



**Horsham
District
Council**

APPENDIX 2

Planning Obligations and Affordable Housing

Draft Supplementary Planning
Document

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Section 1: Introduction

Relationship with other Planning Documents

- 1.1 The Horsham District Planning Framework (HDPF) was adopted in November 2015 as Horsham District's 'Local Plan'. The HDPF sets out the strategy for development and growth within the District to 2031, including policies for the securing of affordable housing and the provision of infrastructure and services to support new planned development.
- 1.2 The Planning Obligations and Affordable Housing SPD is not a policy document. It provides guidance on the implementation of the adopted policies. Once it comes into effect, this SPD will replace the previous Planning Obligations SPD, which was adopted in 2007.
- 1.3 The approach set out through this SPD sits within the context of the emerging Horsham District Community Infrastructure Levy, which the Council expects to bring into effect at the same time as the final version of this SPD. Once in effect, CIL will become the primary mechanism by which the Council seeks developer contributions to help meet the District's infrastructure needs. However, a significant role for planning obligations remains and the SPD aims to provide the necessary guidance to facilitate that continuing role.

Purpose of this Document

- 1.4 This SPD sets out Horsham District Council's approach to securing planning obligations and affordable housing from new development across Horsham District (except the area covered by the South Downs National Park). Its purpose is to provide developers and landowners with further details and guidance on when, how and why the Council will seek planning obligations from new development proposals.
- 1.5 Almost all development has some impact on the environment or amenities, or on the need for infrastructure and services. Sometimes the impacts may be of such significance that development should not be permitted. However, often they can be mitigated through the design of the scheme and/or through appropriate mitigation measures, including financial contributions to help address the cumulative impacts of development on infrastructure.
- 1.6 Mitigation can generally be achieved in three ways:
 - Through conditions imposed on planning applications;

- Through planning obligations, where conditions are not effective or appropriate to deliver the mitigation (for example, in relation to financial contributions);
- Through the payment of the Community Infrastructure Levy in accordance with the adopted CIL Charging Schedule, where the impacts relate to infrastructure needs which the Council has said will be funded (at least in part) by CIL receipts.

1.7 The objective of this SPD is to provide guidance regarding the basis on which planning obligations and affordable housing will be sought. It will assist in implementing local objectives in respect of the provision of sustainable development across the District by contributing towards the delivery of the HDPF. To achieve this objective, the SPD explains how the HDPF's policies relating to the securing of infrastructure and affordable housing will be applied in the context of Horsham's emerging CIL regime.

Section 2: Legislative and Policy Context

Relevant Legislation

- 2.1 Planning obligations are legal agreements negotiated between local planning authorities and those with an interest in a piece of land (e.g. developers). Planning obligations can be secured either through a bilateral Section 106 (s106) Agreement or through a 'Unilateral Undertaking' from a developer.
- 2.2 The statutory basis allowing anyone interested in land in the area of a local planning authority to enter into planning obligations is Section 106 of The Town and Country Planning Act (TCPA) 1990 (as amended). Further legislation is set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).
- 2.3 In dealing with planning applications, it may be possible in some instances to make acceptable development proposals which might otherwise be unacceptable in planning terms, through the use of planning conditions or, where this is not possible, through planning obligations under Section 106 of the TCPA 1990.
- 2.4 Section 106 (1) of the TCPA allows a planning obligation to:
- restrict development or use of the land in any specified way;
 - require specified operations or activities to be carried out in, on, under or over the land;
 - require the land to be used in any specified way; or require a sum or sums to be paid to the authority on a specified date or dates or periodically.
- 2.5 The CIL Regulations 2010 came into force in April 2010. Regulation 122 (2) sets out the statutory tests for planning obligations, namely that they should only be sought where they are:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 2.6 For example, planning obligations might be used to prescribe the nature of a development (e.g. by requiring that a given proportion of housing is affordable); or to secure a contribution from a developer to compensate for loss or damage created by a development (e.g. loss of open space); or to mitigate a development's impact (e.g. to pay for or implement changes to the highway required to address traffic/access issues arising from the development).

- 2.7 This draft SPD adheres to a fundamental principle that planning obligations must only be sought to make acceptable, development which would otherwise be unacceptable in planning terms. The outcome of the use of planning obligations as set out in the statutory tests should be that the proposed development concerned is made to accord with published local and national planning policies. Planning obligations affect all those with an interest in the land being developed and will continue to affect subsequent owners of the property, if the obligations are still capable of being complied with or carried out.

