

Torfaen County Borough Council

# Revised Planning Obligations Supplementary Planning Guidance



February 2023

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An Executive Summary of this document is available in Welsh and English versions  
Mae Crynodeb Gweithredol o'r ddogfen hon ar gael yn Gymraeg ac yn Saesneg

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# 1. INTRODUCTION

## 1.1 Review History

Initial Adoption - This Planning Obligations Supplementary Planning Guidance (SPG) was initially adopted by a resolution of Council on 28<sup>th</sup> June 2011.

2016 Update - Since the initial adoption of this SPG, the Welsh Government (WG) has: replaced their national housing strategy with *'Improving Lives and Communities: Homes in Wales'* (April 2010); updated Planning Policy Wales (PPW) several times; and also updated the *'Acceptable Cost Guidance / On-Costs for use with Social Housing Grant Funded Housing in Wales'*. Similarly, the Council has: adopted the Torfaen Local Development Plan (LDP) (3<sup>rd</sup> December 2013), which superseded the adopted Gwent Structure Plan, the adopted Torfaen Local Plan and the adopted Torfaen Affordable Housing Delivery Statement SPG; updated the Torfaen Local Housing Market Assessment (LHMA) in June 2015; and based upon its Torfaen LDP 2015 Annual Monitoring Report (AMR) resolved (in December 2015) that the level of affordable housing sought in North Torfaen be reduced from 10% to 5% and noted, as a matter of 'planning practice', that until viability improves the threshold at which affordable housing and recreation provision is sought be generally raised from 3 to 10 or more dwellings; and this SPG be updated accordingly.

Taking account of the above matters and other factual / clarification updates, this limited update of mainly Part One, Annex 1 on 'Affordable Housing', the Standard S106 Agreements Heads of Terms / Templates, the 'Glossary', and the 'Policy and Guidance' section in other Annexes of the SPG underwent public consultation during April / June 2016; and following consideration of all comments received, was adopted by Council resolution on 20<sup>th</sup> September 2016.

December 2021 Update - A further update to Annex 1 on 'Affordable Housing' to reflect the latest Welsh Government (WG) Acceptable Cost Guidance (ACG) published in August 2021, which provides separate ACG values for large schemes (of 11 homes or over) and small schemes (of 10 homes or under). This opportunity has also been taken to update WG policy / guidance references (to include Future Wales and the latest 11<sup>th</sup> Edition of Planning Policy Wales) throughout the whole SPG; as well as referring to the latest Torfaen LDP 2017, 2018, 2019 & 2021 Annual Monitoring Reports (including the annual review of housing viability) and the Torfaen 2020 Local Housing Market Assessment (LHMA); the latter of which changes the split between social rented and intermediate affordable housing provision from 80% and 20% in the 2016 SPG Update to 75% Social Rented and 25% intermediate going forwards. In addition, the updated education yield figures have separated nursery from primary and 6<sup>th</sup> form from secondary to reflect the current education structure in Torfaen, and updated education costings have been referenced. In Annex 6, capital and maintenance costings for recreation facilities have been updated to current figures. Therefore, this December 2021 Update, which only comprises factual changes, has been published without consultation; tracked changes word files for the 2021 Update can be provided upon request.

February 2023 Revision - This revision to the Planning Obligations SPG has been largely driven by the Welsh Government change in approach to Acceptable Cost Guidance figures which, from April 2022, do not include the value of land and therefore a new methodology for calculating affordable housing obligations is required. The Council, with the input of Torfaen's Registered Social Landlords (RSLs), has compiled a 'tariff' based system for the value that RSLs will pay developers for the social rented affordable properties. There is no change proposed for the intermediate properties which will remain at the current 50% of market value with the RSL retaining the equity. For any cash payment in lieu of on-site provision, 'Works Only' ACGs published by Welsh Government will be used. All affordable housing will now be required to contribute towards any ongoing site maintenance charges; but to maintain the affordability of such properties for their occupiers, an allowance for 50-

years of these charges will be deducted from the price that the RSLs will pay for the social rented properties. In addition, a new process has been introduced that potentially allows an RSL to use WG Social Housing Grant, in liaison with the developer outside the S106 agreement, to make up the affordable housing percentage on a site (as specified by LDP Policy H4), if it cannot be provided by the developer on viability grounds. These changes are set out in Annex 1. The opportunity has been taken to update a number of other elements of the SPG. Within this Part One section, reference to the Development Appraisal Toolkit (DAT) has been replaced with details of the Development Viability Model as the Council's preferred method of assessing development viability. Within Annex 3 the Council's approach to calculating the available capacity of a school has been clarified with additional detail. The area requirement per pupil has been amended from net to the gross area to take into account required supporting facilities additional to classrooms. The definition of costs has been widened to now include furniture, fittings, equipment, ICT and any abnormal costs with the source of the costs data changed from BCIS to the Torfaen Property Construction Group and evidenced by up-to-date information on current and recent school construction projects. The SPG has also been subject to minor wording improvements and changes to reflect the increased national policy / guidance emphasis on reducing the need to travel, active travel modes, placemaking and ecological resilience. The Draft Revised Planning Obligations SPG was subject to a six-week public consultation period January to March 2022 following which additional work to resolve comments received has been completed. Since the consultation, the following factual changes have also been made:

- a discrepancy has been corrected in Table 1 of this Part One, with regards to the trigger for requiring public open space and recreation provision to retain the threshold at three dwellings throughout the county borough which now corresponds with the requirement in Annex 6;
- reference to the Environment (Wales) Act 2016 has been inserted into the legislative context;
- reference to the 2022 Annual Monitoring Report has been added;
- updated references to the County Plan and Economy and Environment Service Area titles; and
- education and recreation costings have been updated to reflect current circumstances.

These amendments have been made prior to the SPG being adopted by Council resolution on 28<sup>th</sup> February 2023.

## 1.2 Planning Obligations

Planning obligations are an established and valuable tool within the development management process. They provide a means to enable a proposed development to proceed and to meet the needs of the local community associated with the new development by securing developer contributions towards the provision of infrastructure, services and other public benefits. They are commonly used to bring development proposals in line with the objectives of sustainable development as set out in local and national policy.

A planning obligation is a legal agreement, executed as a Deed, between the Council and the applicant / developer and any others that may have a legal interest in the land. An obligation either requires the developer to do something or restricts what can be done with land following the granting of planning permission. The exact nature of each agreement depends upon the individual circumstances of the site and the proposed development.

## 1.3 Aims and Objectives of this Guidance

Supplementary Planning Guidance (SPG) is prepared to give detailed guidance on how policies within the development plan are to be implemented. This SPG relates to national policy, guidance and relevant policies of the Adopted Torfaen Local Development Plan (December 2013). It is intended to improve clarity and transparency for all involved in and

with an interest in the development process and to explain the approach that the Council will take in respect of the negotiation, drafting, implementation and subsequent monitoring of planning obligations.

Part One of this guidance sets out the context and general information regarding planning obligations. Part Two comprises topic specific annexes, referring to those obligations which tend to occur most frequently i.e. affordable housing, highways, education, community facilities, biodiversity & geodiversity, public open space and recreation facilities.

The guidance contained within this SPG is to be applied as appropriate taking into account other relevant material considerations. It will not replace the negotiation of planning obligations as each application will continue to be considered on its individual merits.

This SPG refers to a wide range of matters that may be the subject of planning obligations. Not all of these matters will be relevant to every planning application. The Council will consider the issues that are relevant on a case by case basis, taking account of the nature of the development proposal, the site and the local context. The Council also reserves the right to seek obligations relating to matters not covered by this SPG where there is sufficiently robust evidence to justify such obligations. These will be negotiated separately on individual schemes as appropriate.

#### 1.4 Preparation and Status of Supplementary Planning Guidance

Section 38(6) of the Planning and Compulsory Purchase Act (2004) states that the determination of a planning application must be in accordance with the development plan unless material considerations indicate otherwise. The Welsh Government advises that adopted SPG may be a material consideration provided it is consistent with the development plan. This SPG has been prepared in accordance with the policies contained within Future Wales (February 2021), the Adopted Torfaen Local Development Plan (December 2013) and guidance set out in:

- The Community Infrastructure Levy Regulations 2010 (as amended)
- Welsh Office Circular 13/97: Planning Obligations
- Welsh Government Circular WGC 016/2014 - The Use of Planning Conditions for Development Management
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021)
- Technical Advice Note 2: Planning and Affordable Housing (2006)
- Technical Advice Note 5: Nature Conservation and Planning (2009)
- Technical Advice Note 6: Planning for Sustainable Rural Communities (2010) (*as updated by Annex A of the Chief Planning Officers Letter - Publication of Planning Policy Wales Edition 4 - February 2011*)
- Technical Advice Note 11: Noise (1997)
- Technical Advice Note 12: Design (2016)
- Technical Advice Note 15: Development and Flood Risk (2004)
- Technical Advice Note 16: Sport, Recreation and Open Space (2009)
- Technical Advice Note 18: Transport (2007)
- Technical Advice Note 19: Telecommunications (2002)
- Technical Advice Note 20: Planning and the Welsh Language (2017)
- Technical Advice Note 21: Waste (2017)
- Technical Advice Note 23: Economic Development (2014)
- Technical Advice Note 24: The Historic Environment (2017)

The weight afforded to the SPG when making a decision is increased if it has been prepared in consultation with the general public and interested parties, and if it has been

the subject of a Council resolution. Therefore, the 2011, 2016 and current (February 2023) versions of this SPG were prepared with involvement from Council and other stakeholders and were all subject to six-week consultation exercises involving all interested parties and members of the public. The comments received were considered and where appropriate, changes were made before being adopted by resolutions of Council. As such, the currently adopted SPG is a material consideration of considerable weight in the determination of planning applications and appeals.

This SPG refers to external data sources and guidance which may be updated from time to time. In each case, this guidance will refer to the most up to date issue of the data and / or guidance to ensure that the guidance within this document remains relevant. Where data and guidance is updated following the adoption of this SPG, the latest issue or equivalent guidance should be referred to.

## 2. LEGISLATION, GUIDANCE AND POLICY CONTEXT

### 2.1 Legislation and Guidance

Section 106 of the Town and Country Planning Act 1990 (amended by Section 12 of the Planning and Compensation Act 1991) provides the enabling legislation to allow planning obligations to: restrict the development or use of land; require specific operations to be carried out; require land to be used in a specified way; and require specific sums to be paid to the Council in accordance with a payment schedule. All four categories of obligation are routinely used as appropriate.

Welsh guidance on the implementation of the Act is provided in Welsh Office Circular 13/97. The Circular identifies broad principles based on the fact that the planning system should operate in the public interest and should aim to foster sustainable development. Negotiations must be seen to be fair, open and reasonable. Obligations cannot be used to offer extra or unnecessary inducements in an attempt to satisfy objectors, influence the planning decision or have wider development implications where there are valid objections to a proposal.

Amongst other factors, government policy requires planning obligations to be sought only where they meet certain tests:

1. The obligation must be **necessary** - either from a practical point of view to enable the development to go ahead or to make a proposal acceptable in land-use planning terms.
2. The obligation must be **relevant to planning**, in other words it must be a material consideration to the assessment of the planning application.
3. The obligation must be **directly related to the proposed development**. Case law has established that there is some flexibility in terms of the direct relationship between the obligation and the development so that only a 'sufficient connection' is required. Establishing the relationship between a particular planning benefit and an individual development must therefore be a matter of planning judgement, exercised in the light of local circumstances.
4. The obligation must be **fairly and reasonably related in scale and kind** to the proposed development. In other words, there must be a relationship between what is lost or required, and what is being requested or offered.
5. The obligation must be **reasonable in all other respects**. In some cases, it may be reasonable for a number of developers to contribute jointly to an improved facility which will be of benefit to them all and to the wider community. But they should only be expected to do so if their proposals have created some need for the facility and their level of contribution would have to be fairly and reasonably related to the level of demand created by their development.

More recently, Part 11 of The Planning Act 2008 provided for the introduction of the Community Infrastructure Levy to fund the provision of infrastructure in both England and Wales. The Community Infrastructure Levy Regulations (as amended) came into force on 6<sup>th</sup> April 2010. Regulation 122(2) gives legal effect to three of the tests set out above as follows: -

*“a planning obligation may only constitute a reason for granting planning permission if it complies with the three tests...namely, that it is:*

*(a) necessary to make the development acceptable in planning terms;*

*(b) directly related to the development; and*

*(c) fairly and reasonably related in scale and kind to the development.”*

The Active Travel (Wales) Act 2013 made walking and cycling the preferred option for shorter journeys, particularly everyday journeys such as to and from a workplace or education establishment or in order to access health, leisure or other services or facilities. The Active Travel Act also requires Local Authorities to identify routes required to create fully integrated networks for walking and cycling to access work, education, services and facilities.

The Well-being of Future Generations (Wales) Act 2015 is a key piece of legislation which aims to further improve the social, economic, environmental and cultural well-being of Wales both now and in the longer term. The Act puts in place a ‘sustainable development principle’ which is a duty for public bodies to *“act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs”*. The Act is underpinned by seven well-being goals, which public bodies must work to achieve (a prosperous Wales, a resilient Wales, a healthier Wales, an equal Wales, a Wales of cohesive communities, a Wales of vibrant culture and thriving Welsh Language and a globally responsible Wales).

The Environment (Wales) Act 2016 introduced an enhanced biodiversity and resilience of ecosystems duty (Section 6 Duty). This means that in the exercise of their functions, planning authorities should ensure that development does not cause any significant loss of habitats or populations of species, locally or nationally, and must provide a net benefit for biodiversity.

## 2.2 National Policy Context

Future Wales and Planning Policy Wales (PPW) 11<sup>th</sup> Edition (both February 2021) set out the national policies and guidance within which the local plan policies are applied. PPW is supplemented by topic based Technical Advice Notes. PPW contains minimal reference to planning obligations with the primary sources of information being WG Circulars 13/97 & 016/2014 and the CIL Regulations as set out above.

## 2.3 Local Policy Context

The Development Plan for Torfaen is the Adopted Torfaen Local Development Plan (December 2013). The LDP sets out the Council’s policies and proposals against which the development and use of land is to be assessed.

Within the Torfaen LDP, Policy S8 provides for planning obligations; Policy H4 seeks provision of affordable housing; Policy H5 seeks provision for recreation, open space, leisure facilities and allotments; Policy H9 enables provision of affordable housing by way of exception sites; Policy T1 provides for transport improvements; Policy T2 relates to safeguarding and improvement of former transport routes; Policy T3 safeguards and facilitates improvement to the walking and cycling network, Policy CF3 both protects and provides for community facilities, Policy CF5 provides for compensatory provision for allotments, recreational facilities & amenity open spaces lost to development, and Policy



BG1 seeks to protect and mitigate local ecological and geological sites. Other Torfaen LDP policies may also be applicable.

## **S8 Planning Obligations**

**Planning obligations will be required on development proposals through S106 legal agreements where they are necessary to address the impacts of development and to make the proposal acceptable in land use planning terms. Based on evidence of local need and / or generation of need by the proposal, taking into account site specific circumstances, viability and LDP Objectives, planning obligations will be specifically targeted to achieve the key priorities of: -**

- a) Affordable housing;**
- b) Open space, children's play spaces and formal outdoor recreation facilities;**
- c) Investment in educational provision;**
- d) Highways and transport infrastructure management and improvements (including walking and cycling infrastructure and public transport facilities and services); and**
- e) Maintenance and enhancement of the environment, historic assets and biodiversity networks and resources**

**and may also include, but are not limited to:**

- f) Community facilities;**
- g) Employment and commercial opportunities;**
- h) Waste management facilities and services;**
- i) Public realm improvements and public art;**
- j) Renewable energy and energy efficiency;**
- k) Improvements to the Monmouthshire and Brecon Canal;**
- l) Incorporation of Sustainable Urban Drainage Schemes (SUDS); and**
- m) Flood defence measures to mitigate the risk of flooding.**

The associated LDP policy justification text refers to this adopted Planning Obligations SPG, which provides the framework and requirements for planning obligations for new developments; the use of the Three Dragons Development Appraisal Toolkit (DAT) (now replaced by the Development Viability Model (DVM)) to determine the level of affordable housing and the ability of the scheme to provide other Section 106 requirements if the developer considers them to be uneconomic; and notes that the Community Infrastructure Levy (CIL) Regulations restricts planning obligations designed to collect pooled contributions from 5 or more developments which may not be used to provide infrastructure which could be funded through CIL.

## **H4 Affordable Housing**

**In order to achieve a target of approximately 1,132 affordable homes within Torfaen over the period 2006-2021, the Council will, on all residential sites of 3 or more dwellings or over 0.1ha (including if it forms part of a more substantial site over this size), seek to negotiate the on-site provision of up to the following percentage of affordable housing and / or a payment in lieu of on-site provision, by Housing Sub-Market Area, as follows:-**

- 1. North Torfaen - 10%;**
- 2. Pontypool - 25%;**
- 3. Cwmbran West & North - 20%; and**
- 4. Cwmbran East & South - 30%.**

**These percentages will change upwards if Social Housing Grant is to be used.**

**These percentages may change by 5% increments (increase or decrease), via Supplementary Planning Guidance, if house prices or construction costs change (up or down) as a result of annual monitoring and an update of the Affordable Housing Viability Study.**

**The dwelling size and tenure of the affordable housing should contribute to balanced & sustainable communities, reflect local need and normally be designed to the principles of the Welsh Government Development Quality Requirements.**

The associated LDP policy justification text in relation to 'threshold avoidance' uses a minimum density of 30 dph; and / or takes into account adjacent land which could also be used for housing. It also refers to this Torfaen Planning Obligations SPG, including Annex 1 on Affordable Housing that explains how the Policy will be implemented in detail. It also states that, subject to consultation, an update of the Affordable Housing Annex 1 will be used if, after the annual review of Policy H4, it is found that housing viability has changed enough to conclude that the percentage of affordable housing sought in any of Torfaen's four Housing Sub Market Areas should increase or decrease by a 5% increment. The DAT (now DVM) will also be used to calculate a higher percentage of affordable housing if WG Social Housing Grant is available. Finally, it states that the Council expects all affordable housing to be built to the WG Development Quality Requirements (DQR), especially where it will be tenure neutral or for rent. However, a relaxation of DQR may be allowed for intermediate housing for sale in exceptional circumstances such as for economic or design reasons.

#### **H5 Provision for Recreation, Open Space, Leisure Facilities and Allotments**

**Provision for children's play areas, outdoor recreation, open space and leisure facilities will be sought in conjunction with new residential developments of 3 dwellings or more, based on a minimum of: -**

- a) 2.4 hectares of recreational open space per 1,000 population;**
- b) 0.4 hectares of on-site open space per 1,000 population;**
- c) 2.0 hectares of accessible natural green space per 1,000 population; and**
- d) 20 allotments (250m<sup>2</sup> each) per 1,000 households.**

The associated LDP policy justification text refers to the provision of these facilities on site in the first instance and where this cannot be achieved, appropriate alternative off site provision or financial contributions will be sought. It refers to the Council's Assessments of the level of formal open space provision in the County Borough (the 'Draft Outdoor Recreation Assessment' - July 2009, and the 'Draft Open Space and Recreation Assessment Report' - October 2009) which can be used as a basis for considering the accessibility of development proposals, which generate demand for, or result in the loss of, the provision of such facilities. It notes that the Council has adopted the: Fields in Trust (FiT) recreational open space standard of 2.4ha per 1,000 population and associated hierarchical levels of provision; its own on-site open space standard of 0.4 hectare per 1,000 population; the Natural Resources Wales Natural Green Space Standard with provision for at least 2 hectares of accessible natural green space per 1,000 population and associated hierarchical levels of provision; and The National Society of Allotment and Leisure Gardeners national standard of 20 allotments per 1,000 households based on an average plot size of 250m<sup>2</sup>.

#### **H9 Affordable Housing Exception Sites**

**In order to help meet local affordable housing need and to ensure the viability of local communities, permission will be granted for small affordable housing sites (9 or less dwellings) within or adjoining the existing urban boundaries where: -**

- a) The site is solely for affordable housing;**

- b) **A genuine local need for affordable housing has been identified in the Housing Sub-Market Area;**
- c) **It can be demonstrated that the need for affordable housing in the Housing Sub-Market Area cannot be satisfactorily met within the Housing Sub-Market Area;**
- d) **The proposal relates well visually and physically to the existing settlement form, is integrated with the existing community and does not constitute a ribbon, sporadic, isolated or fragmented form of development; and**
- e) **The site is in proximity to services and facilities.**

The associated LDP policy justification text states that affordable housing exceptions sites must be fully justified and will only be appropriate where there is evidence of local need (which refers to a person or household who either works or lives within and/or has a family connection to the Housing Sub-Market Area in question and is in affordable housing need). Planning permission will be subject to a planning condition or obligation to ensure that the affordable dwellings will be delivered in partnership with a Registered Social Landlord and national legislation / policy currently ensures that they remain available in perpetuity to meet local housing needs. Such sites must meet all the other planning criteria against which a housing development would be judged and are not appropriate for market housing.

## **T1 Transport Improvements**

**Land is or will be safeguarded for the construction of the following proposed major transport improvement schemes; development that would be likely to prejudice their implementation will not be permitted: -**

- 1. North Torfaen Highway and Public Transport Improvements (mainly A4043 & B4246 corridors);**
- 2. Pontypool & New Inn Park and Ride / Share Facility;**
- 3. Cwmbran Town Centre Improvements; and**
- 4. Llanfrechfa Grange Link Road, Llanfrechfa**

**Similarly, developments that would require any of the above schemes to be implemented, on highway safety and efficient movement of traffic grounds (as evidenced by a Traffic Impact Assessment), will not be permitted unless the improvement is implemented as part of the proposal or a proportional financial contribution is made towards their implementation within a reasonable time period.**

The associated LDP policy justification text provides a summary of these four transport improvements and recognises sustainable transport considerations, particularly the promotion of public transport and other sustainable modes as part of the design should be key considerations.

## **T2 Safeguarding Former Transport Routes**

**1. The following former railway lines, where they have not already been lost to permanent development, are safeguarded from development that would be likely to prejudice their future transport use: -**

- 1a. The National Cycle Route Network 49/492 former 'High Level' (Mineral) railway line between Waunavon and the British Strategic Action Area, Talywain for an extension of the Pontypool & Blaenavon Railway Co Ltd; and**
- 1b. The 'Low Level' railway line between Blaenavon and Pontypool.**

**2. The Monmouthshire and Brecon Canal is safeguarded from development that is likely to prejudice its reopening to navigation or its regeneration. This includes: current navigable sections, maintaining height clearances, locks that need reopening / providing land required for any canal realignments or ancillary features such as basins, water ponds & culverts, boat transfer points, etc.**

**New developments adjacent to these safeguarded routes or that will benefit from the transport improvement will be expected to either undertake them or make an appropriate financial contribution towards their implementation and, if appropriate, their future maintenance.**

The associated LDP policy justification text provides details on these routes and the Council's long term aspiration to restore navigation on the Monmouthshire & Brecon Canal from Brecon to Newport.

### **T3 Walking and Cycling Routes**

**Land is safeguarded to facilitate the following improvements to the cycle route network:-**

- 1. National Cycle Route Network 492 Varteg Road Bridge to Blaenavon Town Centre;**
- 2. National Cycle Route Network 492 to Abersychan Town Centre;**
- 3. Abersychan Town Centre to National Cycle Route Network 492 at Merchant's Hill, Pontypool;**
- 4. Pontypool & New Inn Train Station to Pontypool Town Centre;**
- 5. Pontypool & New Inn Train Station to Mamhilad - scheme to be agreed; and**
- 6. Usk (Monmouthshire) to Coed-y-Gric Road, Griffithstown.**

**Where possible, walking and cycling routes should be made inclusive in terms of accessibility by all user groups.**

The associated LDP policy justification text states that the walking and cycle network should form part of the wider green infrastructure network as promoted through other policies of the LDP.

### **CF3 Community Facilities**

**Proposals resulting in improvements to the quality and accessibility of the County Borough's community facilities including schools, libraries, health centres, post offices, public halls, public houses and local shops will be favourably considered, subject to other relevant policies of the plan. Development proposals that would result in the loss of or be of detriment to a community and / or leisure facility will not be permitted except where:**

- a) A comparable replacement facility can be provided either on or off site and within easy and convenient access by walking or cycling; or**
- b) It can be demonstrated that the community facility is no longer required by the community it serves; or**
- c) The community facility is no longer economically viable; or**
- d) It can be demonstrated that the premises, if non operational, has been vacant for over a year and the premises has been actively marketed for that use, either for lease or sale over a similar period of time, at a reasonable rental or purchase price; or**
- e) A reorganisation plan has been approved by the respective responsible body.**

The associated LDP policy justification text further states that community facilities are defined as either public or private facilities used by local communities for leisure and social purposes including community centres and meeting places, community halls, youth centres, public houses, places of worship, local shops and any other facility that fulfils a role of serving the community. The Council continues to monitor the quality and level of provision and where possible and appropriate, will seek improvements to ensure that no section of the local community is excluded from having access to basic facilities and services. There may also be a need to secure a contribution towards the provision of facilities as part of

new housing development especially in areas where the cumulative effect of additional new development over a period of time has led to an overall under provision of facilities. With regard to criterion d) of this Policy, planning applications will need to be supported by appropriate evidence to demonstrate that the facility is surplus to requirements or that it is no longer economically viable. The supporting information could include (but not be limited to): -

- the facility has been actively marketed at a price that is based on an appropriate market value for its existing commercial use;
- the business accounts for a number of years preceding the application would be required so that the potential profitability of the enterprise can be assessed; and
- evidence that local businesses/local community groups have been contacted to explore whether they can make use of the building (or part of) as alternative or additional accommodation.

#### **CF5 Protection of Allotments and Recreation & Amenity Open Space**

**Development will be permitted on allotments, areas of formal & informal recreation space, children’s play areas and amenity open space subject to the following:**

- a) **It would not cause or exacerbate a deficiency of such space taking account of the Councils Adopted Standards; and**

**(Note: The Standard for allotments is:-**

- **Blaenavon - 1.65ha;**
- **North Pontypool - 11.23ha;**
- **South Pontypool - 4.97ha;**
- **Cwmbran - 12.52ha; and**
- **Ponthir - 0.65ha.)**

- b) **The space does not have significant amenity value or quality; or**
- c) **The loss is not significant to the overall integrity of the space;**
- d) **It is an appropriate use, which relates to the function of the space; or**
- e) **The need for the development outweighs the need to protect the space; or**
- f) **The developer makes satisfactory compensatory provision, which is of equal community benefit, value and quality.**

The associated LDP policy justification text states that the aim of this Policy is to protect open space, either in public, private or voluntary ownership, which has significant recreational, conservation, environmental or amenity value. The five categories of open space (formal & informal recreation space, children’s play areas, amenity open space and allotments) are also defined. Finally, in order to assess significance, the definition of Amenity Value and Quality is outlined in the TCBC Open Space and Recreation Assessment Report.

#### **BG1 Locally Designated Sites for Biodiversity and Geodiversity**

**Development proposals will not be permitted where they would cause significant adverse effects to local nature conservation designated sites (including the features of a Site of Importance for Nature Conservation, Local Nature Reserves, or Regionally Important Geological Sites unless it can be demonstrated that: -**

- a) **The development could not reasonably be located elsewhere and the benefits of the proposed development justifiably outweigh the nature conservation or geological value of the site; and**
- b) **Adequate mitigatory and / or compensatory provision is made proportionate to; or an enhancement to the value of the ecological resources or geological site lost.**

The associated LDP policy justification text states that Sites of Importance for Nature Conservation (SINC) and Regionally Important Geological Sites (RIGS) designations in

Torfaen are identified on the Proposals Map. However, the Council will be undertaking a review of the SINC designations and boundaries alongside work on the preparation of a Biodiversity SPG. Once completed an updated SINC layer will be available as part of the Biodiversity SPG which will provide the most up to date information on the SINC's in Torfaen and should be referred to alongside the LDP Proposals Map. The Torfaen Local Biodiversity Action Plan (LBAP) identifies and gives advice on habitats and species of importance within Torfaen; and the Council will produce a Biodiversity and Geodiversity SPG which will describe the mechanisms that TCBC will provide to help identify those biodiversity resources that should be protected. The SPG will also identify suitable mitigation / compensation measures designed to enhance the biodiversity network (including locally designated sites) in Torfaen where biodiversity resources will be unavoidably lost. Development proposals must be accompanied by an ecological / geological survey, appraisal and mitigation / compensation strategy, where appropriate and when requested by the Council.

This SPG will be periodically reviewed to ensure that it is relevant and consistent with the policies, aims and objectives of the LDP and the latest national planning guidance.

### 3. PRINCIPLES OF USE OF PLANNING OBLIGATIONS

#### 3.1 Use of Planning Obligations

The Council endorses the principles of the use of planning obligations as set out in Welsh Office Circular 13/97 and the CIL Regulations as summarised in Sections 2.1 & 2.2 above. The Council will therefore seek to negotiate appropriate planning obligations to ensure that new development makes a positive and sustainable contribution to the communities of Torfaen. Where a planning condition could be used to secure the same outcome as a legal agreement, the Council will use conditions rather than planning obligations.

Planning obligations will be sought with regard to developments where there would be a detrimental impact upon the site or local community as a result of the proposed development that can be mitigated.

This SPG is provided as a guide to developers regarding the Council's general expectations in respect of planning obligations. However, each case will be considered on its own merits having regard to the specific circumstances of the site and the development proposal. A summary of the most common obligation requirements is set out in Table 1 below.

