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A. Introduction

Purpose of document

1. Supplementary Planning Documents (SPD) add further detail to policies in the Local Plan. They can be used to provide further guidance for development on specific sites or on particular issues. Supplementary Planning Documents are a material consideration in planning decisions but are not part of the development plan.

2. This SPD provides more detailed guidance on the principles and operation of development contributions to support Core Strategy Policy CS34: Infrastructure delivery and development contributions.

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**CS34: Infrastructure delivery and development contributions**

**Infrastructure delivery**

*Infrastructure delivery will take place in a coordinated manner guided by an Infrastructure Delivery Plan to support the Core Strategy and specific delivery schedules for key areas. These will include mechanisms for the funding and delivery of physical, social, community, environmental and any other infrastructure required to support development and regeneration. The Infrastructure Delivery Plan and delivery schedules will be reviewed and if necessary revised as and when required.*

**Development contributions**

*Development proposals will be expected to provide a contribution towards the cost of infrastructure. Subject to statutory processes and regulations, contributions may be collected towards:*  
- Initial costs, e.g. design and development work and ‘pump-priming’ of projects or programmes.  
- Capital costs.  
- Ongoing revenue such as the management and maintenance of services and facilities.  
- Any other infrastructure related costs permitted by law and identified as a local need.  

*Contributions will be collected through Section 106 agreements and/or through a Community Infrastructure Levy once a Charging Schedule is in place. Until a Charging Schedule is in place, and before 2014, contributions from S106 Agreements may be pooled to meet the costs of strategic infrastructure, where this meets the legal tests set out in the Community Infrastructure Regulations. Once the Charging Schedule is in place, S106 Agreements will continue to be used for site specific costs and affordable housing.*
3. The purpose of the guidance is to clarify the Council’s approach to the negotiation and implementation of development contributions required as a consequence of development proposals.

Process of plan preparation

4. The programme for plan preparation is set out below.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Timeframe</th>
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<tbody>
<tr>
<td>Evidence gathering and preparation of draft document</td>
<td>Autumn 2013 – Summer 2013</td>
</tr>
<tr>
<td>Approval of Consultation Draft by Executive Committee/ delegated authority</td>
<td>April 2014</td>
</tr>
<tr>
<td>Consultation (6 weeks)</td>
<td>17th Sept – 29th Oct 2014</td>
</tr>
<tr>
<td>Consideration of responses received</td>
<td>Oct / Nov 2014</td>
</tr>
<tr>
<td>Adoption of SPD by Council</td>
<td>Nov 2014</td>
</tr>
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5. This Consultation Draft is available for public comment for six weeks between 17th Sept and 29th October 2014. All representations received will be taken into account and, if necessary, the plan amended accordingly. If significant issues are raised and/or substantive changes proposed to the draft document then a further period of consultation will be required. The decision on final adoption of the document will be taken at a formal meeting of the Council.

Scope of this SPD

6. The Development Contributions: Principles and Operational Guidance SPD will provide a framework for the delivery of development contributions through Section 106 agreements. Specifically, it provides guidance on principles and operational mechanisms for agreeing and delivering development contributions. A further SPD on service-specific development contribution requirements is intended to follow to complement this document.

7. Once adopted, this SPD will carry full weight as a material consideration in the assessment of development proposals.

8. This guidance is informed by the North Somerset Infrastructure Delivery Plan (IDP), which can be viewed on the Council’s website. In particular, the IDP sets out a number of key principles for infrastructure delivery, which will inform and guide the development contributions process. These are provided for reference in Appendix A of this SPD.
B. **Background to planning obligations**

*What are planning obligations and Section 106 agreements for?*

9. It is an established principle that developers should mitigate any negative impacts created by the developments they bring forward. This is usually achieved through planning conditions. However, if that is not possible, then developers may be required to enter into a contractual agreement under Section 106 of the Town and Country Planning Act 1990, otherwise known as a ‘S106 agreement’.

10. A Section 106 agreement relates to a specific planning permission and will set out what the developer agrees to do (or not to do) and the circumstances and timescales within which this will happen. The requirements set out in the S106 are known as ‘planning obligations’. Section 106 agreements can also include requirements of the Council, for example, that it will spend contributions by a certain date.

11. This SPD is focused on guidance about planning obligations that secure the delivery of infrastructure improvements needed to mitigate development. Such infrastructure can be physical, social or economic in nature. Investment can be used for new facilities, or to improve existing facilities that would otherwise be adversely affected as a result of the development.

