



Developer Contributions

**Draft Supplementary Planning Document (SPD)
March 2014**

DRAFT FOR CONSULTATION

6th March – 17th April 2014



Consultation Overview

Worthing Borough Council is currently progressing work to adopt a Community Infrastructure Levy (CIL) and it is expected that this will be in place by early 2015. The introduction of CIL will change the way in which developers contribute to the provision of infrastructure in the Borough. This draft Developer Contributions Supplementary Planning Document (SPD) discusses the differences between CIL and Planning Obligations and explains how they will work together when CIL is in place.

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Link to Evidence Base:

<http://www.adur-worthing.gov.uk/planning-policy/infrastructure/>

For any queries, please call 01273 263009

The Council has approved this document for consultation and it is published for a six week consultation period starting on Thursday 6th March until Thursday 17th April.

Representations on the Draft SPD will be taken into account and, if necessary, the document will be amended later this year in response to comments made. The revised document will form a key piece of evidence when the Draft Charging Schedule for CIL is considered at Examination (see indicative timetable below).

Please note that representations received cannot be treated as confidential as all comments must be publicly available in accordance with government regulations. Please be aware that Worthing Borough Council and Adur District Council work in partnership and information may also be shared across the two organisations.

Next Steps for CIL and this SPD (indicative timetable)

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| ➤ Draft Charging Schedule consultation ends | April 2014 |
| ➤ Submission of Draft Charging Schedule | June 2014 |
| ➤ Examination of Draft Charging Schedule | Summer 2014 |
| ➤ Adoption of Charging Schedule and SPD | Autumn 2014 |
| ➤ Implementation of CIL and SPD | Early 2015 |

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Section 1 - Introduction

In order to create sustainable communities the Council wants to ensure that the necessary infrastructure is put in place to meet the needs of the local community. This includes not only the physical infrastructure such as road access and utilities that enable development to proceed in the first place, but also the community facilities and environmental improvements which will ensure that the occupiers of new developments have adequate access to services.

The Council expects developers to fund or contribute directly to the necessary improvements so as to mitigate or compensate for the impact of their proposal. These measures are known as 'developer contributions'. The purpose of this Supplementary Planning Document (SPD) is to provide guidance to all interested parties about the types of contributions that will now be sought and the basis for the charges. It will enable a developer to work out at an early stage in the development process what contributions will be required in association with their development.

The document brings together the Council's approach to seeking contributions from new development to address the cumulative impacts on infrastructure and to deliver affordable housing. The delivery of these elements will now be achieved through two key mechanisms: the Community Infrastructure Levy (CIL) and Planning Obligations (Section 106 Agreements / Unilateral Undertakings). In addition, Planning Conditions are also used in certain circumstances. Although Planning Obligations can still be used by the Council this SPD clarifies that once the Council has introduced CIL it will become the principle mechanism for the collection of contributions from most development.

The key principles of CIL are set out in this document and these should be read in conjunction with the CIL Charging Schedule (when adopted) and other CIL guidance. In terms of Planning Obligations, changes to regulations have limited (and will further limit) their use however there is still an important role to be played by these for affordable housing and site specific infrastructure for some developments. This SPD is designed to collate information on these two mechanisms and clarify what the Council will expect from new development.

It is intended that this SPD will be adopted at the same time that the Council's CIL Charging Schedule takes effect.

Status of the document

Supplementary Planning Documents provide greater detail on the Council's policies set out in the Core Strategy and high level planning documents. The National Planning Policy Framework (NPPF) supports the production of SPDs where they can help developers make successful applications or aid infrastructure delivery.

Whilst SPDs are not examined by an Inspector, they are subject to a process of consultation and engagement with relevant parties and ultimately they must be adopted by the Council. When adopted, this guidance will replace all previous Worthing Borough Council guidance on Developer Contributions and will form a material consideration when assessing planning applications within the Borough.

Legislative and Policy Framework

The statutory framework for Planning Obligations is set out in Section 106 of the Town and Country Planning Act 1990 (as amended).

The Planning Act (2008) introduced powers for local authorities to apply a Community Infrastructure Levy (CIL) to development proposals to support infrastructure delivery in an area. Local Authorities are entitled to charge CIL on the basis that it can contribute to well evidenced, costed and justified infrastructure. CIL Regulations 2010 and Guidance has since been amended, firstly by new statutory guidance published in 2012 under Section 221 of the Planning Act and more recently through a further iterations published in April 2013 and February 2014.

The NPPF, which provides the higher level planning framework, makes it clear that the planning system should identify and coordinate development requirements, including the provision of infrastructure. CIL is viewed as playing a key role in supporting this aim in that it will allow the local authority to raise funds from owners or developers of land undertaking new building projects to help fund the identified infrastructure requirements within the Borough. A key advantage of CIL is that more developments will help to fund the infrastructure required in an area and developers and landowners will have greater certainty as to what these costs will be.

When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development set out in the NPPF.

Worthing Core Strategy

A commitment to providing adequate infrastructure alongside new development and increasing the delivery of affordable housing are strong themes within the Worthing Core Strategy. The following policies and their supporting text are of particular relevance:

- Policy CS10 – Affordable Housing (see Section 5 of this document)
- Policy CS11 – Protecting and enhancing recreation and community infrastructure
- Policy CS12 – New Infrastructure

Structure of the document

Following this introduction, Section 2 summarises the mechanisms through which planning contributions will be collected and how these will be implemented by the Council. It will also explain how CIL and Planning Obligations relate to each other. Sections 3 and 4 then explore CIL and Planning Obligations respectively in more detail. Finally, Section 5 provides detail with regards to the requirements for affordable housing.

Section 2 - Mechanisms for Securing Infrastructure from Development

CIL and Planning Obligations are the two main mechanisms available to the Council to ensure that future development addresses any adverse impacts that it creates. In addition, many forms of infrastructure will actually be integrated within development schemes as part of the design process. If necessary, Planning Conditions can be used to ensure that key requirements are met.

Planning Conditions and Obligations are a tried and tested mechanism to require individual developments to provide or pay for the provision of development specific infrastructure requirements. They are flexible and have historically delivered a wide range of site and community infrastructure benefits, including the transfer of land for community use and the pooling of contributions for certain types of infrastructure.