Table 1: Summary of Common Requirements

Type of Obligation	Residential development threshold	Commercial development threshold	Obligation
Affordable Housing	3 dwellings or 0.1 ha (10 dwellings or 0.33 ha) <sup>1</sup>	N/A	Site Specific - On site provision for an RSL and / or commuted sum:- <ul style="list-style-type: none"> <li>▪ up to 5% North Torfaen HSMA <sup>2</sup></li> <li>▪ up to 25% Pontypool HSMA</li> <li>▪ up to 20% Cwmbran West &amp; North HSMA</li> <li>▪ up to 30% Cwmbran South &amp; East HSMA</li> </ul>
Highways & Transport	No Threshold	No Threshold	Site Specific - Highways Infrastructure Works and / or Sustainable Transport Works according to need
Educational Facilities	10 dwellings	N/A	Site Specific - Provision for additional capacity according to need
Community Facilities &	25 dwellings	1 ha or 1,000 m <sup>2</sup>	Site Specific - Provision for additional capacity according to need

Regeneration			
Biodiversity, Geodiversity and Ecological Resilience	No Threshold	No Threshold	Site Specific - Mitigation and / or compensation according to impact
Recreation, Open Space & Allotments	3 dwellings or 0.1 ha or loss of such facility	Loss of such facility	Site Specific - Provision of additional capacity and / or compensatory provision according to need (adopted FiT, Council, NRW and allotments Standards and / or LDP Policy)

**Notes:**

- <sup>1</sup> Following a viability review (in the 2015 Torfaen LDP AMR) of the LDP residential development thresholds above which S106 obligations are sought (of 3 (0.1ha) or more dwellings in both Policies H4 (Affordable Housing) and H5 (Provision for Recreation, Open Space, Leisure Facilities and Allotments)), as these policies can only be changed via a review of the LDP, Council on 15<sup>th</sup> December 2015 “Notes, as a matter of ‘planning practice’, that until viability improves, ...affordable housing provision within the Torfaen LDP North Torfaen, Pontypool and Cwmbran North & West Housing Sub-Market Areas within planning applications for 10 or more dwellings or where the site area is 0.33ha or above.”
- <sup>2</sup> As LDP Policy H4 provides for the % of affordable housing sought in each Housing Sub-Market Area (HSMA) to be changed in 5% increments via SPG following an annual review of viability, Torfaen Council on 15<sup>th</sup> December 2015 also resolved to reduce the amount of affordable housing sought with the North Torfaen HSMA from up to 10% to up to 5%.

Viability matters will be reviewed annually as part of the Torfaen LDP AMR; so these thresholds and affordable housing % sought may change again. The 2017, 2018, 2019, 2021 and 2022 Torfaen LDP AMRs have confirmed the above conclusions which remain unchanged.

Section 106 Agreements are voluntary and require the co-operation of the developer in order to be delivered. Planning permission may be refused or determination delayed where a developer fails to show they can adequately mitigate the impacts of their development either through planning obligations or other measures.

Extant planning permissions granted before this SPG was adopted will also come within its terms and conditions should an application for renewal be submitted. This SPG represents a material change in the planning circumstances since the original permission was granted and will be taken into account when determining such applications. Likewise, material changes in planning circumstances will be considered regarding Section 73 (to vary or remove a condition) applications, the practical effect of which is to grant a fresh consent.

### 3.2 Sub-Division of Sites

Where a site is subdivided, the Council will treat such sites in their totality. Under such circumstances, each subdivided plot will be required to provide a contribution towards the relevant obligation proportionate to its size and relative to the impact of the development. Where the new development involves more than one developer, the Council may seek joint contributions from developers to mitigate combined impacts.

Where developments are proposed which fall short of the threshold, it will be necessary for the Council to consider whether the proposal constitutes deliberate under development of the site to avoid the planning obligation requirement. If so, there is planning case law to support a stance that the requirement should be applied. As a general rule, a minimum density of 30 dwellings per hectare will be considered appropriate. Where site specific

constraints make lower densities necessary, this will be considered by the Council on a site by site basis.

### 3.3 Pooled Contributions

The Council recognises that in some cases, necessary infrastructure required to cater for a development may go beyond the scope of an individual development. Therefore, where considered appropriate, S106 contributions may be pooled. However, with the exception of affordable housing and highway contributions under Section 278 of the Highways Act 1980 (as amended), the CIL Regulations restrict the use of pooled contributions towards items that may be funded via the levy. Indeed, from the 6<sup>th</sup> April 2015, no more than 5 contributions may be collected in respect of a specific infrastructure project or a type of infrastructure through a section 106 agreement which was entered into after 6<sup>th</sup> April 2010. Further 'double-dipping' (S106 or CIL) restrictions will apply if the Council introduces a CIL. However, until that time, and given that the Council may have difficulties with specifying generic types of infrastructure under this pooling restriction, all future S106 Agreements will need to identify a specific infrastructure project in the S106 for any such contributions; and even then a check will need to be made to ensure that the 5 limit has not already been reached; otherwise the ability of the Council to request a further contribution to this particular project will need to be given careful consideration when determining the planning application. Therefore, applicants are encouraged to identify or ask the Council to identify such specific projects, if required, when they seek pre-application planning advice for their proposals.

### 3.4 Management Arrangements

Where new public or private spaces or facilities are provided, the developer will need to provide for the long term maintenance and / or management of the site. This can be achieved by way of establishing a management company or trust to undertake the site management in perpetuity or by way of transferring the land / facility to the Council accompanied by a commuted sum to enable the Council to undertake the maintenance for a period of 20 years.

If a management company or trust is the preferred option, this will be secured within the legal agreement so that if the management company defaults on its obligations or becomes bankrupt, the obligation transfers equally to the individual dwelling / unit owners within the site. This default obligation will be registered as a Local Land Charge on each dwelling / unit.

In setting its LDP S106 policies, viability has been assessed assuming that these costs are paid up front by the developer when it offers the Council or the private management company the adoption of such facilities, with an appropriate commuted sum for their future maintenance.

### 3.5 Outline Planning Applications

Whether or not an obligation is necessary, and if so, it's nature and value, can often only be established when the details of an application are known at the time of the planning application. As a general rule, in determining an outline application, a legal agreement will be required to provide for the principle of specific obligations with the value and details to be determined when the full details of the scheme are known, either via the associated Reserved Matters application or by any subsequent full application.

## 4. **PROCEDURAL CONSIDERATIONS**

### 4.1 Process of Negotiation



The Council seeks to ensure that planning obligations are progressed as quickly and efficiently as is reasonably possible. To this effect, the Council has set out a procedure for negotiating planning obligations and Service Level Standards which are attached at Appendices A and B respectively.

During pre-application discussions and the subsequent assessment of a planning application, the Council as Local Planning Authority will consider as and where planning obligations should be sought in relation to a proposed development, taking into account responses received from consultees. Any discussions or draft agreements will be without prejudice to the final decision of the Council on any application proposal.

As all parties with an interest in the land must normally be party to any Section 106 agreement relating to it, an applicant must also inform and involve landlords and anyone with a legal interest in the land, such as a bank with a charge or mortgage at an early stage. The Council will require evidence of title to the land, details of the solicitor acting for the applicant and full details of all parties that are to be subject to the agreement as early as possible in the process. Prior to completion of the agreement, the applicant's solicitors will be required to provide clear Land Registry and / or Land Charges searches against the relevant land / their client.

In almost all circumstances, the Heads of Terms of the Agreement should be agreed prior to the application being presented to Planning Committee or receiving a resolution to grant. From time to time on very large applications, there may be occasion to consult third parties on Heads of Terms. The Council will consider this on a case by case basis taking into account any such requests as appropriate. Following the date of Planning Committee or resolution to grant, the applicant will have a period of up to six months to finalise and sign the legal agreement. Any agreement which has not been signed within the six month period and cannot be signed imminently will need to be reconsidered by Planning Committee or under delegated powers.

The legal agreement is usually drafted by the Council's legal department. Where appropriate, the Council will use the standard model clauses set out within the topic specific annexes. Where the applicant chooses to draft the agreement themselves, the agreement would need to satisfy the planning obligation requirements deemed necessary by the Local Planning Authority and must be checked by the Council's legal department. Suggested templates of a standard Section 106 Agreement and a Unilateral Undertaking are attached at Appendices C and D respectively. However, the applicant should be clear that each agreement will be individual to each planning application and clauses may vary.

#### 4.2 Modification or Discharge of Planning Obligations

Subsequent to a signed agreement, a planning obligation may be modified or discharged by agreement, executed as a Deed, between the Council and all relevant parties. If the modification comprises a material change to the Agreement, it may be necessary to report the modification to the Planning Committee.

Alternatively, any one party may apply to the Council for modification or discharge of an Agreement following the expiry of five years from the date signed. Such an application is subject to a right of Appeal.

#### 4.3 Development Viability and Development Viability Model (DVM)

Developers are required to take account of necessary planning obligations at an early stage to ensure that these are reflected in the land value assumptions. Where a developer submits that the planning obligation requirements associated with a scheme are too onerous and will potentially make the scheme unviable, they will be expected to submit a financial assessment of the costs and anticipated profit based upon properly sourced

evidence in accordance with the Council's procedure for Viability and Valuation Assessment attached at Appendix A. The Council will seek verification of these details, initially from the Council's Asset Management and Economy & Environment departments but potentially also from the District Valuer or a consultant at cost to the developer. Special attention will be paid to land values and build costs, especially those of national housebuilders who benefit from economies of scale; and their submitted 'abnormal' and external costs.

The RICS Build Costs Information Service (BCIS) average costs for Torfaen reflects the 'normal' costs of building the sub/super-structure of the dwelling itself, to which the DVM adds 15% to cover the 'normal' costs of external works, including infrastructure; any 'abnormal' costs in excess of this 15% allowance can also be considered. It is also considered that land values should be reduced when 'abnormal' costs (which exceed 'normal' site development costs contained within the BCIS figure plus the 15% allowance for external works) apply as the land is not worth so much given that it is fettered by such costs. Similarly, the costs of releasing restrictive covenants over land or compensating for the loss of playing fields, community facilities, biodiversity, etc. in order for the land to be made available for development should be taken from the land value; rather than being considered as a S106 cost born by the Council.

In order to facilitate such a financial assessment, and subject to payment of a standardised fee, the Council will make a site specific copy of the Development Viability Model (DVM) available for site developers. The DVM has been produced by Burrows-Hutchinson Ltd Chartered Surveyors who have worked with a number of Local Planning Authorities (LPAs) across Wales. Using this model ensures consistency for developers and LPAs regarding viability matters. The DVM is recognised by Torfaen Council as a suitable means of undertaking a financial viability appraisal ("FVA"). The DVM uses a residual method to calculate land value which enables a determination of economic viability based upon a variety of circumstances. Other valuation tools may be acceptable on larger or complex development sites, but the Council will have to agree to their use.

The DVM will be tied to a specific site although the model can be used to run numerous scenarios upon the identified site. The standard fees cover the Officer input required to set up and issue the model for a named site, as well as a high-level evaluation of the submitted FVA. It does not allow for any time that an applicant might wish to spend debating the findings of the review. Further discussion / resubmission, and / or the need for third party expertise will incur additional cost to be determined as appropriate.

The fee structure is based on site size and scale; and mirrors that adopted by other Local Planning Authorities using the DVM, recognising that the scale and scope of a development proposal will influence the amount of Officer time likely to be required to evaluate the completed FVA.

The Council recognises that the DVM may not be appropriate for 100% Registered Social Landlord housing schemes; given that they are not for profit organisations and derive income, in part, from controlled housing rents over time rather than initial house sales. For such schemes, the Council is likely to consider residual viability upon the evidence of scheme income from the level of Welsh Government Social Housing Grant, capitalised social rents over 30 years and intermediate housing sales income against scheme costs, including an appropriate price for the land, construction costs from an approved tender (with a constructor return / profit) and agreed professional & other fees / overheads and management costs.

Similarly, the Council recognises that for predominantly commercial schemes a standard commercial viability model may be more appropriate. In such instances the Capital Value which is a product of the rent and yield is used to determine residual viability. The Council

will need to agree rental values / yields and other inputs (appropriate land value, build costs, fees / developer return, etc.) with the developer.

Any subsequent reduction in obligations on this basis is only likely to be justified where there are material considerations which outweigh the unmitigated impact. Each situation will be considered on its own merits and any previous decision will not constitute a precedent for any similar decision.

Torfaen Council recognises that some of the information required to demonstrate viability may be considered by the applicant as commercially sensitive. Torfaen Council will treat FVA's as confidential between the Council and the person or organisation that has submitted it. No submitted FVA will be publicly available. If it is considered necessary to present the details of an FVA as evidence, for example to an Inspector, the Council will discuss with the applicant / appellant the extent to which such information may be released.

#### 4.4 Reduced Obligations

Where reductions are justified on the basis of unusual market circumstances, the Council will usually require developers to agree to a time limiting S106 clause of two years. Following two years from the date of the agreement, the agreement will require review for any units left to be completed, in order to take account of any subsequent uplift in market conditions which might make the normal requirement feasible. For small housing sites of less than 10 dwellings, with the exception of those within the Cwmbran South and East Housing Sub-Market Area, these time limiting clauses will not currently be required, but the Council will review this position annually as part of the LDP AMR review of housing viability.

#### 4.5 Re-Negotiation of Obligations

In circumstances where a development already approved cannot proceed on the basis of the cost of planning obligations, the Council will consider re-negotiating the planning obligations using the process outlined above. In some cases, it may be possible to retain the existing legal agreement subject to a Deed of Variation to enable deferred provision / payment plan. Any request for deferment must be made in writing and accompanied by financial justification. The request will be considered by the Council taking into account the site specific details and justification for the deferment.

#### 4.6 Prioritising Planning Obligations

Where a reduced level of obligations has been determined on the grounds of viability, the priority of each of the obligations will be determined on the basis of whether the proposed development would be considered so unacceptable without the obligation as to form a reason for refusal of the planning application. The assessment to make this judgement will be informed by the specific circumstances of the site and evidence submitted by Service Areas taking into account the key priorities of the Council's published County Plan. Specific priorities for a specific scheme will be determined on a case by case basis.

#### 4.7 Unilateral Undertakings

A planning obligation may take the form of a Section 106 Agreement or a Unilateral Undertaking. A Unilateral Undertaking is appropriate in circumstances where only the developer needs to be bound by the agreement with no reciprocal commitments by the Council or any other party. The Council encourages the use of Unilateral Undertakings wherever possible.

#### 4.8 Commencement of Obligations

All planning obligations will come into effect at the time that the planning permission is granted. Individual triggers for obligations will be detailed where appropriate within the legal agreement. Planning permission will not be granted until the legal agreement has been finalised and signed by all parties. All planning obligations are recorded on the Local Land Charges Register until such time that they are discharged.

#### 4.9 Financial Provisions and Administration Fee

Payment of contributions will generally be sought upon commencement of development unless it is agreed that an alternative stage in development is appropriate and acceptable. The Council will (where appropriate) consider payment of phased contributions. In such cases, the planning obligation must detail the phasing and timing of payments.

Where a payment is necessary in lieu of specified capital works, the payment shall include Value Added Tax (VAT) at the rate at the time of payment. No VAT is required with respect to maintenance contributions or with respect to provision of services. Upon request, the Council will provide a VAT receipt where applicable.

All financial contributions will be index linked from the date of the Agreement to the date of payment. In addition, any amounts which are overdue will be charged interest (usually at 4% above the base lending rate of the bank used by the Council at the time the calculation is made) payable from the date on which the amount was due until the date it is received by the Council. Where it is deemed necessary, the Council may require the developer to pay a bond to ensure delivery of necessary obligations.

All financial contributions will be held by the Council in separately identifiable interest bearing financial records. Interest generated on sums held will be retained for the purposes of the obligation. Where the Council holds contributions for payment to a third party organisation, the contribution will have a clear audit trail. Any interest generated by the contribution will be passed on to the third party organisation at the time of payment.

Any financial contributions which remain unspent by the Council at the end of the time period specified in a legal agreement will, upon the specific request of the payee, be returned to the payee with any interest accrued, unless otherwise agreed in writing.

Prior to the completion of the agreement, applicants will be expected to pay the Council's reasonable legal fees for drafting and amending the legal agreement. In addition, the Council has introduced a separate fee system for the subsequent monitoring of planning obligations. The monitoring fee will only be sought where justified and will be based upon the complexity and number of obligations required to be monitored, the size of development, the trigger points for each planning obligation and the likely Officer time required to monitor those obligations. This monitoring fee enables the Council to cover some of the costs associated with the monitoring and implementation of planning obligations.

#### 4.10 Monitoring and Enforcement

The Council will monitor planning obligations to ensure that they are complied with in full by the developer and the Council. It should be noted that it is the responsibility of the developer to notify the Council prior to commencement of development and also when any triggers specified within the agreement are reached. Where it is found that a legal agreement is not being complied with in relation to a planning application, the Council will, in the first instance, informally seek to enforce compliance with the legal agreement. If this approach is unsuccessful, the breach will be recorded on the Local Land Charges Register and the Council's Legal Services will consider the appropriate enforcement action to be taken. This may comprise a legal injunction and / or debt recovery proceedings. As stated above, where financial contributions are overdue, interest shall be applied, at a rate of 4%

above the base lending rate of the bank used by the Council at the time the calculation is made, from the date the payment is due until the date it is paid.

#### 4.11 Freedom of Information / Environmental Information Requests

During the planning application process, the Council recognises that some of the information submitted with regards the negotiation of planning obligations will have been submitted with an expectation of commercial confidence, which is acknowledged. Whilst the Council will take such expectation properly into account when dealing with any requests under either the Freedom of Information Act (2000) or the Environmental Information Regulations (2004) applicants should be aware that the Council must in all cases comply with its statutory responsibilities.

Heads of Terms for the obligations will be set out in the Planning Officers report which becomes publicly available upon a resolution to grant permission. Signed legal agreements, both Section 106 and Unilateral Undertakings are a matter of public record and are available to view by the public.

## 5. **FURTHER INFORMATION**

Further information can be sought from the Development Management Team at [planning@torfaen.gov.uk](mailto:planning@torfaen.gov.uk) or the Planning Policy and Implementation Team at [ldp@torfaen.gov.uk](mailto:ldp@torfaen.gov.uk).

## **PLANNING OBLIGATIONS**

### **SUPPLEMENTARY PLANNING GUIDANCE**

#### **APPENDICES**

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**APPENDIX A**

**PROCESS MAPS**

NEGOTIATION AND IMPLEMENTATION

VIABILITY AND VALUATION ASSESSMENT

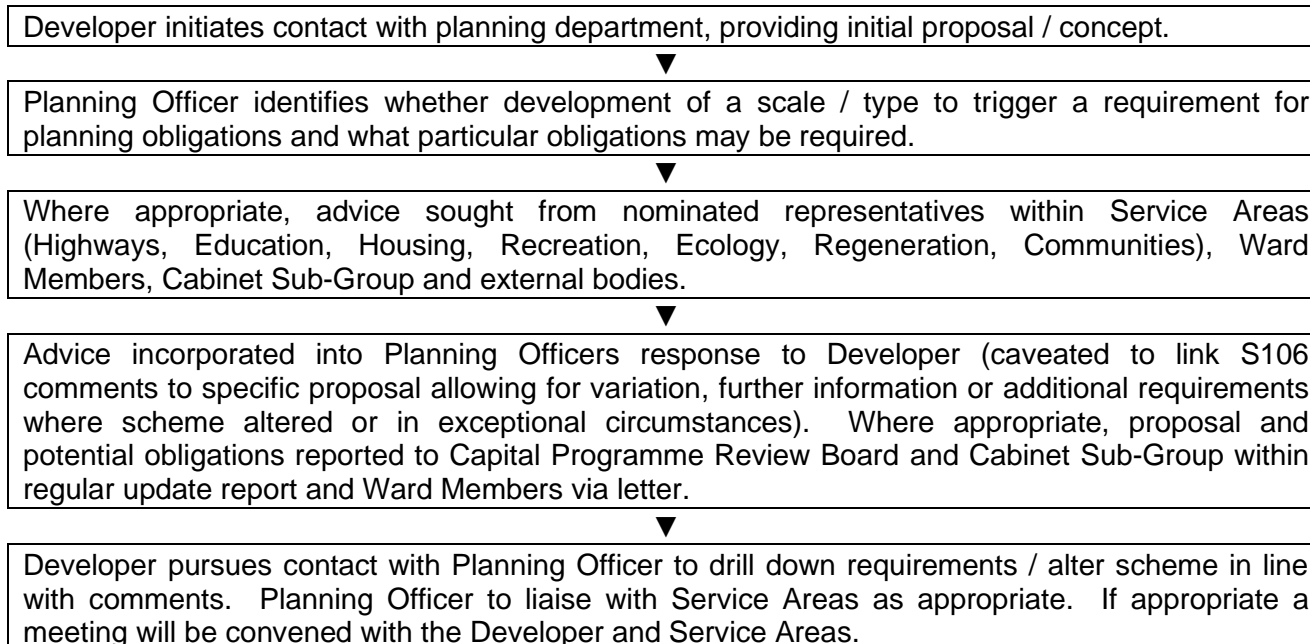
TRANSFER OF LAND OWNERSHIP

MONITORING

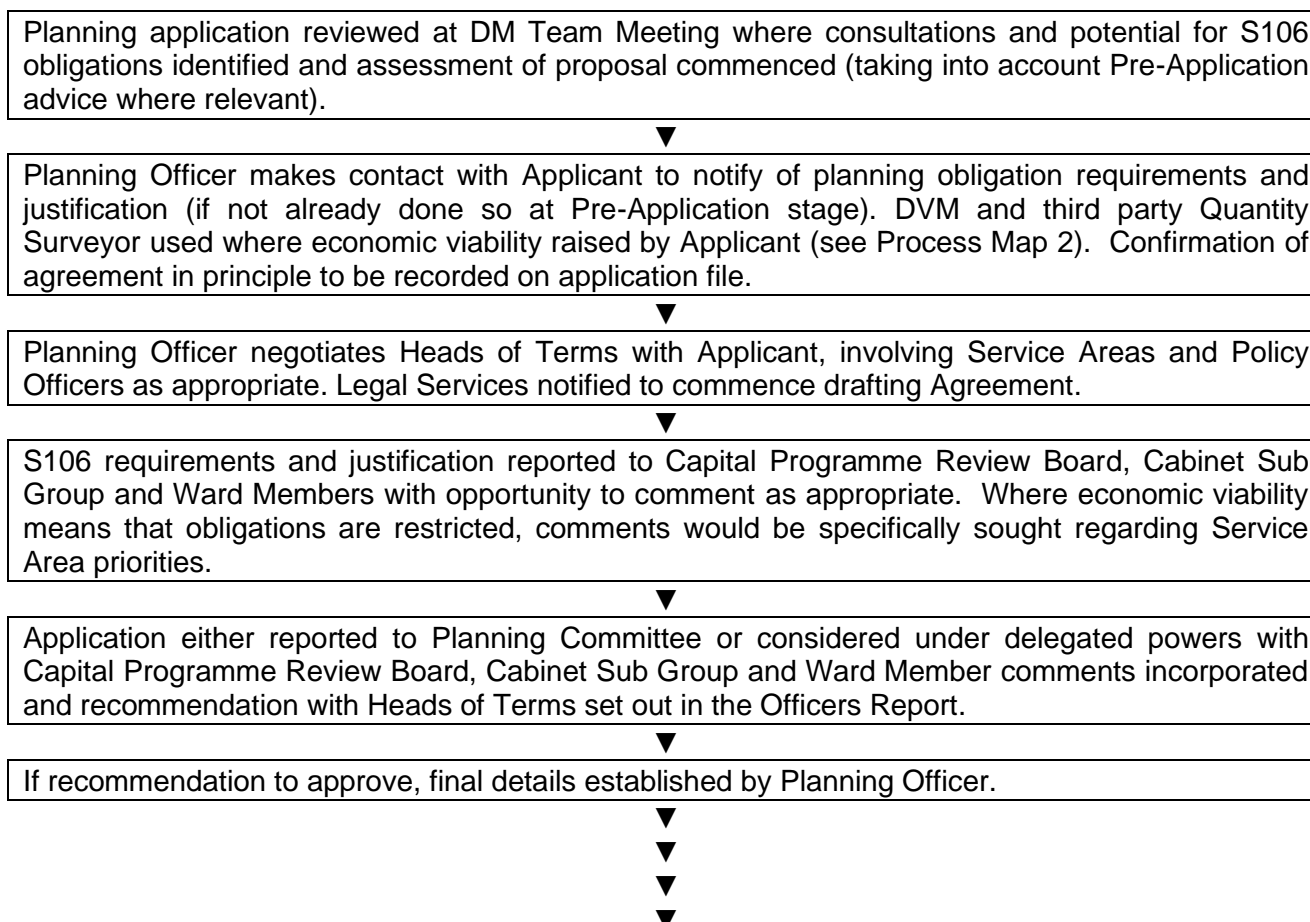
ENFORCEMENT

## **PROCESS MAPPING: NEGOTIATION AND IMPLEMENTATION**

### **PRE-APPLICATION**



### **PLANNING APPLICATION**





▼  
EITHER

Legal Services prepare and complete draft S106 Agreement and send draft S106 to Planning Officer for confirmation.

▼  
Planning Officer liaises with Service Areas and confirms draft S106 with Legal Services.

▼  
Legal Services send S106 to Applicants solicitor for signing.

▼  
S106 Agreement signed and copies retained in Legal Services, Planning, Finance and relevant Service Areas.

N.B. If the S106 legal agreement is not signed within 6 months of the date of the resolution to grant permission, the application will be reconsidered.

▼  
OR

Applicant instructs their own solicitor to draft legal agreement.

▼  
Applicant submits draft legal agreement to Planning Officer who forwards a copy to Legal Services and Service Areas for confirmation.

▼  
Legal Services liaise with Applicant / nominated solicitor to resolve any issues.

▼  
Planning permission granted and Decision Notice issued to Applicant.

A Standard Advice Note will be applied to all relevant decision notices as follows:

*This permission is subject to a Section 106 legal agreement dated ..... Under the terms of the Agreement, the Developer must notify the Development Management Service at Torfaen County Borough Council, Civic Centre, Glantorvaen Road, Pontypool NP4 6YN or [planning@torfaen.gov.uk](mailto:planning@torfaen.gov.uk) 14 days prior to the date of commencement of development.*

▼  
Legal Services: Retain copy of S106 Agreement and record as a Local Land Charge. Send copies to Finance, Planning and Service Areas as appropriate.

Finance: Receive copy of Agreement and record programmed payments and assign reference codes.

Planning: Receive copy of Agreement and record details of S106 Agreement for monitoring purposes. Keep copy of Agreement with Planning Application file and maintain register of Agreements for public access.

Service Areas: Receive copy of Agreement and tentatively programme works / financial contribution as per the details of the Agreement.

N.B. Obligations will only come to fruition if the planning permission is implemented. A signed S106 legal agreement does not guarantee implementation and so the spend of agreed contributions should be tentatively programmed pending commencement of development.

## **POST APPLICATION**

Technical Administration liaise with Building Control to monitor when Building Regulations Approval is granted / Initial Notice received.

▼  
Developer issues notice of commencement to Development Management Service.

▼  
Technical Administration forward notice of commencement of development to Finance and Service Areas as appropriate.

▼  
Technical Administration / Planning Officer monitors progression of development scheme in association with Building Control and notifies Finance and Service Areas as appropriate.



Developer undertakes on site provision of works / makes financial contribution to Council in accordance with triggers identified within Agreement.



Service Areas / external bodies confirm to Technical Administration and Finance Officer that works undertaken to appropriate standard using Proforma 3. If land transfer required, Planning Officer instructs Legal Services to commence legal transfer using Proforma 4.

Finance Officer monitors contributions paid and liaises with Service Areas to ensure spend within required timescale.

