

# **TORBAY LOCAL PLAN**

A landscape for success

The Plan for Torbay – 2012 to 2032 and beyond

PROPOSED SUBMISSION PLAN (FEBRUARY 2014)

## **ADDENDUM:**

### **Additional information requested from Torbay Council by Examination Inspector following close of Hearing Sessions on 20 November 2014**

**Torbay Council – 11 December 2014**

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## APPENDIX 1 Meeting housing need

### APPENDIX 1.1

#### Proposed Covenant at Churston Golf Course and related housing sites

The Inspector has already received a number of documents relating to this matter (see Torbay Council Document TC/19). As requested, this Appendix updates the Inspector on the Mayor's final decision on the proposal.

At the meeting of Torbay Council on 4 December 2015, the Mayor confirmed the decision that the Council enters into a deed covenanting with the residents of Churston & Galmpton ward that, inter alia, it will not allow any development of Churston Golf Course without any such proposal first obtaining the majority of votes in a local ward referendum.

As a consequence, and to promote certainty in the development process, the local planning authority will now remove the land at Churston Golf Course from its five year housing land supply. This site, which has planning permission for the construction of 132 dwellings, will now be replaced by the recently approved development for 165 dwellings at Wall Park, Brixham (permission granted subject to signing of S106 Obligation).

The Golf Course site is not however lost to the Plan and, indeed, the Council believes it would be premature to strike it out completely, pending a Secretary of State decision (see below) and, if necessary, a referendum. All the SHLAA evidence points to this being a suitable site for housing and as a consequence it will now be added to the pool of sites to be delivered through the neighbourhood planning process later in the Plan period. A replacement site will not therefore be needed to offset the net loss of this site from the Council's overall figure for housing provision in Torbay.

Wall Park, however, is allocated in the Submission Plan as a Future Growth Area. As a consequence the Plan will now have a notional housing numbers 'deficit' of about 135 dwellings. At the present stage in the Examination process, whilst the Council awaits the views of the Inspector on the acceptability of the Submitted Plan's proposed level of housing growth, it is not intended to restore this deficit through the inclusion of a new, hitherto unallocated housing site. The Council's position remains that the possible alternative sites as initially identified in the SHLAA (see Council Document TC/4 – Excluded sites) are for a variety of reasons too sensitive / inappropriate for inclusion.

As will be noted from the relevant Council Minute (see link below), the Mayor's decision has now been referred to the Secretary of State for consent for its disposal. In the meantime, the Council has sought legal advice on whether the granting of a covenant, primarily in response to a petition, creates a legal precedent and if the Council has a duty to act consistently, what are the wider implications of such a decision for the Mayor and future Administrations. This is a matter of particular importance in relation to possible similar covenants on other Council owned sites supporting delivery of the Local Plan.

In response, the Council's legal advisor has indicated that *the granting of the covenant in response*

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*to the petition does not create a legal precedent , as a legal precedent can only be created by a judicial ruling.* By way of qualification, this advice has stated that, as a public authority, the Council should act consistently and fairly in all of its dealings. If the Council were to receive further requests to grant covenants, then unless it is possible to differentiate decisions on specific facts, the Council could face a Judicial Review challenge if it acted inconsistently, on the grounds of irrationality. A reasoning or decision is deemed to be irrational (or 'Wednesbury' unreasonable) if it is so unreasonable that no reasonable person, acting reasonably, could have made it. Following the outcome of the Secretary of State's deliberations, the Council's legal advisor will comment further on the issue of precedent and also give further consideration to the preparation of a policy relating to the administration of covenants on Council-owned land.

Documentation: Council Minute 115 (Council Meeting, 4 December 2014) including Record of Mayor's Decision appended to Minutes (available via link below) :

[www.torbay.gov.uk/app1-1a-councilminute.pdf](http://www.torbay.gov.uk/app1-1a-councilminute.pdf)

[www.torbay.gov.uk/app1-1b-councilminute.doc](http://www.torbay.gov.uk/app1-1b-councilminute.doc)

[Minutes details on public web site](#)

## APPENDIX 1.2

### Vacant housing stock in Torbay

Use of vacant housing stock – quantum and the scale of likely contribution

Documentation: Vacant Homes in Torbay and Overall Local Plan Housing Numbers

[www.torbay.gov.uk/app1-2-vacanthomes.doc](http://www.torbay.gov.uk/app1-2-vacanthomes.doc)

## APPENDIX 1.3

### Housing delivery rates

The Inspector has expressed concerns over the need to clarify how the maintenance of its five year housing supply will be linked with housing delivery rates. To provide clarification, the Council has amended Policy SS12 to indicate that additional land for new homes will be brought forward by reference to relevant trigger points, including level of creation of new jobs and rate of market delivery of new homes.