Whilst for Worthing, CIL is being designed to be the principle mechanism for collecting infrastructure contributions there will still be a role to play for Obligations and Conditions and this section will summarise these and explain how they relate to each other.

All applicants for planning permission will need to be aware of the opportunities to meet infrastructure needs within developments themselves, and the way good design and Planning Conditions can assist in achieving this. To meet this aim, developers are encouraged to engage in pre-application discussions with the Council at the earliest opportunity.

Planning Conditions

Planning Conditions are requirements made by the Council as Local Planning Authority for actions that are needed in order to make a development acceptable in planning terms. Whilst they cannot be used to secure financial contributions they can be used to ensure that certain elements related to the development proposal, and which may benefit the wider community, are carried out. In Worthing such conditions are likely to cover, amongst other things, the requirement to:

- undertake archaeological investigations.
- implement necessary local site-related transport improvement (see also 'Highway Improvements' below).
- undertake appropriate flood risk solutions.

Community Infrastructure Levy (CIL)

When adopted, the Levy will apply to most new developments and charges are based on the size and type of new development. CIL will generate funding to deliver a range of Borough-wide and local infrastructure projects that support residential and economic growth. The basis for the CIL charge will be detailed within the Council's CIL Charging Schedule and supporting evidence. The developer contribution to infrastructure required through CIL is non-negotiable. Further information relating to CIL can be found in Section 3 of this SPD.

Planning Obligations (Section 106 Agreements and Unilateral Undertakings)

Development should make appropriate provision of services, facilities and infrastructure to meet its own needs. This means that where sufficient capacity does not exist the development should contribute what is necessary either on-site or by making a financial contribution towards provision elsewhere. These site specific developer contributions are secured by applying a Planning Obligation, secured by either a Section 106 Agreement or Unilateral Undertaking, which is prepared and concluded as part of the planning application process.

The NPPF supports the continued use of these mechanisms and it states that Local Planning Authorities can consider whether otherwise unacceptable development could be made acceptable through the use of conditions or Planning Obligations. However, it also emphasises that agreements should be sufficiently flexible to prevent planned development being stalled.

The NPPF (paragraphs 203-206) reiterates the statutory requirements set out in regulation of the 122 of the CIL Regulations that states that Planning Obligations should only be sought where the requirements are:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The above tests are embedded within law in Regulation 122 of CIL Regulations 2010 (as amended). Therefore, the Council can continue to use Planning Obligations alongside CIL for affordable housing and to mitigate the potential adverse impacts of development. As such, the Council will continue to negotiate financial or other contributions for site related infrastructure improvements that are required to: mitigate the impact of development; enable planning permission to be granted; and to make a new development acceptable or successful.

In accordance with Section 106 of the Town and Country Planning Act 1990 (as amended) Planning Obligations can be used to:

- a) restrict the development or use of the land in any specified way;
- b) require specified operations or activities to be carried out in, on, under or over the land;
- c) require the land to be used in any specified way; or
- d) require a sum or sums to be paid to the authority on a specified date(s) or periodically.

Planning Obligations can therefore be used to: prescribe the nature of the development (e.g. a proportion of the housing must be affordable); compensate for loss caused by a development (e.g. loss of open space); or mitigate a development's impact (e.g. increase public transport provision). Agreements must be governed by the fundamental principle that planning permissions may not be bought or sold and they cannot be used to secure a share in the profit from development.

Unless it is agreed otherwise, Planning Obligations run with the land in perpetuity and are usually enforced against those with a legal interest in the land at the time of

any breach of the planning obligations until such time as they are discharged or otherwise modified.

Further information on Planning Obligations can be found in Section 4 (Planning Obligations) and Section 5 (Affordable Housing).

Highway Improvements

Agreements for the private sector funding of works on the strategic road network would normally be made under Section 278 of the Highways Act 1980 (as amended). These agreements provide a financial mechanism for ensuring delivery of mitigation works identified and determined as necessary for planning permission to be granted. However, it should be noted that under certain circumstances, particularly where works are required as mitigation for multiple developments, CIL may be the more appropriate funding mechanism.

Section 278 Agreements are not the responsibility of the Borough Council as Local Planning Authority. Further guidance on the Section 278 process and the steps which will need to be taken by a developer and others, when such an agreement is contemplated, can be found on the Department for Transport website and the West Sussex County Council website (as Highway Authority).

Section 38 of the Highways Act 1980 provides for agreements to be used when a local Highways Authority wishes to enter into a legal agreement with a developer to adopt a highway – provided that it has been constructed to a specified standard.

The relationship between CIL and Planning Obligations

Guidance makes it clear that Planning Obligations and CIL need to be complementary contribution mechanisms. This SPD will help to clarify how the Council intends to implement each mechanism in partnership.

In general, CIL is intended to provide infrastructure to support the development and growth of an area rather than to make individual planning applications acceptable in planning terms. As a result, there may still be some site specific impact mitigation requirements without which a development should not be granted planning permission (e.g. new school facilities within a strategic development, play areas, local highway and junction improvements and landscaping). These requirements (which must be directly related to the development) are more suitably delivered through a Planning Obligation or Section 278 agreement, in addition to the CIL charge. Furthermore, the provision of affordable housing lies outside of the remit of CIL and will continue to be secured, in the main, through Planning Obligations.

As such, there is still a legitimate role for Planning Obligations to enable the Council to be confident that the specific consequences of development can be mitigated in a way that would make individual developments acceptable. However, to ensure no 'double dipping' takes place it is important that the Council clearly differentiates the 'general' infrastructure projects that will be funded through CIL and, when establishing the appropriate levy rate, distinguishes these from the projects that will still be expected to be funded through Planning Obligations.

To help ensure that both mechanisms are complementary, reforms have also been introduced to restrict the use of Planning Obligations. Some of these have already come into effect and others will take effect from April 2015. To avoid duplication Regulation 123 (CIL Regulations 2010 – as amended) already restricts the use of Planning Obligations for infrastructure that will be funded in whole or in part through CIL. Furthermore, after April 2015, Planning Obligations can no longer be used as the basis for a tariff to fund infrastructure. Instead, the levy will be used as the mechanism for pooling contributions from a variety of developments to fund infrastructure.