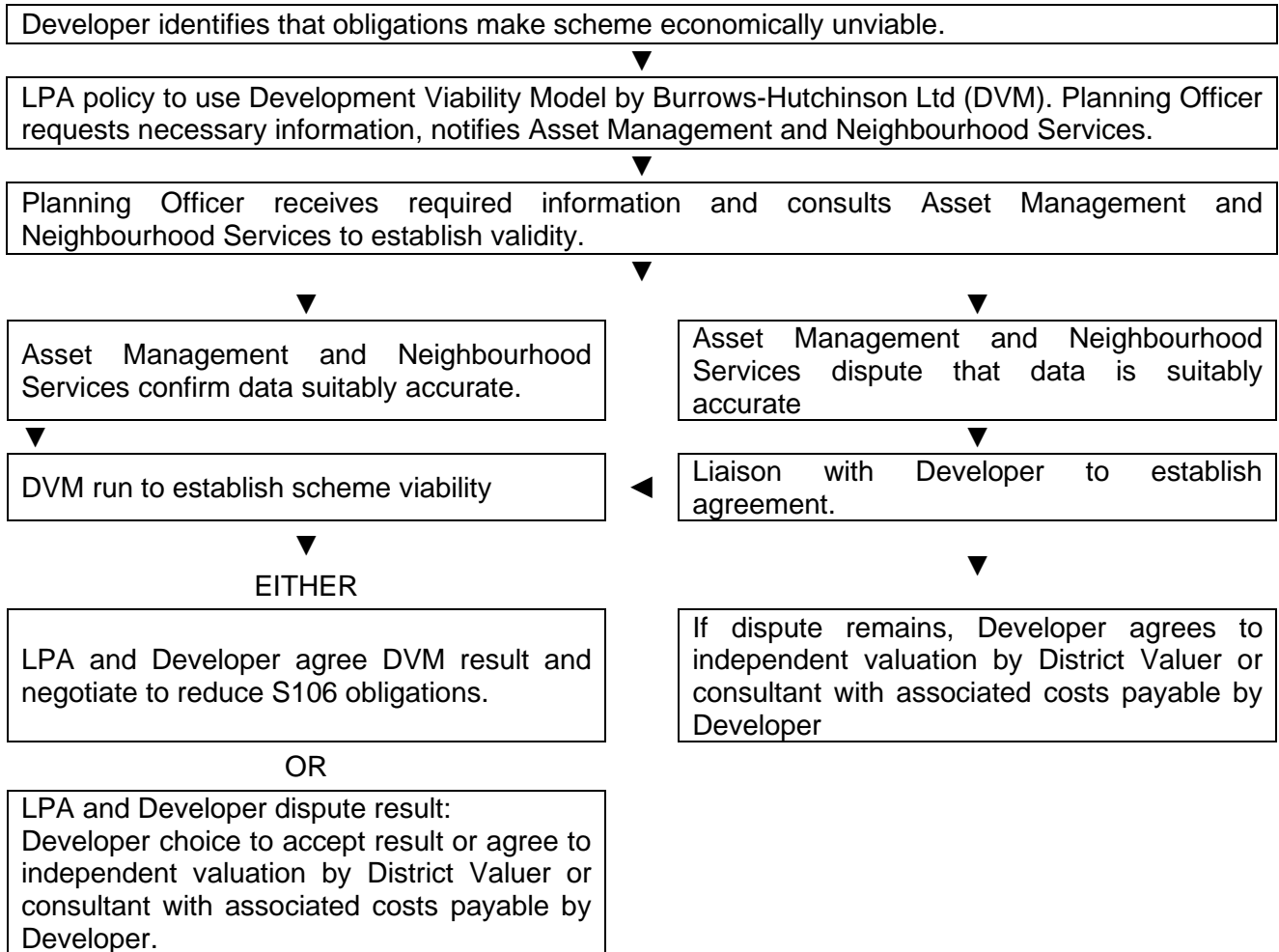


Technical Administration monitors outstanding obligations in accordance with the Monitoring Process Map and commences enforcement action as appropriate in accordance with the Enforcement Process Map.



When all obligations discharged, Technical Administration instructs Agreement to be removed from Local Land Charges Register.

## **PROCESS MAPPING: VIABILITY AND VALUATION ASSESSMENT**



## **PROCESS MAPPING: TRANSFER OF LAND OWNERSHIP**

Developer initiates contact with Legal Services to transfer a specified piece of land to TCBC ownership. Developer submits Land Registry Plan, title deed and draft Land Transfer Agreement.



Legal Services notify Technical Administration to confirm compliance with rest of Legal Agreement. Technical Administration liaises with Service Areas to confirm completion of any works and quality of land.



Any outstanding obligations to be pursued by Technical Administration / Planning Officer in accordance with Enforcement Process Map. Transfer of land not to be continued until all outstanding matters resolved.



When all outstanding matters resolved, Planning Officer instructs Legal Services to continue with transfer of land ownership using Proforma 4. Technical Administration notifies Finance Officer where maintenance payments involved.



Legal Services check validity of information submitted and Asset Management confirm Land Registry Plan. Legal Services finalise terms of Land Transfer Agreement with Developer.



Both parties sign Land Transfer Agreement and any maintenance payment specified within the Legal Agreement is paid to Finance Officer. TCBC Legal Services fees and land registration fee also payable by Developer at signing of Land Transfer Agreement.



Land subject to transfer of ownership is registered by Legal Services. Confirmation forms deed of title, retained by Legal Services.



Legal Services notify:

- Asset Management who update Land Terrier record
- Technical Administration who update Monitoring Database accordingly
- Service Areas as relevant. Neighbourhood Services notified where maintenance of facility or land now a responsibility of TCBC.

## **PROCESS MAPPING: MONITORING**

Legal Services: Retain copy of S106 Agreement and record as a Local Land Charge. Send copies to Finance, Planning Officer, Technical Administration and Service Areas as appropriate.

Finance: Receive copy of Agreement and record programmed payments and assign reference codes.

Planning: Receive copy of Agreement and record details of S106 Agreement for monitoring purposes. Keep copy of Agreement with Planning Application file and maintain register of Agreements for public access.

Service Areas: Receive copy of Agreement and tentatively programme works / financial contribution as per the details of the Agreement.

NOTE: Obligations will only come to fruition if the planning permission is implemented. A signed S106 legal agreement does not guarantee implementation and so the spend of agreed contributions should be tentatively programmed pending commencement of development.



Planning Officer sends letter to Developer reminding of terms of obligations and providing point of contact for any issues.



Technical Administration to liaise with Building Control to monitor when Building Regulations Approval is granted / Initial Notice received.



Technical Administration commences quarterly monitoring review to check on commencement of development and progress. If application expires without commencement occurring, Monitoring Database to be updated and status changed to historical agreement. Quarterly monitoring review to be continued throughout development until obligations completed.



Developer submits notice of commencement to Development Control Department or Planning Officer identifies that work has commenced on site and issues written request for notice of commencement to be submitted.



Technical Administration forwards notice of commencement of development to Finance and Service Areas.



Planning Officer sends letter to Developer to remind of terms of obligations as appropriate.



Technical Administration / Planning Officer tracks progression of development scheme in association with Building Control and Neighbourhood Services. Refuse collection and / or Council tax payment used to confirm occupation where necessary. Technical Administration notifies Finance and Service Areas as relevant triggers are imminent.



Developer undertakes on site provision of works / makes financial contributions to Council in accordance with triggers identified within Agreement. If obligations not complied with, refer to Enforcement Process Map.



Service Areas / external bodies confirm to Technical Administration that works undertaken to appropriate standard using Proforma 3. If land transfer required, Planning Officer instructs Legal Services to commence legal transfer using Proforma 4.

Finance monitors contributions paid and liaises with Service Areas to ensure spend within required timescale.



When all obligations discharged, Technical Administration instructs Agreement to be removed from Local Land Charges Register.

## **PROCESS MAPPING: ENFORCEMENT:**

### **NON COMPLIANCE WITH LEGAL AGREEMENT**

Where a Developer fails to fulfil an obligation set out within a Section 106 Legal Agreement or Unilateral Undertaking at the appropriate time, the Planning Officer writes to the Developer requesting timescales for fulfilling the obligation or payment of the contribution within 14 days. This letter includes the financial contribution(s) due including indexation and / or interest as appropriate.



Where no response is received within the 14 days, the Planning Officer writes a second letter to the Developer stating that if the Developer has a particular reason for not paying, they should write to the Planning Officer within 10 working days of the date of the letter explaining that reason and providing evidence in support, with a timescale for when they believe they would be in a position to pay the contribution. The letter should include that in the absence of any such evidence, or if the Council remains dissatisfied with the proposals, the matter will be referred to Legal Services for action to be taken and the breach will be recorded in the Local Land Charges Register until it is resolved.



If no response or an inadequate response is received, the Planning Officer notifies Legal Services of the non compliance who record the breach in the Local Land Charges Register.



Legal Services sends a letter to the Owner advising that if the Owner / Developer continues to remain in default of its obligation(s), then formal enforcement action will be considered. This could take the form of serving an injunction to stop the development, or debt recovery court proceedings.



If no response is received within 10 working days, enforcement action which may comprise an injunction or debt recovery will be taken by Legal Services, subject to agreement by the Chairman of Planning Committee.



When non compliance with an obligation is resolved, the breach lodged on the Local Land Charges Register is removed.

**APPENDIX B**

**PLANNING OBLIGATIONS**

**SERVICE LEVEL STANDARDS**

## **PLANNING OBLIGATIONS SERVICE LEVEL STANDARDS**

Torfaen County Borough Council is committed to providing a high quality and efficient planning service. The Council has recently undertaken a two year project to develop the Council's policy on affordable housing, planning obligations and the use of Section 106 Agreements which has resulted in the production of Planning Obligations Supplementary Planning Guidance and introduction of a Section 106 monitoring database.

The Council has also resolved to introduce a separate fee system applicable to planning applications which require the processing and monitoring of a Section 106 Legal Agreement. The fee charged will contribute towards the additional administrative and professional resources required within the Planning Department.

These Service Level Standards have been developed to set out the Council's commitment to providing a quality service to Applicants and Developers in respect of planning obligations. The aims of the Planning Department with respect to planning obligations are:-

**Clarity** - To ensure that policy documents, guidance and copies of signed Agreements with regard to planning obligations are readily available to Applicants, Developers and Members of the Public also to ensure that Applicants and Developers are advised of the need for planning obligations at the earliest available opportunity.

**Fairness** - To provide a high quality service to all Applicants irrespective of their status as individuals, small local businesses, or national development companies.

**Speed** - To process planning obligation legal agreements as swiftly as possible.

**Consistency** - To ensure that planning obligations are sought consistently across sites and in accordance with national guidance and local planning policies.

**Quality** - To ensure that planning obligations are agreed where they are necessary and are implemented in a manner that fulfils their purpose, to best meet the needs arising from the development.

The Planning Obligations Supplementary Planning Guidance has been developed to inform applicants and developers of the Council's expectations with regard to planning obligations. In addition, the Council operates a pre-application advice service whereby further detail regarding site specific contributions can be provided.

Planning Committee reports will include agreed details under heads of terms relating to planning obligations where obligations are necessary. Following a resolution to grant planning permission from Planning Committee or under delegated powers, an Agreement will be progressed as quickly as possible dependent upon the resources available and the agreement of all the parties involved.

The Council's first point of contact for issues relating to planning obligations and Legal Agreements is Pat Weaver, Technical Administrator, Planning. Tel. 01633 647326 Email: [pat.weaver@torfaen.gov.uk](mailto:pat.weaver@torfaen.gov.uk)

The Council is committed to improving customer service with regards planning obligations and we would like you to tell us where we have provided a good service and suggest where we could improve. Please contact Technical Administration (as above) in the first instance.

If you are dissatisfied with the level of service you have received or wish to make a complaint, please contact Mr Richard Lewis, in writing, as follows:

Head of Planning and Development  
Torfaen County Borough Council  
Civic Centre, Glantorvaen Road,  
Pontypool, NP4 6YN

Or Email: [richard.lewis@torfaen.gov.uk](mailto:richard.lewis@torfaen.gov.uk)



## **APPENDIX C**

### **SECTION 106 AGREEMENT TEMPLATE**

THIS DOCUMENT IS A SUGGESTED PRECEDENT AND DOES NOT COMPRISE LEGAL ADVICE. IT SHOULD NOT BE RELIED UPON AS COMPRISING LEGAL ADVICE. THE CONTENTS MAY BE ALTERED BY TORFAEN COUNTY BOROUGH COUNCIL AT ANY TIME. INDEPENDENT LEGAL ADVICE SHOULD BE SOUGHT BEFORE COMMENCING NEGOTIATIONS IN RELATION TO THIS DOCUMENT.

DATED:

202

**TORFAEN COUNTY BOROUGH COUNCIL**

and

**PLANNING OBLIGATION BY DEED OF AGREEMENT**

pursuant to Section 106 of the Town and Country Planning Act 1990 and other enabling powers  
relating to

CHIEF LEGAL OFFICER AND MONITORING OFFICER

CIVIC CENTRE

PONTYPOOL

TORFAEN

NP4 6YB

(REF: )

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**BETWEEN**

- (1) The **TORFAEN COUNTY BOROUGH COUNCIL** of Civic Centre Pontypool NP4 6YB (“the Council”)
- (2) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Developer”)
- (3) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Owner”)
- (4) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Mortgagee”)

**WHEREAS**

- (A) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area in which the Site is situated
- (B) The Owner is the freehold owner of the Site registered at the Land Registry under title number(s) [ ]
- (C) The Mortgagee has a charge over the Site registered at the Land Registry dated the [ ]
- (D) The Developer has an interest in the Site by way of [ ] dated [ ]
- (E) On the [ ] day of [ ] the Council received the Planning Application (Ref: [ ]) for permission to develop the Site
- (F) The parties have agreed in contemplation of the issue of the Planning Permission that the Site will be bound by the obligations contained in this Agreement
- (G) On the [ ] the Council resolved to grant the Planning Permission subject to this Agreement which is made pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Act and all other enabling powers
- (H) The parties agree that the obligations in this Agreement are:-
  - (a) necessary to make the Development acceptable in planning terms;
  - (b) directly related to the Development; and
  - (c) fairly and reasonably related in scale and kind to the Development

## 1. DEFINITIONS

1.1 For the purposes of this Deed (including the recitals) unless the context otherwise requires the following expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 as amended
"Commencement of Development"	means the carrying out of a material operation as defined in Section 56(4) of the Act PROVIDED THAT for the purposes of this Agreement operations in connection with site surveys, ground investigations, demolition, archaeological investigations, investigations for assessing the existence degree or nature of any contamination and the erection by means of enclosure for the purposes of site security and / or the display of advertisements shall not of themselves constitute material operations and "Commence Development" shall have a corresponding meaning
"the Development"	means the development of [insert description] permitted by and in accordance with the Planning Permission
"Dwellings"	means the units provided in accordance with the Planning Permission
"Interest"	means 4% above the base lending rate of the bank used by the Council at the time the calculation is made
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"the Planning Application"	means the application for Planning Permission dated [ ] and submitted by [ ] to the Council and bearing the statutory register number [ ] for outline / full / planning permission
"the Planning Permission"	means the outline / full planning permission subject to conditions granted by the Council pursuant to its powers under the Act in respect of the Planning Application and annexed to this Agreement at the First Schedule in draft form only and any subsequent approval given to an application under the Act varying or modifying the Planning Permission
"Practical Completion"	means completed so that the works can be used for the purpose

and operated in the manner for which they were designed and fitted out so that they are available for occupation or use

“RPI” means the Index of Retail Prices published by the Office of National Statistics or its successor body to reflect changes in the cost of living in the United Kingdom PROVIDED THAT if the Retail Price Index is no longer published or if the basis of that Index is changed between the date of this Agreement and the date on which any payment under this Agreement that is subject to the Index is made then any replacement for the Retail Price Index shall apply or such adjustments shall be made in the Retail Price Index as shall be specified by its publishing body

“the Site” means comprised in the Planning Application and shown edged red on the Site Plan

“Site Plan” means the plan annexed to this Agreement entitled Site Plan and initialled by or on behalf of the Parties for the purposes of identification

## **2. CONSTRUCTION OF THIS DEED**

In this Agreement where the context allows:

- 2.1 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.2 Words in the singular meaning where the context so admits include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- 2.3 Any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement
- 2.4 References to any party in this Agreement shall include (unless the context otherwise requires) successors in title of that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
- 2.5 Where a party comprises more than one party any obligations of that party shall be joint and several under this Agreement

- 2.6 Any references to Parts Clauses Schedules paragraphs sub-paragraphs appendices and plans are (unless otherwise stated) references to the Parts Clauses Schedules paragraphs subparagraphs appendices and plans of this Agreement
- 2.7 Any reference to this Agreement shall include any schedules appendices and / or plans (if any) appended to or otherwise annexed to this Agreement
- 2.8 A reference in this Agreement to an Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
- 2.9 A term or expression defined in a Schedule shall bear the meaning ascribed to it in that Schedule if used elsewhere in the Agreement

### **3. LEGAL EFFECT**

- 3.1 This Agreement is made pursuant to Section 106 of the Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other powers enabling and enactments which may be relevant for the purpose of giving validity to this Agreement and facilitating the obligations contained in it with the intent to bind the Parties and any successors in title to each and every part of the Site and their respective interests in the Site
- 3.2 The Council is the local planning authority by which the obligations contained in this Agreement are intended to be enforceable

### **4. OBLIGATIONS AND COVENANTS**

- 4.1 The [Owner and Developer] covenant with the Council to observe and perform the restrictions and obligations on their part in respect of the Site as set out in this Agreement and Schedules
- 4.2 The Council covenants with the [Owner and Developer] to observe and perform the obligations on its part as set out in this Agreement and Schedules
- 4.3 The Schedules referred to in sub clauses 4.1 and 4.2 are:
- 4.3.1 Schedule 1 containing restrictions and obligations relating to
- 4.3.2 Schedule 2 containing restrictions and obligations relating to
- 4.4 The Council has resolved and hereby covenants with the [Owner / Developer] to issue the Planning Permission within five working days of the date hereof in the form of the draft annexed hereto

## **5. MORTGAGEE'S CONSENT AND INDEMNITY**

- 5.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner
- 5.2 The [Owner / Developer] covenants to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Agreement

## **6. EXERCISE OF POWERS OF THE COUNCIL**

- 6.1 Nothing contained or implied in this Agreement shall prejudice or affect or fetter the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and under all public and private statutes bylaws orders and regulations

## **7. NOTICES AND NOTIFICATION REQUIREMENTS**

- 7.1 The [Owner and / or Developer] shall notify the Council in writing;
- 7.1.1 Seven days prior to the Commencement of Development of its intention to Commence Development and the Development shall not be Commenced unless and until notice has been given in accordance with this clause
- 7.1.2 Within seven days of any change in ownership (other than the transfer of individual Market Housing Units) of any of its interests in the Site occurring before all the obligations under this Agreement have been discharged such notice shall give details of the transferees full name and registered office (if a company) or usual address (if not) together with the area of the Site or the unit of occupation purchased by reference to a plan
- 7.2 Any notice or consent or approval required to be given under this Agreement shall (unless otherwise specified):-
- 7.2.1 In relation to the Council be given or served in accordance with Section 231 and 233 of the Local Government Act 1972
- 7.2.2 In relation to any other party shall be delivered personally or sent by ordinary post at the address given in this Agreement

7.3 The address for service of any such notice consent or approval required shall be in the case of service upon the Council be the address appearing at the Head of this Agreement (c/o ...) and in the case of service upon the Owner and / or Developer at their address appearing at the head of this Agreement or such other address for service as shall have previously been notified by the Owner to the Council

## **8. INTEREST**

8.1 If any payment made under this Deed is paid late Interest will be payable on the sum due from the date payment is due to the date of payment

## **9. REGISTRATION OF THIS AGREEMENT**

9.1 The obligations of the [Owner and Developer] being Local Land Charges for the purposes of the Local Land Charges Act 1975 this Agreement shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council

9.2 Where in the opinion of the [Owner and Developer] the provisions of this Agreement have been completed and/or satisfied, the Owner or their successors in title at that time shall be entitled to make application to the Council for a certificate to the effect that the provisions of this Agreement have been completed and/or satisfied and upon the Council being satisfied that such obligations have been completed and/or satisfied the Council acting reasonably shall issue a certificate to such effect and forthwith remove this Agreement from the Register of Local Land Charges

## **10. MISCELLANEOUS**

10.1 The covenants and obligations of the Owner / Developer under this Agreement are joint and several except for those to transfer land to the Council in which case they shall be those of such of the holder of the freehold of the relevant land

10.2 No person shall be liable for any breach of the planning obligations contained in this Agreement occurring after he has parted with all of his interest in the Site or the part in respect of which such breach occurs without prejudice to the Council's continuing ability to enforce this Agreement and the said planning obligations against the Site and any successor in title from time to time and also without prejudice to liability for any breach occurring prior to parting with such interest

10.3 This Deed shall not be enforceable against owner occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.



- 10.4 If the Planning Permission expires within the meaning of Sections 91, 92 or 93 of the Act or is not implemented or is revoked quashed or otherwise withdrawn this Agreement shall cease to have effect
- 10.5 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be nor be deemed to be approval for any other purpose whatsoever
- 10.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 10.7 No waiver (whether express or implied) by the Council in respect of any breach or default by the [Owner / Developer] in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the [Owner / Developer]
- 10.8 Nothing contained or implied in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or on appeal after the date of this Agreement
- 10.9 All works and / or acts required to be undertaken by any party under this Agreement or as incidental to this Agreement shall in all respects be at the cost of that party

## **11. COUNTERPARTS**

- 11.1 This Agreement is executed in ..... copies each of which shall be of equal validity for all purposes

## **12. CONTRACTS (THIRD PARTIES) ACT**

- 12.1 Nothing in this Agreement shall confer any rights to third parties and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

## **13. COSTS**

- 13.1 The [Owner / Developer] shall on completion of this Agreement pay to the Council legal costs of .....Pounds (£...) that the Council incurred in the preparation and execution of this Agreement

13.2 The [Owner / Developer] shall on completion of this Agreement pay to the Council administration and monitoring costs of .....Pounds (£...) that the Council will incur in monitoring compliance with this Agreement.

#### **14. DISPUTE RESOLUTION (OTHER THAN MEANING OR CONSTRUCTION)**

14.1 In the event of any dispute or difference arising between the Parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body in the United Kingdom to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

14.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

#### **15. JURISDICTION**

15.1 This Agreement is governed by and interpreted in accordance with the laws of England and Wales

IN WITNESS whereof the Parties have executed this Agreement as a deed on the date appearing at the head of this Agreement

**FIRST SCHEDULE**

**SECOND SCHEDULE**

**THIRD SCHEDULE**

**EXECUTED** as a **DEED** by the )

affixing of the **COMMON SEAL** )

of the **COUNTY BOROUGH** )

**COUNCIL OF THE COUNTY**)

**BOROUGH OF TORFAEN** which )

is authenticated by: )

Authorised Signatory

**EXECUTED** as a **DEED** by )

affixing the Common Seal of )

In the presence of:

.....

Director

.....

Director / Secretary

## **APPENDIX D**

### **UNILATERAL UNDERTAKING TEMPLATE**

THIS DOCUMENT IS A SUGGESTED PRECEDENT AND DOES NOT COMPRISE LEGAL ADVICE. IT SHOULD NOT BE RELIED UPON AS COMPRISING LEGAL ADVICE. THE CONTENTS MAY BE ALTERED BY TORFAEN COUNTY BOROUGH COUNCIL AT ANY TIME. INDEPENDENT LEGAL ADVICE SHOULD BE SOUGHT BEFORE COMMENCING NEGOTIATIONS IN RELATION TO THIS DOCUMENT.

DATED:

202

**TORFAEN COUNTY BOROUGH COUNCIL**

and

**PLANNING OBLIGATION BY UNILATERAL UNDERTAKING**

pursuant to Section 106 of the Town and Country Planning Act 1990 and other enabling powers  
relating to

CHIEF LEGAL OFFICER AND MONITORING OFFICER

CIVIC CENTRE

PONTYPOOL

TORFAEN

NP4 6YB

(REF: )

**THIS UNDERTAKING** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20

**BY**

(5) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Developer”)

(6) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Owner”)

(7) \*\* (CRN: \*\*) whose registered office is \*\*\* (“the Mortgagee”)

**TO**

(1) TORFAEN COUNTY BOROUGH COUNCIL of Civic Centre Pontypool NP4 6YB (“the Council”)

**WHEREAS**

(I) The Council is the Local Planning Authority for the purposes of the Town and Country Planning Act 1990 (as amended) for the area in which the Site is situated

(J) The Owner is the freehold owner of the Site registered at the Land Registry under title number(s) [ ]

(K) The Mortgagee has a charge over the Site registered at the Land Registry dated the [ ]

(L) The Developer has an interest in the Site by way of [ ] dated [ ]

(M) On the [ ] day of [ ] the Council received the Planning Application (Ref: [ ]) for permission to develop the Site

(N) The Owner / Developer having regard to the provisions of the development plan and to all other material considerations gives this Undertaking to secure the planning obligations without which the application for the Development would not be acceptable

(O) On the [ ] the Council resolved to grant the Planning Permission subject to this Undertaking which is made pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Act and all other enabling powers

(P) The Owner / Developer agree that the obligations in this Undertaking are:-

(d) necessary to make the Development acceptable in planning terms;

(e) directly related to the Development; and

(f) fairly and reasonably related in scale and kind to the Development

## 1. DEFINITIONS

1.1 For the purposes of this Deed (including the recitals) unless the context otherwise requires the following expressions shall have the following meanings:

"the Act"	means the Town and Country Planning Act 1990 as amended
"Commencement of Development"	means the carrying out of a material operation as defined in Section 56(4) of the Act PROVIDED THAT for the purposes of this Undertaking operations in connection with site surveys, ground investigations, demolition, archaeological investigations, investigations for assessing the existence degree or nature of any contamination and the erection by means of enclosure for the purposes of site security and / or the display of advertisements shall not of themselves constitute material operations and "Commence Development" shall have a corresponding meaning
"the Development"	means the development of [insert description] permitted by and in accordance with the Planning Permission
"Dwellings"	means the units provided in accordance with the Planning Permission
"Interest"	means 4% above the base lending rate of the bank used by the Council at the time the calculation is made
"Occupation" and "Occupied"	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations
"the Planning Application"	means the application for Planning Permission dated [ ] and submitted by [ ] to the Council and bearing the statutory register number [ ] for outline / full / planning permission
"the Planning Permission"	means the outline / full planning permission subject to conditions granted by the Council pursuant to its powers under the Act in respect of the Planning Application and annexed to this Undertaking at the First Schedule in draft form only and any subsequent approval given to an application under the Act varying or modifying the Planning Permission
"Practical Completion"	means completed so that the works can be used for the purpose

and operated in the manner for which they were designed and fitted out so that they are available for occupation or use

“RPI” means the Index of Retail Prices published by the Office of National Statistics or its successor body to reflect changes in the cost of living in the United Kingdom PROVIDED THAT if the Retail Price Index is no longer published or if the basis of that Index is changed between the date of this Undertaking and the date on which any payment under this Undertaking that is subject to the Index is made then any replacement for the Retail Price Index shall apply or such adjustments shall be made in the Retail Price Index as shall be specified by its publishing body

“the Site” means comprised in the Planning Application and shown edged red on the Site Plan

“Site Plan” means the plan annexed to this Undertaking entitled Site Plan and initialled by or on behalf of the Parties for the purposes of identification

## **2. CONSTRUCTION OF THIS DEED**

In this Undertaking where the context allows

- 2.1 Words importing the masculine gender include the feminine and neuter genders and vice versa
- 2.2 Words in the singular meaning where the context so admits include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa
- 2.3 Any headings or side notes are for ease of reference only and shall not affect the construction of this Undertaking
- 2.4 References to any party in this Undertaking shall include (unless the context otherwise requires) successors in title of that party and to any person deriving title through or under that party and in the case of the Council the successors to their respective statutory functions
- 2.5 Where a party comprises more than one party any obligations of that party shall be joint and several under this Undertaking



- 2.6 Any references to Parts Clauses Schedules paragraphs sub-paragraphs appendices and plans are (unless otherwise stated) references to the Parts Clauses Schedules paragraphs subparagraphs appendices and plans of this Undertaking
- 2.7 Any reference to this Undertaking shall include any schedules appendices and / or plans (if any) appended to or otherwise annexed to this Undertaking
- 2.8 A reference in this Undertaking to an Act of Parliament or to any Order Regulation Statutory Instrument or the like shall include a reference to any amendment or re-enactment of the same
- 2.9 A term or expression defined in a Schedule shall bear the meaning ascribed to it in that Schedule if used elsewhere in the Undertaking

### **3. LEGAL EFFECT**

- 3.1 This Undertaking is made pursuant to Section 106 of the Act Section 2 of the Local Government Act 2000 and Section 111 of the Local Government Act 1972 and all other powers enabling and enactments which may be relevant for the purpose of giving validity to this Undertaking and facilitating the obligations contained in it with the intent to bind the Owner / Developer and any successors in title to each and every part of the Site and their respective interests in the Site
- 3.2 The Council is the local planning authority by which the obligations contained in this Undertaking are intended to be enforceable

### **4. OBLIGATIONS AND COVENANTS**

- 4.1 The [Owner and Developer] covenants with the Council to observe and perform the restrictions and obligations on their part in respect of the Site as set out in this Undertaking and Schedules
- 4.2 The Schedules referred to in sub clauses 4.1 are:
- 4.2.1 Schedule 1 containing restrictions and obligations relating to
  - 4.2.2 Schedule 2 containing restrictions and obligations relating to
- 4.3 The Council has resolved and hereby covenants with the [Owner / Developer] to issue the Planning Permission within five working days of the date hereof in the form of the draft annexed hereto

## **5. MORTGAGEE'S CONSENT AND INDEMNITY**

- 5.1 The Mortgagee acknowledges and declares that this Deed has been entered into by the Owner with its consent and that the Site shall be bound by the obligations contained in this Deed and that the security of the mortgage over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall otherwise have no liability under this Deed unless it takes possession of the Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner
- 5.2 The [Owner / Developer] covenants to indemnify the Mortgagee in respect of any liabilities actions demands proceedings costs and expenses arising directly or indirectly as a result of the Mortgagee having entered into this Undertaking

## **6. EXERCISE OF POWERS OF THE COUNCIL**

- 6.1 Nothing contained or implied in this Undertaking shall prejudice or affect or fetter the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and under all public and private statutes bylaws orders and regulations

## **7. NOTICES AND NOTIFICATION REQUIREMENTS**

- 7.1 The [Owner and / or Developer] shall notify the Council in writing;
- 7.1.1 Seven days prior to the Commencement of Development of its intention to Commence Development and the Development shall not be Commenced unless and until notice has been given in accordance with this clause
- 7.1.2 Within seven days of any change in ownership (other than the transfer of individual Market Housing Units) of any of its interests in the Site occurring before all the obligations under this Undertaking have been discharged such notice shall give details of the transferees full name and registered office (if a company) or usual address (if not) together with the area of the Site or the unit of occupation purchased by reference to a plan
- 7.2 Any notice or consent or approval required to be given under this Undertaking shall (unless otherwise specified):-
- 7.2.1 In relation to the Council be given or served in accordance with Section 231 and 233 of the Local Government Act 1972
- 7.2.2 In relation to any other party shall be delivered personally or sent by ordinary post at the address given in this Undertaking

7.3 The address for service of any such notice consent or approval required shall be in the case of service upon the Council be the address appearing at the Head of this Undertaking (c/o ...) and in the case of service upon the Owner and / or Developer at their address appearing at the head of this Undertaking or such other address for service as shall have previously been notified by the Owner to the Council

## **8. INTEREST**

8.1 If any payment made under this Deed is paid late Interest will be payable on the sum due from the date payment is due to the date of payment

## **9. REGISTRATION OF THIS UNDERTAKING**

9.1 The obligations of the [Owner and Developer] being Local Land Charges for the purposes of the Local Land Charges Act 1975 this Undertaking shall be registered as a local land charge in the Register of Local Land Charges maintained by the Council

9.2 Where in the opinion of the [Owner and Developer] the provisions of this Undertaking have been completed and/or satisfied, the Owner or their successors in title at that time shall be entitled to make application to the Council for a certificate to the effect that the provisions of this Undertaking have been completed and/or satisfied and upon the Council being satisfied that such obligations have been completed and/or satisfied the Council acting reasonably shall issue a certificate to such effect and forthwith remove this Undertaking from the Register of Local Land Charges

## **10. MISCELLANEOUS**

10.1 The covenants and obligations of the Owner / Developer under this Undertaking are joint and several except for those to transfer land to the Council in which case they shall be those of such of the holder of the freehold of the relevant land

10.2 No person shall be liable for any breach of the planning obligations contained in this Undertaking occurring after he has parted with all of his interest in the Site or the part in respect of which such breach occurs without prejudice to the Council's continuing ability to enforce this Undertaking and the said planning obligations against the Site and any successor in title from time to time and also without prejudice to liability for any breach occurring prior to parting with such interest

10.3 This Deed shall not be enforceable against owner occupiers or tenants of dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

- 10.4 If the Planning Permission expires within the meaning of Sections 91, 92 or 93 of the Act or is not implemented or is revoked quashed or otherwise withdrawn this Undertaking shall cease to have effect
- 10.5 Any approval given by the Council under this Undertaking or for the purposes of this Undertaking shall not be nor be deemed to be approval for any other purpose whatsoever
- 10.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 10.7 No waiver (whether express or implied) by the Council in respect of any breach or default by the [Owner / Developer] in the performance or observation of the Planning Obligations in whole or in part shall constitute a continuing waiver or prevent the Council from enforcing any of the obligations or conditions contained in the Planning Obligations or acting upon any subsequent breach or default of the Planning Obligations by the [Owner / Developer]
- 10.8 Nothing contained or implied in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted by the Council or on appeal after the date of this Undertaking
- 10.9 All works and / or acts required to be undertaken by any party under this Undertaking or as incidental to this Undertaking shall in all respects be at the cost of that party

## **11. COUNTERPARTS**

- 11.1 This Undertaking is executed in ..... copies each of which shall be of equal validity for all purposes

## **12. CONTRACTS (THIRD PARTIES) ACT**

- 12.1 Nothing in this Undertaking shall confer any rights to third parties and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Undertaking

## **13. COSTS**

- 13.1 The [Owner / Developer] shall on completion of this Undertaking pay to the Council legal costs of .....Pounds (£...) that the Council incurred in the preparation and execution of this Undertaking

13.2 The [Owner / Developer] shall on completion of this Undertaking pay to the Council administration and monitoring costs of .....Pounds (£...) that the Council will incur in monitoring compliance with this Undertaking.