12. The scale and scope of contributions will be dependent on the mix and nature of the development and delivery arrangements. The council in conjunction with developers will seek to ensure that infrastructure is delivered in the most cost effective manner and that services make efficient use of the infrastructure provided. It is recognised that aspects of services may well in future be provided by the private or third sector without any public subsidy and this needs to be reflected in the contributions being sought.

13. In providing this guidance, North Somerset Council has had regard to the economic situation, both in terms of the difficulties currently experienced by the development industry and to prepare for future economic recovery. However, the Council must also ensure that development is sustainable and that long-term needs of communities are properly provided for. A planning application may be refused on the basis that it cannot meet the obligations necessary to mitigate its impacts.

14. Planning obligations may be used for a wide range of purposes. However, following the enactment of the Community Infrastructure Levy (CIL) Regulations 2010, they are subject to legal restrictions (see paragraphs 15 – 19 below).
National regulations and policy


16. Regulation 122 and Paragraph 204 of the NPPF set out the following statutory tests that must be satisfied in order for obligations to be required in respect of development proposals:

- The obligation must be necessary to make the proposed development acceptable in planning terms; and
- The obligation must be directly related to the proposed development; and
- The obligation must be fairly and reasonably related in scale and kind to the proposed development.

17. From April 2015, regulations will restrict the pooling of planning obligations to no more than five as counted from 6 April 2010. If from April 2010 – 2015 five or more S106 planning obligations have been entered into, then no further contributions towards the same infrastructure can then be sought (unless it is through CIL). For this reason, the pooling of contributions will be undertaken with care and only where unavoidable.

18. These pooling restrictions do not apply to obligations to provide or fund affordable housing.

19. Additional guidance on planning obligations was provided in the National Planning Policy Guidance published in March 2014. This re-emphasised the importance of the statutory tests and that obligations must be “fully justified and evidenced”. The Guidance gives weight to the need for developers to provide evidence on scheme viability where obligations are being negotiated but also states that local authorities should be “flexible” in relation to affordable housing obligations and tariff-style contributions.

When are planning obligations required?

20. Subject to the legal tests detailed above, examples of the ways in which planning obligations can be used include but are not restricted to:
• Safeguarding land for infrastructure or requiring it to be used in a specific way (for example, safeguarding an area for a future road scheme).
• Restricting the levels of development that can be carried out until infrastructure is provided.
• Requiring land or money to be passed to North Somerset Council, a third-party organisation or a local community for an agreed purpose. This is likely to include the capital costs of a project and in some cases will include a contribution to maintenance for a set period of time (often referred to as “commuted sums”).
• Requiring specific actions to take place such as the delivery of ‘works in kind’ in lieu of a financial contribution (e.g. the developer may build an access road, which is then adopted by the council).

21. Planning obligations can be wide ranging in terms of the actions or contributions they require, provided it can be demonstrated that the obligation is needed to mitigate the impact of the development and that the obligation meets the legal tests detailed above.

22. The following are examples of areas where planning obligations may be required:

- Transport, including highways, sustainable transport and travel plans.
- Education and youth services.
- Flood management.
- Green infrastructure, strategic open spaces, public rights of way.
- Health care.
- Sports & leisure built facilities and playing pitches.
- Economic development and the employment-led approach.
- Libraries and information services.
- Waste management.
- Public realm.
- Heritage protection.
- Social services.
- Emergency services.
- Community development.
- Affordable housing.
- Gypsy & Traveller provision.

23. This is not intended to be a comprehensive or limiting list.

24. Applicants are advised to refer to more detailed service-based Supplementary Planning Documents (SPDs), where available, for further guidance on requirements, standards and specifications.

25. The absence of an approved SPD does not preclude contributions towards any specific service or infrastructure, provided that the requested contribution is necessary to mitigate the impact of the
development in question and otherwise compliant with planning obligation regulations.

26. The range of policy areas for which obligations will be appropriate will depend on the scale, location and nature of the proposed development.

**North Somerset’s Community Infrastructure Levy (CIL)**

27. North Somerset Council is seeking to introduce a Community Infrastructure Levy (CIL) in 2014/15.

28. Once the CIL is in place, North Somerset Council will not be permitted to charge developers twice for the same infrastructure using both CIL and S106 contributions. On introducing a CIL, North Somerset Council will publish a “Regulation 123” list setting out the infrastructure that the CIL might be used for. This infrastructure will not then be sought through planning obligations. Overall, the effect will be that the CIL will replace some of the contributions that have previously been collected through S106 agreements. However, prior to the introduction of the CIL, the Council will continue to apply planning obligations for these schemes, where appropriate and in line with the tests detailed above.