In order to clarify what types of infrastructure will be funded by each mechanism once CIL is in place the Council will publish a Regulation 123 list. This list will set out the infrastructure projects and types that the Council intends will be, or may be, wholly or partly funded through CIL (and therefore not through Planning Obligations). Although CIL will be the principle mechanism for collecting developer contributions, the reality is that some developments in Worthing will be liable to pay both CIL ('general infrastructure') and Planning Obligations (site specific measures / affordable housing). However, in these instances the contributions will cover different infrastructure projects and developments will not be charged for the same infrastructure through each mechanism.

Overall, the principle is that all eligible developments must pay towards CIL and, in addition, affordable housing and any (identified) site specific requirements (usually for the more significant development sites) will be secured through Planning Obligations where they are necessary to make the development acceptable in planning terms. When setting the CIL charging rates it is important to understand the dynamics of CIL and Planning Obligations and how they may be utilised once CIL has been introduced. To help achieve this, when calculating the appropriate CIL rate for the Borough the envisaged and forecast requirements for infrastructure through Planning Obligations have been considered and factored into the viability testing model.

Implementation

The CIL rate to be collected from development will be set out within the Council's adopted CIL Charging Schedule. Planning Obligations sought will be based on the Council's assessment of the likely impact created by the development. In some cases the developer will be required to carry out assessments of need in connection with their planning application.

General Principles

- **By working with developers, the Council hope that many of the design / mitigation requirements are delivered as part of the initial development proposal.**
- **Where necessary and appropriate, Planning Conditions will be used to ensure that the final proposal meets such requirements.**
- **CIL will be the principle (non-negotiable) mechanism through which the Council will collect infrastructure contributions to fund more 'general' projects (see Section 3) to support the growth of the area.**
- **However, Planning Obligations will still play a key role for some developments (see Sections 4 and 5).**
- **In such circumstances where a proposal directly necessitates the provision of infrastructure to mitigate / enable development (that is not planned for delivery through CIL or any other funding programme) the Council may seek a contribution or delivery through a Planning Obligation (Section 106 Agreement / Unilateral Undertaking).**
- **Where a proposal is required to deliver affordable housing (in line with Core Strategy Policy 10) this will be secured through a Section 106 Agreement.**
- **Planning Obligations (Section 106 Agreements / Unilateral Undertakings) will not be used to secure infrastructure already identified for investment through the 'Regulation 123' list.**
- **Section 278 Agreements may be used by West Sussex County Council (as Highway Authority) to ensure that works to the highway are carried out to an acceptable standard.**

Section 3 – The Community Infrastructure Levy

Context

CIL is a new framework for the pooling of developer contributions by local authorities. It will be used to secure appropriate financial contributions and to support the delivery of any infrastructure required to support growth and mitigate the cumulative impacts of new development. The levy applies to most new buildings and charges are based on the size and type of the new development. The intention is that CIL will complement mainstream public funding and will provide a more consistent and transparent mechanism of raising financial contributions from development.

This section sets out in more detail the Council's approach, as the Charging Authority, to the implementation of CIL within Worthing. The CIL Charging Schedule will set out the actual charges on development. This Schedule will be subject to an independent examination in 2014 and, subject to it being found sound and adopted, it will then sit alongside this SPD which will be adopted when the Worthing CIL comes into force. When in place, the Council will also publish a manual that will help to provide understanding and guidance as to how CIL will be implemented and enforced.

As previously explained, developers (usually of large schemes) may still be required to provide specific infrastructure through Planning Obligations to mitigate the direct impact of the development proposed and to help deliver affordable housing. However, in these instances a standard fee is also charged through CIL to enable the delivery of new or improved infrastructure needed to support the development generally. This can then be pooled with contributions from other developments to deliver items of wider (non site-specific) infrastructure identified as a priority to support growth within the Borough.

Infrastructure to be funded through CIL

Although CIL will make a significant contribution to the infrastructure requirements of an area generated by new development, other sources of public funding will continue to bear the main burden of infrastructure funding. CIL is intended to contribute to some of the funding gaps that remain once existing sources of funding have been taken into account. The rate set must strike an appropriate balance between the desirability of funding infrastructure and the potential impact on the economic viability of development (as a whole).

Infrastructure which can be funded by the levy can cover a broad range of facilities or services which provides communities with increased flexibility to choose what new infrastructure they need as a priority. The levy can also be spent on the provision, improvement, replacement, operation or maintenance of infrastructure.

A list of infrastructure that will be funded through CIL (called the Regulation 123 list) will be available on the Council's website following the adoption of the Levy. This list will be reviewed regularly to ensure it reflects current infrastructure needs. When CIL is adopted (or from April 2015) Planning Obligations cannot be used where there

have been five or more Planning Obligations, in relation to the same infrastructure or type of infrastructure, entered into on and since 6th April 2010. There is no restriction on pooling for items not capable of being funded by CIL, such as affordable housing.

Development that qualifies for CIL contributions

As set out in legislation, CIL can be charged on all new 'chargeable' development where there is an increase (net) in gross internal floorspace. Where there is an existing building on site in a lawful use that will be demolished as part of the development, the Gross Internal Area (GIA) of that building will be deducted from the total chargeable floorspace of a new development.

CIL can only be charged where the GIA of the development is more than 100m² except where the development is for a single residential unit of less than 100 m² (these will still have to pay CIL). Self-build housing, residential extensions / annexes and buildings that people do not normally go, or only go into intermittently (such as for the inspection of machinery) will not be liable to pay the levy.

Setting the levy rate

The Borough Council, as charging authority, must produce a document called a Charging Schedule which sets out the type of development that is required to pay CIL and the rate of the levy. When setting the levy the Council must seek to provide a balance between collecting revenue to fund infrastructure and ensuring that the rates are not so high that they put development at serious risk. The Council will also need to draw on infrastructure planning that underpins the development strategy for the area to help identify the total infrastructure funding gap.

Rates set must be supported by evidence, including the economic viability of new development and the area's infrastructure needs. One standard rate can be set or, if justified, specific rates for different areas and types of development can be established. If supported by evidence, the ability to set differential rates gives the Council flexibility to deal with varying circumstances.

In calculating individual charges for the levy, the Council will be required to apply an annually updated index of inflation to keep the levy responsive to market conditions.