#### **14. DISPUTE RESOLUTION (OTHER THAN MEANING OR CONSTRUCTION)**

14.1 In the event of any dispute or difference arising between the Parties hereto touching or concerning any matter or thing arising out of this Undertaking (other than a dispute or difference touching or concerning the meaning or construction of this Undertaking) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body in the United Kingdom to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

14.2 In the absence of Undertaking between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to sub-clause 14.1 hereof then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

#### **15. JURISDICTION**

15.1 This Undertaking is governed by and interpreted in accordance with the laws of England and Wales

IN WITNESS whereof the Parties have executed this Undertaking as a deed on the date appearing at the head of this Undertaking

**FIRST SCHEDULE**

**SECOND SCHEDULE**

**THIRD SCHEDULE**

**EXECUTED** as a **DEED** by the )  
affixing of the **COMMON SEAL** )  
of the **COUNTY BOROUGH** )  
**COUNCIL OF THE COUNTY**)  
**BOROUGH OF TORFAEN** which )  
is authenticated by: )

Authorised Signatory

**EXECUTED** as a **DEED** by )  
affixing the Common Seal of )

In the presence of:

.....  
Director

.....  
Director / Secretary

**APPENDIX E**

**GLOSSARY**

## GLOSSARY

**Acceptable Cost Guidance (ACG)** - A document that is currently published by the Welsh Government that specifies the cost of works in providing an affordable dwelling dependant on the size and specification of the dwelling proposed and its location.

**Affordability** - The ability of households or potential households to purchase or rent property that satisfies the needs of the household without subsidy. This could be based on an assessment of the ratio of household income or earnings to the price of property to buy or rent and available in the open market in the required local housing market area.

**Affordable Housing** - Affordable housing includes social rented and intermediate housing, provided to specified eligible households whose needs are not met by the market.

**Affordable Housing Exception Site** - Land within or adjoining existing Torfaen LDP Urban Boundaries, not allocated in the Plan, which subject to Policy H9 (et al) may be suitable for a small scale 100% affordable housing site (of 9 or less dwellings) subject to an identified local need.

**Affordable Housing Sub Group** - A sub group of Torfaen's Strategic Housing Forum with the responsibility of agreeing priorities with regard to existing and emerging affordable housing requirements. The group will identify how funding will be spent and the appropriate partners for delivery.

**Affordable Housing Quota** - Amount of affordable housing the Local Authority will seek on new development sites through planning conditions and Section 106 obligations.

**Affordable Housing Viability Study** - A study undertaken to assess whether a specified level of planning obligations would compromise the viability of development schemes. The planning obligations set out in this SPG have been subject to viability testing.

**Building Control Information Service** - Administered by the Royal Institute of Chartered Surveyors it provides an index identifying the inflationary % increase in the costs of construction year on year.

**Community Infrastructure Levy** - CIL is a levy on new development that will be set by local planning authorities. The power to charge CIL is set out in the Planning Act 2008 but it is entirely at the discretion of local planning authorities as to whether to have a CIL scheme. Local authorities that implement CIL would use the money raised from it, rather than a Section 106 agreement, to fund infrastructure schemes across their area, such as schools and roads. This means in turn that such authorities could only use Section 106 agreements to fund affordable housing or environmental improvements on the development site.

**Commuted Sum** - a sum of money paid by a developer to cover the future maintenance costs of specified areas or items that are going to be adopted and maintained at public expense

**Deed (of Variation)** - A legal document which has been "signed, sealed and delivered" not just signed, but signed and witnessed, with a seal appended and formally handed over.

**Density** - A measure of the number of dwellings per hectare.

**Detailed / Full Application** - A planning application seeking full permission for a development proposal, with no matters reserved for later planning approval.

**Development Viability Model (DVM)** - An Access based database which provides the user, in most cases the local authority, with an assessment of the economics of residential development for specific schemes. It allows the user to test the economic implications of different types and amounts of planning obligations.



**Development Brief** - document providing detailed information to guide developers on the type of development, design and layout constraints and other requirements for a particular, usually substantial, site.

**Development Management** - the process whereby a local planning authority decides whether a planning application meets the requirements of planning policy, particularly as set out in the development plan and national policy.

**Development Plan** - a document that sets out in writing and / or in maps and diagrams a local planning authority's policies and proposals for the development and use of land and buildings in the authority's area.

**DIY Homebuy** - A shared equity product available under the Help2Own Scheme typically providing an interest free equity loan of 30% of the purchase price.

**Heads of Terms** - An outline of the main matters to be contained within and addressed by a planning obligation.

**'Help2Own'** - Low cost home ownership scheme operated by Torfaen County Borough comprising DIY Homebuy and new build properties delivered by grant or planning obligations. There is potential to add new products to the range in the near future.

**Homebuy** - A low-cost ownership scheme operated by registered social landlords under which social housing tenants and those on housing waiting lists can purchase a home with an interest-free equity loan.

**Intermediate Housing** - This is a type of Affordable Housing where prices or rents are above those of social rented housing but below market housing and includes equity sharing schemes such as Homebuy.

**Local Biodiversity Action Plan** - The Local Biodiversity Action Plan is the agreed strategy for conservation and enhancement in a particular area which will help meet the UK Biodiversity Action Plan.

**Local Development Plan** - Part 6 of the Planning and Compulsory Purchase Act 2004 (covering Wales) requires each local authority to prepare a Local Development Plan (LDP) for its area (Section 62 of the 2004 Act). This process is designed to build upon the work many local authorities have undertaken in developing their local plans and unitary development plans. The LDP is designed to be more streamlined, succinct and developed with a higher degree of community engagement than previous plans have required. Torfaen adopted its LDP in December 2013, at which time it superseded the Gwent Structure Plan and Torfaen Local Plan as the statutory development plan for the Borough.

**Local Housing Market Areas** - Geographical areas within which there are clear links between where people both live and work. These areas can be defined by patterns of household movement and are influenced by factors such as proximity to family, friends, employment, education and other facilities, and are likely to operate across local authority boundaries.

**Local Housing Market Assessment** - The Local Housing Market Assessment (LHMA) analyses the number of additional houses, including affordable homes (including their tenure split), needed in a local authority area as a result of the formation of households. Local Housing Market Assessments form an important part of the evidence base for policies on housing within local authorities, informing key strategic documents such as the Local Housing Strategy and Local Development Plan. The latest LHMA for Torfaen was published in 2020.

**Low Cost Home Ownership (LCHO)** - There are two main types of these LCHO 'intermediate' products:-

- **Shared Ownership** where the purchaser buys a share of the property from an RSL, say 50%, with a normal mortgage from a lender and then pays rent on the other 50% equity share to the RSL. Under the associated legal agreement there is a facility to buy further shares at a later date, which is known as 'staircasing'; and
- **Homebuy** - is another form of low-cost ownership, but unlike shared ownership, no rent is payable on the equity loan. Instead, the purchaser buys the property and obtains a mortgage for typically 50% of the value of the property, whilst the remaining equity loan is held by a RSL, which reclaims its share when the property is eventually sold. There is an opportunity for the owner to 'staircase' and reduce the equity loan. In Torfaen Homebuy is run under the Help2Own scheme and there are qualifying criteria to become eligible under the scheme.

**Local Land Charge** - A local land charge is a restriction or prohibition on a particular parcel or parcels of land, either to secure payment of a sum of money, or to limit the use (in the widest sense) to which the land may be put. A crucial feature of a local land charge is that it must be binding on successive owners or occupiers of the land in question.

**Market Housing** - Private housing for rent or sale where the price is set in the open market.

**Market Value** - as defined in section 3.2 of the RICS Appraisal and Valuation Standards 6<sup>th</sup> edition; which is *"The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion."* The Market Value is normally arrived at by the District Valuer, but can also be arrived at by an independent Chartered Surveyor (either MRICS or FRICS qualified) with a minimum of 10 years experience with knowledge of the geographical area and with the relevant expertise in the appropriate market sector.

**Material Consideration** - A process in development planning in which the decision maker, when assessing an application for development, must consider in deciding on the outcome of an application.

**Mortgage Rescue** - Process designed to prevent vulnerable families from losing their homes and facing the trauma of repossession.

**Off-Site Provision** - Agreement made between a housing developer and local authority to fund the provision of affordable housing off-site as is it not practical and viable to locate affordable housing on the site of the initial development.

**Outline Application** - a general application for planning permission to establish that a development is acceptable in principle, subject to subsequent approval of detailed matters.

**Pepper Potting** - Pepper potting relates to the provision of affordable housing within a market led scheme. It ensures that the delivery of affordable housing is dispersed and not isolated, so there is a mix of uses throughout the site providing balanced communities.

**Perpetuity** - An annuity that has no definite end or can continue forever.

**Planning Agreements / Planning Obligations** - Agreements between a developer and local authorities at the time of determination of a planning application in which the applicant agrees to provide community or infrastructure benefits. They are often referred to as "Section 106 agreements" and may include an agreement to provide an element of affordable housing.

**Planning Conditions** - These conditions are imposed on planning permissions where there is a clear land use planning reason for doing so. The local planning authority must give clear, full and

precise reasons for any conditions imposed. A test of a legitimate condition is if the proposal would have been refused without it.

**Registered Social Landlords (RSL)** - Technical name for social landlords that own or manage social housing and are registered with, and regulated by, the Welsh Government. Most RSLs are Housing Associations (independent, not-for-profit organisations that are able to bid for Social Housing Grant funding).

**Reserved Matters Application** - Planning application to determine the detailed matters “reserved” by an “outline” planning permission, e.g. siting, access, design and external appearance and landscaping.

**Right to Acquire** - Introduced in the Housing Act 1996 and gives eligible housing association tenants a statutory right to purchase at a discount the property in which they live. The Right to Acquire only applies to properties built or acquired by housing associations, both charitable and non-charitable, with public funds from 1st April 1997 onwards. Some properties are exempt including those in small rural settlements and sheltered housing.

**Retail Price Index (RPI)** - A measure of inflation, published monthly by the UK Office for National Statistics, based upon the change in the cost of a representative sample of retail goods and services.

**Section 73 Application** - An application under the Town and Country Planning Act 1990 to vary or remove conditions associated with an existing planning permission. Uses of a section 73 application include seeking a minor material amendment, or extending the lifetime of the planning consent.

**Section 106 Agreements (Planning Obligations)** - Arrangements to overcome obstacles which may otherwise prevent planning permission from being granted. May be used to offset negative consequences of development, to help meet local needs or to secure benefits which would make a development more sustainable. Often used in permissions for residential development to secure an element of affordable housing either on or off site.

**Section 278 Agreement** - Requirement under the Highways Act 1980 to undertake off site highways works under a planning permission.

**Site Thresholds** - The numbers of houses on a residential development site above and over which a planning obligation may be sought.

**Social Housing Grant (SHG) Programme** - Capital grant provided by the Welsh Government to local authorities to fund Registered Social Landlords to fully or partially invest in social housing. Not all affordable housing receives SHG.

**Social Rented Housing** - Rented housing of a high standard owned and managed by registered social landlords in Torfaen at below market costs for households in housing need, for which guideline target rents are determined through the WG rent regime.

**Supplementary Planning Guidance** - These planning documents provide supplementary information in respect of the policies in a current or emerging local plan or national policy. They can cover topic based issues, such as on affordable housing, or provide further guidance in respect to the development of particular site areas. They are not subject to independent examination and do not form part of the development plan itself.

**Sustainable Development** - A generic term given to development which meets local needs whilst minimising harmful social, economic and environmental impacts. The widely used definition quoted by the World Commission on Environment and Development in 1987 states “Development

which meets the needs of the present without compromising the ability of future generations to meet their own needs”.

**Sustainable Urban Drainage System (SUDS)** - a sequence of management practices and control structures designed to drain surface water in a more sustainable fashion than some conventional techniques.

**Technical Advice Notes** - A series of documents provided by the Welsh Government on planning related issues such as affordable housing (TAN 2). They are designed to provide further guidance to local authorities in the preparation of development plans and in the consideration of planning applications or appeals on such matters.

**Transport Statement** - An appraisal of the likely traffic generation impacts resulting from new development, taking into account the measures which are required to improve road safety and promote walking, cycling and the use of public transport.

**Travel Plan** - Document detailing the potential transport impacts of a proposed development and the ways of mitigating against these impacts.

**Unilateral Undertaking (Planning Obligation)** - A legal agreement offered and signed only by the developer that binds the developer to make a payment or carry out works in kind.

## **ANNEX 1: AFFORDABLE HOUSING**

The Welsh Government's (WG) National Housing Strategy '*Improving Lives and Communities: Homes in Wales*' (April 2010) sets out the challenges in meeting Wales' housing requirements, the priorities and the actions that will be taken. It sets the priorities of providing more housing of the right type and offering more choice; and improving homes and communities, including the energy efficiency of new and existing homes. Actions that will be taken include increasing the number of affordable homes for purchase or rent, in the right location; and giving people more choice by broadening the range of homes and tenancy arrangements to suit people's income and circumstances. The planning system is seen as an increasingly important means of improving the supply of affordable housing for local people. As such, the Council will seek to secure affordable housing via planning obligations.

### **1.1 Policy and Guidance**

The following policy and guidance are specifically relevant.

- Future Wales: The National Plan 2040 (February 2021) - Policy 2 Strategic Placemaking and Policy 7 on Delivering Affordable Homes.
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021) paragraphs 4.2.20, 4.2.28 - 31.

Paragraph 4.2.20 states: -

*"Where new housing is to be proposed, development plans must include policies to make clear that developers will be expected to provide community benefits which are reasonably related in scale and location to the development. In doing so, such policies should also take account of the economic viability of sites and ensure that the provision of community benefits would not be unrealistic or unreasonably impact on a site's delivery."*

And paragraph 4.2.29: -

*"Where development plan policies make clear that an element of affordable housing or other developer contributions are required on specific sites, this will be a material consideration in determining relevant applications. Applicants for planning permission should therefore demonstrate and justify how they have arrived at a particular mix of housing, having regard to development plan policies. If, having had regard to all material considerations, the planning authority considers that the proposal does not contribute sufficiently towards the objective of creating mixed communities, then the authority will need to negotiate a revision of the mix of housing or may refuse the application. Development plan policies should also state what the authority would regard as affordable housing and the arrangements it would expect for ensuring that such housing remains reserved for those who need it in perpetuity. All affordable housing, including that provided through planning obligations and planning conditions, must meet the Welsh Government's development quality standards."*

- Welsh Office Circular 13/97 Planning Obligations esp. paragraphs B2, B7, B10 and B11.
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10, 4.21 - 22, 5.41 and 5.80.
- The Community Infrastructure Levy Regulations 2010 (as amended): especially Part 11 on Planning Obligations (Regulations 122 & 123).
- Welsh Government Technical Advice Note 2: Planning and Affordable Housing (2006) esp. paragraphs 10.14 and 12.1-12.7.
- Welsh Government Technical Advice Note 6: Planning for Sustainable Rural Communities (2010) esp. paragraphs 4.1.1-4.2.4 and 4.23.1.
- Welsh Government 'Delivering affordable housing using section 106 agreements: A Guidance Update' (September 2009).

- Welsh Government ‘Welsh Development Quality Requirements 2021: Creating Beautiful Homes and Places (WDQR 2021)’ (July 2021), especially the ‘three detailed requirements’ sections and the ‘space standards’ of Appendices A and B.
- Adopted Torfaen Local Development Plan (2013) Policies (which are set out in full in Part One to this SPG): S1 (Urban Boundaries), S2 (Sustainable Development), S3 (Climate Change), S4 (Place Making / Good Design), S8 (Planning Obligations), H4 (Affordable Housing) and H7 (Gypsy and Traveller Site Allocations). In detail, Policy H4 on Affordable Housing states: -

***“In order to achieve a target of approximately 1,132 affordable homes within Torfaen over the period 2006-2021, the Council will, on all residential sites of 3 or more dwellings or over 0.1ha (including if it forms part of a more substantial site over this size), seek to negotiate the on-site provision of up to the following percentage of affordable housing and / or a payment in lieu of on-site provision, by Housing Sub-Market Area, as follows: -***

- 1. North Torfaen - 10%;***
- 2. Pontypool - 25%;***
- 3. Cwmbran West & North - 20%; and***
- 4. Cwmbran East & South - 30%.***

***These percentages will change upwards if Social Housing Grant is to be used.***

***These percentages may change by 5% increments (increase or decrease), via Supplementary Planning Guidance, if house prices or construction costs change (up or down) as a result of annual monitoring and an update of the Affordable Housing Viability Study.***

***The dwelling size and tenure of the affordable housing should contribute to balanced & sustainable communities, reflect local need and normally be designed to the principles of the Welsh Government Development Quality Requirements<sup>1</sup>.”***

- <sup>1</sup> [weblink](#) to latest Welsh Government ‘Welsh Development Quality Requirements 2021’ (WDQR 2021) ‘Creating Beautiful Homes and Places’, July 2021. Also see Appendix 3 below.

**Table 1: Torfaen LDP Housing Sub-Market Areas (HSMAs) by Postcode**

<b>Housing Sub-Market Area</b>	<b>Postcodes</b>
North Torfaen	NP4 7 and NP4 9
Pontypool	NP4 0, NP4 5, NP4 6 and NP4 8
Cwmbran West and North	NP44 1, NP44 4 and NP44 5
Cwmbran South and East	NP18 1, NP44 2, NP44 3, NP44 6, NP44 7 and NP44 8

## **1.2 Definition of Affordable Housing**

The Council uses the following definition of Affordability and Affordable Housing which is based upon Planning Policy Wales 11<sup>th</sup> Edition (2021) and TAN 2 (2006): -

*Affordable Housing is a dwelling (including Council or Registered Social Landlord Gypsy & Traveller pitches) where there are secure mechanisms in place to ensure that it is accessible to those who cannot sensibly (in terms of income multipliers) afford market housing (having regard to local incomes and local house prices / rents), both on first occupation and for subsequent occupiers (unless “stair-casing” to full ownership takes place; in which case any subsidy should generally be recycled to provide replacement affordable housing).*

Affordable housing includes: -

- Social Rented Housing which is provided by local authorities and Registered Social Landlords (RSLs) where rent levels have regard to WG’s ‘Guideline and Benchmark Rents’;
- Intermediate Housing where prices or rents are above those of social rent but below market housing prices or rents (the lowest quartile of market rent values being ignored for quality reasons). This can include equity share schemes (branded as Help2Own, DIY Homebuy and Mortgage Rescue in Torfaen) where the equity or rented property is retained by an RSL and in smaller rural communities, unsubsidised housing where the initial and resale value of the home

is capped at an affordable level linked either to a fixed multiple of local incomes or discount from market value;

- Supported housing including schemes for older people (Extra-care schemes) and schemes to support independent living;
- Council or Registered Social Landlord Gypsy & Traveller pitches; and
- Rural enterprise dwellings where justification for the dwelling has been proven and occupancy is restricted in association with the rural enterprise.

All other types of housing are referred to as Market Housing which is private housing for sale or rent where the price is set in the open market and occupation is not subject to control by the local planning authority or RSL. Homes such as low-cost market housing that do not meet the definition will not be considered affordable housing for planning purposes.

### 1.3 Assessing the Need for Affordable Housing

The latest Torfaen Local Housing Market Assessment (LHMA) 2020, identifies a need for 240 affordable dwellings per annum in Torfaen up to 2025 as follows: -

**Table 2: Torfaen Annual Affordable Housing Need (2020 - 2025)**

Area	Social Rented	Intermediate		Total
		Low-Cost Home Ownership (LCHO)	Intermediate Rented	
North Torfaen HSMA	21	6	0	27
Pontypool HSMA	49	14	4	67
Cwmbran HSMAs	114	26	6	146
<b>Torfaen</b>	<b>184</b>	<b>46</b>	<b>10</b>	<b>240</b>
<b>Rounded %</b>	<b>75%</b>	<b>20%</b>	<b>5%</b>	<b>100%</b>

Therefore, the Council's affordable housing target now comprises **75% social rented and 25% intermediate provision**. This Table / Annex will be updated accordingly every time the Council produces a new LHMA.

Within this requirement for affordable housing, there is a need for 'Specialist Needs' & 'Extra Care' housing and Gypsy & Traveller pitches; proposals for which will be developed over time by the Council and its RSL partners based upon evidence of need and the current provider market.

#### Affordability of Intermediate Housing

The assessment of mortgage eligibility for owner occupation of intermediate housing adopted for this SPG is based upon local affordability using calculations adopted for the Council's Help2Own scheme; with lending for single incomes assumed to be a maximum of 3.75x the income and lending for joint incomes based on a 3.5x maximum multiplier. In addition, the purchaser is likely to also require a mortgage deposit of 5% of the full market value to obtain a mortgage.

The assessment for intermediate rent is based upon Welsh Government Local Housing Market Assessment Guidance; with intermediate rents set no higher than 80% of the 'Hometrack' median market rent for the house type in the Ward.

### 1.4 Meeting the Need for Affordable Housing

#### Affordable Housing Threshold and Quota

Torfaen Policy H4, states that the Council will seek to negotiate between 10% to 30% affordable housing (depending on location) on sites of 3 or more dwellings or 0.1ha. However, Council on 15<sup>th</sup> December 2015, based upon the findings of the Torfaen LDP 2015 Annual Monitoring Report (AMR) residential viability assessment, resolved, subject to annual review, that: -

1. as provided for in LDP Policy H4, the level of affordable housing sought within the North Torfaen Housing Sub-Market Area (HSMA) be reduced from 10% to 5%; and
2. as a matter of 'planning practice' (given that the 3-dwelling threshold of Policy H4 can only be changed by a formal review of the LDP), until viability improves, the threshold at which affordable housing is sought be raised to 10 dwellings (0.33ha) within Torfaen except for the Cwmbran South & East HSMA where the current 3 dwellings (0.1ha) threshold will remain.

Therefore, Table 3 below sets out the Council's general approach, however, in exceptional circumstances an alternative may be appropriate. When this is the case, site viability will form part of the consideration. Exemptions to LDP Policy H4 will comprise proposals for sheltered housing, care homes, hostels, houses in multiple occupation (HMO's), student accommodation and Gypsy & Traveller pitches.

**Table 3: Affordable Housing Requirements across Torfaen (from 15<sup>th</sup> December 2015)**

Housing Sub-Market Area (HSMA)	Social Rented Housing	Intermediate Housing	Total Affordable Housing Requirement	Dwellings (Area) Threshold
North Torfaen	4%	1%	5%*	10 (0.33ha) *
Pontypool	19%	6%	25%*	10 (0.33ha) *
Cwmbran West and North	15%	5%	20%*	10 (0.33ha) *
Cwmbran South and East	23%	7%	30%*	3 (0.1ha) *

\* Subject to Annual Review in the Torfaen LDP Annual Monitoring Report

Further Clarification Notes: -

1. Gross Dwelling Numbers - LDP Policy H4 (as amended by this SPG - as stated above) sets the site dwelling threshold, over which affordable dwellings will be sought, to the (gross) number of dwelling proposed on the site or conversion scheme. Therefore, no account will be taken of the (net) increase or decrease of existing dwelling numbers on a site in applying this threshold. However, as with any application, the Council will take viability, especially the existing use value, into account in applying its S106 LDP policies and associated SPG; and
2. Site Re-plans - Similarly, after a site has obtained planning permission and the developer submits a site re-plan that changes the overall dwelling numbers, the affordable housing requirement will be recalculated against the proposed whole site numbers, either up or down as appropriate; subject to any S106 obligations pertaining to the site, which can set a minimum level of affordable housing. Subsequent provision of the affordable dwellings will normally be on-site, and the re-plan application should identify the location, tenure, type and size of the affordable homes, which have been agreed by the Council's Housing Strategy Team. However, in some instances the Council may ask for or agree to a payment in lieu of on-site provision, especially if the development has already commenced. In these circumstances, the payment will be calculated against the proposed dwelling sizes within the re-plan area; and if there is a request for a relaxation of any S106 obligation for the reasons of viability, then this will be assessed against the viability of the whole site using the Burrows-Hutchinson Ltd 'Development Viability Model' (DVM), for which the Council will make a standard charge to issue and assess.

#### Developer Provision of Affordable Housing

In accordance with the need for mixed communities set out by national as well as local policies, the Council's requirement is for 100% of the affordable homes' (as specified by the Council's Housing Strategy Team, based upon local need and the requirements of a 'balanced sustainable community') to be provided freehold on the development site, with any affordable flats in a complete block. As set out in Table 2 above, 75% of the requirement is to be for social rented homes and 25% is to be for intermediate homes; both constructed in accordance with the 'specifications, sizes (GIA) and general internal storage' requirements of the Welsh Development Quality Requirements: Creating Beautiful Homes and Places (WG, 2021) (see **Appendix 3**); and unless agreed by the Council, to the same quality and appearance as the market housing. Therefore, it is recommended that



developers submit a 'pre-application enquiry' to ascertain the Council's affordable housing requirements for their site; before drawing up plans and submitting a planning application.

The preferred approach is for the developer to build the homes and transfer them freehold to a named Registered Social Landlord. In addition, the affordable dwellings should be provided to a specification where the RSL or occupiers do not need to spend any additional money for them to be useable as a dwelling; e.g. gardens to be turfed and ready for use, vinyl floor finishes to all screed areas and rooms containing sanitary-ware, provision of door numbers, etc.

Site maintenance charges (such as for open space or recreation facilities, etc. managed by private maintenance companies) will influence affordability, especially for the social rented homes. Therefore, whilst all affordable dwellings on a site will be expected to pay the relevant site maintenance charge; a reduction may need to be made to the price paid for the social rented properties so the RSL can pay the charge on behalf of the tenant in perpetuity. It is strongly suggested that this 'charge' is identified as soon as possible to potentially inform negotiations on the layout / affordable housing tenure mix, viability assessment, and the S106 Agreement. No reduction will be required for the price of the Intermediate properties. It is also recognised that a reasonable service charge may be appropriate for the maintenance of the built fabric of flats.