National Planning Policy and the Horsham District Planning Framework

- 2.8 The statutory Framework is supported by the National Planning Policy Framework (NPPF), which was published in March 2012. The NPPF sets out the Government's planning policies and how these are expected to be applied. Paragraph 153 covers the use of Supplementary Planning Documents and Paragraphs 203 to 205 of the NPPF relate to planning obligations. The National Planning Guidance (NPG) also supports the NPPF. The NPG is maintained as 'live' online guidance.
- 2.9 In addition, the HDPF was adopted in November 2015 as the up-to-date local plan for the District. A number of policies within the HDPF (including policies 16 – Affordable Housing and 39: Infrastructure Provision) set out policy expectations, which could result in the Council seeking to secure planning obligations and these are covered in more detail in Section 6 of this SPD.

Section 3: Methods of Securing Developer Contributions

- 3.1 Developer contributions can be sought through a number of different mechanisms. This section provides an overview of how developer contributions may be secured by the Council through the planning system. The four key methods comprise:
- Planning conditions (these cannot secure financial contributions);
 - Planning obligations (also known as Section 106 Agreements);
 - Section 278 agreements (relating to agreements made under Section 278 of the Highways Act 1980); and
 - Community infrastructure Levy (CIL)
- 3.2 This SPD provides guidance only on planning obligations, and on the relationship between planning obligations and the Community Infrastructure Levy.

Planning Obligations

- 3.3 Section 106 of the TCPA 1990 (as amended) gives local planning authorities the power to enter into legal agreements with owners of land. These agreements are known as 'planning obligations' but are sometimes also referred to as 'Section 106 Agreements'.
- 3.4 Planning obligations are legal deeds that have to be entered into by the landowner and anyone else who has a legal interest in the land. **They run with the land, unless this is specifically excluded by the Agreement.**
- 3.5 Section 106 also makes provision for planning obligations to be given to the Council unilaterally, i.e. only signed by the land owner(s) and any other parties with an interest in the land, and not by the Council. These unilateral obligations (known as 'unilateral undertakings') are most frequently used in planning appeal situations, but can also be used in other circumstances.

Community Infrastructure Levy

- 3.6 The Community Infrastructure Levy (CIL) is a charge placed on new development. The funds raised through CIL can help to pay for a wide range of infrastructure to support development across Horsham District. Please see the **"Horsham District Council CIL Charging Schedule (April 2017)"** for more details about the proposed charge rates and information about exemptions and relief from CIL.
- 3.7 CIL is intended to supplement rather than replace other infrastructure funding streams and to help ensure that new development is supported by the

infrastructure it requires, which in turn helps to ensure that the Horsham District Planning Framework (HDPF) can be implemented effectively. CIL funds are meant to help fund new, or upgrade existing infrastructure to support growth, rather than being used simply in order to cover the cost of existing deficiencies.

- 3.8 The CIL chargeable amount is derived from the figures contained in the Council's Charging Schedule and the formula contained in the CIL Regulations, including the rules set out in the Regulations for the annual indexation of CIL charge rates.
- 3.9 In broad terms funds raised through CIL receipts will be used to help fund infrastructure projects that support the growth of the area. This might include supporting housing and economic growth, as well as providing greater certainty over future development, and benefiting local communities through the provision of new or upgraded facilities. CIL is also designed to provide a more predictable funding stream **than using Section 106 agreements alone**, so that the delivery of infrastructure projects can be planned more effectively.