The key pieces of evidence (available to view on the Council's website) that have been used to support the setting of the Worthing CIL charge are the:

- Infrastructure Funding Gap Review; and
- Viability Assessment (and supporting documents) which assesses the impact of potential CIL charges on the viability of new development taking account of other costs.

Charging CIL

The CIL charge is expressed in £ per m² on the net additional increase in floorspace. It will be collected as a cash contribution although in some cases it may be more appropriate to transfer land or infrastructure ('in-kind') to the charging authority as

full, or part, payment. In such cases the land must be used to provide, or facilitate the provision of, infrastructure to support development in the area.

When adopted, the CIL charge required from new development will be set out in the Charging Schedule which will have been subject to a statutory process, including independent Examination.

Exemptions

The CIL charge will be non-negotiable. However, mandatory exemptions and relief from CIL include social (affordable) housing relief and developments by charitable institutions on their land to be used wholly or mainly for the purposes of their charitable activity. Further information relating to exemptions and other discretionary matters is set out in the Draft Charging Schedule.

The Council, at this stage, does not intend to implement any additional discretionary exemptions for exceptional circumstances. However, the Council will ensure that the level of charge is set so that the majority of development in the borough is viable and remains so as part of the monitoring and management of CIL. Furthermore, the impact of the introduction of CIL and the potential benefits or otherwise of introducing this levy will be kept under review.

As explained in Section 2, in exceptional circumstances where it can be demonstrated that the combined effect of developer contributions make a development unviable the Council will collect CIL but may seek to negotiate other elements where appropriate.

Collecting CIL

The levy's charges will become due from the date that a chargeable development is commenced. When planning permission is granted, the Council will issue a liability notice setting out the amount of the levy, the payment procedure and the possible consequences of non-compliance. As detailed in the Draft Charging Schedule, the Council intends to adopt an instalment policy that will in effect stagger CIL payments for larger development sites in the Borough.

The responsibility to pay the levy runs with the ownership of land on which the liable development will be situated. Although liability rests with the landowner, the regulations recognise that others involved in a development may wish to pay. To allow for this, anyone can come forward and assume liability for the development.

Spending CIL

Charging authorities are required to spend the levy's revenue on what they see as the infrastructure needed to support the development of their area. The assessment of 'need' will largely be informed by the Infrastructure Delivery Plan (IDP) and Infrastructure Funding Gap Review (available to view on the Council's website).

The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy pre-existing deficiencies unless those deficiencies will

be made more severe by new development. Unlike contributions collected through Planning Obligations there is no time constraint or pooling restrictions for the spending of monies collected through CIL.

The Council must allocate a meaningful proportion (15-25%) of levy revenues raised in each neighbourhood back to that neighbourhood. This will ensure that where a neighbourhood bears the brunt of a new development, it receives sufficient money to help it manage those impacts. For Worthing (where there are no Parish Councils and currently no Neighbourhood Forums / Plans) the Council, as charging authority, will retain the funds to spend on behalf of the local community.

The Council may pass money to other bodies to deliver infrastructure which will benefit the development of Worthing. This may include, for example, the Environment Agency for flood defences or West Sussex County Council for education infrastructure. The Council will also be able to collaborate and pool its revenue from their respective levies to support the delivery of sub-regional infrastructure.

In line with guidance, the Council intends to use revenue from the levy to recover the costs of administering the levy (up to 5% of total revenue).

Monitoring and Review

To ensure that the levy is open and transparent, the Council will prepare a report on the levy for the previous financial year. This will be incorporated within the Council's Annual Monitoring Report (AMR) which will be placed on the Council's website by the end of each year. The report for CIL will set out:

- The amount of CIL collected within the monitoring year;
- The total amount of CIL collected since adoption;
- The expected CIL income from permitted applications;
- How much CIL revenue has been spent; and
- The infrastructure delivered using funding collected from CIL charges.

It will be important to ensure that the CIL charge remains appropriate and reflects both the identified funding gap and the levels of viability within the Borough. In the event that it is considered necessary to change the Charging Schedule the Council will follow the same stages of draft preparation, consultation and an independent Examination before the revised Charging Schedule can be adopted by the Council. It is estimated that this process will take approximately 18 months with the costs being recouped as part of the administration charge collected.

Further details on the levy charge can be found on the Council's website. When adopted, the Council CIL Charging Schedule should be read in conjunction with this document.

The CIL Process - Indicative Steps



Section 4 - Planning Obligations

Context

As explained in Section 2, in line with CIL Regulation 122, the Council will consider whether otherwise unacceptable development could be made acceptable through the use of Planning Obligations which must be directly related to the development. Although CIL will be collected from all eligible development to fund 'general' infrastructure there may be cases where the development proposed results in a specific need for infrastructure (or access to a service) that is not currently available, and that has not been identified for investment through CIL or other investment programmes. In such circumstances, the Council would expect these aspects to be addressed as part of the proposal at the time planning permission is sought – and secured by a Planning Obligation. In addition, the provision of affordable housing will continue to be provided through Planning Obligations and this requirement is explained in more detail in Section 5.

Where developers are expected to contribute towards the provision of infrastructure in association with development, this will be delivered on-site or through a contribution to off-site provision through a Planning Obligation (usually a Section 106 Agreement). In considering the Planning Obligation requirements for a development, the current capacity of infrastructure will be considered to ensure that obligations are only necessary where present facilities are not able to accommodate the additional needs that will be generated from the development. This assessment will be undertaken in partnership with other relevant bodies such as the County Council (further information can be found on the WSCC website).

All Planning Obligation requirements will be site specific and therefore the level of works required cannot be standardised. Whilst this guidance aims to be as clear as possible, developers are encouraged to enter into pre-application discussions with the Council at the earliest opportunity so that they are aware of their CIL liabilities and any potential Planning Obligations that may be required. As an application progresses, developers are encouraged to draft any appropriate 'Heads of Terms' to satisfy required Planning Obligations in a Section 106 Agreement.

Any contribution in the form of a financial payment will be required to be paid either once development starts, or on first occupation (or occasionally other such triggers as agreed by the Council). If this is some time after the permission was granted, the contributions may be subject to indexation and increased in line with the General Tender Prices Index or an appropriate alternative.