29. It is anticipated that the CIL will primarily be used to help fund infrastructure categorised in the North Somerset Infrastructure Delivery Plan (IDP) as “strategic schemes”. These benefit a wide geographic area and it is therefore appropriate that a wide range of developments should contribute.

30. Planning obligations will continue to be used for site-specific infrastructure and for affordable housing. They may also be used for major growth areas, particularly where some of the infrastructure required may be best delivered by developers as “works-in-kind” or where the delivery of the requirement is time-critical.

31. A proportion of the CIL will be passed directly to the Town or Parish Council in whose area a development takes place. This is currently 15%, or 25% for those areas which have an adopted Neighbourhood Plan. In introducing a CIL, North Somerset Council will consider whether certain community-focused S106 planning obligations would be better delivered through the CIL community proportion. Town and Parish Councils are permitted to use both S106 and CIL contributions to fund the same infrastructure (North Somerset Council is not permitted to do so).

32. This division between the CIL and S106 planning obligations will be subject to the CIL consultation and examination processes.
Highways agreements

33. In some cases, transport works to mitigate the impacts of a development will be delivered through a Section 38 or Section 278 legal agreement rather than a Section 106 agreement. This may be required by planning conditions or through a Section 106 agreement.

34. Section 38 and Section 278 agreements allow a developer to implement approved highway infrastructure works necessary for a development, which once completed and if appropriately constructed will be adopted by the local authority. Section 38 agreements relate to new highway infrastructure works; Section 278 agreements relate to works adjacent to or on existing highways.

35. Further details can be found in service-specific guidance such as the North Somerset Highways Design Guide.

36. There are no restrictions on the pooling of Section 38 or 278 agreements, but they are subject to separate regulations under the Highways Act 1980.

37. Section 38 and 278 agreements cannot be used to fund infrastructure that is identified on the Council’s Regulation 123 list as to be funded by a Community Infrastructure Levy.
C. Guidance on the operation of planning obligations within North Somerset

Is my application liable for planning obligations?

38. North Somerset Council provides pre-application advice to people who wish to carry out a development so that their application is more likely to be acceptable and a quality scheme is achieved. This includes guidance on whether a development may be liable for planning obligations. Potential applicants are strongly recommended to use this service. Please see www.n-somerset.gov.uk for further information.

39. Planning obligations may be required to mitigate any type of development proposal. However, in practice they are most likely to be sought in respect of the following proposals:

- Residential developments: five or more dwellings. [Note: government is currently consulting on a minimum threshold of 10 dwellings or 1000sqm for affordable housing contributions; the outcome of this consultation may have an impact on the five dwelling threshold proposed here and this will be asked about in the consultation questions].
- Commercial developments: 1000m$^2$ or more gross internal area (GIA).
- Other developments: 0.3ha land or more.

40. It is possible that as part of the assessment of the planning application the conclusion is that no obligations are required. However the scale of these proposals and the existing planning policy context mean that it is likely in most cases that some form of mitigation and therefore planning obligations will be sought.

Exemptions from Section 106 planning obligations

41. There are no set exemptions from Section 106 planning obligations, provided that the obligations can be proven to be needed to mitigate the impact of the proposed development and that the obligations otherwise comply with regulations.

42. However it is anticipated that certain forms of development may be likely to face a lower level of obligations. These include:

- B-class employment: North Somerset Council has a policy of promoting ‘employment-led growth’ with a focus on B-class commercial uses. Obligations on these use classes will be restricted to ‘site-specific’ requirements and account will be taken of any positive benefits such as reductions in out-commuting from the local area.
• Infrastructure and not-for-profit community or public sector-led schemes. Where these schemes have in themselves a clear community benefit this may be taken into account in considering the level of contributions to be applied.

• Regeneration schemes: where these have a clear public benefit (such as improving the public realm) and in particular where a lack of development viability is proven, this may be taken into account in considering the appropriate level of contributions required.

• Affordable housing: the Council is giving consideration as to whether affordable housing units should be exempt from certain planning obligations, or whether contributions should be reduced. If agreed, any exemptions or reductions would apply only to obligations where a reduced development impact can be shown relating to the requirement that affordable housing residents need to have a ‘local connection’ to the North Somerset area, and would be likely to apply only to smaller sites of fewer than 50 total dwellings on mixed-tenure schemes or 30 units on affordable only schemes.

Views are sought on these potential exemptions.