Section 4: Horsham District Council's Approach to Securing Planning Obligations

The Relationship between Planning Obligations and CIL

- 4.1 Where a CIL charge is payable this is the primary source of developer funding for infrastructure and will replace some of the role previously undertaken by planning obligations. Whilst CIL receipts make a significant contribution, other sources of public sector and private funding will still form the main part of the total funding required to ensure that planned development is adequately supported by infrastructure.
- 4.2 As part of this overall approach to infrastructure funding and delivery, planning obligations may continue to be used for a number of purposes to secure or fund new infrastructure, in addition to being used to secure affordable housing as part of new development. However, the use of planning obligations is now restricted in a number of ways by Regulations 122 and 123 of the CIL Regulations 2010 (as amended).
- 4.3 First, CIL Regulation 122 states that planning obligations may only be used as a reason to grant planning permission if they are:
- necessary to make the development acceptable in planning terms;
 - directly related to the development;
 - and be fairly and reasonably related in scale and kind to the development being permitted.
- 4.4 Secondly, CIL Regulation 123 limits the 'pooling' of financial contributions secured through planning obligations, so that no more than 5 separate planning obligations (completed since 1 April 2010) may contribute to the same infrastructure project or type of infrastructure.
- 4.5 Finally, Regulation 123 seeks to ensure that there is no overlap between the infrastructure projects and types that are funded by CIL and those for which the Council may continue to seek to secure planning obligations. To set out this separation the Council will publish on its website a 'Regulation 123' list identifying infrastructure projects or types that the Council intends to fund, in whole or in part, through CIL receipts.
- 4.6 The Council may change its Regulation 123 list at any time, subject to compliance with the procedures set out in the CIL Regulations and the National Planning Guidance, including the need for consultation on the changes proposed. The Council's up-to-date Regulation 123 list will always be published on the Council's website.

- 4.7 There will be occasions in which a development will be liable for CIL as well as there being the requirement for the completion of a planning obligation. Such obligations will relate to the provision of affordable housing (which cannot be funded through CIL) or to site specific requirements that are necessary to make the proposed development acceptable in planning terms whilst adhering to the provisions of Regulations 122 and 123 of the CIL Regulations. E.g. open space or highways works.

The Use of Planning Obligations

- 4.8 As has been the case in the past, the Council will act as the co-ordinating authority for the consideration of planning obligations and the collection of contributions. Although the District Council is not responsible for the provision of all services and facilities listed in this document, Horsham District Council will act as collecting authority for all CIL funds. ~~collect and remain accountable for the spending of funds.~~ Other service providers, for example, West Sussex County Council and the Environment Agency, will be consulted on individual planning applications likely to require the securing of planning obligations. Horsham District Council will pass relevant CIL funds to West Sussex County Council and other relevant bodies for the provision of certain strategic infrastructure. These bodies will be responsible for the expenditure of the funds that HDC has passed to them.
- 4.9 In order to ensure compliance with the CIL Regulations 122 and 123, the Council will operate a transparent process of identifying where a new development proposal is likely to give rise to the need for infrastructure works or financial contributions to be secured through planning obligations.
- 4.10 The Council will also liaise with West Sussex County Council and any other relevant body that which may also be seeking to secure planning obligations from a proposed development, to ensure that they are able to justify the expectations made, consistent with the legislation and national policies.
- 4.11 Given the above, although this SPD seeks to support the HDPF in establishing the circumstances in which planning obligations are likely to be sought, it is important to retain a level of flexibility in considering all planning obligations as it is not always possible to identify the specific services for which land, works or finance may need to be secured, even when the proposal is an allocation within the development plan.

‘Standard Planning Obligations’

- 4.12 There are a variety of purposes for which the Council may seek a planning obligation in relation to planning applications within the District. Where possible, guidance on these different purposes has been included within this

SPD. These include the more common, or 'standard' type of obligations, which may be required from a range of development proposals typically expected within Horsham District. Detailed guidance on 'standard planning obligations' is provided in Section 6, and a summary is set out below. The standard obligations are divided into three broad categories, which are based on the relationship between these obligations and the statutory restrictions to use of planning obligations, introduced by the CIL Regulations 2010 (as amended).

- 4.13 The planning obligations listed below are not exhaustive however, and there are likely to be occasions when additional or alternative planning obligations are required to address the impacts of a specific planning application. The requirement for these 'non-standard obligations' is more likely to arise for larger or more complex planning applications, or for applications for types of development that are rare within Horsham District.

Category 1: Affordable Housing

- 4.14 Affordable housing is not considered to be 'infrastructure' by the CIL legislation and so is not affected by the restrictions to the use of planning obligations. Therefore, the Council will continue to secure affordable housing through planning obligations, in accordance with Policy 16 of the HDPF and the guidance within this SPD.