Planning Obligations have to be registered as local land charges. Applicants will therefore need to produce title to the site (in the form of land registry office copies if the land is registered, or an epitome of title if the land is unregistered) and third parties with a legal interest in the land will have to be party to the agreements.

Any planning permission will only be issued once the Section 106 Agreement has been completed or Unilateral Undertaking has been provided and is satisfactory. If a satisfactory Planning Obligation has not been provided within the relevant target period, the application will subsequently be refused.

Thresholds

Most developments, however small, are likely to add to the demand for infrastructure. However, this needs to be balanced against the practicalities of requiring smaller developments to contribute towards provision and the need to ensure that development is not discouraged from coming forward. For this reason, and to respond to the emergence of CIL and meet with regulations it is likely that Planning Obligations will only be used for significant schemes in the borough. For affordable housing this will be for developments of over 5 dwellings (in line with Policy 10 of the Worthing Core Strategy). Where a proposed development is likely to need a Planning Obligation the Council will endeavour to bring this to the attention of the developer at the first opportunity.

Common Planning Obligations

As previously explained, other than for affordable housing, Planning Obligations will only be used to mitigate against any impact on the environment or local services that arise directly as a result of any particular developments. These will be cases where the development proposed results in a specific and significant need for infrastructure (or access to a service) that is not currently available and has not been identified for investment through CIL or any other investment programme.

Any Planning Obligation must be directly related to the development and the demands for infrastructure must be fairly and reasonably related in scale and kind to the development. The necessity for Planning Conditions and Planning Obligations therefore needs to be assessed against the needs of each site and project. Where appropriate, the Council will make this assessment using relevant evidence such as the 'Open Space & Recreation Study', transport studies and the County Council's 'Planning for School Places' data. Where it is determined that a Planning Obligation is required the Council will justify this need to demonstrate how the site specific impacts of the development would need to be mitigated.

As an example, a development proposal may require a major junction improvement to 'unlock' a development site. Alternatively, a major housing development may take place in a location where there is no capacity for additional school places and is of a scale that would justify the need for a new school(s) - hence a Planning Obligation would be required to secure funding for the new school.

Further examples of site specific infrastructure that may be required and negotiated through a Planning Obligation (if present facilities are not able to accommodate the additional need generated by the development):

- Transport requirements
- Site specific flood risk / Sustainable Drainage
- Public open space / Children's play area / Formal sport
- Health facilities
- Crime Prevention
- Education

Viability

The Council takes the view that costs incurred in delivering a high quality and sustainable development should take into account the need to provide infrastructure and be in compliance with the Council's planning policies. As such, developer contributions are a necessary cost of development and developers should factor them into proposals from the earliest stage and take them into account when purchasing the land.

To ensure that the infrastructure requirements placed on developers are not too onerous, comprehensive viability testing has been undertaken when firstly, setting the original affordable housing requirements and subsequently, for the setting of CIL (which also took full account of the existing affordable housing requirements). This testing has also had regard to other costs placed on development.

Despite this, and particularly during times of difficult market conditions, the Council is sensitive to viability issues for developers in providing for a range of infrastructure as part of new development. Regard will be had to the impact of CIL (or the phasing of CIL) and viability when any Planning Obligations are sought. This approach is in line with the NPPF, which accepts that special and specific circumstances may occasionally mean that there is insufficient value in a proposal to support the full range of developer contributions identified.

In these instances, whilst the Council is not able to negotiate with regard to CIL, the Council may enter into negotiations with regards to other contributions. However, robust evidence must be provided in writing by the applicant to support any claims that the infrastructure requirements would make a scheme unviable and the Council will need to balance this against the need to ensure that the necessary infrastructure is provided to address the impact of the development and make it acceptable in planning terms.

Any viability Appraisal that might be required will be an 'open book' assessment which should include information on: existing land values; proposed use values; demolition and construction costs; finance and marketing costs; assumed yield; site abnormalities; and the development timetable.

Where viability concerns are raised, evidence should include an assessment carried out by an independent person of the costs of providing the contributions required and how this impacts on the economic viability of the development. Whilst there may be a level of negotiation appropriate to some schemes where viability is questionable it should be reiterated that these circumstances will not be the norm and the Council will seek to ensure that the majority of schemes in the Borough provide and deliver the Council's infrastructure requirements in full. In cases where contributions cannot be agreed the Council may seek the services of a viability consultant (usually the District Valuer) to validate and assess the evidence of viability provided. The cost of any consultant appointed by the Council would need to be met by the developers. In most instances it is expected that this will help to resolve any disputes with regard to scheme viability but, at this point, if the Council is still not satisfied then planning permission for the development proposed is likely to be refused.

In the event of developments becoming stalled for a significant period of time due to reasons of viability or changes in circumstances the applicants / developers are able to discuss with the Council whether a review of a previous agreement may be appropriate. The Council will consider such a scenario on its merits and in accordance with the viability testing and evidence provided.

Monitoring

When a Planning Obligation (Section 106 Agreement / Unilateral Undertaking) has been completed, a copy is placed on the planning register and details are also recorded on a database for monitoring purposes. Where a development has been started or completed checks are then undertaken to ensure that the requirements of the planning permission have been complied with. As part of the Local Development Framework the Council publishes an Annual Monitoring Report in December each year which includes information on the planning contributions collected and schemes implemented using the funds.

If it is evident that the Planning Obligation is not being complied with officers will instigate enforcement action if other measures fail. Planning contributions can be enforced through the use of an injunction, which can stop the development proceeding. In addition, the Council will consider charging developers interest for late payment of financial contributions.

Administration Fee

The monitoring and administration of Planning Obligations is an impact of a development and is one which the Council would not have to bear if the development were not to take place. Developers will therefore be required to pay the Council's lawyers their reasonable costs for preparing an agreement or undertaking.

For Section 106 Agreements, legal costs are usually charged at the hourly rate of the solicitor having conduct of the matter. A flat rate is payable for checking title and Unilateral Undertakings provided, however where queries are raised the hourly rate then applies. No VAT is payable. At the time of writing legal costs in connection with Planning Obligations are being reviewed.