43. Further guidance on exemptions will be provided in service-specific SPD(s) on planning obligations.

**Who decides what planning obligations are needed?**

44. North Somerset Council offers a pre-application service so that potential developers can ask for information on expected planning obligations and other planning issues prior to submitting their application. Applicants for developments of more than five dwellings, 1000m² commercial development or sites of 0.3ha are strongly advised to use this service, which will allow them to prepare both spatially and financially for obligations at an early stage of their proposals. Details of the pre-application service can be found on our website [www.n-somerset.gov.uk](http://www.n-somerset.gov.uk). In general, applicants are advised to provide as much information about their proposals as possible at as early a stage in the process as possible, for example about the mix of development, phasing, infrastructure proposals included in the application, etc.

45. Either through the pre-application process or later through the application process, requirements for planning obligations will be identified by consultees in their responses to your application and / or by your planning application case officer. This will include consideration of:

- Expert advice from officers, partner agencies, developers and technical advisors, as appropriate.
- Consultation with elected members, in particular, local ward members and relevant Executive Members.
• Consultation with Town and Parish Councils and any relevant community groups.

46. Applicants will be informed of potential planning obligations and if necessary a meeting with relevant services will be arranged to discuss the requirements, the detail of how they will be delivered, and the steps to be taken in drawing up the necessary legal agreements.

47. In the event that an applicant believes a planning obligation to be unjustified, this should be raised with their planning case officer at as early a stage as possible and an explanation provided as to how the obligation fails to meet national regulations and/or local policies. NSC will give due consideration to such evidence, in particular in relation to the statutory tests for planning obligations set out in paragraphs 16 above. Generalised concerns about justification that are not evidenced through reference to national regulations and local policies will not be accepted.

48. If a resolution cannot be reached, the matter will be referred to a more senior officer or to a third party as necessary (see “disputes procedure”).

49. If an applicant believes that required planning obligations are unaffordable, this should be dealt with through the viability process set out below.

50. The final decision on Section 106 planning obligations will be made by the relevant Planning Committee or as delegated to officers.

Drawing up the S106 legal agreement

51. Planning obligations are normally secured through a legal contract between the Council and the landowner, known as a S106 agreement.

52. If planning obligations are identified as likely to be required, the applicant must provide the planning case officer and the Council’s Legal Services with contact details of the instructed solicitor acting on behalf of the applicant as soon as possible.

53. The applicant’s solicitor will be required to provide an undertaking that any and all legal costs incurred by the Council in securing planning obligations will be met in full by the applicant. The Council’s Legal Services will not undertake work on planning obligations without such confirmation in place.

54. Proof of title for all land comprising the red-line application site and any other land which is the subject of the planning obligations must be submitted to the Council’s Legal Services, who will usually write to the applicant/agent separately on this matter.
55. The steps outlined in paragraphs 52 - 54 should be completed at the earliest possible opportunity in the application process to allow the legal teams to start the work on drafting the agreement without delay.

56. In addition, applicants must notify other parties with an interest in the land / development of the planning obligations process and provide them with details. This might be a bank or other corporate entity with an interest in the land and should be consistent with any details given on the ownership certificate.

57. In some cases, an applicant may choose to draw up a “Unilateral Undertaking”, which is a one-party agreement. This can be an efficient and effective means of securing planning obligations where the obligation consists of financial contributions only and where there are no obligations required of the local authority, e.g. to repay monies unspent within a particular timescale.

58. Unilateral Undertakings may be rejected by the Council if they are deemed not to provide the required obligations or if they do not provide adequate security for such contributions, e.g. if the Council does not believe that the agreement would be enforceable. Applicants are advised to notify the Council of their intention to draw up a Unilateral Undertaking at the earliest possible opportunity and to discuss its contents with their case officer.

59. For the avoidance of doubt legal and monitoring fees are also chargeable in respect of unilateral undertakings since these must be subject to legal scrutiny and monitoring to ensure their acceptability and enforcement.

Viability

60. The Council recognises that in some circumstances, requirements for planning obligations may render a development at the margins of financial viability, or may contribute to a wider lack of viability.

61. In the event that an applicant considers that the aggregate of their planning obligations renders their development unviable and undeliverable, they should raise this concern with the council as early in the process as possible, ideally at the pre-application stage.

62. Where an applicant is arguing a lack of viability, they must submit to the Council all necessary financial information to support their case on an ‘open book’ basis and in an industry standard format for the Council or its consultants to review. A failure to provide such information may lead to a refusal of the application. Information required is likely to include:
• Calculation of the Gross Development Value of the proposal together with comparable evidence to support eventual sale/letting values. To include all capital and revenue streams;
• Development costs detailed on an elemental basis including; base build, hard and soft landscaping, any abnormal development costs etc;
• Detailed land budget identifying all gross and net land areas;
• Fees - professional fees, marketing fees, legal fees etc;
• Finance costs and details of funding sources;
• Developer return;
• Third party land costs/title issues;
• Development Programme – build and sales periods;
• Assumptions on affordable housing provision in terms of percentage provision, tenure, mix and value;
• Assumptions on sustainability criteria, cost of compliance and variant approaches;
• Existing Use Value;
• Land value.