**Therefore, developers can expect to receive the following payments for the on-site affordable housing (at the time of notice of sale to the Registered Social Landlord (RSL)): -**

- **the relevant 'Social Rented Unit Tariff' from Table 4 below** (which is the amount an RSL can afford to pay for each home based upon capitalising (using the Welsh Government's affordable housing Standard Viability Model (SVM)) the rent less any on-costs, including for management, repairs & maintenance; allowances for voids, bad debts, & major repairs, etc.) **for each social rented dwelling type, less a 50-year allowance to cover any site maintenance charges over £104 per annum** (RSLs have previously stated approx. £2 of the weekly rent goes on maintaining open spaces, etc. on their sites)); and
- **50% of the 'Market Value' for each intermediate dwelling type** (low-cost home ownership and intermediate rented).

**No additional payments shall be made between the landowner, developer or the RSL, such as a contribution towards the planning fees, or for being the nominated RSL for the site, service charges, etc., albeit each side should pay their own legal fees.**

<b>Houses</b>			<b>Flats</b>			<b>Bungalows</b>		
Type	GIA m <sup>2</sup>	Tariff	Type	GIA m <sup>2</sup>	Tariff	Type	GIA m <sup>2</sup>	Tariff
7P 4B H	114	£92,224	3P 2B F	65	£50,330	3P 2B B	58	£73,588
6P 4B H	110	£91,709	2P 1B F	53	£43,875			
5P 3B H	94	£78,542						
4P 3B H	88	£77,935						
4P 2B H	83	£73,213						

**Note:** the above eight dwelling-types represent the usual homes specified by the Council; if another house type is specified, then the RSL will provide a sum based upon the same method of capitalising the rent less on-costs (and subject to an appropriate deduction for any site maintenance charges).

Contributions in lieu of full or partial on-site provision, such as a financial payment (see below), provision of the affordable housing on another site or off-site land provision with a financial payment may be accepted in exceptional circumstances. Any off-site provision of dwellings or land would normally be required to be provided within the same Housing Sub-Market Area as the original development site; noting that the site for the off-site provision will generate its own additional affordable housing requirement. The developer will need to evidence the means of delivering the

alternative provision, including availability / control of the land, and obtaining planning permission for the development.

#### Liaison for an RSL to Purchase Additional Affordable Units when there is a Policy Shortfall

An Acceptable Cost Guidance (ACG) is published by WG that specifies the 'works only' cost (which is paid through Social Housing Grant) of an RSL providing an affordable dwelling (including all fees, bonds, warranties, LTT, RSL overheads, etc.) according to the size (using a specified 'minimum floor area', by measuring the gross internal area as defined by the Valuation Office), type (if a flat, house or bungalow), & specification (in terms of the number of people who can be accommodated according to bedroom sizes) of the dwelling proposed, and the scheme size (different costs are provided for schemes of '11 Homes and Over' and schemes of '10 Homes and Under') - see **Appendices 1 & 2** for details; noting that, RSLs are expected to purchase the 'land' upon which these dwellings are to be built using their own finances.

It is Welsh Government policy that Social Housing Grant cannot be used to help fund affordable housing provided through Section 106 Agreements, but it can be used for an RSL to purchase 'of-the-shelf' market properties built to the WDQR2021 Standards as a separate deal between themselves and the developer. Therefore, where for viability reasons, if the Council has accepted that a housing scheme proposal cannot achieve the maximum affordable housing % for the relevant Housing Sub-Market Area under LDP Policy H4 as amended (see Table 3 above), then the developer will be requested, at their earliest possible opportunity, to liaise with an RSL, outside the S106 Agreement, to potentially make up any affordable housing 'shortfall' by purchasing, at market value, additional affordable units (as specified by the Council's Housing Strategy Team) up to the aforesaid LDP Policy H4 maximum affordable housing %; using a combination of Social Housing Grant and their own finances.

#### Developer Payment in Lieu of 100% On-Site Affordable Housing Provision

In extremely exceptional circumstances, where the Council or an RSL consider that it is impractical to provide affordable housing on a site, a payment in lieu of 100% on-site provision may be appropriate. This could include, for example, a small conversion or apartment block scheme where it is not possible to separate the affordable housing from the market housing and where this would present difficulties in terms of management arrangements, service charges, etc. The payment required in such circumstances will be the Welsh Government's 'works only' ACG for, depending on the number of dwellings proposed (or calculated at 30 dwellings per net developable ha if greater), either a Large Site (11 or more homes) or a Small Site (10 homes and under) for each of the affordable housing types not being provided on-site regardless of tenure (as specified by the Council's Housing Strategy Team) at the time the payment is made, see details in **Appendix 2**, see Table 5 below for an example. Therefore, it is recommended that developers submit a 'pre-application enquiry' to ascertain if such a payment will be sought; before drawing up plans and submitting a planning application.

Where a scheme relates to the conversion of an existing building, the individual circumstances of the development will be considered. The Affordable Housing requirement for the area in which the site is located will be applied however provision may take the form of either on-site provision or, in limited circumstances, a financial contribution in lieu of on-site provision. The Council will take build and other costs into account and will use the Development Viability Model (DVM) to negotiate an appropriate contribution.

Where serviced land or an alternative site forms part of the contribution, the land, with the relevant planning permission, should be transferred to the RSL at a land value, and accompanied by a financial payment, which allows the RSL to provide the required affordable units within the WG Acceptable Cost Guidance, taking account the sums the RSL would have paid for the affordable units on the serviced land or alternative site.

**Table 5: Example of Payment in Lieu of 100% On-site Affordable Housing Provision in Pontypool HSMA** (5 market dwellings x 25% affordable housing requirement = 1.25 affordable dwellings)

Market House Type	No's (A)	Size m <sup>2</sup> (GIA)	Equivalent RSL House Type	Equivalent 'small scheme' ACG (B)	Total ACG Value (A x B = C)
2 Bed	2	84.6	4 Person 2 Bed House: 83m <sup>2</sup>	£176,200	£352,400
3 Bed	2	92.5	5 Person 3 Bed House: 94m <sup>2</sup>	£199,500	£399,000
4 Bed	1	111.0	6 Person 4 Bed House: 110m <sup>2</sup>	£233,500	£233,500
TOTAL (D)					£984,900
<b>Payment for 1 dwelling</b> (5 Person 3 Bed House) (E)					<b>£199,500</b>
Average ACG per dwelling (D/5 = F)					£196,980
<b>Payment for ¼ dwelling</b> (F x 0.25) (G)					<b>£49,245</b>
<b>Total Payment in Lieu for 1.25 dwellings</b> (E + G)					<b>248,745</b>

#### Developer Payment in Lieu of Part of the On-Site Affordable Housing Provision

Similarly, the Council may wish to secure a payment in lieu of part of the on-site affordable housing provision to use for other types of affordable housing (such as a Council Gypsy and Traveller site, the remodelling of larger existing affordable housing units to meet a need for smaller units, DIY Homebuy, Extra-care facilities, etc.), especially for the intermediate homes (when the 'new-house premium' for purchasing 50% of the market value, may be as much as purchasing a similar sized existing second-hand property on the open market). Again, in such cases, the payment will be the Welsh Government's 'works only' ACG for, depending on the number of dwellings proposed (or calculated at 30 dwellings per net developable ha if greater), either a Large Site (11 or more homes) or a Small Site (10 homes and under) for each of the affordable housing types not being provided on-site regardless of tenure (as specified by the Council's Housing Strategy Team) at the time the payment is made, see details in **Appendix 2**. Therefore, it is recommended that developers submit a 'pre-application enquiry' to ascertain both the requirements for the on-site provision of affordable units, and if such a part payment will be sought; before drawing up plans and submitting a planning application.

#### Payment in Lieu of Part of an Affordable Housing Unit

**Larger Sites** (11 or more homes) - Where the on-site affordable housing requirement would comprise a number of full dwellings plus part of a dwelling, the full dwellings will normally be expected to be provided on-site with a financial payment based upon ACG values relating to the part of a dwelling (see details in **Appendix 2**). For example, where the total affordable housing requirement is 1.3 dwellings, 1 dwelling should be built on-site accompanied by a financial payment in lieu of the 0.3 part of the dwelling. If preferred, the Developer could choose to round up the on-site provision to the next whole number of dwellings in which case the financial payment would not be required. In this scenario, the financial payment for part of a dwelling is the average equivalent ACG value for all the affordable units being provided on the site (regardless of tenure) which results in an average site ACG value for a complete affordable dwelling; and then multiplying the result by the proportion of the dwelling for which the Affordable Housing Payment is being sought. See Table 6 below for an example: -

**Table 6: Example of Payment in Lieu of ½ Affordable Dwelling in Cwmbran S&E HSMA** (25 dwellings x 30% affordable housing requirement = 7.5 affordable dwellings)

On-Site Affordable House Type	No's (A)	'Large Scheme' ACG (B)	Total ACG Value (A x B = C)
4 Person 2 Bed House	3	£160,200	£480,600
2 Person 1 Bed Flat	4	£121,300	£485,200
TOTAL (D)			£965,800
Average ACG per dwelling (D/ 7 = E)			£137,972
<b>Payment for ½ dwelling</b> (E x 0.5)			<b>£68,986</b>

**Smaller Sites** (10 homes and under) - Where the affordable housing provision on a small site would only comprise part of a dwelling, a financial payment in lieu of on-site provision will be required. However, in this instance, we cannot base the payment on the average ACG of the on-site affordable dwellings, as there are none. Therefore, the financial payment for part of an affordable dwelling will be based upon average 'equivalent' ACG values (see details in **Appendix 2**) for all the market units being provided on the site. See Table 7 below for an example: -

**Table 7: Example of Small Site in North Torfaen HSMA** (5 Market Dwellings x 5% affordable housing requirement = 0.25 dwelling)

Market House Type	No's (A)	Size m <sup>2</sup> (GIA)	Equivalent RSL House Type	Equivalent 'small scheme' ACG (B)	Total ACG Value (A x B = C)
2 Bed	2	84.6	4 Person 2 Bed House: 83m <sup>2</sup>	£176,200	£352,400
3 Bed	2	92.5	5 Person 3 Bed House: 94m <sup>2</sup>	£199,500	£399,000
4 Bed	1	111.0	6 Person 4 Bed House: 110m <sup>2</sup>	£233,500	£233,500
TOTAL (D)					£984,900
Average ACG per dwelling (D/5 = E)					£196,980
<b>Payment for ¼ dwelling (E x 0.25)</b>					<b>£49,245</b>

### Use of Financial Payments

All financial contributions made in lieu of affordable housing provision will be spent on the provision of affordable housing products in accordance with an Investment Plan produced and facilitated by the Council's Affordable Housing Sub-Group. Each financial payment will be ring fenced for use within the Housing Sub-Market Area of the originating site unless it is for a facility provided at County level, such as a Council owned Gypsy & Traveller site, Extra-care facilities, etc. Typical uses may comprise Help2Own, DIY Homebuy, purchase and renovation of empty properties, increasing equity in new build properties, adaptations for special needs occupiers and Mortgage Rescue. Where there are Boroughwide needs, it will be at the discretion of the Affordable Housing Sub-Group how those needs are met.

### Occupancy Control

Occupancy controls aim to ensure that affordable homes are allocated to households in order to meet a genuine local need. As such, affordable housing will be offered in accordance with the need identified in the Torfaen Common Housing Register and Help2Own list. Occupancy restrictions relating to rural enterprise dwellings are set out in national policy (TAN 6).

### Dwelling Types and Sizes

A mix of dwelling types and sizes (both market and affordable) will be required on all sites in order to create balanced sustainable communities. In determining the types of homes, developers should have regard to the nature of the site; and it is recommended to submit a 'pre-application enquiry' to ascertain the Council's affordable housing requirements before drawing up plans and submitting a planning application. All affordable dwellings are required to meet Welsh Development Quality Requirements: Creating Beautiful Homes and Places (WDQR2021), July 2021 (especially the 'three detailed requirements' (1. Homes should be of high quality, innovative and sustainable; 2. Homes should be flexible, responsive to the changing needs of the occupants, meet the changing needs of a variety of households who will occupy the building over its life and be of sufficient size; and 3. Homes should be safe and secure) and the 'space standards' of Appendices A and B) or any subsequent WG Standard.

### Integration of Market and Affordable Homes

In designing a housing development scheme, it is important that the scheme is designed as a whole, with both the market and the affordable homes located together, rather than as two separate schemes; similarly, neither should the social or intermediate affordable housing be separated. The

Council considers that in order to ensure the creation of mixed and integrated communities, the affordable housing should not be visually distinguishable from the market housing in terms of build quality, materials, detailing, levels of amenity space and privacy.

The affordable homes should not generally be restricted to one part of the site, particularly in larger schemes where they should be distributed evenly across the site; with clusters of 75% social rented and 25% intermediate dwellings across the site in accordance with the provisions of Table 8 below. Planning applications should include plans which identify the location, tenure, type and size of the affordable homes, which have been agreed by the Council’s Housing Strategy Team.

**Table 8: Number of Clusters under each on-site Affordable Housing percentage**

Phase / Site Size (Dwellings)	Number of Clusters under each on-site Affordable Housing Percentage					
	5%	10%	15%	20%	25%	30%
10 or less	£	One	One	One	One	One
11 - 20	£ / One	One	One	One	One	One
21 - 49	One	One	One	One	One	Two
50 - 74	One	One	One	Two	Two	Three
75 - 99	One	One	Two	Two	Three	Three
100 - 149	One	Two	Two	Three	Three	Three
150 - 200	One	Two	Two	Three	Three	Three
201 +	Same provision as 150 - 200 Dwellings, then Maximum of 20 Dwellings per Cluster thereafter					

£ - Where sites would provide less than 1 affordable dwelling (or part of an affordable dwelling), the Council would normally take a financial payment in lieu of on-site provision.

## 1.5 Securing Affordable Housing

### Ensuring Delivery / Phasing

The Council will seek to ensure that the affordable homes are actually delivered and built alongside the market homes. Therefore, it will make provision for ‘trigger points’ in Section 106 planning agreements to ensure that the affordable housing is provided in step with the market housing or at an agreed time. The Council will ensure that Section 106 Agreements will deliver the affordable housing provision. The onus will be on the developer and RSL to ensure delivery.

## 1.6 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an affordable housing contribution is required. The definitions and clauses are indicative only and may be varied to accommodate specific site circumstances.

### Definitions

“**Affordable Housing**” means either a Social Rented Unit or an Intermediate unit, where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford market housing, both on first occupation and for subsequent occupiers.

“**Affordable Housing Land**” means the land shown edged red on Plan [ ] attached to this Agreement where the Affordable Housing Units are to be provided.

**“Affordable Housing Payment”** means a financial payment of £[numbers and words] increased (but not decreased) by RPI from the date of grant of the Planning Permission to the date of payment in lieu of the provision of [x] Affordable Housing units within the Development.

**“Affordable Housing Units”** means [x] units of Affordable Housing provided within the Development of which [x] shall be Social Rented Units and [x] shall be Intermediate Units.

**“Affordable Value”** means the Intermediate Value or the Social Rented Value dependant on the tenure of the Affordable Housing Unit.

**“Chargee”** means any mortgagee or chargee of the RSL or the successors in title to such mortgagee or chargee or any receiver or manager or manager or administrative receiver (including a housing administrator) howsoever appointed.

**“Dwellings”** means a unit provided in accordance with the Planning Permission and for the avoidance of doubt shall include Affordable Housing Units.

**“Fully Serviced”** means the proper connections within the Site so as to connect it to surface water drainage facilities and to mains foul drainage facilities, water, gas, electricity and telecommunications and enjoys direct access to the public highway or a roadway constructed to adoptable standards (connecting to the public highway) which is the subject of an agreement under Section 38 of the Highways Act 1980.

**“Intermediate Unit”** means [x]% of the Affordable Housing Units plot number [x] as set out on Plan [x] to be constructed in accordance with the requirements of the Council’s Planning Obligations Supplementary Planning Guidance.

**“Intermediate Value”** means the amount contained in paragraph 11 of Schedule 1 Affordable Housing.

**“Market Housing Units”** means that part of the Development which is general market housing for sale on the open market and which is not Affordable Housing.

**“Market Value”** means the price at which an affordable housing unit might reasonably be expected to be sold by private treaty, assuming:

- i. a willing seller and willing buyer;
- ii. a reasonable period in which to negotiate the sale;
- iii. that such affordable housing unit is freely exposed on the open market taking no account of the restriction contained within this Schedule 1; and
- iv. on terms comparable to those which would apply generally to a sale of a housing unit in the general housing market within the locality of the Site.

**“Nominated RSL”** means an RSL with Welsh Government approved development status in Torfaen County Borough approved by the Council to administer the provisions of Schedule 1 Affordable Housing whose appointment shall be notified by the Council to the Developer in writing.

**“Notice Period”** means the period of three months from the date of receipt by the Nominated RSL and the Council of the Sale Notice.

**“Protected Tenant”** means any tenant who:-

- a) has exercised the right to acquire pursuant to the Housing Act 1996 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- b) has exercised any statutory right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit
- c) has been granted a shared ownership lease by a Registered Social Landlord (or similar arrangement where a share of the Affordable Housing Unit is owned by the tenant and a share is owned by the Registered Social Landlord) in respect of a particular Affordable Housing Unit and which tenant has subsequently purchased from the Registered Social Landlord all the remaining shares so that the tenant owns the entire Affordable Housing Unit

**“Registered Social Landlord (RSL)”** means a registered social landlord within the meaning of the Housing Act 1996.

**“Sale Notice”** means a notice served by the Owner or Developer as appropriate upon the Council and the Nominated RSL which informs the Council and the Nominated RSL of the commencement of construction of an Affordable Housing Unit.

**“Site Maintenance Charge”** means a charge levied on all Dwellings within the Development for the life of the Development for the cost of servicing and maintenance of areas retained by the Owner and / or Developer for the benefit of the Development

**“Social Rented Tariff”** means for a 1 bed property £XX (words and figures) for a two bed property £XX (words and figures)

**“Social Rented Units”** means [x] % of the Affordable Housing Plot Numbers [x] as set out on Plan [x] to be constructed in accordance with the Welsh Governments Development Quality Requirements, current at the time the application for Planning Permission is made.

**“Welsh Development Quality Requirements”** means the standards and guidance published by the Welsh Government which sets out requirements for all new affordable housing units built by registered social landlords or by developers under a planning condition or planning obligation.

#### Example Clauses

#### Payment

1. Prior to the Commencement of Development the Owner and / or Developer shall pay to the Council the Affordable Housing Payment
2. The Council shall use the Affordable Housing Payment to provide, enable, or enhance Affordable Housing within Torfaen to meet Affordable Housing need.

#### OR

3. Within [x] working days of approval of the reserved matters application confirming the number and details of Dwellings to be built as part of the Development the Council shall calculate the Affordable Housing Payment and inform the Owner / Developer of the amount in writing
4. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Affordable Housing Payment to be used by the Council to provide, enable, or enhance Affordable Housing within Torfaen to meet Affordable Housing need.

#### On Site Provision

1. The Owner and / or Developer shall provide the Affordable Housing Units within the Development towards the provision of Affordable Housing within the County Borough of Torfaen.
2. Prior to the Commencement of Development the Owner and / or Developer shall submit to the Council for the Council’s written approval (such approval not to be unreasonably withheld or delayed) details of a scheme to provide the Affordable Housing Units (“the Scheme”).
3. The Scheme shall include (but not be limited to) details of:
  - 3.1. Type
  - 3.2. Tenure
  - 3.3. Position (by way of reference to a plan)
  - 3.4. Size; and
  - 3.5. Priceall of which shall be in accordance with the Council’s adopted Planning Obligations Supplementary Planning Guidance current at the time the Scheme is submitted.
4. The Scheme shall comply with the requirements of the Welsh Government as set out in the Welsh Development Quality Requirements or such equivalent document current at the time the application for Planning Permission is made.

5. The Owner and / or Developer shall construct the Affordable Housing units in accordance with the approved Scheme.
6. The Owner and / or Developer shall in accordance with the Scheme unless otherwise agreed by the Council commence construction of the Affordable Housing Units before the date on which 50% of the Market Housing Units are completed and complete construction of the Affordable Housing Units before the date on which 80% of the Market Housing Units are completed.
7. No more than 50% of the Market Housing Units shall be Occupied until 100% of the Affordable Housing Units have been transferred to the Nominated RSL on terms that accord with relevant Welsh Government funding requirements current at the date of construction of the Affordable Housing Units.
8. Twenty-eight days prior to the Commencement of Development the Developer and the Nominated RSL shall jointly instruct the District Valuer to provide the expected Market Value for the completed Affordable Housing Unit.
9. From the date of completion of the Affordable Housing Units they shall not be used other than for Affordable Housing unless paragraph 16 of this Schedule applies.
10. The Social Rented Units shall be offered for sale by the Owner to the Nominated RSL at the Social Rented Tariff
11. The Intermediate Units shall be offered for sale by the Owner / Developer to the Nominated RSL at a purchase price of 50% of Market Value contained in the report compiled by the District Valuer in accordance with Clause 8 above as follows:-
  - 9.1 - 2 bed house at a price of £XX (words and figures)
  - 9.2 - 3 bed house at a price of £X (words and figures)
12. Within seven days of the commencement of construction of the Affordable Housing Units the Owner / Developer shall:
  - 12.1 serve a Sale Notice on the Nominated RSL and offer to sell the Affordable Housing Units to the Nominated RSL at the Affordable Value pursuant to the provisions of this Agreement; and
  - 12.2 serve a copy of the Sale Notice on the Council.
13. The Nominated RSL may accept the offer referred to in paragraph 12.1 above by signing and returning a copy of the Sale Notice to the Owner and / or Developer within the Notice Period.
14. The Owner and / or Developer shall not sell any Affordable Housing Unit without having first served a Sale Notice on the Nominated RSL and the Council.
15. If the Nominated RSL does not accept the offer referred to in paragraph 12.1 above or fails to respond within the Notice Period the Owner may dispose of any Social Rented Units free from the obligations set out in this Schedule provided that an Affordable Housing payment is paid to the Council within 7 days of completion of the sale of the relevant Social Rented Unit equivalent to the Social Rented Tariff for such a unit
16. If the Nominated RSL does not accept the offer referred to in paragraph 12.1 above or fails to respond within the Notice Period the Owner may dispose of any Intermediate Unit free from the obligations in this Schedule provided that an Affordable Housing payment is paid to the Council within seven days of the completion of the sale of the relevant Intermediate Unit equivalent to 50% of the Market Value of the Intermediate Unit.
17. From the date of Practical Completion of the Affordable Housing Units they shall not be used other than for Affordable Housing save that this obligation shall not be binding on:
  - 17.1. any Protected Tenant or any mortgagee or chargee of the Protected Tenant or any person deriving title from the Protected Tenant or any successors in title thereto and their respective mortgagees or chargees; or
  - 17.2. any RSL Chargee or any receiver (including an administrative receiver) appointed by such Chargee or any other person appointed under any security documentation to enable such Chargee or receiver to realise its security or any administrator (each a Receiver) of the



whole or any part of the Affordable Housing Units or any person or bodies deriving title through such Chargee or Receiver provided that the RSL Chargee or Receiver shall have first complied with their duties set out in paragraph 17 below.

- 17.3. Any purchaser from a mortgagee of an individual Affordable Housing Unit pursuant to any default by the individual mortgagor.
18. Any Chargee or Receiver shall prior to seeking to dispose of an Affordable Housing Unit pursuant to any default under the terms of the mortgage or charge shall give not less than three month's prior notice to the Council of its intention to dispose ("Chargee Notice") and
  - 18.1. in the event that the Council responds within six weeks from receipt of the notice indicating that arrangements for the transfer of the Affordable Housing Unit can be made in such a way as to safeguard them as Affordable Housing then the Chargee or receiver shall cooperate with such arrangements and use its best endeavours to secure such transfer for consideration not less than the amount due or outstanding under the terms of the relevant security documentation including all accrued principle monies, interest and cost and expenses.
  - 18.2. If the Council does not serve its response to the Chargee Notice served under paragraph 17.1 of this Schedule within the six weeks then the Chargee or receiver shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.
  - 18.3. If the Council or any other person cannot within two months of the date of service of its response under paragraph 17.1 of this Schedule secure such transfer then provided that the Chargee shall have complied with the Chargee's Duty the Chargee shall be entitled to dispose free of the restrictions set out in this Schedule which shall from the time of completion of the disposal cease to apply.

PROVIDED THAT at all times the rights and obligations in this paragraph shall not require the Chargee to act contrary to its duties under the charge or mortgage and that the Council must give full consideration to protecting the interest of the Chargee in respect of monies outstanding under the charge or mortgage including all accrued principal monies, interest, costs and expenses.

19. The Affordable Housing Units shall not be subject to a Site Maintenance Charge.

#### Land Transfer

1. Prior to the Commencement of Development, the Owner and / or Developer shall transfer the Affordable Housing Land to the Nominated RSL Fully Serviced with all associated rights of access at a nil value for the purpose of construction of the Affordable Housing Units.
2. The Affordable Housing Land shall be used for the provision of the Affordable Housing Units and shall not be occupied or used in any other manner.

**RICS definition of Gross Internal Area (GIA) - 6<sup>th</sup> Edition**

**Gross Internal Area (GIA):** Area of a building measured to the internal face of the perimeter walls at each floor level (see notes).

**Includes:**

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls with clear height above, measured at base level only
- Internal open sided balconies, walkways, and the like
- Structural, raked or stepped floors are treated as a level floor measured horizontally
- Horizontal floors with permanent access below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies, etc.)
- Mezzanine areas intended for use with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with headroom of less than 1.5m
- Pavement vaults
- Garages
- Conservatories

**Excludes:**

- Perimeter wall thickness and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores and the like in residential property

**Notes:**

1. The definition of Gross Internal Area is taken from the RICS Code of Measuring Practice 6<sup>th</sup> Edition 2015, Definition of Gross Internal Area.
2. The GIA excludes the thickness of perimeter walls but includes the thickness of all internal walls. Therefore, it is necessary to identify what constitutes a separate building, e.g., the sum of the GIA of a terrace of buildings, treated as separate buildings, will be different from the terrace treated as a single building.
3. Areas of open ground floors and the like should be excluded.
4. 'Internal face' means the structural wall or plaster coat applied to the structural wall, not the surface of internal linings installed by the occupier.
5. Lift rooms, etc. should be included if housed in a roofed structure having the appearance of permanence (e.g., made of brick or similar building material). Areas covered by enclosures designed solely to mask plant, rooflines, etc. should be excluded.

**Welsh Government 'Works Only' Acceptable Cost Guidance Values per House Type & Size / Scheme Size (May 2022)**

<b>Table A</b>		
<b>Schemes 11 Homes and Over</b>		
<b>Type</b>	<b>GIA m<sup>2</sup></b>	<b>ACG</b>
<b>Houses</b>		
10P 7B H	152	£293,200
10P 6B H	146	£281,700
10P 5B H	142	£274,000
9P 5B H	136	£262,400
8P 6B H	132	£254,700
8P 5B H	128	£247,000
7P 4B H	114	£220,000
6P 4B H	110	£212,200
6P 3B H	102	£198,600
5P 4B H	98	£189,000
5P 3B H	94	£181,300
4P 3B H	88	£169,800
4P 2B H	83	£160,200
3P 2B H	74	£156,100
2P 1B H	58	£122,400
<b>Flats</b>		
5P 3B F	86	£196,700
4P 2B F	73	£167,000
3P 2B F	65	£148,600
2P 1B F	53	£121,300
1P 1B F	40	£91,500
<b>Bungalows</b>		
8P 6B B	125	£291,200
7P 4B B	108	£251,600
6P 4B B	99	£230,600
5P 3B B	86	£200,300
4P 3B B	74	£172,400
4P 2B B	70	£163,100
3P 2B B	58	£135,100
2P 1B B	50	£116,500

<b>Table B</b>		
<b>Schemes 10 Homes and Under</b>		
<b>Type</b>	<b>GIA m<sup>2</sup></b>	<b>ACG</b>
<b>Houses</b>		
10P 7B H	152	£322,600
10P 6B H	146	£309,900
10P 5B H	142	£301,400
9P 5B H	136	£288,600
8P 6B H	132	£280,100
8P 5B H	128	£271,700
7P 4B H	114	£242,000
6P 4B H	110	£233,500
6P 3B H	102	£216,400
5P 4B H	98	£208,000
5P 3B H	94	£199,500
4P 3B H	88	£186,800
4P 2B H	83	£176,200
3P 2B H	74	£171,700
2P 1B H	58	£134,600
<b>Flats</b>		
5P 3B F	86	£216,400
4P 2B F	73	£183,700
3P 2B F	65	£163,500
2P 1B F	53	£133,400
1P 1B F	40	£100,700
<b>Bungalows</b>		
8P 6B B	125	£320,200
7P 4B B	108	£276,600
6P 4B B	99	£253,600
5P 3B B	86	£220,300
4P 3B B	74	£189,600
4P 2B B	70	£179,300
3P 2B B	58	£148,600
2P 1B B	50	£128,100

**Notes**

1. dwelling occupancy, designated by Persons (P), Bedrooms (B) and type (F - Flat, B - Bungalow, H - House)
2. Gross Internal Area (GIA)
3. ACG 2022 (including on cost)

**WG ‘Welsh Development Quality Requirements 2021’ (WDQR 2021) (July 2021)**

**WDQR 2021 ‘Creating Beautiful Homes and Places’** states “*New affordable homes delivered ... under section 106 ... and planning conditions will only be required to meet the **Appendix A** and **Appendix B** ‘space requirements’ for agreements entered into after 01 October 2021.*”

**Appendix A** - Homes should be of sufficient size to meet the needs of occupants, have a convenient layout for everyday living and have adequate circulation space.