While financial contributions will normally be expected to be paid on commencement of development, the legal costs will be payable upon signing of the agreement, where the applicant's solicitor has provided an undertaking in respect of those costs at the outset. All Planning Obligation financial payments will be indexed linked to cover cases when the start of development might be delayed.

Section 5 - Affordable Housing

Context

As previously explained, affordable housing sits outside the scope of CIL and, as such, this requirement will be met through the use of Planning Obligations.

Housing is a fundamental need that helps to support the local economy. It is well documented that unsuitable housing conditions or being unable to access affordable housing can negatively affect quality of life. Local housing evidence demonstrates that Worthing has very significant levels of affordable housing need. For this reason, and supported by national guidance, the Council will continue to seek to secure appropriate affordable housing provision on development sites in the Borough.

The National Planning Policy Framework (NPPF) enables local authorities to seek affordable housing on suitable sites. Paragraph 50 states that to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive mixed communities, local planning authorities should:

- Plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community.
- Identify the size, type, tenure and range of housing that is required in particular locations.
- Where they have identified that affordable housing is needed, set policies for meeting this need on-site (or off-site or financial contribution if this can be robustly justified).

Definition of Affordable Housing

The NPPF defines affordable housing as follows:

‘Affordable housing includes social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision’

Social rented housing is owned by local authorities and Registered Providers, for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency as a condition of grant.

Affordable rented housing is let by local authorities or Registered Providers of social housing to households who are eligible for social rented housing. Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 per cent of the local market rent.

Intermediate affordable housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the affordable housing definition above. These can include shared equity products (shared ownership and equity loans), other low cost homes for sale and intermediate rent but not affordable rented housing”.

Homes that do not meet the above definitions, such as ‘low cost market’ housing, may not be considered as ‘affordable housing’ for planning purposes.

Worthing Planning Policy

Local housing evidence has identified that there is an acute affordable housing need in Worthing. This is as a result of a combination of market conditions, barriers to entry, development constraints, low earning bias and the existing social housing stock. To help meet the housing needs of the borough, there therefore needs to be a proactive approach to deliver more affordable homes. However, in terms of achieving overall delivery, account also needs to be taken of the impact of the requirements for affordable housing and the pressure this may place on the viability of development.

This balance, and the Council’s approach to affordable housing, is set out within the Worthing Core Strategy. The requirement for affordable housing will be applied in accordance with Policy CS10 (Affordable Housing) which sets a stepped requirement for affordable housing either through on-site provision or by financial contribution. The targets were informed by evidence and are considered to be realistic and achievable.

Core Strategy Policy 10 - Affordable Housing

A mix of affordable housing, including social rent and intermediate housing will be sought to meet local needs on all but the smallest sites:

- on all sites of 6 to 10 dwellings, 10% affordable housing will be sought via a financial contribution
- on all sites of 11 to 14 dwellings, 20% affordable housing will be sought via a financial contribution
- on all sites of 15 or more dwellings, 30% affordable housing will be sought

The policy approach is to seek to secure on-site provision on sites of 15 dwellings or more, with financial contributions for sites of 6-14 units. This is subject to:

- the economics of providing affordable housing
- the extent to which the provision of affordable housing would prejudice other planning objectives to be met from the development of the site
- the mix of units necessary to meet local needs and achieve a successful development.

Where the Council accepts that there is robust justification, the affordable housing requirement may be secured through off-site provision.

The appropriate mix in terms of housing tenures, house sizes of affordable housing and spread within a development will be determined in response to identified needs, funding priorities and housing strategy targets at the time of the development.

It should be noted that Policy CS10 applies to the number of units (gross) proposed on all housing sites; mixed use sites that incorporate an element of residential development and open market sheltered / extra-care housing (if self-contained). The policy also applies to the conversion or change of use of any building, whether or not it is already in residential use. The policy does not, however, apply to:

- accommodation for Gypsies and Travellers;
- residential accommodation, which is to be used as incidental to the main dwelling;
- any part-time/non permanent accommodation where full time occupancy is restricted by condition;
- housing for more vulnerable members of the community e.g. those with mental health problems or physical disabilities that require a high level of on-site support; and
- care homes, extra care homes and nursing homes falling within Use Class C2 that generally provide non self-contained accommodation.

As stated above, the starting point in determining the level of affordable housing to be provided is the number of dwellings (gross) proposed on a development site. However, the size of the development should not be artificially reduced in order to reduce or eliminate the affordable housing requirement, for example by sub-dividing sites or reducing the density of all or part of a site. To resist this, the Council will seek to ensure that efficient use is made of land and that proposals are not made which represent an underdevelopment of a site. Similarly, the Council will need to be satisfied that developers are not bringing sites forward in phases to avoid specific affordable housing thresholds. If this is shown to be the case, the Council will seek to apply the relevant affordable housing target to all subsequent phases, based on the capacity of all phases, including those already built.

It is important to note that the provision of affordable housing (full compliance with Core Strategy policy 10) has been incorporated into the viability testing undertaken during the production of a Community Infrastructure Levy for the Borough. Therefore, in most circumstances, the Council does not expect viability considerations to reduce the ability of a site to contribute towards affordable housing provision. Despite this, if in exceptional circumstances, a developer considers that there are significant and relevant economic constraints affecting a development and that these are sufficient to jeopardise the developer meeting the affordable housing requirements, the developer must demonstrate this by submitting details of scheme costs and a financial appraisal of scheme viability. If necessary, the District Valuer may be engaged (at the cost of the developer) to assess the developer's viability claims. If genuine and significant economic constraints exist, the Council will discuss with the developer the options available to achieve economic viability.

On-site provision of affordable housing

The Council is committed to the achievement of sustainable and balanced communities and as such, Core Strategy Policy CS10 sets out a strong presumption for affordable housing to be provided on-site for schemes of 15 or more units. So that affordable properties can be secured for successive occupiers the provision of affordable housing will normally be achieved through the involvement of a

Registered Provider agreed by the Council and registered with the Homes and Communities Agency. The Council will expect the freehold interest on the affordable housing to be transferred to the Registered Provider. In rare circumstances where the transfer is a leasehold arrangement, the lease will be for a minimum of 125 years and the land rent will be restricted to a peppercorn charge.