63. The detailed examination of viability may involve the use of specialist cost and development viability consultants. The costs of providing that information and the council’s costs in assessing the proposal including any use of specialist consultants will be borne by the applicant, both at the point of agreeing planning obligations, and as a result of any later reviews of viability resulting from market recovery mechanisms.

64. In the event that a lack of development viability is proven, the council will consider whether any reasonable amendments to the package of planning obligations are possible to assist in reducing costs. The council recognises that viability is affected by a range of factors and that in times of market downturn there can be competing demands from planning obligations, affordable housing and sustainability criteria. Considerations to reduce costs may therefore include:

Works in kind: the delivery of infrastructure items by the developer, particularly on larger sites. All infrastructure provided in this manner must be delivered to agreed standards and timescales and appropriate fees will be charged for the supervision and adoption of such works.

Co-location and shared uses: The Council’s preferred approach is to co-locate and share community facilities where possible. This provides advantages both in reducing costs and in providing a ‘one-stop’ option for service users. It assists cooperation between services such as health and social services, where good communication is key. Examples of services that would be considered for co-location include education (schools); local health care; sports and leisure facilities; libraries and information services; emergency services; and social services.
Management and maintenance: Consideration will be given to the long-term private sector or community management and maintenance of facilities, which may bring about a reduction in the ongoing costs of infrastructure and associated commuted sums. However, the Council’s starting position in such discussions will be a presumption to adopt, with the handover to alternative management thereafter. Proposals for private management of public spaces funded by maintenance charges paid by residents will not normally be supported. The final approach will be that which is felt to provide the best overall outcome for the local community.

Phasing: The delivery of infrastructure may be assisted through a phased approach, which ensures that facilities are provided at the time that they are needed but which also takes account of cashflow issues for public and private providers. This can improve viability by reducing the need and costs of early borrowing.

Reduced requirements: If all of the above have failed to deliver a viable scheme, the council and partners will consider whether reduced obligations can be agreed. The first stage would be to consider whether reduced specifications are possible (for example, for affordable housing, changes to design standards or tenure mix); after which reductions in quantity may be considered, potentially subject to grant input as set out below (in the case of affordable housing, any reduction would apply only to the nil subsidy element). The wholesale removal of a requirement would be a last resort and is unlikely to be acceptable other than in the most exceptional circumstances where there is an over-riding reason for supporting the development because of other benefits that it brings (for example, the restoration of a significant heritage asset). Any reduction in requirements must be accompanied by a market recovery mechanism to secure the restoration of contributions in the event that viability improves. The prioritisation, reduction and retention of contributions will be guided by the prioritisation of infrastructure set out in North Somerset’s Core Strategy Infrastructure Delivery Plan and will be subject to the council’s corporate governance processes. Consideration may also be given to reductions in policy requirements other than planning obligations, where such requirements are specified in policy as being subject to viability and with a view to striking the correct balance between different needs and opportunities.

65. The Council will consider whether additional subsidy is available to assist in the delivery of planning obligations and if appropriate will support bids to secure such funding. Given the pressures on local authority budgets, this will not normally include funding from the Council’s own resources, except where funding has been identified for strategic infrastructure or affordable housing as part of the Council’s approved programmes. All public sector funding is subject to State Aid regulations, procurement regulations and the Council’s contract standing orders.
66. Where opportunities for external funding (including affordable housing grant) to support the development are identified by NSC, applicants will be required to make reasonable endeavours both prior to and post-consent to secure such funding, either through a direct bid to the funder or through supporting a bid by NSC or a third party. Such reasonable endeavours shall include the timely provision of information including financial information on request and the inclusion of clauses within S106 agreements to allow adjustments to the delivery of the application and obligations on receipt of funding, for example through provisions to increase the number of affordable housing units. Receipt of grant shall also be incorporated into viability updates required through market recovery mechanisms.

67. In the event that external funding is available and is unreasonably refused, or where an applicant fails to make reasonable endeavours to secure such funding, this shall be deemed as failing to mitigate the impacts of the development and may lead to refusal of the application.