**Space requirements will be met where:**

- The dwelling provides at least the Gross Internal (floor) Area (GIA) and built-in storage area set out in Appendix B.
- Accessibility requirements will be satisfied if dwellings are designed to meet the Lifetime Homes Standards as published by the Joseph Rowntree Foundation.  
<http://www.lifetimehomes.org.uk/pages/revised-design-criteria.html>
- Homes are provided with adequate facilities for clothes washing, drying and a dedicated airing cupboard containing an appropriate source of heat.
- A dwelling with two or more bed spaces has at least one double (or twin) bedroom.
- Critical room dimensions meet intended purposes, in particular: -
  - A single bedroom must have a floor area of at least 6.5m<sup>2</sup> and must be at least 2.1m wide.
  - A double or twin bedroom must have a floor area of at least 11.5m<sup>2</sup>.
  - One double (or twin bedroom) must be at least 2.75m wide and every other double (or twin) bedroom must be at least 2.55m wide.
- The minimum floor to ceiling height is 2.3m for at least 75% of the GIA.
- Gross Internal (floor) Area (GIA) is measured to the internal finished surfaces of main containing walls on each floor, including private staircases, internal partitions, flues and ducts; it excludes external dustbin enclosures or stores, any porch open to the air or enclosed.
- The measurement of floor area of common access flats excludes the area of the communal stairs and circulation space.
- The measurement of floor areas of individual ground floor external access flats includes the area occupied by the staircase and entrance hall necessary to gain access to the first floor flat. The areas of the ground floor and upper floor flats (walk-up) shall be averaged in order to make comparisons against the minimum floor areas shown above.
- Space for mechanical and electrical installations should be provided in addition to the above general storage areas.
- The areas in the table are based on single or two storey homes and it is recognised that larger homes and homes over two storeys will have a proportionate increase in area.

**Appendix B - Minimum Floor Areas**

Home Designation	Home Type	Floor Area (GIA) m <sup>2</sup>	General Storage m <sup>2</sup> (included in GIA)
7P4B	2 Storey House	114	3
6P4B	2 Storey House	110	3
5P3B	2 Storey House	93	2.5
4P3B	2 Storey House	88	2.5
4P2B	2 Storey House	83	2.5
3P2B	2 Storey House	74	2
3P2B	Bungalow	58	2
3P2B	Flat - Walk up	65	2
3P2B	Flat - Common access	58	2
2P1B	Flat - Walk up	53	1.5
2P1B	Flat - Common access	50	1.5

**Note:** Provided that designs do not compromise the quality of homes intended to be delivered by this standard, a reduction of up to 5% of the above GIA may be applied.

## **ANNEX 2: HIGHWAYS AND TRANSPORT**

Sustainable communities rely on an effective transportation network to enable access to employment, shopping, leisure and other facilities. The fundamental basis of national and local policy is to reduce the need for travel and to encourage greater use of walking, cycling and public transport as alternatives to the private car. The National Sustainable Placemaking Outcomes set out within Planning Policy Wales 11 refer to the need for accessibility by means of active travel and public transport, development not being car dependent, minimising the need to travel and convenient access to goods and services. Safe and sustainable connections including active travel networks within and between developments should be secured. As such, the Council will seek planning obligations for highways infrastructure and sustainable transport improvements where appropriate.

### **2.1 Policy and Guidance**

The following policies and guidance are specifically relevant. The Torfaen Local Development Plan policies are set out in full in Part One to this SPG:

- Future Wales: The National Plan 2040 Policies 11 (National Connectivity) and 12 (Regional Connectivity) promote active and low carbon modes of transport, requiring new development to contribute towards improvement and connection to the National Cycle Network. *“Where routes within Active Travel Networks and the National Cycle Network will provide part of the supporting infrastructure for new developments, planning authorities must seek to secure their provision or improvement as part of developments through the planning process, using planning obligations where necessary”.*

Planning Policy Wales 11<sup>th</sup> Edition (2021): paragraphs 3.12-13, 4.1.11, 4.1.33 and 4.1.39. Paragraph 4.1.33 states *“New development should be integrated with active travel networks and contribute to their expansion and improvement, through the inclusion of well-designed routes and facilities as part of the schemes and financial contributions to pay for off site connections.”*

- Technical Advice Note 18: Transport (2007): paragraphs 4.4, 4.12, 4.14 - 15, 9.5, 9.10, 9.18, and 9.20 - 9.24.

Paragraph 9.20 states that *“planning authorities may use planning obligations to secure improvements in roads, walking, cycling and public transport, whether as a result of the proposal on its own or cumulatively with other proposals and where such improvements would be likely to influence travel patterns either on their own or as part of a package of measures”.*

Paragraph 9.23 makes clear that the objective of using planning obligations in relation to transport should be to *“secure satisfactory accessibility to sites by all modes with the greatest degree of access being achieved by public transport, walking and cycling”.*

- Welsh Office Circular 13/97: Planning Obligations: paragraphs B2, B7, B10 and B14.
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10 and 4.21 - 22.
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013) Policies: S2 (Sustainable Development), S5 (Planning Obligations); BW1 (General Policy - Development Proposals); T1 (Transport Improvements); T2 (Safeguarding Former Transport Routes); and T3 (Walking and Cycling Routes).
- TCBC Supplementary Planning Guidance - CSS Wales / CSS Cymru - Wales Parking Standards 2014 (adopted September 2016).
- Active Travel Wales Act 2013 - makes walking and cycling the preferred option for shorter everyday journeys and requires Local Authorities to identify walking and cycling routes to create fully integrated networks to access work, education, services and facilities.

## **2.2 Circumstances in which Obligations will be Sought**

A planning obligation relating to highways and transport may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. Sites will be considered on a case by case basis. There is no standard threshold or trigger and as such, discussion with the Council as to the likelihood of such an obligation is recommended at the earliest point. Where a proposed development may impact upon a trunk road, it is advisable to also consult with the Welsh Government at the earliest opportunity.

Planning obligations will be sought in respect of all proposals whereby highways and transport measures are necessary to enable a development to function efficiently in transport terms and these cannot be secured by way of a planning condition. These measures will normally, but not exclusively, be provided within the immediate vicinity of the site.

## **2.3 Nature and Scale of Obligation**

The Council's approach to addressing the growing demand for transport is to ensure that all new developments minimise demand for access by car while maximising opportunities for access by sustainable transport modes, especially walking, cycling and public transport. As such, obligations will contain an emphasis on maximising opportunities for additional trips to be made by public transport, walking or cycling as well as ensuring that the highway network is capable of accommodating road traffic movements associated with a development in a safe and efficient manner.

### Transport Statements

The nature and extent of obligations for highways and transport will be informed, where relevant, by a Transport Statement submitted to accompany a planning application. The Transport Statement should include an evidence based estimate of the modal split of trips to be generated by the development expressed as the percentage of journeys by private car transport and the percentage of travel by other modes, namely public transport, walking and cycling.

Account will be taken with regard to the trips generated by existing land uses / operations on a proposed development site to ensure that any obligation fairly reflects the additional trip impact arising from the development proposal. For the purposes of this SPG, sites that have been vacant for three years or more will not have an existing trip 'allowance'.

### Highways and Transport Works

Highways and transport facilities will generally comprise local interventions specific to the site (i.e. within the site, adjacent to it or within its immediate environs). Some facilities will be incorporated within the design and layout of the development site and can be secured by way of planning conditions. Other facilities, beyond the site boundary which cannot be secured by Grampian conditions, will be secured by way of a Section 106 legal agreement. Where specific works to the highway infrastructure are required, the Council will also require agreement under Section 278 of the Highways Act 1980.

Developers will be expected to provide parking and access, including any works to the highway necessary to construct access to the site and connection with any adjacent footway. Development will also be required to include pedestrian and cycle access, in addition to any principal access where these would provide more direct and convenient routes to and from the development for cyclists and people on foot. This will include providing network links to existing footways and cycleways including the National Cycle Route and making access to nearby transport stops and other local facilities as convenient as possible. Wherever possible, obligations will be sought towards specific measures within the immediate vicinity of the site that may be required to enhance access to local facilities by sustainable modes.

In designing for the provision of parking, developers will need to have regard to the Council's 'CSS Wales / CSS Cymru - Wales Parking Standards 2014' SPG (adopted September 2016) (and any subsequent replacement document adopted as SPG); which is a material consideration for all planning proposals with parking implications.

Examples of highway and transport obligations include:

- Highway measures e.g. junction upgrades, signalisation of junctions, highway transport infrastructure, modification to waiting / parking restrictions, traffic management schemes
- Funding for improved public transport facilities / infrastructure serving a site
- Funding for additional or improved bus services linking the site with local facilities (usually at least three years' worth of subsidy required)
- Funding for provision or promotion of public transport information and ticket availability
- Funding for creation and / or improvement of pedestrian and cycle routes to serve the site including links to the National Cycle Route, secure cycle parking, signage and enhancement of public rights of way
- Funding of mitigation measures such as off-site car parking where this complements local strategies
- Funding towards operation of a car club where car parking is limited
- Road safety schemes and controlled parking zones
- Maintenance of special structures e.g. retaining walls, culverts and bridges
- Travel plan initiatives and provision for safe routes in communities.

Proposed obligations should demonstrate that such provision mitigates the effect of the development and provides sufficient transport capacity / improvements to the network to accommodate movement generated by the development.

### Delivery of Works

The Council's expectation is that highways and transportation works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard.

In exceptional circumstances, a financial sum to contribute towards off site facilities / features may be acceptable in principle. In such cases, the developer will be required to provide a detailed scheme for the works accompanied by full costings. The scheme should be submitted for agreement with the Council and upon agreement, the corresponding payment made. The Council will then use the payment to undertake the works in accordance with the agreed scheme.

In addition, improvements could comprise the transfer of land, works by the developer or a financial sum for a third party to undertake the capital and maintenance works on their land. For example, work to the Monmouthshire and Brecon Canal are likely to involve Glandŵr Cymru; in which case the Council would liaise with the third party to agree a detailed scheme / costs for the required works and who carries them out.

### Maintenance of Works

In all circumstances, highways and transportation works undertaken as part of a planning obligation will be required to be maintained appropriately, provision for which will be secured by way of an appropriate Highways Agreement. For extraordinary maintenance of retaining walls, culverts and other structures that are not in accord with Torfaen County Borough Council Design Guidance, the legal agreement would provide for a commuted sum to cover the extraordinary maintenance. Alternatively, the developer may choose to redesign a scheme to avoid the need for the extraordinary maintenance.

For maintenance of areas of land that will be within highway limits but will not form part of the public highway, the developer can either choose to establish a management company to operate in perpetuity secured by legal agreement or can dedicate the land to the Council and provide a commuted sum for maintenance of the land.

Where land forms part of the public highway and there is an extraordinary maintenance liability, a planning obligation will require the transfer of the land to the Council as part of an appropriate Highways Agreement accompanied by a commuted sum for the extraordinary maintenance. The Highway Agreement will oblige the Council to maintain the land as public highway for as long as it is public highway and the maintenance contribution will be based on the extraordinary maintenance liability for a period of 20 years.

## 2.4 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where a highways and transport obligation is required.

### Definitions

**“Highways Agreement”** means an agreement to under specific works within the public highway under Section 278 of the Highways Act 1980

**“Highways Infrastructure Land”** means the land hatched on Plan [ ] annexed to this Agreement

**“Highways Infrastructure Obligation”** means a planning obligation to be determined at the time of submission of full details of the Development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made to provide for Highways Infrastructure Works required to meet the needs of the Development

**“Highways Infrastructure Payment”** means the sum of £ ..... (pounds) (£..) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment

**“Highways Infrastructure Works”** means [the works to the public highway] at [specify site] which are required to ensure the occupiers of the Development can move safely and efficiently

**“Highways Infrastructure Works Scheme”** means a detailed specification of works to provide the Highways Infrastructure Works

**“Sustainable Transport Land”** means the land hatched on Plan [ ] attached to this Agreement

**“Sustainable Transport Obligation”** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made to provide for sustainable transport measures required to meet the needs of the Development

**“Sustainable Transport Payment”** means the sum of £....pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant Planning Permission to the date of payment

**“Sustainable Transport Works”** means [the works to the sustainable transport network] at [specify site] which are required to provide realistic sustainable transport options to and from the site

**“Sustainable Transport Works Scheme”** means a detailed specification of works to provide the Sustainable Transport Works



**“Travel Plan”** means a plan setting out targets for modal shift and mechanisms for achieving the targets including costs and with a designated budget for implementation of £... pounds

### Example Clauses

#### Payment

1. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Highways Infrastructure Payment / Sustainable Transport Payment
2. The Council shall use the Highways Infrastructure Payment / Sustainable Transport Payment to provide the Highways Infrastructure Works / Sustainable Transport Works

#### Provision of Infrastructure Works / Sustainable Transport Works

3. Prior to the Commencement of Development the Owner / Developer shall submit the Highways Infrastructure Works Scheme / Sustainable Transport Scheme to the Council for the Council’s approval such approval shall not be unreasonably withheld or delayed
4. The Owner / Developer shall provide the Highways Infrastructure Works / Sustainable Transport Works in accordance with the approved Highways Infrastructure Works Scheme / Sustainable Transport Scheme
5. The Owner / Developer shall provide the Sustainable Transport Works which shall be completed prior to the Occupation of the (.th) Dwelling comprised within the Development
6. No Occupation of the Development shall take place until the Highways Infrastructure Works are completed
7. The Highway Infrastructure Works will be maintained by the Owner / Developer for a minimum period of 12 months following Completion on elapse of the period of 12 months and subject to the Owner/ Developer remedying any defects to the satisfaction of the Council the Owner / Developer shall transfer to the Council the Highways Infrastructure Land

#### Land Transfer

8. Prior to the Commencement of Development the Owner / Developer shall transfer to the Council the Highways Infrastructure Land / Sustainable Transport Land Fully Serviced (as appropriate) with all associated rights of access at no cost
9. The Council shall use the Highways Infrastructure Land / Sustainable Transport Land for the provision of the Highways Infrastructure Works / Sustainable Transport Works and for no other purpose

#### Outline Permission

10. The Owner / Developer shall enter into a further legal agreement to secure obligations with regard highways infrastructure / sustainable transport as appropriate when the full details of the proposal are submitted as Reserved Matters or a full planning application

#### Travel Plan

11. Prior to the beneficial Occupation of the Development the Owner / Developer shall submit to the Council for the Council’s approval such approval not to be unreasonably withheld or delayed the Travel Plan
12. The Owner / Developer shall implement the approved Travel Plan

## **ANNEX 3: EDUCATION FACILITIES**

Education infrastructure is an integral part of achieving and maintaining sustainable communities. The need for the provision of high-quality education facilities is recognised in the 'Torfaen County Plan' and Well Being Statement (2022) with the first two well being objectives being:

1. We will raise educational attainment, helping young people and adults to gain the qualifications and skills needed to lead positive lives; and
2. We will encourage and champion children, young people and families so they can thrive.

In seeking to improve standards and provide schools which are fit for purpose, the Council is fully engaged in the Welsh Government's 21<sup>st</sup> Century Schools and Colleges programme which provides for long term investment into educational facilities. All new residential developments which are likely to house school aged children create additional demand for places at existing schools and place pressure upon educational services. To address this, the Council will, where appropriate, seek planning obligations to mitigate this impact and provide for the additional pupils.

### **3.1 Policy and Guidance**

The following policies and guidance are specifically relevant. The Torfaen Local Development Plan policies are set out in full in Part One of this SPG.

- Future Wales: The National Plan 2040 (February 2021) Policy 2 Strategic Placemaking requires local facilities to be within walking distance of homes.
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021) paragraphs 4.4.1 - 4.4.2.
- Welsh Office Circular 13/97 Planning Obligations: paragraphs B2, B7 and B10.
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10 and 4.21 - 22.
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013): Policies: S2 (Sustainable Development); S4 (Place Making / Good Design); S5 (Planning Obligations); SAA4 (Mamhilad); SAA6 (South Sebastopol); CF2 (Primary School Safeguarding); and CF3 (Community Facilities).

### **3.2 Circumstances in which Obligations will be Sought**

A planning obligation in relation to educational facilities will be required where a proposed development is likely to result in the generation of additional pupil numbers in excess of that which local schools can accommodate. School capacity will be calculated in accordance with Welsh Government Circular 021/2011: *Measuring the Capacity of Schools in Wales*. It will comprise a snapshot assessment at the time of the planning application and will take into account existing numbers of pupils and any planned increase or decrease in capacity as part of the 21<sup>st</sup> Century Schools and Colleges programme based upon the needs of the catchment area and not trends in parental preference.

The Education (School Premises) Regulations 1999 provide minimum quality standards for schools in Wales which, along with current guidance such as Building Bulletins, set out the requirements for educational environments and accompanying facilities. Any areas of existing schools which do not meet the standards will be discounted for the purposes of capacity assessment relating to planning obligations. Contributions will therefore be sought where:-

- (a) the pupils potentially arising from the development will cause the surplus capacity of local schools within the catchment area to be exceeded; or
- (b) existing surplus capacity exists to accommodate some or all of the pupils potentially arising from the development but refurbishment is required to make those places 'fit for use'.

It is also necessary to retain some spare places to enable schools to cope with fluctuations in numbers of pupils throughout the school year. Correspondence between Welsh Government and

TCBC dating from 2012 relates to the strategic reduction in excess surplus pupil spaces and confirms the Welsh Government advice of raising the TCBC intended surplus capacity from 5% but requiring no more than 10% capacity across the county borough. Accordingly, when assessing pupil capacity, the Council will consider the individual circumstances of the school, and by using the Welsh Government guidance, apply the Admission Number arising from that capacity calculation in line with the council's School Admission policy at the time.

The likely requirement for school places arising from permitted or allocated development both within and immediately adjacent to the relevant catchment area will be taken into account and assessed on a site-by-site basis. Obligations relating to educational facilities may apply to new residential development comprising 10 or more dwellings, including applications for renewal of consents. Based upon the pupil yield factors applied by the Council, such a development would be likely to generate a requirement for three additional school places: two at primary school and one at secondary school with lesser requirements for nursery and sixth form places.

This policy guidance applies to residential units only and exemptions comprise one-bedroom dwellings and studio flats, sheltered / elderly person housing, care homes, rest homes and nursing homes, hostels and student accommodation on the basis that such developments are unlikely to house children of school age. Each residential development exceeding the above thresholds will be assessed to determine how many children and young people are likely to be generated from that development and its potential demand and impact on local schools and education facilities.

Where large scale development generates sufficient pupil numbers to justify a new primary or secondary school, there will be a requirement on developers to provide this within the development. If not physically possible to accommodate the facility on site, the developer will be required to make an equivalent financial contribution (e.g. land value and building costs) towards its off-site provision. Any need for new schools as a result of allocated sites will be addressed through the Local Development Plan.

### **3.3 Nature of Obligation**

Obligations will most likely form a financial sum (Education Facilities Payment) to be paid to the Council at an agreed stage in the development. The Payment would be utilised by the Local Educational Authority to provide the required works at a specified school. This could comprise additional places or bringing existing floorspace up to a satisfactory standard.

In appropriate circumstances, it may be preferable for the obligation to comprise the transfer of land or works by the developer in lieu of part or all of a financial payment. In such circumstances, the Council's expectation is that the works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Any transfer of land or works should be accompanied by a commuted sum to enable the Council to undertake the maintenance of the land / facility for a period of 20 years.

### **3.4 Use of Education Facilities Payment**

An Education Facilities Payment towards the upgrading and / or extension of existing educational facilities will be sought if the implementation of the development will result in a need for additional capacity. Schools within Torfaen County Borough are grouped in clusters based upon catchment areas and location. Where a site is within a particular school catchment area, contributions may not be most appropriately spent at that school where there is an alternative school which may have better accessibility or may be more suitable for providing the level of capacity required. Within each cluster therefore, the most appropriate project will be pursued.

Education Facilities Payments may be utilised to provide for the additional pupils by:

- Provision of new school

- Provision of new / refurbished classrooms
- Replacement of existing demountable facilities with permanent facilities
- Improvements and refurbishments to make facilities fit for purpose
- Provision of additional facilities necessitated by the additional demand.

The use of the Payment will be determined by the Local Education Authority in conjunction with the Local Planning Authority according to the individual circumstances of the development, taking into account the 21<sup>st</sup> Century Schools and Colleges Programme for investment and the school estates survey data.

Projects to be funded by a planning obligation will be set out within the legal agreement along with details of the delivery / timing of payment(s) and the timing of spend. Where a Payment is agreed for a scheme to provide additional capacity and the school in question is then subject to strategic reorganisation so that the scheme would no longer be appropriate, the Payment may be transferable to the next closest relevant school at the time of construction where additional capacity is still required to mitigate the impacts of development. This principle would also apply where a school is closed down on the grounds of poor / substandard accommodation.

Welsh medium education is provided throughout the county borough with Welsh Government targets for places being addressed through the Torfaen Welsh in Education Strategic Plan (2022 – 32). Planning obligations specifically relating to Welsh medium education will be considered on a site by site basis.

### 3.5 Methodology for Calculating Education Facilities Payment

The methodology for calculating the Payment is based upon the anticipated yield of the development multiplied by costs per pupil for the provision of the additional facilities. Starting September 2020, Torfaen now operates a Secondary School (aged 11-16) with separate 6<sup>th</sup> Form (aged 17-18) education system. Therefore, the latest 2021 pupil yield from new residential development is split as follows:

Age Group	Number of Children Generated per 100 Applicable Dwellings	Yield Multiplier per Applicable Dwelling
Maintained Nursery (age 3-4)	3 pupils	0.03
Primary (age 4-11)	23 pupils	0.23
Secondary (age 11-16)	10 pupils	0.10
6 <sup>th</sup> Form (age 16-18)	2 pupils	0.02

The pupil yield numbers above are calculated from the actual take up of school places from completed new build housing development in the county borough 2016-2021 and will be reviewed on a regular basis going forward. The number of pupils generated by a proposed development will be rounded up to the nearest whole pupil for the purposes of ensuring all forthcoming need is addressed.

Calculations for the provision of facilities are based upon an equivalent area measurement per pupil taken from the Department for Education ‘Area guidelines for mainstream schools’ Building Bulletin 103 (June 2014).

The gross internal floor area of the building(s) comprises the basic teaching areas, halls, dining and PE spaces, learning resource areas, staff and administration, and storage areas as well as

supporting areas such as toilets and personal care, kitchen facilities, circulation, plant and internal walls. Building Bulletin 103, Annex A (2014) provides the following maximum gross building areas required per pupil:

Age Group	Gross Building Area Per Pupil
Maintained Nursery (age 3-4)	4.2 m <sup>2</sup>
Primary (age 4-11)	4.5 m <sup>2</sup>
Secondary (age 11-16)	7.1 m <sup>2</sup>
6 <sup>th</sup> Form (age 16-18)	7.85 m <sup>2</sup>

The costs applied to this provision account for the following elements:

- Standard construction costs;
- Professional design fees, planning / building regs and SAB etc;
- Furniture, fittings and equipment; and
- ICT.

The cost of works is derived from data held by the Council's Property Construction Group based upon the latest experience of building in Torfaen as follows:

Nature of Works	Cost per M <sup>2</sup>	Cost per Pupil Place (Cost / M <sup>2</sup> x Gross Building Area)	
New Build Capacity	£8,000 m <sup>2</sup>	Maintained Nursery (age 3-4)	£33,600
		Primary (age 4-11)	£36,000
		Secondary (age 11-16)	£56,800
		6th Form (age 16-18)	£62,800
Light Refurbishment <sup>1</sup> to Increase Capacity	£1,950 m <sup>2</sup>	Maintained Nursery (age 3-4)	£8,190
		Primary (age 4-11)	£8,775
		Secondary (age 11-16)	£13,845
		6th Form (age 16-18)	£15,308
Medium Refurbishment <sup>1</sup> to Increase Capacity	£3,045 m <sup>2</sup>	Maintained Nursery (age 3-4)	£12,789
		Primary (age 4-11)	£13,703
		Secondary (age 11-16)	£21,620
		6th Form (age 16-18)	£23,904
Heavy Refurbishment <sup>1</sup> to Increase Capacity	£3,930 m <sup>2</sup>	Maintained Nursery (age 3-4)	£16,506
		Primary (age 4-11)	£17,685
		Secondary (age 11-16)	£27,903
		6th Form (age 16-18)	£30,851

<sup>1</sup> Degrees of refurbishment are defined as follows in accordance with WG guidance used in the development of the 21<sup>st</sup> Century Schools and Colleges programme. Only refurbishment schemes that result in increased pupil capacity will be considered appropriate for funding by planning obligations.

Light Refurbishment: Investment focused on common areas and essential repairs only. Extension of economic life is approximately 5 years. Works include strip out of existing space, shell and core refurbishment including cosmetic upgrades. Assumes existing main plant, existing floors and ceilings are retained.

Medium Refurbishment: Investment involves full upgrade of the existing building services and finishes but stops short of major structural alterations. Extension of economic life is approximately 15 years. Works include

strip out of existing space, shell and core refurbishment including cosmetic upgrades. No major structural or sub-structural alterations. Existing floors and ceilings are retained and minor repairs only to façade.

Heavy Refurbishment: Investment includes significant structural alterations and may also include the replacement of facades and roof finishes. The complete renewal of internal fittings, finishes, and MEP systems. The building is typically unoccupied. Extension of economic life is approximately 15 - 30 years. Works include strip out of existing space, shell and core refurbishment including cosmetic upgrades. Replacement to raised floors, ceilings and new services.

The figures above have been tested against the costs of recently completed new school construction projects and will be regularly reviewed and updated to reflect changes in school building costs. The most up-to-date data will be used at the time of any application.

The appropriate formula for the Education Facilities Payment is therefore as follows: -

**Education Facilities Payment = Nursery / Primary School Contributions + Secondary School Contribution + 6<sup>th</sup> Form Contribution**

Where: -

**Nursery School Contribution** = (No. of applicable dwellings x 0.03) x Cost per Pupil Place for the Relevant Works

**Primary School Contribution** = (No. of applicable dwellings x 0.23) x Cost per Pupil Place for the Relevant Works

**Secondary School Contribution** = (No. of relevant dwellings x 0.10) x Cost per Pupil Place for the Relevant Works

**6<sup>th</sup> Form Contribution** = (No. of relevant dwellings x 0.02) x Cost per Pupil Place for the Relevant Works

### 3.6 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an education obligation is required.

#### Definitions

“**Education Facilities**” means the works to be undertaken to provide for (..) no. of additional nursery places (..) no. of additional primary school places (..) no. of additional secondary school places and (..) no. of additional sixth form places

“**Education Facilities Obligations**” means a planning obligation to be determined at the time of the submission of full details of the Development (or any subsequent full application for planning permission) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made to provide for additional education facilities to meet the needs of the Development

“**Education Facilities Payment**” means the sum of £... pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment to provide (..) no. of additional nursery places (..) no. of additional primary school places (..) no. of additional secondary school places and (..) no. of additional sixth form places

“**Education Facilities Scheme**” means a detailed specification of the works to be undertaken to provide the Education Facilities

“**Education Land**” means the land hatched on Plan [ ] attached to this Agreement where the Education Facilities are to be provided

**“Fully Serviced”** means the proper connections within the Site so as to connect it to surface water drainage facilities and to mains foul drainage facilities water gas electricity and telecommunication and enjoys direct access to the public highway or a roadway constructed to adoptable standards (connecting to the public highway) which is the subject of an agreement under Section 38 of the Highways Act 1980

### **Example Clauses**

#### **Financial Payment**

1. Prior to the Commencement of Development, the Owner / Developer shall pay to the Council the Education Facilities Payment
2. The Council shall use the Education Facilities Payment to provide for (..) no. of additional nursery school places at [ ] (..) no. of additional primary school places at [ ] (..) no. of additional secondary school places at [..] (..) and no. of additional sixth form places at [ ]

#### **Provision of Education Facilities**

3. The Owner / Developer shall provide the Education Facilities
4. Prior to the Commencement of Development, the Owner / Developer shall submit to the Council for the Council’s approval the Education Facilities Scheme such approval not to be unreasonably withheld or delayed
5. The Owner / Developer shall provide the Education Facilities in accordance with the approved Education Facilities Scheme and shall Complete the Education Facilities prior to the Occupation of the (..th) Dwelling comprised within the Development
6. The Owner / Developer shall transfer the Education Facilities to the Council Fully Serviced and with all associated rights of access at no cost to the Council prior to the Occupation of the (..th) Dwelling comprised within the Development
7. The Council shall use the Education Facilities for the purposes of education and for no other purpose

#### **Provision of Land for Education Facilities**

8. Prior to the Commencement of Development, the Owner / Developer shall transfer to the Council the Education Land Fully Serviced with all associated rights of access at no cost to the Council
9. The Council shall use the Education Land for the provision of education facilities

#### **Outline Application**

10. The Owner / Developer shall enter into a further legal agreement to secure any required Education Facilities Obligation as appropriate when the full details of the proposal are submitted as reserved matters or a full planning application.