Category 2: Other standard planning obligations not restricted by the CIL Regulations

- 4.15 This category refers to a range of planning obligations that may be required to make development acceptable in planning terms, but which do not seek to secure works or contributions for infrastructure, as defined by Section 216(2) of the Planning Act 2008 (as amended), meaning that these obligations are not restricted by CIL Regulation 123. Therefore, where appropriate and where the tests set out in CIL Regulation 122 can be met, planning obligations can be used in this way to secure works or contributions for, but not limited to:

- Category 2.1 – Non-Infrastructure mitigation to address impacts of development to biodiversity and protected European Sites (HDPF Policies 31, 35 and 38);
- Category 2.2 – Mitigation required due to the implementation of local Air Quality Action Plans (HDPF Policy 24);
- Category 2.3 – Mitigation required due to the implementation of any relevant management plan for protected landscapes (HDPF Policy 30);
- Category 2.4 – Mitigation measures required to protect the historic environment
- Category 2.5 – Non-infrastructure public bus service enhancements;

- Category 2.6 – Travel Plans and ‘Smarter Choices’ contributions;
- Category 2.7 – Traffic Regulation Orders (TROs); and
- Category 2.8 – Restrictions to the use of land necessary to make a planning application acceptable in planning terms.

Category 3: Standard planning obligations excluded from the Regulation 123 List

4.16 This category of planning obligations refers to site-specific developer contributions that are necessary to make the development acceptable in planning terms. These contributions relate specifically to the provision of necessary on or off-site infrastructure or to the requirement to improve the natural or historic environment on-site or in the immediate surrounds of the development site.

4.17 Since many, if not all, of these requirements are infrastructure that would be capable of being funded through CIL, the Council has ensured that these are specifically excluded from the Regulation 123 list. In addition, the types of provision that may be secured within this category planning obligations are underpinned by the Council’s evidence base, and in particular the Horsham District Infrastructure Delivery Plan, which is available on the Council’s website.

4.18 Therefore, where appropriate and where the tests set out in CIL Regulation 122 can be met, planning obligations can be used in this way to secure works or contributions for, but not limited to:

- Category 3.1 – Transport and Highways
- Category 3.2 – Education
- Category 3.3 – Leisure, Sport and Open Space
- Category 3.4 – Community Facilities
- Category 3.5 – Public Services
- Category 3.6 – Flood Management Improvements
- Category 3.7 – Biodiversity and Nature Conservation Improvements

Section 5: Negotiations and Development Viability

Negotiations

- 5.1 ~~It is the Council's aim to carry out negotiations on planning obligations and to agree Section 106 agreements prior to issuing of the planning permission to which the agreement is linked.~~ If a Section 106 agreement is necessary to make a development acceptable, the agreement must be completed before planning permission is issued. The aim is to ensure that developers and landowners are informed of the likely works or contributions required for a proposed development at the earliest opportunity. This may be through pre-application discussions, which developers are encouraged to undertake as soon as possible.
- 5.2 Pre-application dialogue is particularly important where the proposed development may give rise to an affordable housing requirement. This will allow issues such as local housing need and demand to be considered in addition to the form of any affordable housing contribution. It will also be important to consider the on-site provision of infrastructure, such as open space and community facilities. Larger schemes will be expected to provide open space and community infrastructure on site, in line with CIL regulation 123, which restricts the pooling of planning obligations.
- 5.3 During pre-application dialogue, the Council will advise whether other service providers will need to be engaged in relation to the proposed development, in order to gain a better understanding of any requirements they might make in relation to the proposed development.

Development Viability

- 5.4 The NPPF (paragraph 173) puts emphasis on the need for Local Authorities to consider the viability of schemes carefully. It states that *“to ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking into account the normal costs of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable.”*
- 5.5 Viability considerations are emphasised further in the Planning Practice Guidance (ID: 10-019-20140306), which states *“In making decisions, the local planning authority will need to understand the impact of planning obligations on the proposal. Where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would cause the*

development to be unviable, the local planning authority should be flexible in seeking planning obligations.”