68. Applicants should be aware that, although the council will endeavour to be flexible where proven necessary, planning permission will only be granted where all issues are adequately addressed - including sufficient development contributions to mitigate the impact of the proposed development. A valid reason for refusal of planning permission can be the fact that the proposal cannot contribute adequately to the identified mitigation required as a result of development.

69. The final decision on Section 106 planning obligations will be made by the relevant Planning Committee or as delegated to officers in line with North Somerset Council’s corporate governance procedures.

Works-in-kind and provision of land

70. It is possible that elements of infrastructure and other planning obligations could be provided on or close to a development site as part of that development programme.

71. Where it becomes evident that such provision is the appropriate and pragmatic way forward, and can be achieved without prejudice to other contributions / contributors, then works may be agreed in lieu of the equivalent financial contribution.

72. In assessing the potential to accept works in kind in lieu of payment the council will have regard both to the value of the works and their relative investment priority against other infrastructure requirements within a given service. The council will consider the ability of the developer to deliver the requirement to the necessary standard and timing and may refuse to permit works-in-kind if there is reason to doubt this.
73. The works in question will need to be costed and that cost verified by an independent third party paid for by the applicant. Any reduction in costs through developer delivery must be taken into account in viability assessments.

74. The Section 106 agreement will set out the terms and conditions in respect of such an arrangement. This will include the detailed specifications and standards for the works and the location and timing of delivery.

75. Developers providing works-in-kind will be expected to fund the costs for the professional supervision of the delivery of the works by North Somerset Council (or an agreed alternative) and of any other associated costs, for example, legal costs relating to infrastructure adoption.

76. Accepting works in kind in lieu of payment presents complications in terms of valuation and equity. However, it does have the potential of making a very positive contribution, not least in bringing some infrastructure forward more quickly than might otherwise be the case.

77. Any land held by the developer that is required for identified planning obligations should be provided at nil cost through the relevant Section 106 agreement. This reflects the approach adopted by most other local authorities and underlines the premise that each development proposal is expected to make the maximum contribution it can within the constraints of viability.

**Market recovery mechanisms**

78. Where evidence has been produced and verified that indicates that a development is not viable and where a reduced package of planning obligations has been agreed, the applicant will be required to enter into a Market Recovery Mechanism to secure the restoration of contributions in the event that viability improves.

79. Although the specific details of the mechanism may vary according to the detail of each site, the general principles will be as follows:

i. The applicant and the Council shall agree a viability assessment incorporating the information requirements set out in paragraph 62 of this report. The outcome of this assessment will be used to provide a financial base position establishing the funding (or other resources) available to meet planning obligations. The assessment will be appended to the Section 106 agreement or otherwise recorded in a formal manner that allows ease of future reference.

ii. The applicant and the Council shall agree and record in the Section 106 agreement the details of the planning obligations to be subject
to the market recovery mechanism and in what form these would be recovered. This could be for example an increase in affordable housing, an extension or improvement to on-site infrastructure delivered by the developer, or a share of any increase in profits, provided that it is allocated to a specified use or uses. The planning obligations to be restored through the mechanism must be identified and compliant with national regulations on planning obligations. A generic share of profits for non-specified uses would not be acceptable as it would be unlikely to comply with the CIL Regulations 2010. However the mechanism may incorporate mechanisms for switching funds from one scheme to another within the same cost envelope if for example alternative funding became available for a certain scheme.

iii. An agreed set of trigger points must be included in the Section 106 agreement for a financial review of the development. These trigger points may take the form of calendar dates or of development-based triggers such as number of units occupied, but must allow adequate time or remaining development that adjustments to planning obligations can practically be delivered (for example, an increase in affordable housing units).

iv. On reaching the trigger point, the applicant will be expected to submit an updated viability appraisal. This shall include:
   - Updated costs, indexed using the BCIS all-in tender price index for the South West or an agreed alternative and indexed to the point of delivery.
   - Updated house price information based on actual sales prices for the preceding period.
   - Any other revenue received from or financial support provided to the development including grant funding and / or sales to Affordable Housing Registered Providers (RPs), unless previously accounted for.
   - Updated forecasts for developer return (profit).

v. In the event that the developer return is higher than that forecast in the original assessment agreed in (i), the developer will be required to make the additional contributions agreed through (ii) above, up until the full requirement of agreed contributions is provided. It is acknowledged that this target may not be reached until a number of reviews have been held.

80. Alternative market review mechanisms are possible and may be appropriate for certain schemes (for example, for regeneration schemes a re-valuation may be more appropriate than an updated viability appraisal). In some cases therefore variations to the above process may be agreed or required at the discretion of the Council.
81. Where a developer is unwilling to agree to a market recovery mechanism, the Council is likely to refuse the planning application.