In exceptional cases where the Council agrees (by reference to the viability assessment and other relevant factors) that full on-site provisions cannot be achieved, alternative options for the contribution may be considered. This could include changes to the affordable housing tenure mix, the number of affordable units, the phasing of delivery, contributions towards off-site provision or the provision by the developer of an alternative suitable site for the affordable housing. If it is agreed that an element of affordable housing could be delivered on an alternative site then this would be in addition to the contribution towards affordable housing that the alternative site would be expected deliver site in its own right.

Funding affordable housing

It is anticipated that all intermediate and affordable rent properties required under Core Strategy Policy CS10 as a Planning Obligation on mixed tenure sites (market and affordable) will be delivered with no or little public subsidy. As such, developers should assume that there is no public subsidy to support the delivery of affordable housing through Planning Obligations, both when considering viability issues and when agreeing a price with the landowner for the purchase of the site. Lack of grant funding therefore cannot be used to demonstrate the non-viability of a scheme.

The Council has a very limited amount of capital funding available to support the delivery of affordable housing, mainly derived from commuted sum contributions generated from earlier developments, and from right to buy 'claw-back' receipts. This funding is primarily intended to support the delivery of affordable housing additional to that delivered through planning policy and further information on this source of funding can be obtained from Council Officers.

Transfer prices

In return for building the affordable housing units on site, a developer will agree and receive a payment from a Registered Provider for the affordable units. This will not be equivalent to the full market value of the property but will be at a discounted rate and will vary depending on the tenure of unit provided. The developer/applicant should enter into early negotiations with a Registered Provider in order to determine the transfer price of the units.

Given the flexibility in charging rent levels, developers and landowners are recommended to take account of the guidance on rent levels and to liaise with Registered Providers prior to submitting any applications. This will help to provide understanding as to how the rent levels can impact on the price that Registered Providers can offer to either purchase the affordable housing or to enter into a management agreement to run it.

Management and Nominations

The Council's preference is for the affordable housing to be transferred to a Registered Provider and managed as affordable housing in accordance with the Tenant Services Authority (TSA) guidelines.

Developers may, in certain circumstances, develop the affordable housing but choose to retain ownership and manage it directly. In such cases, the Council will need to ensure that the affordable housing is available to those judged to be in housing need by the Council and that appropriate management arrangements are in place, that the affordable housing is provided at an affordable level and that the housing remains affordable to successive occupiers to be nominated by the Council.

The provision of affordable housing will be subject to a Nominations Agreement between the Council and the Registered Provider. The agreement gives the Council 100% nomination rights for first lets and sales and 75% thereafter. The Agreement will set out how the affordable housing will be allocated and the Council will nominate applicants according to housing need and in accordance with the Council's Housing Allocations Policy.

Type and tenure of affordable housing provision

The Council expects a variety of affordable dwellings types to be provided to meet the range of housing needs identified in the Borough through key evidence documents such as the Council's Housing Register and the most up-to-date Strategic Housing Market Assessment (SHMA). However, the precise mix of dwelling type for the affordable element will be informed by the characteristics of the site, the type of development and its location. It should also be recognised that demands will change as needs vary over time.

As such, the Council will negotiate the exact tenure, type and size split on each site through pre-application discussions. The mix in terms of property type for any particular development site will be advised by the Council's Housing and Enabling Manager who will assess need with reference to the local evidence.

Affordability

In considering planning applications for mixed-tenure sites (market and affordable), regard will be made to the proposed affordability of any affordable housing to be provided in accordance with the following guidance.

Affordable Rent

Whilst Social Rented housing is tied to target rents, there is much greater flexibility in relation to the new Affordable Rent model, with rent levels that can be charged at anything up to 80% of market rents. Market rent levels in Worthing are high so the affordable rent level has the potential to present some challenges to ensure that rents remain affordable to meet local need. At or near 80% of market rent levels, tenants in Worthing would face some of the highest Affordable Rents in the country, significantly above Social Rents, without necessarily having correspondingly high

household incomes to meet these costs. This would be a particular concern with regard to the affordability of larger properties (three plus bedrooms).

On developments which include properties of 3 bedrooms or more, the Council would expect to see the rent levels set at no more than 70% of open market rent (OMR) and no more than 65% of open market rent for properties with 4 or more bedrooms. In addition, where a development is exclusively (or largely) made up of 1 and 2 bedroom properties the Council would expect a number to be set at rent levels below 80% of OMR (appropriate number to be agreed in discussion with the Council's Housing and Enabling Manager).

Intermediate

Intermediate affordable housing can play an important role in meeting the housing needs of those who can afford to pay more than social rents (and who are unlikely to be a priority for this accommodation) but who cannot afford suitable housing in the open market. There are a variety of intermediate affordable housing products of which shared ownership housing is one form.

The Council wishes to ensure that intermediate affordable housing provided within the borough is a realistic and affordable option for households across a spread of incomes, from £20,000 to £60,000 (gross) rather than only being available to households with incomes towards the upper end of this spectrum. Furthermore, applicants/developers will need to demonstrate that any intermediate affordable housing proposed meets the definition of affordable housing, in that it should be available at a total monthly cost which is less than the costs of buying or renting privately within Worthing.

The Council is of the view that a household can be considered to be able to afford intermediate affordable housing when rental elements (on the landlord's share) and mortgage payments (on the part they own) and any service charge, constitute no more than 30% of gross household income. The Council will require that the average cost of intermediate affordable housing provision (mortgage plus rent plus any service charge) is affordable on this measure, to households with gross incomes of no more than £31,000, assuming that purchasing households are able to pay a deposit of 5% of the value of the share of the property they are purchasing, taking out a repayment mortgage over 25 years and based on reasonable assumptions on the mortgage interest rates available on this form of tenure at the time of the application, which should be agreed with the Council.

To ensure that the affordability of intermediate products is kept up-to-date and reflects changes to incomes and housing costs going forward the figure for gross annual income will be indexed against lower quartile house prices in Worthing. Where there is a year-on-year uplift in lower quartile house prices in Worthing, the gross annual income figure threshold (currently £31,000) would be uplifted on the same percentage basis. These will be reported within the Council's Annual Monitoring Report.