## **ANNEX 4: COMMUNITY FACILITIES AND REGENERATION**

Community based facilities and services provide a central role in meeting the needs of society and contribute towards higher standards of sustainable development by providing appropriate facilities locally and reducing the need to travel. Community facilities are those used by local people for primarily functional, social and / or leisure purposes and include schools, cultural facilities, health services, libraries, allotments and places of worship. As such, the quality, quantity and location of provision impacts upon quality of life. Where development is likely to increase the need for such facilities or place existing facilities under pressure, the Council will seek planning obligations towards the provision of new facilities or the improvement of existing facilities. In addition to community facilities, where appropriate, the Council will seek obligations with regard to the provision of public realm improvements, community safety measures, public art, waste and recycling facilities, works to the Monmouthshire and Brecon Canal and Afon Llwyd Corridor, broadband connectivity and commercial training opportunities.

### **4.1 Policy and Guidance**

The following policies and guidance are specifically relevant. The Torfaen Local Development Plan policies are set out in full in Part One to this SPG.

- Future Wales: The National Plan 2040 (February 2021) Policy 2 Strategic Placemaking requires local facilities to be within walking distance of homes. Policy 13 (Supporting Digital Communications) requires new developments to provide Gigabit capable broadband infrastructure from the outset.
- Planning Policy Wales 11th Edition (February 2021) paragraphs 3.21, 4.4.1 – 2 and 5.2.17
- Welsh Office Circular 13/97 Planning Obligations paragraphs B2, B7, B10 and B14
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10, 4.21 and 4.22.
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013) Policies: S2 (Sustainable Development); S4 (Place Making / Good Design); S5 (Planning Obligations); S9 (Retailing / Town Centres); RLT8 (Local and Neighbourhood Shopping Centres); CF2 (Primary School Safeguarding); and CF3 (Community Facilities).

### **4.2 Circumstances in which Obligations will be Sought**

Planning obligations in relation to community facilities will be required where a proposed development is likely to result in the generation of additional households or work force so that the likely additional population would exceed the existing or planned capacity of local facilities. Such facilities may include community centres and meeting places, community halls, doctor's surgeries, community learning facilities, libraries and leisure centres. For the purposes of this guidance, community facilities do not include those which are not freely available to all members of the public.

Requirements relating to education facilities and open space / recreation facilities are provided for in Annexes 3 and 6 of this SPG respectively. However, facilities attached to a school or religious building that are available for use by members of the public are included here. Provision for health facilities, shops, places of worship and police stations may be appropriate in exceptional circumstances.

As a general guide, obligations may apply to residential development comprising a net increase of 25 or more dwellings or commercial development with a net increase of 1,000 m<sup>2</sup> floorspace or a site area exceeding 1 ha.



The Council will undertake an assessment on a case by case basis to determine whether or not the proposed development would result in an increase in demand that exceeds the existing and / or planned capacity of the local community facilities serving the site, or whether it would generate a specific impact on a local community facility. In assessing which community facilities the development may impact upon, the catchment areas of local facilities will be considered in relation to the proposed development site.

There are a variety of ways with which the Council identifies community facility capacity / need. These include needs assessments, consultation with key community groups in the area, community led plans and audits of existing facilities. In carrying out the capacity assessment the Council will use the most up to date information available.

Any need for significant new facilities as a result of allocated sites will be addressed through the Local Development Plan.

### **4.3 Nature of Obligation**

Obligations relating to community facilities, public realm improvements, community safety measures and works to the Monmouthshire and Brecon Canal / Afon Llwyd Corridor may comprise the transfer of land, works by the developer or a financial sum (Community Facilities Payment) to be paid to the Council at an agreed stage in the development.

Where works are required, the Council's expectation is that the works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be required to fund the development of the detailed scheme and carry out the works to the appropriate standard. If land or works are to be transferred to the Council, they must be accompanied by a commuted sum to enable the Council to maintain the facility for 20 years.

A Community Facilities Payment would be more appropriate where works are required off site. In such cases, the developer will be required to provide a detailed scheme for the required works accompanied by costings of initial provision and maintenance over a 20 year period. The scheme should be submitted for agreement with the Council and upon agreement, the corresponding payment made. The Council will then use the payment to undertake the works in accordance with the agreed scheme.

#### Waste and Recycling Facilities

All new residential and commercial developments will be required to evidence appropriate provision for waste and recycling facilities within the site which will normally be secured by planning conditions. An obligation will be required where provision cannot be secured within the site and will only be considered acceptable in exceptional circumstances.

In some circumstances, there may be a requirement for publicly accessible community recycling facilities. In such cases, an obligation may comprise works or a financial contribution and would need to take into account the long term management and maintenance of the facilities.

#### Public Art

The Council will expect all development to achieve a high standard of design in accordance with national guidance set out in Technical Advice Note 12: Design (2009).

In terms of incorporating public art, it is the Council's expectation that opportunities for art to be designed into the scheme will be taken forward. These could include decorative features within boundary walls or enclosures, site entrance signage within highway or building structures or themed play areas. Ideas and designs could be generated in conjunction with Arts Wales and appropriate community groups. All such works could significantly raise the quality of the development and could be secured by way of planning conditions. Planning obligations relating to

public art will only be negotiated where there is some specific opportunity deemed necessary to the development which could only be delivered outside of the application site. Development to which this may relate may comprise a publicly accessible building, community building or development with a significant public profile. The scale and nature of the obligation will be established on a site by site basis.

### Broadband Connectivity

Increasingly, our society is dependent upon broadband connectivity for all aspects of life including education, work and social interaction. Household connectivity to high speed data access via broadband is now established as an essential service. New development is required to provide for 'gigabit capable' broadband connections, both within and to the site under Policy 13 of Future Wales (2021).

### Commercial Training Opportunities

It is considered that all major commercial developments may be able to provide opportunities for trainee employees. The Council will encourage commitments to provide opportunities for local jobseekers, contractors and local businesses. Such opportunities would be dependent upon the scale of the development, the type of employment facilities being provided and the level of internal training opportunities being provided by the operator.

## **4.4 Use of Community Facilities Payment**

A Community Facilities Payment towards the upgrading and / or extension of existing community facilities or regeneration works will be sought if the implementation of the development will result in the generation of sufficient additional population to create or exacerbate insufficient capacity at local facilities or to address a specific impact generated or exacerbated by the development.

The catchment areas of local facilities will be considered in relation to the proposed development site so that the needs of the development from which the payment is sought will be addressed. Dual use of existing and new facilities will be encouraged where this is practicable. Within each local community, the most appropriate project to address the capacity issue will be pursued.

Examples of suitable schemes for Community Facilities Payments may be:

- Improvements to a community hall to increase its use within vicinity of site
- Improvements to indoor leisure centres to increase capacity within vicinity of site
- Improved library services where there are inadequate facilities to cater for the needs of the development
- Public realm works, including Monmouthshire and Brecon Canal and Afon Llwyd Corridor where the increased use of a site or facilities within a locality provides justification
- Parking management where a development would generate / influence demand in the locality
- Street furniture or mobility access improvements where these are likely to be necessary as a result of the development
- Street lighting, signage and CCTV as appropriate
- Landscaping schemes and boundary treatments.

The specific use of a Payment will be determined by the Council according to the individual circumstances of the development. Projects to be funded by a planning obligation will be set out within the legal agreement along with details of the delivery / timing of payment(s) and the timing of the provision of the works. A Community Facilities Payment will also need to provide for maintenance and management of the works as appropriate over a period of 20 years.

## **4.5 Standard Heads of Terms**

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where community facilities and regeneration contributions are required.

### **Definitions**

**“Community Facilities”** means [the provision of facilities] at [specify site] which meet local community needs and are publicly available

**“Community Facilities Land”** means the land hatched on Plan [ ] annexed to this Agreement

**“Community Facilities Obligation”** means a planning obligation to be determined at the time of submission of full details of the Development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made to provide for additional Open Space and Recreational Facilities to meet to the needs of the Development

**“Community Facilities Payment”** means the sum of £..... pounds (£...) increase (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment

**“Community Facilities Scheme”** means a detailed specification of works to provide the Community Facilities

**“Public Art”** means a piece of art available to the public that is the original work of a living professional artist which is created for a particular place commissioned by or working in collaboration with others such as architects designers planners developers arts officer and community representatives or such provision of facilities which enable the creation on art

**“Training and Development Scheme”** means a scheme for the provision of training and development or such other mechanism which enables local people to secure local employment within Torfaen

**“Waste and Recycling Facility”** means the provision of appropriate facilities for drop off storage and collection of domestic materials for re use or recycling at [designated site] which meet local community needs

**“Waste and Recycling Payment”** means the sum of £... pounds (£..) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment

**“Waste and Recycling Scheme”** means a detailed specification of works to provide the Waste and Recycling Facility

### **Example Clauses**

#### **Payment**

1. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Community Facilities Payment / Waste and Recycling Payment
2. The Council shall use the Community Facilities Payment / Waste and Recycling Payment to provide the Communities Facilities / Waste and Recycling Facilities

#### **Provision of Community Facilities / Waste and Recycling Facilities**

3. Prior to the Commencement of Development the Owner / Developer shall submit to the Council for the Council's approval the Community Facilities Scheme / Waste and Recycling Scheme such approval shall not be unreasonably withheld or delayed
4. The Owner / Developer shall provide the Communities Facilities / Waste and Recycling Facilities in accordance with the approved Communities Facilities Scheme / Waste and Recycling Scheme and shall complete the Communities Facilities / Waste and Recycling Facilities prior to the Occupation of the (.th) Dwelling comprised within the Development
5. The Owner / Developer shall transfer the Communities Facilities / Waste and Recycling Facilities Fully Serviced and with all associated rights of access at no cost to the Council prior to the Occupation of the (.th) Dwelling comprised within the Development
6. The Council shall use the Community Facilities / Waste and Recycling Facilities for the provision of the Community Facilities / Waste Recycling Facilities and for no other purpose

#### Land Transfer

7. Prior to the Commencement of Development the Owner / Developer shall transfer to the Council the Community Facilities Land / Waste and Recycling Land Fully Serviced with all associated rights of access at no cost
8. The Council shall use the Community Facilities Land / Waste and Recycling Land for the provision of the Communities Facilities / Waste Recycling Facilities and for no other purpose

#### Outline Permission

9. The Owner / Developer shall enter into a further legal agreement to secure obligations with regard to community facilities and regeneration as appropriate when the full details of the proposal are submitted as Reserved matters or a full planning application

#### Training and Development

10. Prior to the Commencement of Development the Owner / Developer shall submit to the Council for the Council's approval the Training and Development Scheme
11. The Owner / Developer shall provide training and Development in accordance with the approved Training and Development Scheme

#### Public Art

12. Prior to the Commencement of Development the Owner / Developer shall submit to the Council for the Council's approval a scheme including timeframes for the provision of Public Art within the Development
13. The Owner / Developer shall provide the Public Art in accordance with the approved scheme and timeframe which shall be no later than the Practical Completion of the Development

## **ANNEX 5: BIODIVERSITY, GEODIVERSITY AND ECOLOGICAL RESILIENCE**

Conserving and enhancing biodiversity and geodiversity is one of the key aims of sustainable development. To address the impacts of development, the Council will, where appropriate, seek planning obligations to provide for nature conservation and geodiversity interests.

Torfaen boasts a wide range of wildlife and the planning system has a vital role to play in maintaining and enhancing biodiversity. The County Borough of Torfaen is characterised by high quality natural habitats and contains areas of national and local conservation importance. There are 4 ecological Sites of Special Scientific Interest (SSSI), approximately 200 Sites of Importance for Nature Conservation (SINC) and 7 Local Nature Reserves (LNR). The Afon Lwyd is an important ecological corridor in Torfaen alongside the Monmouthshire and Brecon canal. Key habitats include deciduous woodland, wildlife corridors, wetlands, species rich grassland and heath land. Woodlands in general comprise approximately 5% of the total area in Torfaen and there are examples of ancient woodlands in Cwmbran. The Local Biodiversity Action Plan (2003) identifies that there are approximately 20 UK priority species found in Torfaen with approximately 136 species of conservation concerns and a further 40 species of interest. Furthermore, Section 42 of the Natural Environment and Rural Communities Act 2006 sets out a list of species and habitats of principal importance for conservation of biological diversity in Wales.

Geodiversity refers to the variety of soils, rocks, fossils, minerals and natural processes that make up the Earth's physical landscape and structure. There are no designated geological SSSI's in Torfaen; but the Torfaen LDP has, based upon the British Geological Society "South Wales RIGS Audit - Torfaen CBC, 2012", designated 7 Regionally Important Geological Site (RIGS).

### **5.1 Policy and Guidance**

The following policy and guidance is specifically relevant. Torfaen Local Development Plan policies are generally set out in full in Part One to this SPG.

- Future Wales The National Plan 2040 (February 2021) Policy 9 states *"In all cases, action towards securing the maintenance and enhancement of biodiversity (to provide a net benefit), the resilience of ecosystems and green infrastructure assets must be demonstrated as part of development proposals through innovative, nature based approaches to site planning and the design of the built environment."*
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021) paragraphs 6.2.12, 6.4.3, 6.4.9 (box) and 6.4.21
- Natural Environment and Rural Communities Act 2006
- Habitats Directive (92/43/EEC)
- Conservation of Habitats and Species Regulations 2010
- Technical Advice Note 5: Nature Conservation and Planning (2009)

This Technical Advice Note provides advice about how the land use planning system should contribute towards protecting and enhancing biodiversity and geological conservation. It should be read in conjunction with Planning Policy Wales.

TAN 5 confirms that under Section 40(1) of the Natural Environment and Rural Communities Act (NERC) 2006, every public authority has a duty to *"have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity"*.

Natural heritage incorporates both biodiversity and geodiversity to include flora, fauna, geological and geomorphological features. Paragraphs 3.4.1 and 3.4.2 set out the need for a Local Planning Authority to produce a biodiversity SPG.

Paragraph 4.7.1 identifies that obligations are particularly useful for delivering measures in a proposed development to avoid, mitigate or compensate for potential harm to nature conservation and to ensure proposed natural heritage benefits are delivered in a timely and appropriate way.

- Minerals Technical Advice Note 1: Aggregates (2004): paragraphs 49, 55 - 61, 96, 100, 112, 114, 126, 134 - 137 & D7.
- Minerals Technical Advice Note 2: Coal (2009): Paragraph 87 states *“Regionally Important Geodiversity Sites (RIGS) are designated for their scientific, educational, historic or aesthetic features as the most important places for geology and geomorphology outside SSSIs. Integrity sites contain finite deposits or landforms which are irreplaceable if destroyed; exposure sites provide exposures of a rock which is extensive or also well-developed below the ground and offer opportunities for RIGS creation.”*
- Welsh Office Circular 13/97 Planning Obligations: paragraphs B2, B7, B11 and B14.
- Welsh Government Circular 016/2014 The Use of Planning Conditions for Development Management: paragraphs 3.10, 4.21, 4.22 and 5.80.
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013) Policies: All site allocations, S2 (Sustainable Development), S3 (Climate Change), S4 (Place Making / Good Design), S7 (Conservation of the Natural and Historic Environment), S8 (Planning Obligations), BW1 (General Policy - Development Proposals), H5 (Provision for Recreation, Open Space, Leisure Facilities and Allotments), M3 (Tir Pentwys Preferred Area for Aggregates (*includes Llanhilleth Quarry RIGS*)), CF4 (Protection of Important Urban Open Space), CF5 (Protection of Allotments and Recreation & Amenity Open Space) and BG1 (Locally Designated Sites for Biodiversity and Geodiversity).

## **5.2 Circumstances in which Obligations will be Sought**

A contribution relating to ecology and biodiversity may apply to any scale and any type of development, according to the specific characteristics of the proposed site and the potential impact from the proposed development. This includes both direct and indirect impacts on the site and linked areas (e.g. water corridors, green corridors, foraging areas). There is no standard threshold or trigger and as such, discussion with the Council as to the likelihood of such a contribution is recommended at the earliest point.

In considering potential development, sites will be assessed for ecological value using the most up to date information sources, including Section 42 listings (NERC Act 2006), the Local Biodiversity Action Plan and information held by South East Wales Biodiversity Records Centres (SEWBREC). Where there is a reasonable likelihood of ecological value, developers will be expected to undertake the required ecological survey work to determine the extent of species / habitats on site. This survey work will assist in determining necessary mitigation measures. A summary of the appropriate times for surveying different species has been attached as Appendix 5A.

All circumstances will be considered on their individual merits and will be assessed on a case by case basis. The over-riding principle with regard to ecology and biodiversity is to ensure a net benefit to biodiversity and where enhancement above and beyond that required to mitigate the impact of the development is possible, it will be encouraged.

Obligations (as opposed to planning conditions) may be used where mitigation, enhancement or compensation measures require a long term or complex commitment, or where a financial contribution and / or transfer of land is required. The nature and scale of the obligation(s) will reflect the impact of the development and the need for improvements, management and monitoring of biodiversity and geodiversity.

### 5.3 Nature of Obligation

The Council's approach to ecology and biodiversity is based upon the Five Point Approach to Planning Decisions for Biodiversity as set out in the Planning for Biodiversity Good Practice Guide (RTPI) (1999) and advocated in TAN 5 (2009) as follows:-

*Information - Is more information about the site's biological resource needed? Is more information about the development and its potential effects needed? Is the significance of the effects clear? Is there internal or external expertise that can help to inform the decision?*

*Avoidance - Have all adverse effects on wildlife species and habitats been avoided wherever possible?*

*Mitigation - Where adverse effects are unavoidable have they been or can they be minimised by use of mitigation measures that can be guaranteed, for example by conditions or planning obligations / agreements?*

*Compensation - Where, despite mitigation, there will be residual adverse effects that mitigation cannot reduce further, have they been or can they be compensated by measures that try at least to offset the harm? Can the compensatory measures be guaranteed by conditions or planning obligations / agreements?*

*New Benefits - Where there would be no significant harm to wildlife habitats, are there opportunities to provide new benefits for wildlife, for example by habitat creation or enhancement, and can these new benefits be guaranteed by planning obligations / planning agreements?*

It is preferable for all impacts to be avoided or mitigated. Compensation or enhancement is not an alternative to avoidance or mitigation if that is possible. Where this is not possible effects should be compensated for by the enhancement or creation of features of comparable scale and nature to that which is lost or compromised. In such cases, the Council will consider the attachment of conditions or enter into legal agreements that would overcome the potentially damaging effects of development on habitats and / or species. Where new benefits would be appropriate, they would be linked to the scale and nature of the impact and the need for compensation.

Where a mitigation or compensation plan is required, it should incorporate aims and objectives, mitigation / compensation measures, means of delivery, timescales and a scheme of monitoring and reporting. Mitigation / compensation measures should be technically feasible, demonstrate good practice, be ecologically viable in terms of size, extent and siting, be fully resourced and have a guaranteed long term funding commitment.

Some impacts cannot be compensated for e.g. the loss of ancient woodland and in such circumstances, the loss of the feature would have to be considered as a material consideration in the assessment of the planning application.

Enhancement or creation of features should wherever possible, be primarily on site (i.e. closest to the point of loss). The first priority should be like for like replacement of features however, where the nature conservation features of the site would be changed by the proposed development, the measures may not be able to comprise like for like replacement. In such circumstances, a specific assessment of the constraints and opportunities of the site may provide for the provision of alternative features to a similar scale as those lost. Where provision can only be addressed off site, a financial contribution in lieu of the provision may be acceptable.

Examples of potential obligations to address ecology and biodiversity issues comprise:-

- Restricting development in identified / sensitive areas so as not to harm existing features
- The undertaking of specific measures to address the individual requirements of an identified species and / or habitat
- Securing on-site works required to enhance existing features, e.g. woodlands, hedgerows, ponds, grassland, bird nesting boxes, bat roosting boxes

- Securing the creation of new features within the site, e.g. wildlife planting, pond, nature reserve area
- Securing a financial contribution to enhance or create appropriate conservation assets nearby e.g. accessibility improvements, interpretation facilities, nature reserve, stepping stone habitats
- Securing a programme of monitoring and / or management associated with the development site or a nearby related site
- Measures to reduce the visual impact of development proposals within the local landscape by the provision of structure or focus planting.

The longer term management of facilities and habitats must also be addressed. In circumstances where the developer provides new facilities within the site, it will be necessary to ensure a suitable management and monitoring plan covering a minimum of 20 years and the provision of resources to implement the plan. A Management Plan (to include monitoring programme as appropriate) should be produced in accordance with the Countryside Council for Wales Minimum Format Management Plan and should include appropriate financial costs. Management options on a longer term basis than 20 years should be addressed where appropriate.

In some circumstances, it may be appropriate to transfer a specified part of the site to the Council, accompanied by a commuted sum to enable the Council to undertake the management of the site for a period of 20 years.

The Council will consider adopting land on a site by site basis. Greater weight will be placed on adopting sites which are of particular ecological or local biodiversity significance. This could also include land comprising protected trees or important woodland.

Where a Management Plan is not provided prior to determination of the planning application, a planning obligation may be necessary to ensure appropriate provision for the long term management and care of the land.

#### **5.4 Scale of Obligation**

The extent of the contribution required will directly relate to the impact upon the site and locality of the proposed development. As stated previously, the priority is to ensure no net loss of biodiversity as a result of development although where further enhancement is possible, it will be encouraged. The obligations required will therefore vary according to the specifics of each site and each proposed development.

It is the Council's expectation that wherever possible, works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be expected to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Where a financial sum to contribute towards off site facilities / features is agreed in principle, the works agreed will be costed with reference to SPON's External Works and Landscape Price Book, Tir Gofal management costings (or its replacement, Glastir), and records of similar work undertaken by the Council.

Where a Management Plan is required, it must provide reasonable costings for implementation of the proposed measures for a minimum period of 20 years. The Management Plan should include monitoring where appropriate.

Where an area of land is to be transferred into Council ownership, the land shall be transferred free of charge and accompanied by a commuted sum to enable the Council to undertake the required management for a period of 20 years. Alternatively, a Management Company should be established to provide for management of the land / facility in perpetuity.



## 5.5 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an ecology and biodiversity obligation is required.

### Definitions

**“Ecology and Biodiversity Land”** means the land hatched on Plan [ ] annexed to this Agreement where the Ecology and Biodiversity Works shall be provided

**“Ecology and Biodiversity Obligation”** means a planning obligation to be determined at the time of the submission of full details of the Development (or any subsequent full application for planning permission) to be secured by the Council in accordance with the adopted Planning Obligations SPG current at the time the submission or application is made in the interests of protecting ecological and / or biodiversity resources

**“Ecology and Biodiversity Payment”** means the sum of £ .... pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment to undertake the Biodiversity Works

**“Ecology and Biodiversity Safeguarded Land”** means the land hatched red on Plan [ ] annexed to this Agreement on which no development or occupation shall occur in the interests of protecting ecological and / or biodiversity resources

**“Ecology and Biodiversity Scheme”** means a detailed specification for the avoidance mitigation compensation and enhancement of wildlife habitats or features of ecological importance on the [specified land] which shall include timescales and proper costings

**“Ecology and Biodiversity Works”** means the works to be undertaken in accordance with the Ecology and Biodiversity Scheme

**“Management Scheme”** means an agreement for the management of [specified land] in accordance with the terms of section 39 of the Wildlife and Countryside Act 1981 (as amended)

**“Management and Monitoring Payment”** means the sum of £ .... pounds (£...) increased (but not decreased) by RPI from the date of the resolution to grant the Planning Permission to the date of payment to implement the Management and Monitoring Plan

**“Management and Monitoring Plan”** means a detailed and costed scheme submitted in support of the Planning Application for the management and monitoring of the [specified land] over a period of twenty years produced in accordance with [ ] or other such plan produced by Natural Resources Wales at the time the application is made

**“Fully Serviced”** means the proper connections within the Site so as to connect it to surface water drainage facilities and to mains foul drainage facilities water gas electricity and telecommunications and enjoys direct access to the public highway or a roadway constructed to adoptable standards connecting to the public highway which is the subject of an agreement under s38 of the Highways Act 1980

### Example Clauses

#### Payments

1. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Ecology and Biodiversity Payment

2. The Council shall use the Ecology and Biodiversity Payment to undertake the Ecology and Biodiversity Works [as specified within the Ecology and Biodiversity Scheme]
3. Prior to the Commencement of Development the Owner / Developer shall pay to the Council the Management and Monitoring Payment
4. The Council shall use the Management and Monitoring Payment to implement the Management and Monitoring Plan

#### Provision of Ecology and Biodiversity Works

5. Prior to the Commencement of Development the Owner / Developer shall submit to the Council for the Council's approval the Ecology and Biodiversity Scheme such approval shall not be unreasonably withheld or delayed
6. The Owner / Developer shall carry out the Ecological and Biodiversity Works in accordance with the approved Ecology and Biodiversity Scheme and shall complete the Ecology and Biodiversity Works prior to the Occupation of the (.th) Dwelling
7. The Owner / Developers shall transfer the [specified land] to the Council prior to the Occupation of the (.th) Dwelling
8. The Council shall use the [specified land] for purposes related to ecology and biodiversity and for no other purpose

#### Management

9. The Owner / Developer shall at all times implement the requirements of the Management and Monitoring Plan

#### Land Transfer




10. The Owner / Developer shall not use or occupy the Ecology and Biodiversity Safeguarded Land for any purpose
11. Prior to the Commencement of Development the Owner / Developer shall transfer the Ecology and Biodiversity Safeguarded Land to the Council at no cost together with associated rights of access
12. The Council shall use the Ecology and Biodiversity Safeguarded Land as a [Local Nature Reserve] and for any purpose necessary and incidental thereto but for no other purpose

#### Outline Planning Permission

13. The Owner / Developer shall enter into a further legal agreement to secure any required Ecology and Biodiversity Obligation as appropriate when the full details of the proposals are submitted as reserved matters or a full planning application

## Appendix 5A: Timetable for Ecological Surveys

Survey	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Extended Phase 1												
Plants												
Breeding Birds												
Wintering Birds												
Badgers												
Bat Activity and Emergence												
Bat Roost Sites												
Bat Winter Hibernation Sites												
Hazel Dormouse												
Otters												
Reptiles												
Water Voles												
Great Crested Newts (adults in ponds)												

	indicates the likely optimum time for survey
	indicates that surveys may be possible, but that it is a sub-optimal time
	indicates that surveys cannot be undertaken

This table is intended to provide indicative guidance only. Professional advice should always be sought when planning survey programmes.

## **ANNEX 6: RECREATION AND PUBLIC OPEN SPACE**

Formal and informal public open space, recreation facilities and allotments can have a significant recreational and amenity value, in turn contributing to health and wellbeing, biodiversity and the environment. The Council recognises that opportunities to access open space, use allotments and participate in good quality recreational activities are essential to the health, mental, physical and emotional wellbeing of children and adults. Where development is likely to increase the need for such facilities or place existing facilities under pressure, the Council will seek planning obligations to provide appropriate new facilities or the improvement of existing facilities to facilitate the additional capacity.

The Council, under LDP Policy H5, will seek the provision of adult and children's outdoor playing space in accordance with the Fields in Trust (FIT) Benchmark Standards (updated in 2015), taking into account the quality, quantity and accessibility of existing provision and the individual characteristics of the site and the proposed development.

In addition, the Council will seek accessible natural green space in accordance with guidelines set out by the former Countryside Council for Wales (now Natural Resources Wales) (2006) taking into account its own 'on-site' open space standard under LDP Policy H5 and requirements set out within Torfaen's adopted SPG 'Development and its Incorporation within the Landscape: A Guide for Developers' (Feb 2000).

Finally, the Council has also adopted The National Society of Allotment and Leisure Gardeners national standard for allotments under LDP Policy H5.

### **6.1 Policy and Guidance**

The following policy and guidance is specifically relevant. Development Plan policies are set out in full in Part One to this SPG.

- Future Wales: The National Plan 2040 (February 2021) Policy 2 (Strategic Placemaking) requires local facilities to be within walking distance of homes.
- Planning Policy Wales 11<sup>th</sup> Edition (February 2021) paragraphs 4.4.3, 4.5.1-2  
Technical Advice Note 16: Sport, Recreation and Open Space (2009) especially paragraphs 3.13 - 3.18, 3.27, 4.2 4.13 - 14 and 4.15
- Welsh Office Circular 13/97 Planning Obligations paragraphs B7, B10 and B14
- The Community Infrastructure Levy Regulations 2010 (as amended): Regulations 122 & 123.
- Torfaen Local Development Plan (2013) Policies: S1 (Urban Boundaries); S2 (Sustainable Development); S3 (Climate Change); S4 (Place Making / Good Design); S7 (Conservation of the Natural and Historic Environment); S8 (Planning Obligations); BW1 (General Policy - Development Proposals); H5 (Provision for Recreation, Open Space, Leisure Facilities and Allotments); CF3 (Community Facilities); CF4 (Protection of Important Urban Open Space); CF5 (Protection of Allotments and Recreation & Amenity Open Space); and CF6 (New Playing Field).

### **6.2 Circumstances in which Obligations will be Sought**

The Council is currently undertaking an Open Space and Recreation Study which is being completed in line with guidance set out in TAN 16, in order to establish the current provision of public open space and recreation facilities both in terms of quantity and quality. The initial findings have revealed an overall deficiency in the provision of suitable quality facilities across the County Borough. The Council will also utilise the Heads of the Valley Accessible Greenspace Assessment (2007) as appropriate, in assessing the availability of greenspace in relation to a specific site.

All residential developments (including conversions and redevelopments but excluding mobile homes subject to temporary permission) of three or more units or with a site area exceeding 0.1 ha and any development that involves the loss of any existing open space or recreational facility will

therefore be assessed to establish whether there are suitable facilities already available or whether the development would cause a deficiency or exacerbate an existing deficiency in provision of public open space and / or recreational facilities.