Contributions to repay the forward-funding of infrastructure

82. In certain circumstances, the Council or its partners may be able to forward fund the provision of infrastructure to ensure its provision at an earlier stage of development than would otherwise be the case.

83. Such circumstances will be rare and are only likely to occur where the infrastructure serves a number of sites, meaning that it is more cost-effective for a single party such as the Council to intervene to coordinate and deliver the works.

84. Forward funding is unlikely to be funded through the Council’s direct resources and will rely on the availability of external funding sources such as the West of England Revolving Infrastructure Fund.

85. The forward funding of infrastructure does not remove the obligation from developers to fund infrastructure that is necessary to mitigate the effects of their development, even if the infrastructure is completed prior to the submission of planning applications in relation to the site served by that infrastructure. Developers will be required to repay any forward funding through planning obligations, including any administrative and financing costs, through relevant planning obligations. Where a developer is unwilling to contribute towards infrastructure that is necessary for their site and which has been forward funded in this manner, the Council is likely to refuse the planning application.

Performance bonds

86. Section 106 agreements often involve financial contributions, the provision of land, buildings or services and physical works.

87. There are risks to the community implicit in this process and, in order to minimise those risks, it is essential that insurance is in place in case of default.

88. The council can provide a standard bond document to be attached to completed Section 106 agreements when such bonds are required. Different versions of the bonds are available to deal with physical works or financial contributions.

89. It is a normal requirement that a bond is in place prior to commencement of works and a copy must be supplied to the council.

90. The council recognises that Bonds can place a significant financial burden on developments and may give consideration to alternative mechanisms for securing contributions where this is practicable and
where such mechanisms are proven to provide adequate security for the investment. In some cases, a bond may not be required, but these cases will be the exception rather than the rule. The council will consider each Section 106 and bonding requirement on a case by case basis with consideration given to issues including:

- The nature and timing of the obligations.
- Structure of payment.
- Risk of non-delivery of the obligation and to the public purse.
- The value of the obligation and its importance.
- Development viability.

Indexation of financial contributions

91. Financial contributions required as obligations within Section 106 agreements will often not be payable for a considerable period of time. For example a development scheme to which a Section 106 agreement relates may not commence until two or three years after the agreement has been completed and the payment of the contribution may be triggered by that commencement. In respect of larger schemes contributions may be payable in phases so the final payment can take place many years after the initial calculation.

92. It is important that the value of the planning obligations is maintained over time and it is normal practice to index sums included within Section 106 agreements. This means that in the first instance one of the technical indices that is available will be applied. If a technical index is not available then the index applied will be the higher of either the Retail Price Index or the Bank of England base rate.

93. When the time comes to pay the contribution the index will be applied to the planning obligations. It is that re-assessed figure which will become due. The details of the indexed calculation will be made available to the developer at the time an invoice is issued.

Changes to infrastructure costs

94. In those cases within this document where infrastructure required through planning obligations has been identified and costed it is possible that either the infrastructure specifications may change or, whilst the infrastructure requirement may remain the same, the base cost of that infrastructure will change. It is therefore necessary that measures are in place to enable a review of future development contributions to account for any changes in the base infrastructure requirements and/or costs.

95. Where a planning permission has been granted and a Section 106 agreement has been entered into such agreement may include an infrastructure cost review mechanism. In those circumstances, the
increase arising from a review will be capped at 15% of the agreed payment under the Section 106 agreement calculated on an individual service basis.

**Payment schedule**

96. Development contributions will be paid in accordance with a payment schedule agreed between the council and the applicant on a site by site basis. The objective will be to structure agreements to secure the earliest possible payment of contributions, so that services are delivered in a timely fashion and in step with the development programme.

**Fees**

97. The planning obligations process incurs public costs in respect of both the legal process and the ongoing delivery and monitoring of the obligations.

98. Fees are therefore chargeable for the following purposes. For the avoidance of doubt, these fees apply to both bi-lateral Section 106 agreements and to unilateral undertakings.

*Legal fees*

99. The council’s legal costs will be charged and will become payable upon completion of the agreement. The amount will inevitably vary depending on the nature and complexity of the agreement.

*S106 administration fees*

100. It is essential that once an agreement is complete, and particularly when development commences, the requirements of the agreement are monitored to ensure that the obligations are fulfilled at the right time in the interests of the community.