Documentation: Amended Policy SS12 Five year housing land supply (see also Main Modification MM17 in Appendix 8.1 to this Addendum)

### **Five year housing land supply**

The Council will maintain a rolling 5 year supply of specific deliverable sites sufficient to meet a **minimum of** housing trajectory [MM17] of 400 (plus five percent) dwellings a year (i.e. 2,000 dwellings over 5 years), made up from 270 a year on committed or identified sites and 130 on windfall sites.

~~New housing will be monitored to ensure that it is matched by the provision of infrastructure, particularly infrastructure that would support job creation. [MM17a] Five year supply of housing land will be updated annually as part of the Council's Housing Land Monitor.~~

**The Council will monitor (see Section 7.5) the provision of new jobs, new homes and infrastructure, including green infrastructure, to ensure a rolling 5 year supply of specific deliverable sites sufficient to meet housing needs.**

**Housing need will be assessed against economic growth and the rate of market delivery of new homes.**

**Additional land for new homes, sufficient to deliver 450 (plus 5%) homes per annum, will be identified if any of the following criteria are met:**

- 1. There is an increase at or above 250 net new FTE jobs per annum for two consecutive years and economic projections show this continuing for a further two years, or**
- 2. Market delivery of new homes exceeds 400 homes per annum for two consecutive years or**
- 3. The supply of specific deliverable sites falls below 2,000 homes when measured over a five year period from the preceding 1<sup>st</sup> April). [MM17]**

Where the supply of specific deliverable sites falls below this figure, the Council will either:

- bring forward additional housing land from later stages of the Plan, working closely with land owners, developers and Neighbourhood Forums; or

**2) identify additional sites through new site allocation development plan documents [MM17]**

23 consider favourably applications for new housing, consistent with Policy SS2, H1 and other policies of this Plan.

New housing leading to the 5 year supply figure being exceeded will be permitted where:

- i. the proposal would bring social, regeneration or employment benefits, including through the provision or funding of infrastructure;
- ii. the proposal would not lead to serious infrastructure shortfalls; and
- iii. the proposal is consistent with other policies in the Local Plan.

#### APPENDIX 1.4

##### Five year housing land supply

The Council publishes its current housing trajectory in its annual Authority Monitoring Report. It is confirmed that details of its current five year housing supply will now also be published annually in the latter part of the calendar year. This element of the policy evidence base will be prepared following completion of the local planning authority's Annual Housing Monitor during spring/early summer. The work will also be undertaken with reference to an assessment of 'developer confirmed' site delivery rates in order to ensure that the Council's sites analysis is underpinned by a 'market led reality check'. This research will also feed back in to the Council's housing monitoring mechanisms to ensure that the necessary action can be taken where land supply falls below required level (see also suggested Main Modification to Policy SS12 in APPENDIX 1.3 above).

Documentation: 2014/2015 5 year housing supply spread sheet

[www.torbay.gov.uk/app1-4-5yrhousinglandsupply.pdf](http://www.torbay.gov.uk/app1-4-5yrhousinglandsupply.pdf)

#### APPENDIX 1.5

##### Masterplan housing yields

Update on capacity of individual Masterplan, implications for TLP figures and solutions for meeting identified deficits / cross reference to Schedule of Suggested Main Modifications

[www.torbay.gov.uk/app1-5-masterplanninghousingyields.doc](http://www.torbay.gov.uk/app1-5-masterplanninghousingyields.doc)

## **APPENDIX 2 Non-delivery by Neighbourhood Plans**

### APPENDIX 2.1

#### New Site Allocations DPD

Additional text has been prepared dealing with the possible introduction of a new Site Allocation DPD, with reference to available options, timing, key dates affecting lead-in for the house building industry and the relationship with key stages of Neighbourhood Plan preparation.