Where a development would cause or exacerbate a deficiency in provision, planning obligations will be sought to mitigate the impact.

There will be no exemptions to the above requirement based on the fact that all members of society benefit from access to open space and suitable recreational facilities, however where obligations are required, they will be appropriate to the form of proposed development. For example, a proposal for an elderly person's home would not be required to provide for children's play facilities or towards a football pitch but may be required to provide for a bowling green or informal open space.

Likewise, affordable housing sites will not be exempt from assessment regarding such obligations and the potential for obligation requirements should be considered as part of the initial development appraisal.

There may be additional opportunities for the provision of public open space in association with retail or employment related development where part of the land holding could be retained and maintained as publicly accessible open space. This may be as a result of Sustainable Urban Drainage Systems or incidental open space. Where such opportunities occur, the Council will seek to secure the long term management of the area, either by way of a management company or by adopting the land. Where adoption is considered appropriate, a maintenance sum equivalent to 20 years costs will be required.

Major development sites allocated through the Local Development Plan will be subject to a Development Brief which will include the provision of adequate and appropriate levels of open space.

### **6.3 Nature and Scale of Obligation**

The Council will seek an obligation to address any detrimental impact on the standard of provision of open space and recreation facilities within the vicinity of a site. The obligation may comprise the direct provision of facilities within the application site, off-site provision on land controlled by the developer and / or a financial contribution (Open Space and Recreation Payment) in lieu of direct provision.

It is the Council's expectation that wherever appropriate, works should be delivered directly by the developer in accordance with details and specification to be agreed with the Council. The developer would be expected to fund the development of the detailed scheme and carry out the works to the appropriate standard.

Management of the facilities provided should be addressed either by the establishment of an appropriate management company or by way of transfer of the land to the Council and payment of a commuted sum equivalent to the management costs for 20 years.

### **Standards of Provision**

#### ***Outdoor Play Space***

The FIT Standards provide the definition of outdoor playing space to be '*space that is accessible and available to the general public, and of a suitable size and nature for sport, active recreation and play*'. Facilities falling within this definition include:

- Facilities for pitch sports such as football, cricket or lacrosse, including training areas
- Facilities for other outdoor sports such as bowls, athletics, dry slope ski-ing and tennis, including training areas

- Designated areas for children’s play containing a range of facilities and an environment designed to provide focused opportunities for outdoor play, including play areas and playgrounds of all kinds
- Amenity open space suitable for casual or informal play, particularly in housing areas
- Facilities for teenagers and young people.

Contributions to the open space standard do not comprise areas of the public realm such as public rights of way, footpaths, cycleways, highways and other circulation space. Likewise incidental areas of landscaping and roadside verges cannot be included.

The FIT Benchmark Standard for outdoor playing space provision is **2.4 hectare / 1000 population**, sub-divided as follows:

Outdoor Sport	1.6 ha / 1000 population (of which 1.15 ha should be for pitch sports)
Children’s Play Space	0.8 ha / 1000 population (of which 0.25 ha should be equipped / designated children’s play space and 0.55 ha should be casual / informal children’s play space)

### ***Open Space***

The Natural Green Space Standard devised by Countryside Council for Wales (CCW) (2006) provides a toolkit to help ensure suitable access to open green space. CCW recommends that provision should be made for at least 2 ha of accessible natural green space per 1,000 population, that no-one should live more than 300 metres from their nearest natural green space, that there should be at least one 20 ha site within 2 km of home, that there should be one accessible 100 ha site within 5 km, and that there should be one 500 ha site within 10 km.

The Head of the Valleys Accessible Natural Greenspace Assessment provides mapped representation of Torfaen identifying compliance with the natural green space standard on a postcode basis and will be used to inform site assessment.

Greenspace which contributes towards the standard can comprise public parks and gardens, playing fields and also private greenspace, derelict land, woodlands and wetlands. Designated areas such as Sites of Importance for Nature Conservation (SINCs) and Local Nature Reserves (LNRs) also contribute towards the greenspace standard. The potential to facilitate multifunctional greenspace is a key consideration.

In addition, the Council has adopted SPG ‘Development and its Incorporation within the Landscape: A Guide for Developers’ (2000) which requires open space standards equivalent to 9.16 m<sup>2</sup> per dwelling.

### ***Allotments***

Provision for serviced allotments will be sought in line with national standards where these can be provided on site and to serve the needs of the development.

## **6.4 Methodology for Calculating Provision of Recreation and Open Space**

The Council’s approach to the provision of recreation and open space facilities is as follows:

- 1) Calculate anticipated population to be generated by the development. For the purposes of this guidance, the increase in population is determined by the average household occupancy for Torfaen of 2.3 persons (2021 Census (92,300 population / 40,200 households)).
- 2) Assess existing provision within the locality of the site using FIT recommended distances to facilities, Heads of the Valleys Accessible Natural Greenspace Assessment and TCBC Open Space and Recreation Study.

- 3) Where there is a deficiency, an obligation will be required to provide either improvements to existing sub-standard facilities or on-site provision according to individual circumstances.

### **Outdoor Play Space**

Using average occupancy as 2.3 persons, and the FIT standards of provision, the requirement for outdoor play space per dwelling is calculated as follows:

Total provision:	55.2 m <sup>2</sup> per dwelling
Sub-divided as follows:	
Outdoor Sport (Adult Provision)	36.8 m <sup>2</sup> / dwelling (of which 26.3 m <sup>2</sup> should be for pitch sports)
Children's Play Space	18.4 m <sup>2</sup> / dwelling (of which 5.8 m <sup>2</sup> should be equipped / designated children's play space and 12.6 m <sup>2</sup> should be casual / informal children's play space)

Typical thresholds for on-site provision of facilities are calculated on the basis of a standard density of 30 dwellings per hectare as follows:

Site capable of accommodating 25 dwellings	Local Area of Play (LAP)
Site capable of accommodating 63 dwellings	Local Equipped Area of Play (LEAP)
Site capable of accommodating 100 dwellings plus an area of 0.18ha	Local Area of Play (LAP)/ Local Equipped Area of Play (LEAP)
Site capable of accommodating 520 dwellings plus an area of 0.95ha	Local Equipped Area of Play (LEAP)/ Neighbourhood Equipped Area of Play (NEAP)
Site capable of accommodating 600 dwellings plus an area of 1.1ha	Local Equipped Area of Play (LEAP) / Neighbourhood Equipped Area of Play (NEAP) and 4 x Local Areas of Play (LAP)
Site capable of accommodating 273 dwellings plus an area of 1ha	Football pitch
Site capable of accommodating 218 dwellings plus an area of 0.8 ha	Multi Use Games Area (MUGA)

The exact form and type of open space and recreation facilities are to be determined on a site by site basis, reflecting the requirements of likely future occupiers and the characteristics of the site.

Based upon the initial findings of the Open Space and Recreation Study it is anticipated that for a large percentage of sites of 3 to 62 residential units, there will be existing Local Areas of Play (LAPs) within the vicinity that cannot provide for their development due to the substandard nature of the facilities. In these circumstances, the Council will consider an Open Space and Recreation Payment in order to mitigate the impact of the development by way of upgrading the existing facilities as opposed to additional on-site provision. Where there is no existing provision to serve the site, a LAP will be required on site for developments of 25 plus dwellings. For sites large enough to require a Local Equipped Area of Play (LEAP) (typically 63 plus dwellings), provision should be on site.

### **6.5 Open Space and Recreation Payments**

Open Space and Recreation Payments will be sought if outdoor play facilities and / or open space are required but the preferred approach to addressing the impact does not comprise direct provision on-site by the developer. It should be noted that when calculating payments in lieu of on-site provision, the requirement rises to reflect the increased demand generated by the additional dwellings on the site; noting that there would also be a corresponding increase in income for the developer in comparison to what they would have received from making on-site provision of facilities.

Where a site proposal comprises a density of less than 30 dwellings per hectare, the Open Space and Recreation Payment will be calculated on the basis of the number of proposed dwellings and not what could be achieved at 30 dwellings per hectare. The Tables at Appendix 6A set out the current guidelines for typical capital and maintenance costs for recreation and open space facilities. The most up to date equivalent costs will be used at the time of a planning application.

There are five scenarios where financial contributions could be paid in lieu of on-site outdoor play facilities provision. In almost all circumstances, open space should be provided on site however scenario's 1 and 3 below also apply to open space provision. The current guideline costs of provision of facilities on a per dwelling basis has been included in Appendix 6A.

**Scenario 1: Where existing provision on-site is lost as a result of the development proposal** and cannot be replaced on land controlled by the developer within the vicinity of the site. This scenario could relate to any type of development which involves the loss of an existing recreational facility or area of open space. The Payment would be calculated based upon the costs of appropriate replacement or compensatory provision at an alternative location and would comprise land costs, provision of facilities and maintenance costs over a period of 20 years.

**Scenario 2: Where the total number of proposed dwellings is less than the thresholds for on-site provision** of children's play space (25 dwellings - LAP) or adult recreation provision (218 dwellings - MUGA).

So for a proposed development of 15 dwellings, two payments relating to outdoor play space would be required as follows:

- Children's Play Space: 15 x (Cost per dwelling for LAP); and
- Adult Recreation Provision: 15 x (Cost per dwelling for MUGA)

**Scenario 3: Where there are additional dwellings over and above the threshold for on-site provision of a facility.** In such circumstances, on-site provision should meet the requirement of the specified threshold number of dwellings with a payment required to meet the demand generated by the additional dwellings which cannot be met on site.

Therefore, for a proposed development of 40 dwellings, on-site provision of one Local Area of Play (LAP) would be required which would meet the requirement for the children's play space contribution associated with 25 dwellings (threshold for provision). Therefore, a payment would also be required to provide for the additional 15 units at a value of 15 x (cost per dwelling for LEAP/NEAP). This requirement ensures equity between different sites of differing sizes and ensures that the obligation relates appropriately to the scale of the development.

In this situation, an adult recreation provision payment would also be required as per Scenario 2 above.

**Scenario 4: Where there are existing sub-standard facilities in the vicinity of the site** where investment in these facilities would bring them up to a standard suitable to serve the needs of the proposed development. In such cases, the Payment would equate to the cost of the improvement works in addition to maintenance costs for a period of 20 years.

**Scenario 5: In exceptional circumstances where the Council consider that it is impractical to provide outdoor play facilities and / or open space on the site or where the site is in an 'unsuitable' location.** This could include, for example a conversion scheme where the development site comprises an existing building which would be retained so that there is no available space within the site.

#### Use of Open Space and Recreation Payment



The catchment areas of local facilities will be considered in relation to the development site so that the needs of the development from which the Payment is sought will be addressed. Dual use of existing and new facilities will be encouraged where practicable. Where there are alternative uses for the Payment, the most appropriate project to address the capacity issue will be pursued. Open Space and Recreation Payments may be utilised to increase open space and recreation capacity by:

- Provision of additional space / facilities necessitated by the additional demand; and
- Upgrading of existing facilities to increase their capacity

The use of the Payment will be determined by the Council according to the individual circumstances of the development. Projects to be funded by a planning obligation will be set out within the legal agreement along with details of the delivery / timing of payment(s) and the timing of spend.

## **6.6 Design Guidance for Recreation and Public Open Space Facilities**

The Council will assess proposals taking into account guidance set out in the Fields in Trust document 'Planning and Design for Outdoor Sport and Play' (2009) and the Countryside Council for Wales document 'Providing Accessible Natural Greenspace in Towns and Cities' (2006). It is accepted that each site will have its own character and that guidelines should therefore be interpreted appropriately according to individual circumstances. The primary function of the guidance is to create and maintain useable spaces that have a positive impact on the health and well being of surrounding occupiers and raise the quality of the development.

Location of open space, both natural and formal is a key consideration and requirements should be addressed at the initial design stage. The open space must be located in a position where it is easily accessible from all parts of the development, taking into account movements patterns and proximity to residential occupiers. The expectation is that formal open space should occupy a central location within the development site subject to site characteristics.

Open space should be prominent within the residential area to encourage use by the community. The most active areas should be highly visible with any seating designed to overlook such areas. Access to an estate road is preferable to reinforce accessibility by users and provide for maintenance vehicles. Good quality boundary treatments should be used to clearly identify public and private space.

Open space should also be considered in relation to contributing positively to the environment by providing wildlife habitats. New open space areas should take into account existing / surrounding areas and provide linkages where appropriate.

On larger developments, developers may be required to provide formal recreation facilities or playing pitches. Developers are advised to consult with the Council at the earliest opportunity regarding the requirements for such provision.

The Council considers that the provision of on-site facilities provides an opportunity to introduce public art by way of themed equipment and a high standard of design. It will be expected that, wherever possible, a scheme for open space and recreation facilities considers the potential for raising the standard of the development in this way.

General principles for children's play areas are that they should be:

- Sited in open, welcoming locations, not on backland areas requiring access along high-fenced, narrow alleyways;
- Separated from areas of major vehicle movements and accessible directly from hard-surfaced pedestrian routes;
- Sited on land suitable for the type of play opportunity intended;
- Overlooked from houses or well-used pedestrian routes
- Linked, as far as possible, with other open spaces, footpath systems and amenity areas to provide an adequate amount of separation from nearby residences.

With regard to the Children's Play Space provision, accessibility should be as follows:

Local areas for play or doorstep spaces for play and informal recreation (LAPs) should be located within 100 metres walking distance or 60 metres straight line distance. Characteristics include a minimum activity zone of 100 m<sup>2</sup> and a buffer zone of 5 metres minimum depth to the nearest dwelling.

Local equipped, or local landscaped, areas for play and informal recreation (LEAPs) should be located within 400 metres walking distance or 240 metres straight line distance. Characteristics for equipped areas include a minimum activity zone of 400 m<sup>2</sup> and a buffer zone of 10 metres minimum depth to the nearest dwelling. For landscaped areas, the minimum area is 900 m<sup>2</sup>.

Neighbourhood equipped areas for play and informal recreation, and provision for young people (NEAPs) should be located within 1000 metres walking distance or 600 metres straight line distance. Characteristics include a minimum activity zone of 1000 m<sup>2</sup> and a buffer zone of 30 metres minimum depth to the nearest dwelling.

The Council has adopted minimum standards for the installation of all new play equipment in the form of European Standards BSEN 1176:1998 Parts 1-7 for equipment, and BSEN 1177:1998 for safety surfacing. Compliance with these standards will be a requirement on all new developments and proof of compliance will be required prior to installation. All equipment will be inspected for continued compliance with the European Standards to ensure retained equipment is maintained correctly, and new equipment has been correctly installed, sited and maintained.

The design of all new facilities must fully comply with the Disability Discrimination Act (DDA) 1995. The gradient of footpaths, size of steps, height of handrails and visual obstructions that may be encountered on route to a play or recreation facility are among the factors to be considered.

The Council will only adopt a public open space facility if constructed to the required standard and pass an independent post installation inspection by RoSPA (Royal Society for the Prevention of Accidents) or Fields in Trust. Where the Council does not adopt the on-site provision, the liability to maintain the facility will remain with the developer or property owners.

## 6.7 Standard Heads of Terms

The following definitions and clauses are suggested for use as appropriate in Section 106 legal agreements and unilateral undertakings where an open space and /or recreation contribution is required.

### Definitions:

**“Open Space and Recreation Facilities”** means the open space and / or facilities which meet community needs and are publicly available

**“Open Space and Recreation Land”** means the land hatched on plan (ref...) attached to this Deed where the Open Space and / or Recreation Facilities are to be provided

**“Open Space and Recreation Obligation”** means a planning obligation to be determined at the time of submission of full details of the development (or any subsequent full application) to be secured by the Council in accordance with the adopted Planning Obligations SPG as amended from time to time, to provide for additional Open Space and Recreation Facilities to meet the needs of the development

**“Open Space and Recreation Payment”** means the sum of ... pounds (£...) to be utilised to provide or enhance Open Space and / or Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme

**“Open Space and Recreation Facilities Scheme”** means a detailed specification of works to provide for Open Space and / or Recreation Facilities to address the need generated or exacerbated by the development to include initial provision and management for a period of 20 years

Clauses:

The Developer shall enter into a legal agreement to secure obligations with regard to open space and recreation as appropriate when the full details of the proposal are submitted as Reserved Matters or in conjunction with any subsequent full planning application.

The Open Space and Recreation Land must be used for the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme and not occupied or used in any other manner.

The Developer shall transfer the Open Space and Recreation Facilities Land fully serviced with all associated rights of access at no cost immediately prior to the commencement of development.

The Developer shall submit the Open Space and Recreation Facilities Scheme prior to the commencement of development for agreement with the Local Planning Authority. Approval of the scheme shall not be unreasonably withheld or delayed.

The Developer shall undertake the provision of the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme agreed with the Council. The Open Space and Recreation Facilities shall be completed (and transferred to the Council) prior to the occupation of the (...)<sup>th</sup> dwelling.

The Developer shall pay to the Council (c/o...) immediately prior to the commencement of development the Open Space and Recreation Payment, index linked.

The Council undertakes to utilise the Open Space and Recreation Payment to provide the Open Space and Recreation Facilities in accordance with the Open Space and Recreation Facilities Scheme.

The Council undertakes to accept the transfer of the Open Space and Recreation Facilities Land and utilise the land in the provision of the Open Space and Recreation Facilities.

## **Appendix 6A Capital and Maintenance Costs: Recreation and Open Space Provision**

In relation to this guidance, the Council is using a recreation land value of £40,000 / ha as identified as part of work undertaken by the Council. The Professional Fees / Costs are charged at a rate of 12% of Capital Cost for a project and include provision for legal fees, stamp duty, design of scheme, tendering and contracting, management of the project and organising final certification as appropriate.

It is intended that this Appendix will be routinely updated and published. All costs taken from this guidance and identified within legal agreements will be linked to the Retail Price Index from the current published date to the date of payment.

### **Public Open Space (10,000 m<sup>2</sup>)**

#### Capital Costs

Description	Quantity	Cost
Land Purchase Cost (at £40,000 / ha)		£269,488
Professional Fees / Costs (12% of Capital Costs)		
Footpath	150 m <sup>2</sup>	
Boundary Fence	100 m	
Trees - Saplings	40	
Grass	9,850 m <sup>2</sup>	
Go Plastic Bonn Bench	2	
Broxap Derby Litterbin	2	

#### Maintenance Costs

Description	Frequency	Cost
Rotary grass cutting	12 per year	£193,688
Tree / Shrub maintenance	2 per year	
Empty litter bin	weekly	
Furniture Inspection / Maintenance	Every year	
Overlay footpath	Every 10 years	
Fence painting	Every 10 years	
Footpath Inspection	2 per year	
Full litter pick	Fortnightly	
Play Equipment Inspection / maintenance	Weekly	
Seat/bin replacement	Every 10 years	

Public Open Space Cost per dwelling (9.16m <sup>2</sup> )	Capital	£247
	Maintenance	£177
	<b>Total</b>	<b>£424</b>

### **Local Area of Play (100m<sup>2</sup> active area plus 300m<sup>2</sup> buffer area)**

#### Capital Costs

Description	Quantity	Cost
Land Purchase Cost (at £40,000 / ha)		£66,256
Professional Fees / Costs (12% of Capital Costs)		
Grass	240 m <sup>2</sup>	
Shrub planted area	50 m <sup>2</sup>	
Trees - Saplings	5	
Footpath	10 m <sup>2</sup>	
Bow Top Fencing	50 m	
Self-Closing gate / maintenance gate	2/1	
Play Equipment of <ul style="list-style-type: none"> <li>• Wickstead 4 Seesaw</li> </ul>	1	

<ul style="list-style-type: none"> <li>Wickstead Single Bay 2 Seat Viking Swing with 1 cradle / 1 flat seat</li> <li>Planet Jungle Kifaru</li> <li>Wickstead 'Rock n Bowl'</li> </ul>	1	
Impact Absorbing Surface	100 m <sup>2</sup>	
Go Plastic Bonn Bench	1	
Broxap Derby Litterbin	1	

#### Maintenance Costs

Description	Frequency	Cost
Rotary grass cutting	12 per year	£81,218
Tree / Shrub maintenance	2 per year	
Play equipment maintenance	weekly	
Empty litter bin	weekly	
Furniture Inspection / Maintenance	Every year	
Overlay footpath	Every 10 years	
Fence painting	Every 10 years	
Footpath Inspection	2 per year	
Full litter pick	Fortnightly	
Play Equipment Inspection / maintenance	Weekly	
Seat / bin replacement	Every 10 years	
Replace Impact absorbing surface	Every 10 years	
Repair / replace equipment	Every 15 years	

Local Area of Play Cost per dwelling	Capital	£1,410
	Maintenance	£1,728
	<b>Total</b>	<b>£3,138</b>

#### **Local Equipped Area of Play (400m<sup>2</sup> active area 3200m<sup>2</sup> buffer area = 3600m<sup>2</sup> (age 5-11))**

#### Capital Costs

Description	Quantity	Cost
Land Purchase Costs (at £40,000 / ha)		£212,496
Professional Fees / Costs (12% of Capital Costs)		
Grass	3,110 m <sup>2</sup>	
Shrub planted area	50 m <sup>2</sup>	
Trees - Saplings	10	
Footpath	40 m <sup>2</sup>	
Bow Top Fencing	75 lin m	
Self-Closing gate / double maintenance gate	2/1	
Play Equipment of		
<ul style="list-style-type: none"> <li>Wickstead 4 Seesaw</li> <li>Wickstead Single Bay 2 Seat Viking Swing with 1 cradle / 1 flat seat</li> <li>Wickstead Matrix K2</li> <li>KOMPAN 2.5m Bird's nest swing</li> <li>HAGS NRG Steel Trim TrailMini spinner (HAGGS Mirage Revolution)</li> <li>Planet Jungle Kifaru</li> <li>Wickstead Spring Mobiles</li> <li>Medium pedestal slide</li> </ul>	1 1 1 1 1 1 2 1	
Impact & non-impact Absorbing Surface / edging	400 m <sup>2</sup> /140 lin m	
Go Plastic Bonn Bench	2	
Broxap Derby Litterbin	2	
Signage	1	

### Maintenance Costs

Description	Frequency	Cost
Rotary grass cutting	12 per year	£178,201
Tree / Shrub maintenance	2 per year	
Furniture maintenance	yearly	
Play equipment maintenance	weekly	
Empty litter bin	weekly	
Furniture Inspection / Maintenance	Every year	
Overlay footpath	Every 10 years	
Replace impact absorbing surface	Every 10 years	
Fence painting	Every 10 years	
Footpath Inspection	2 per year	
Full litter pick	Fortnightly	
Play Equipment Inspection / maintenance	Weekly	
Seat / bin replacement	Every 10 years	
Replace Impact absorbing surface	Every 10 years	
Repair / replace equipment	Every 15 years	

LEAP Cost per dwelling	Capital	£364
	Maintenance	£305
	<b>Total</b>	<b>£669</b>

### **Local Area of Play / Local Equipped Area of Play (500m<sup>2</sup> active area 3,290m<sup>2</sup> buffer area)**

#### Capital Costs

Description	Quantity	Cost
Land Purchase Costs (at £40,000 / ha)		£238,081
Professional Fees / Costs (12% of Capital Costs)		
Grass	3,200 m <sup>2</sup>	
Shrub planted area	50 m <sup>2</sup>	
Trees - Saplings	10	
Footpath	40 m <sup>2</sup>	
Bow Top Fencing	75 lin m	
Self-Closing gate / double maintenance gate	2/1	
Play Equipment of		
• Wickstead 4 Seesaw	1	
• Wickstead Single Bay 2 Seat Viking Swing with 1 cradle / 1 flat seat	1	
• Wickstead Matrix K2	1	
• KOMPAN 2.5m Bird's nest swing	1	
• Kompan Track and Ride	1	
• Mini spinner (HAGGS Mirage Revolution)	1	
• Planet Jungle Kifaru	1	
• Wickstead Moulded Spring Mobiles	2	
• Trampoline (built in 2m square ground)	1	
Impact & non-impact Absorbing Surface / edging	500 m <sup>2</sup>	
Go Plastic Bonn Bench	2	
Broxap Derby Litterbin	2	
Signage	1	

#### Maintenance Costs

Description	Frequency	Cost
Rotary grass cutting	12 per year	£205,027
Tree / Shrub maintenance	2 per year	
Furniture inspection / maintenance	yearly	
Play equipment maintenance	weekly	

Empty litter bin	weekly
Furniture Inspection / Maintenance	Every year
Overlay footpath	Every 10 years
Replace impact absorbing surface	Every 10 years
Fence painting	Every 10 years
Footpath Inspection	2 per year
Full litter pick	Fortnightly
Play Equipment Inspection / maintenance	Weekly
Seat / bin replacement	Every 10 years
Replace Impact absorbing surface	Every 10 years
Repair / replace equipment	Every 15 years

LAP / LEAP Cost per dwelling	Capital	£366
	Maintenance	£315
	<b>Total</b>	<b>£681</b>

**Local Equipped Area of Play / Neighbourhood Equipped Area of Play (400m<sup>2</sup> activity safety surface, plus 1,000 m<sup>2</sup> hard surfacing for MUGA activity area plus min 7,771 m<sup>2</sup> buffer area = 9,171m<sup>2</sup>)**

Capital Costs

Description	Quantity	Cost
Land Purchase Costs (at £40,000 / ha)		£416,903
Professional Fees / Costs (12% of Capital Costs)		
Grass	7,771 m <sup>2</sup>	
Shrub planted area	200 m <sup>2</sup>	
Trees	25	
Footpath	120 m <sup>2</sup>	
Bow Top Fencing	175 lin m	
Self Closing gate/double maintenance gate	2/1	
Play Equipment of		
• Wickstead Cobra Seesaw	1	
• Wickstead Planet Jungle Kifaru (inclusive Junior Multi unit)	1	
• Wickstead Matrix K2	1	
• KOMPAN 2.5m Bird's nest swing	1	
• Mini spinner (HAGGS Mirage Revolution)	1	
• Wickstead Single Bay 2 Seat Viking Swing with 1 cradle / 1 flat seat	1	
• Trampoline (built in 2m square ground)	1	
• Wickstead Moulded Spring Mobiles	2	
• Huck Nest Carousel	1	
• Wickstead Viking 2 Bay double 4 flat seats	1	
• Kompan Track and Ride	1	
MUGA		
• Teen Area: SMP Arena Meeting Point - macadam surfacing	1,000 m <sup>2</sup>	
• Tarmac Hard Play Area: Wickstead SANTOS MUGA / Skatepark / Parkour - macadam surfacing		
Impact & non-impact Absorbing Surface / edging	400 m <sup>2</sup>	
Go Plastic Bonn Bench / picnic bench	2/2	
Broxap Derby Litterbin	2	
Broxap Sheffield Cycle racks	2	
Signage	1	

### Maintenance Costs

Description	Frequency	Cost
Rotary grass cutting	12 per year	£429,511
Tree / Shrub maintenance	2 per year	
Furniture maintenance	yearly	
Play equipment maintenance	weekly	
Empty litter bin	weekly	
Furniture Inspection / Maintenance	Every year	
Overlay footpath	Every 10 years	
Replace impact absorbing surface	Every 10 years	
Fence painting	Every 10 years	
Repair / relay Tarmac hard play area	As required	
Footpath Inspection	2 per year	
Full litter pick	Fortnightly	
Play Equipment Inspection / maintenance	Weekly	
Seat / bin replacement	Every 10 years	
Replace Impact absorbing surface	Every 10 years	
Repair / replace equipment	Every 15 years	

LEAP / NEAP Cost per dwelling	Capital	£103
	Maintenance	£106
	<b>Total</b>	<b>£209</b>

### Football Pitch to include pitch, drainage, floodlighting, (10,000 m<sup>2</sup>)

#### Capital Costs

Description	Frequency	Cost
Land Purchase Costs (at £40,000 / ha)		£404,096
Professional Fees / Costs (12% of Capital Costs)		
Cost of Provision		

#### Maintenance Costs

Description	Frequency	Cost
Building maintenance	As required	£326,956
Rotary grass cutting	12 per year	
Fertiliser	2 per year	
Sand top dressing	2 per year	
Renovation work	yearly	
Take down / set up goal posts / nets	As required	
Over marking for grass pitches	weekly	
Empty litter bin	weekly	
Footpath Inspection	2 per year	
Full litter pick	Fortnightly	
Seat / bin replacement	Every 10 years	
Footpath / drainage / pitch Inspection	2 per annum	
Floodlight running & maintenance	As required	
Repair/replace equipment	As required	
Overlay footpath	Every 10 years	

Football Pitch Cost per dwelling	Capital	£1,486
	Maintenance	£1,202
	<b>Total</b>	<b>£2,688</b>



## Multi Use Games Area to include surfacing, fencing, floodlighting (8,000 m<sup>2</sup>)

### Capital Costs

Description	Frequency	Cost
Land Purchase Costs (at £40,000 / ha)		£203,840
Professional Fees / Costs (12% of Capital Costs)		
Cost of Provision		

### Maintenance Costs

Description	Frequency	Cost
Brushing for multi-sports pitch	Monthly	£253,661
Take down / set up goal posts / nets	As required	
Over marking for multi-sports pitch	Yearly	
Empty litter bin	Weekly	
Overlay footpath	Every 10 years	
Full litter pick	Fortnightly	
Repair / replace equipment	As required	
Seat / bin Replacement	Every 10 years	
Overlay Footpath	Every 10 years	
Footpath / drainage / surface inspection	2 per annum	
Floodlight running & maintenance	As required	

Multi-Use Games Area Cost per dwelling	Capital	£935
	Maintenance	£1,164
	<b>Total</b>	<b>£2,099</b>