101. This process incurs public costs which must be recouped. This includes monitoring site progress to assess whether obligation triggers have been reached, invoicing for payment, chasing and enforcing payments (if required), distributing payments to services, and auditing expenditure. Thus where an agreement contains requirements to pay financial contributions towards services a monitoring fee will be calculated on the basis of 5% of the value of those contributions or 15% of the planning application fee, whichever is the greater.

102. Where an agreement does not contain any requirements for financial contributions the fee will be 15% of the planning application fee originally paid when the planning application was submitted. In the case of a resubmission which is not subject to a fee then the
calculation will be based upon the fee paid in respect of the original planning application.

103. The Travel Plans Supplementary Planning Document contains details of the Travel Plan monitoring fee that will be levied.

**Works-in-kind supervision fees**

104. Where planning obligations are provided by way of works in kind the costs of supervising and assessing the delivery and value of such works will be borne by the applicant, including the costs of any external professional support required.

**Viability assessment fee**

105. Where applicants consider that the imposition of planning obligations makes the delivery of development unviable, the applicant will be required to submit viability information about their site as set out above.

106. This information will be reviewed either by Council officers or by external consultants specialising in development viability.

107. The reasonable fees of such an assessment, whether internal or external, must be met by the applicant. Confirmation that costs will be met by the application will be required prior to the Council or external consultants starting work on assessing viability information.

108. The costs of any additional viability assessments or reviews associated with Market Recovery Mechanisms must also be met by the applicant.

**Release clauses**

109. In February 2000 it was resolved at North Somerset Council’s Planning & Transport Committee that:

i) release clauses in respect of the signatories to S106 agreements shall not be allowed;

ii) individual plot purchasers are not bound by the provisions of the agreements;

iii) it is recognised that exceptional circumstances can occur which may justify an exception to the policies in i) and ii) above.
Disputes procedure

110. In the event of a dispute between the Council and an applicant, the parties will resort to a mutually acceptable independent expert to make a determination on the issues in dispute including the costs of adjudication. This determination shall be binding on both parties.

Monitoring and review

111. The Council will publish details of S106 planning obligations received and spent on an annual basis.
APPENDIX A

Extract from North Somerset Core Strategy Infrastructure Delivery Plan 2006 - 2026: Key principles of infrastructure delivery

It is important that infrastructure is delivered in a manner that supports the development of sustainable communities, helping to create a sense of place and strengthening communities. Key principles in delivering infrastructure must include:

- **Comprehensive and coordinated development**: infrastructure is to be delivered to agreed timescales and locations, in compliance with masterplans, area action plans, SPDs and other planning documents. This should include a focus on safeguarding and securing critical strategic infrastructure. Where the delivery of infrastructure is phased, this must be agreed in advance, demonstrating how each element of infrastructure fits into overall frameworks for development, and how any interim arrangements will be managed.

- **Co-location and community hubs**: where possible, and particularly within new developments, community facilities should be co-located or shared to enhance accessibility, community use and viability.

- **Quality design and local distinctiveness**: the design of infrastructure must be of the highest possible quality. This should include taking into account distinctive local characteristics and heritage. Where possible, landscaping and design features should be incorporated into infrastructure provision to add character and assist place-making.

- **Accessibility**: services and facilities should be easily accessible by foot, bicycle and public transport to encourage sustainable travel choices. Parking at facilities must be in compliance with the North Somerset Parking Standards SPD.

- **Sustainable design**: infrastructure will need to be energy efficient and designed maximising its sustainable credentials, making optimum use of renewable resources and built of durable materials.

- **Crime and safety**: It is critical that layouts and the design of infrastructure are designed with a view to minimising crime and improving community safety.

- **Long-term viability**: It is recognised that infrastructure provision requires revenue support as well as initial capital engagement. In planning infrastructure, provision must be made for its long-term management and funding. Options for self-sustaining community management are particularly encouraged.
• **Community engagement:** a pro-active approach to community engagement is central to the creation of sustainable communities. A partnership approach is required, including:
  - Early sharing of information.
  - An early community role in the consideration of preferred options for infrastructure provision, design and delivery.
  - Where possible, delivery and management led by or in partnership with local communities. This will include community ownership of facilities, where appropriate.

In line with these principles, developers bringing forward applications in major growth areas (primarily the Weston Villages) will be required to show that their infrastructure pro-actively assists the principle of comprehensive and coordinated development.

The emphasis on long-term viability is particularly acute due to the financial pressures currently being experienced by North Somerset Council and its partners. Infrastructure proposals, including those funded through development contributions will not be pursued by North Somerset Council until and unless the long-term funding mechanism for that infrastructure has first been agreed. This is particularly the case for new community facilities, which must be able to demonstrate financial sustainability independent of support from North Somerset Council.