Documentation: New explanatory text for insertion after paragraph 4.5.41 of 'Policy SS12 Five year housing land supply' on Page 61 of Submission TLP:

“This Local Plan enables and expects Neighbourhood Plans to come forward and allocate land to assist meeting housing needs after the first five years – i.e. expected requirements from April 2017. The Local Plan identifies a pool of sites, based on a Strategic Housing Land Availability Assessment, which could provide a suitable selection of sites for development subject to further scrutiny through the neighbourhood planning process. Neighbourhood Plans are at an advanced stage of preparation for the Brixham, Paignton and Torquay areas which will cover 100% of the administrative area of Torbay. It is expected that these three Neighbourhood Plans will, drawing on the pool, allocate sufficient housing land to enable delivery of the growth strategy outlined in Policy SS1 and Table 4.3.

Should Neighbourhood Plans not be adopted (made) by the Council, for example an emerging Neighbourhood Plan is found to not be in general conformity with the strategic policies of the Local Plan when submitted to the local planning authority and/or does not pass the Examination or Referendum process, then under those circumstances the Council undertakes to produce a Site Allocations DPD to allocate land to meet housing needs later in the plan period. Sufficient land is allocated within the Local Plan to meet housing needs during the first five years, so either Neighbourhood Plans and/or a Site Allocations DPD will allocate sites to contribute to providing clarity over housing supply after April 2017.”

## **APPENDIX 3    Jobs and homes**

### APPENDIX 3.1

#### Job and relationship with housing delivery

Clarification that the TLP job estimates are accurate and evidence-based (including application of homes/jobs ratios for dwelling construction and type, plus pipeline commercial schemes) > reference to 5 year housing land supply and commercial pipeline spreadsheets

Documentation: (a) Paper on job creation and housing delivery; (b) Appendix 1- Jobs created by homes; (c) Appendix 2- Five year housing land supply and associated job creation spreadsheet; (d) Appendix 3- Oxford Economics data, 2014.

Document (a)

[www.torbay.gov.uk/app3-1a-jobcreation.doc](http://www.torbay.gov.uk/app3-1a-jobcreation.doc)

Document (b)

[www.torbay.gov.uk/app3-1b-jobscreated.xls](http://www.torbay.gov.uk/app3-1b-jobscreated.xls)

Document (c)

[www.torbay.gov.uk/app3-1c-5yrlandsupply.pdf](http://www.torbay.gov.uk/app3-1c-5yrlandsupply.pdf)

Document (d)

[www.torbay.gov.uk/app3-1d-oxfordeconomicsdata.xls](http://www.torbay.gov.uk/app3-1d-oxfordeconomicsdata.xls)

## APPENDIX 4 Sustainability Appraisal

### APPENDIX 4.1

#### SA for OAN and SHLAA

Preparation of SA for both Objectively Assessed Housing Need figure of 12,300 and Strategic Housing Land Availability Assessment figure of 11,550

Documentation: SA for OAN figure of 12,300 and SHLAA figure of 11,550

[www.torbay.gov.uk/app4-1-sustainabilityappraisal.doc](http://www.torbay.gov.uk/app4-1-sustainabilityappraisal.doc)

### APPENDIX 4.2

#### SA methodology and weighting

Commentary on the use of weighting in the Local Plan Sustainability Appraisal process

Documentation: New supporting text to be inserted as a new paragraph (2.1.5) in Section 2, Page 3, in Torbay Council Document TC/9:

“The Sustainability Appraisal process uses 31 sustainability objectives to assess the likely effects of a policy or proposal within the Local Plan. This Sustainability Appraisal Framework has been subject to consultation and agreement at the scoping stage and reflects the NPPF as well as local circumstances in Torbay. The three aspects of sustainable development (social, economic and environment) have been treated evenly i.e. the weight given to different sustainability objectives is equal. The possibility of attaching different weightings to sustainability objectives would favour one aspect of sustainable development over others, which would be contrary to the NPPF principle of achieving sustainable development (paragraph 7). Consistency in judgement on the significance of impacts of different policies and proposals against sustainability objectives is particularly important to provide a balanced assessment.”