The Council acknowledges that the above guidance will impact on the price a Registered Provider can pay to a developer for an affordable unit. However, where

this affects the viability of a scheme and can be robustly demonstrated, it will form an element of the negotiation process. However, it is acknowledged that generally Affordable Rent should have less impact on viability than Social Rent. The proposed affordability measures are intended to strike an appropriate balance between affordability and viability.

Provision of specialist housing units

On some sites, where there is a specific local need, the provision of specialist or supported housing may be required. For example, homes designed specifically for wheelchair users, people with learning disabilities or other special needs groups. The Council is prepared to consider the provision of such specialist housing in lieu of conventional affordable housing requirements, and any such proposals will need to be considered on their own merits in response to a local need.

Where the provision of such dwellings is demonstrated to either impact on viability of delivering the overall affordable housing target and / or to require dwellings to be significantly more than the size standards laid out elsewhere, then the Council may agree to negotiate a reduction in the overall proportion of affordable housing required.

Design Standards

To aid the promotion of inclusive and sustainable communities, the provision of on-site affordable housing should integrate seamlessly into the layout of any development. As such, units will be required to be distributed throughout the proposed development area and large groupings of single tenure / single-type dwellings should be avoided. Within smaller developments or apartment blocks it is accepted that management issues mean that 'pepper-potting' is less appropriate and that affordable housing may be provided in clusters.

The Council seeks a high standard of design for all development and affordable housing is no exception. Affordable housing should not be distinguishable from market housing in terms of appearance, build quality or materials. The affordable housing element must also comply with the HCA Design and Quality Standards regardless of whether Social Housing Grant has been secured. In addition, to ensure that design is of high quality and that an adequate amount of living accommodation is provided proposals must comply with the Council's Guide to Residential Development SPD (2013) and Space Standards SPD (2012).

Calculating a financial contribution

For reasons of viability and housing management, Core Strategy policy CS10 requires that affordable housing will be sought via a financial contribution on all sites of 6 to 10 dwellings (10%) and 11 to 14 dwellings (20%). The Council will seek a financial contribution that would allow affordable housing providers to secure the land in lieu of, and equivalent to, on-site provision. Any financial contributions received will be used to provide affordable housing in partnership with Registered Providers.

This approach is in line with the National Planning Policy Framework which states: *“where affordable housing is needed, local planning authorities should set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time.”*

‘Broadly equivalent value’ is a key term to understand in calculating Commuted Sum levels. This assumes that there are no suitable development sites elsewhere for the applicant developer to provide the equivalent affordable housing. In effect, this means that a Registered Provider should be able to take delivery of an equivalent dwelling off site as should have been provided in the subject development at no additional cost to the sum that would have been paid for on-site delivery.

The Council’s approach to calculating affordable housing contributions (including examples) is set out below. These figures indicate the sum which Registered Providers in the Worthing Borough Council area will need in order to purchase affordable housing. The figures have been produced by the District Valuer Services (DVS) using local evidence and input from the Registered Providers.

Registered Providers have indicated how much they have had to pay in order to buy a unit in Worthing and the DVS has then undertaken research into the open market values in the area. The commuted sum is the difference between the two, in other words, the actual amount that the applicant needs to pay in order to secure a unit.

Dwelling Type	Size	Payment per unit	Payment per m²
Studio flat	32 m ²	£29,760	£930
1 bed flat	51 m ²	£79,560	£1,560
2 bed flat	66 m ²	£80,850	£1,225
3 bed flat	77 m ²	£105,105	£1,365
2 bed house	77 m ²	£84,392	£1,096
3 bed house	93 m ²	£119,133	£1,281
4 bed house	106 m ²	£140,238	£1,323

The payment per unit figures set out above provide a weighted average that take into account the Council’s general requirements for affordable housing types (affordable rent 35% / Intermediate 35% / Social Rent 30%). The dwelling sizes represent the minimum floor areas as set out in the Council’s Space Standards SPD. If the size of units to be built differs significantly from the figures set out above (or, in rare instances, when the requirement is for less than one whole unit) then the values should be adjusted accordingly using the ‘payment by m²’ column.

As explained above, in line with adopted policy, affordable housing will be sought via a financial contribution on all sites of 6 to 10 dwellings (10%) and 11 to 14 dwellings (20%). In addition, in exceptional circumstances, for some larger schemes the Council may agree that a financial contribution will be accepted if it can be shown through evidence that both on-site and off-site provision of affordable housing is

inappropriate. In these rare occasions the rates set out in the 30% column will be used.

Dwelling Type	10%	20%	30%
Studio flat	£2,976	£5,952	£8,928
1 bed flat	£7,956	£15,912	£23,868
2 bed flat	£8,085	£16,170	£24,255
3 bed flat	£10,511	£21,021	£31,532
2 bed house	£8,439	£16,878	£25,318
3 bed house	£11,913	£23,827	£35,740
4 bed house	£14,024	£28,048	£42,238

Using these figures, the following are examples of payments required in relation to development schemes:

Scenario 1 - Development of 12 dwellings. The requirement is for an affordable housing contribution of 20% provided as a financial contribution:

$$\begin{aligned}
 &6 \times 1 \text{ bed flats} = (6 \times £15,912) = £95,472 \\
 + &6 \times 2 \text{ bed flats} = (6 \times £16,170) = £97,020 \\
 &\text{Total contribution required} = £ 192,492
 \end{aligned}$$

Scenario 2 - Development of 8 dwellings. The requirement is for an affordable housing contribution of 10% provided as a financial contribution:

$$\begin{aligned}
 &2 \times \text{studio flats} = (2 \times £2,976) = £5,952 \\
 + &2 \times 1 \text{ bed flats} = (2 \times £7,956) = £15,912 \\
 + &4 \times 2 \text{ bed flats} = (4 \times £8,085) = £32,340 \\
 &\text{Total contribution required} = £54,204
 \end{aligned}$$

Scenario 3 - Demolition of 4 houses to be replaced by 11 dwellings. The requirement is for an affordable housing contribution of 20% provided as a financial contribution:

$$11 \times 2 \text{ bed houses} = (11 \times £16,878) = £185,658$$

Monitoring and Review

The Council will use the Annual Monitoring Report to record monies collected for affordable housing along with the amounts allocated and spent as well as the units delivered on-site. Any significant change to the processes outlined above will require a change in policy or amendments to this SPD.