#### APPENDIX 4.3

##### SA for Excluded sites

Preparation of SA for Excluded Sites (pink category – see Torbay Council Document TC/4)

Documentation: SA for Excluded Sites

[www.torbay.gov.uk/app4-3-sustainabilityappraisal.doc](http://www.torbay.gov.uk/app4-3-sustainabilityappraisal.doc)

#### APPENDIX 4.4

##### HRA for Excluded sites

Preparation of HRA for Excluded Sites (pink category – see Torbay Council Document TC/4)

Documentation: HRA for Excluded Sites

[www.torbay.gov.uk/app4-4-hraexcludedsites.doc](http://www.torbay.gov.uk/app4-4-hraexcludedsites.doc)

## **APPENDIX 5 Duty to cooperate**

### APPENDIX 5.1

#### Five Year Plan Review mechanisms

The Examination Inspector has asked for more clarity and certainty about how any unmet housing need in Torbay can be met elsewhere. Whilst he has confirmed the soundness of the Council's Duty to Cooperate Statement, he requires more clarity on the mechanisms for review and delivery. This includes the provision of more detail on the practicalities of the South Devon Delivery Review Panel, the vehicle proposed for the cooperation of the three South Devon Councils, namely Torbay, South Hams District Council and Teignbridge District Council, in the five year review of the Torbay Local Plan.

There is already agreement between the three Councils on the principle of undertaking a five year review of Local plan housing requirements on a cross-boundary basis through a vehicle such as the proposed the South Devon Delivery Review Panel. However, a further meeting was held between the three local planning authorities at Teignbridge on 2 December 2014 to discuss in further detail the scope of such a review and the role and operation of the Panel. The meeting was attended by senior strategic planning policy officers from each authority.

The agreed starting point at the meeting was the reaffirmation of the principles of cooperation already established and a collective commitment to find a consensus on how we jointly approach meeting future housing needs across the sub-region. Discussion took place regarding the housing needs of individual districts, plan preparation timescales, approaches to monitoring and review, development triggers and format of the proposed South Devon Delivery Review Panel. It was also recognised that there would be a need for additional SA (and probably HRA) work to test possible options for accommodating additional Torbay growth on land within the two adjoining Districts.

As a consequence, Torbay has prepared additional text to reflect this agreed stance, to be inserted on Page 24 of the Council's Duty to Cooperate Statement (Examination Submission Document SD15), within the section entitled 'Position agreed'. The version circulated to adjoining LPAs is set out below. Because of the limited time available since the meeting of the three LPAs, the formal detailed responses from both Teignbridge and South Hams District Councils are still awaited. The final agreed version of this new text, reflecting comments received from each Authority, will be forwarded to the Inspector as soon as possible.

Documentation: New text (in red) for insertion on Page24 of Submission Document SD15

The relevant section now reads as follows **(subject to formal confirmation from SHDC and TDC):**

#### **"Position agreed**

Torbay and Teignbridge Councils have agreed to a coordinated and positive review of the Councils' Local Plans every five years taking account of joint monitoring, also involving South Hams District Council as the other planning authority which adjoins Torbay. This review will consider the need for and location of further development on a sub-regional basis taking account of jointly prepared and

consistent evidence, in order to inform future reviews of the three Local Plans. This is reflected in Teignbridge District Council's Duty to Cooperate Statement.

Notwithstanding the fact that Local Plans within the three Councils (Torbay, Teignbridge and South Hams) have been and continue to be produced on different time scales, the three Councils have agreed that the principles identified in the preceding paragraph will be reinforced through the following actions:

1. Positive and coordinated cross-boundary working

- The Councils will work together and use consistent data to assess performance against local plan requirements;
- The Councils will provide additional land, if required, against key assessment criteria set out in Local Plans (such as those identified in Policy WE1 of the Teignbridge Local Plan)

2. Joint Monitoring

- The Councils will work together to establish and run the South Devon Delivery Review Panel, comprising representatives from the three Councils, infrastructure providers, environmental bodies, businesses representatives and homebuilders;
- The South Devon Delivery Review Panel will meet at least annually, timed to coordinate with the Councils' Authority Monitoring Report requirements, to review delivery of jobs, homes and infrastructure (including green infrastructure) in the South Devon area;
- The South Devon Delivery Review Panel will use the consistent data (used by all three Councils) to assess delivery;
- The South Devon Delivery Review Panel will complement the activities of the Exeter and East Devon Growth Point team and the Teignbridge Infrastructure Board and provide a useful conduit for informing and influencing the Heart of the South West LEP;
- The South Devon Delivery Review Panel will make recommendations to the three Councils on the need for and locations of further development, to inform local plan delivery and review.

3. Analysis of need for and location of further development

- The three Councils will, jointly, put mechanisms in place to ensure that, if housing land availability is falling behind market delivery and housing need requirements (when assessed against agreed criteria) then further sites will be brought forward to meet housing need requirements.
- These mechanisms will be confirmed before May 2015, but could involve, for example, the 'pooling' of non-allocated sites (eg those identified as developable in SHLAAs, but not included in a Local Plan) by each Council and the careful selection of those sites to come forward for development, to ensure that housing need is met in the right locations, at the right time and with the right outcomes.

It is agreed that South Hams and Torbay comprise separate housing market areas .....

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## APPENDIX 6 Infrastructure

### APPENDIX 6.1

#### South West Water – Long road, Paignton

Clarification from South West Water regarding drainage considerations associated with Bookhams site development proposal, Brixham Road / Long Road, Paignton

Documentation: Email dated 15 October 2014 from SWW to Torbay Council, plus related emails

**From:** Development Planning [<mailto:devplan@southwestwater.co.uk>]

**Sent:** 15 October 2014 12:56

**To:** Planning

**Subject:** P/2014/0947 Land off Brixham Road - Long Road, Paignton

I refer to the above application and would advise that it is unlikely that the public foul drainage network would have capacity to accommodate this current application/development.

Should your Council be mindful to approve the application South West Water will require the following conditions to be imposed;

#### **Foul Drainage**

No development shall commence until:

- a) a detailed survey and evaluation of the public foul sewerage network has taken place (at the Owner's expense) to identify improvements necessary to be funded in advance and executed to accommodate the discharge of foul sewage from the Development; and
- b) the Owner has submitted an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 (which shall include the provision of public sewerage improvement works identified as necessary).

No dwelling hereby approved shall be occupied or brought into use and there shall be no discharge to the public foul sewerage network, unless approved in writing by the Local Planning Authority (as in accordance with the scheme of improvement works identified by the Sewerage Undertaker as necessary to accommodate the discharge of foul sewage from the Development).

**Martyn Dunn**

**Development Coordinator**

**01392 443702**

**South West Water, Peninsula House, Rydon Lane, Exeter, EX2 7HR**

**From:** Diamond, Matthew  
**Sent:** 20 November 2014 14:11  
**To:** Steward, Pat  
**Subject:** FW: P/2014/0947 Land off Brixham Road, Paignton

FYI

**From:** Development Planning [<mailto:devplan@southwestwater.co.uk>]  
**Sent:** 20 November 2014 13:17  
**To:** Planning  
**Subject:** P/2014/0947 Land off Brixham Road, Paignton

Further to our response dated 15 October 2014 in respect of the above application I would clarify this in relation to the foul drainage concerns we have raised.

There is no limitation in terms of South West Water being able to provide capacity within the receiving sewage treatment works (Brokenbury Quarry) or the strategic public sewer network serving Torbay generally.

The concerns we have relate to the local sewer network in the immediate vicinity of the development site to which foul drainage connections would need to initially be made.

**Martyn Dunn**  
**Development Coordinator**  
**01392 443702**  
South West Water, Peninsula House, Rydon Lane, Exeter, EX2 7HR

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## **APPENDIX 7    Natural England representations**

### APPENDIX 7.1

#### Agreement of NE to HRA and TLP

Correspondence from Natural England dated 24 November 2014 has been received by Torbay Council confirming legal compliance of the Torbay Local Plan in respect of Habitats Regulations Assessment.

Documentation: Letter dated 24 November 2014 from Natural England to Torbay Council

[www.torbay.gov.uk/app7-1-neletter.pdf](http://www.torbay.gov.uk/app7-1-neletter.pdf)

## **APPENDIX 8 Suggested Main Modifications and Additional Modifications, plus Composite version of modified Local Plan**

### APPENDIX 8.1

#### Main Modifications

The Council has prepared a schedule setting out the suggested 'Main Modifications' to the Submission Local Plan, plus a related user guidance note.

Documentation: Schedule of 'Main Modifications'

[www.torbay.gov.uk/app8-1-draftproposedmainmodifications.doc](http://www.torbay.gov.uk/app8-1-draftproposedmainmodifications.doc)

### APPENDIX 8.2

#### Additional Modifications

The Council has prepared a schedule setting out the suggested 'Additional Modifications' to the Submission Local Plan, plus a related user guidance note.

Documentation: Schedule of 'Additional Modifications'

[www.torbay.gov.uk/app8-2-draftproposedadditionalmodifications.doc](http://www.torbay.gov.uk/app8-2-draftproposedadditionalmodifications.doc)

### APPENDIX 8.3

#### Composite version of modified TLP

The Council has prepared a modified version of the original Submission Local Plan that now embodies all of the suggested main and additional modifications contained in the two Schedules referred to in APPENDICES 8.1 and 8.2 above. This document also includes a related user guidance note.

Documentation: 'Composite version' of Revised Submission Plan

[www.torbay.gov.uk/app8-3-trackchanges.doc](http://www.torbay.gov.uk/app8-3-trackchanges.doc)

**From:** Turner, Steve

**Sent:** 11 December 2014 18:00

**To:** Young, Robert

**Cc:** Steward, Pat; Brooks, Tracy; Shimin, Ashwag; Gunther, Andrew; Pickhaver, David

**Subject:** Torbay Local Plan Examination - Additional information for Examination Inspector

Bob,

I would be grateful if you could forward this email and attached Addendum to Mr. Holland. As you are aware, this documentation has been prepared in response to his request for further information on various policy matters.

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Dear Mr. Holland,

At the close of the Torbay Local Plan Examination Hearing Sessions on Thursday 20 November 2014, you requested that the Council provide you with further information and / or clarification on a range of policy issues relating to matters that you had raised during the Examination of the Torbay Local Plan. These matters are summarised below and detailed responses and/or documentation relating to each point are set out for your attention in individual Appendices within the attached Addendum.

The Council has sought to address the following issues:

**Meeting housing need (APPENDIX 1)**

- Churston Golf Course Covenant – Mayor’s decision; implications for related housing sites; advice on precedent for Local Plan [Appendix 1.1]
- Use of vacant housing stock – quantum and scale of contribution [Appendix 1.2]
- Housing delivery rates (modification to Policy SS12) [Appendix 1.3]
- Confirmation of annual publication of 5 year housing supply [Appendix 1.4]
- Masterplan housing yields – update on capacity and implications for TLP figures [Appendix 1.5]

**Non-delivery by Neighbourhood Plans (APPENDIX 2)**

- Additional text outlining New Site Allocation DPD options and timing [Appendix 2.1]

**Jobs and homes relationship (APPENDIX 3)**

- Clarification that the TLP job estimates are accurate and evidence-based; monitoring of job provision [Appendix 3.1]

**Sustainability Appraisal (APPENDIX 4)**

- Preparation of SA for OAN figure of 12,300 and SHLAA figure of 11,550 [Appendix 4.1]
- SA methodology and weighting [Appendix 4.2]
- SA for Excluded (pink) Local Plan sites [Appendix 4.3]

**PH/1** Further information supplied by Torbay Council to Examination Inspector, including related email correspondence (Torbay Council, 11 December 2014)

- HRA for Excluded (pink) Local Plan sites [Appendix 4.4]

**Duty to cooperate (APPENDIX 5)**

- Details agreed with adjoining District Councils regarding 5 year review and South Devon Delivery Review Panel [Appendix 5.1]

**Infrastructure (APPENDIX 6)**

- SWW clarification on drainage considerations and development proposal for Bookhams site, Paignton [Appendix 6.1]

**Natural England representations (APPENDIX 7)**

- Receipt and publication of letter from NE agreeing to HRA and TLP [Appendix 7.1]

**Suggested Main Modifications and Additional Modifications (APPENDIX 8)**

- Schedule of 'Main Modifications' plus user guidance note [Appendix 8.1]
- Schedule of 'Additional Modifications' plus user guidance note [Appendix 8.2]
- 'Composite version of Revised Submission Plan' plus user guidance note [Appendix 8.3]

If you have any queries regarding the information supplied, Officers will be pleased to assist you via the Programme Officer.

Kind regards,

**Steve Turner**  
**Team Leader - Strategic Planning**

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