- 5.6 Assessing the overall viability of a scheme, developers should take full account of the scale of planning obligations that are likely to be appropriate in addition to any CIL liability that may arise. Where a developer raises viability concerns in relation to contributions for an application, the Council will expect a full “open-book” viability assessment for the scheme to be submitted to support the viability case being made. See Appendix 2 ‘Financial Viability Appraisals’ for further guidance on this.
- 5.7 The Council ~~reserves the right to have~~ **will normally require** all viability assessments **to be** checked by an independent RICS-qualified surveyor/ valuer, to ensure the robustness and validity of the assumptions and methods used. In these circumstances, the Council will appoint the surveyor/ valuer, but the viability assessment costs incurred by the Council ~~would need to~~ will be paid by the applicant. The applicant will also be required to provide a written undertaking to cover the costs before the surveyor/valuer is **appointed instructed**. ~~Viability reports resulting from this process will be shared and discussed with the applicant, subject to Freedom of Information and Environmental Information Regulations.~~
- 5.8 Where, following the above process, conflicts of opinion about scheme viability remain, additional viability work may be sought and this will be preceded by supplementary undertakings to reimburse the Council being sought from the applicant. Any remaining disputes between the Council and the applicant will be referred to an independent arbitrator (in accordance with RICS guidance). ~~To ensure open and transparent decision making the Council expects all viability assessments to be publicly available, unless the applicant can clearly demonstrate why parts must be redacted.~~
- 5.9 The NPPF is clear that where safeguards are necessary to make a particular development acceptable in planning terms, and these safeguards cannot be secured, planning permission should not be granted. This means that although the Council will be flexible in seeking planning obligations where viability has been demonstrated to be a concern, development that cannot provide the necessary requirements may be considered unacceptable and will, in such cases, be refused.

Section 6: Detailed Guidance on Standard Planning Obligations

6.1 The following section sets out in more detail the Council's guidance on the standard types of planning obligation that the Council will seek to secure via a legal agreement. This section sets out the guidance for each of the three categories of planning obligations that were set out in Section 4. It is important to note that this is not an exhaustive list and the exact requirements for planning obligations for any given development proposal will be decided on a case-by-case basis, in **consultation negotiation** with the developer or landowner, following the principles and guidance contained within the SPD. **The Council will be introducing standard legal agreements/unilateral undertakings to simplify procedures.**

Category 1: Affordable Housing

6.1.1 One of the roles of the District Council is to enable and coordinate the provision of housing to meet local need. This includes affordable housing, which is provided for those who cannot afford to buy or rent on the open market.

6.1.2 The Council seeks to maximise the supply of homes to meet the needs of local people, ensuring that all new residential development contributes to the supply of homes to meet that need in terms of size, type and tenure. Whilst it is recognised that the Housing and Planning Bill is likely to have an impact on how affordable housing is classified and delivered in the future, this guidance sets out the detail as it currently relates to the existing legislative framework and adopted HDPF.

Policy

6.1.3 The Horsham District Planning Framework (HDPF) *Policy 16: Strategic Policy: Meeting Local Housing Needs* applies to all types of residential development sites including change of use, mixed use sites that incorporate an element of residential development, sheltered, **retirement**, and extra care schemes (**Use Class C3 – extra care housing is housing designed with the needs of frailer older people in mind and with varying levels of care and support available on site. People who live in Extra Care Housing have their own self-contained homes and their own front doors**), conversions and any other developments where there is a net increase in the number of **self-contained** units on the site.

6.1.4 Residential care homes and nursing homes (Use Class C2) are not required to provide affordable housing.

- 6.1.5 Policy 16 sets a target for the delivery of affordable housing through residential development. Contributions towards the provision of affordable housing will be either through the on-site provision of affordable homes or by financial contribution. The provision of affordable housing or financial contributions will be secured through an appropriate legal agreement, including a Unilateral Undertaking, or undertaking.
- 6.1.6 The policy requirement is different depending on the number of units to be developed on the site:
- On sites of 15 or more dwellings or over 0.5 hectares in area, the Council will require 35% of dwellings to be affordable and delivered on site. Unless there are exceptional circumstances it is expected that the affordable housing would be provided on site;
 - On sites of between 5 and 14 dwellings, the Council will require on-site provision based on 20% of dwellings being affordable, or where this is not achievable, and evidence has been submitted to the Council to demonstrate this, a financial contribution equivalent to the cost of the developer providing the units on site will be sought.. This section of the policy acknowledges the potential financial contributions to be made to off-site provision where on-site provision is not achievable or will not most appropriately meet needs.

Guidance on the Application of Policy 16

Sites of 15 or more dwellings or sites over 0.5ha

- 6.1.7 Policy 16 of the HDPF states that on development sites of 15 or more dwellings, or on sites over 0.5 hectares, 35% affordable housing should be provided on-site.
- 6.1.8 In calculating the number of units to be provided on any qualifying site, the Council will normally round to the nearest number of whole units. Where applying 35% (or any other agreed proportion that the development will provide - higher or lower) achieves 0.5 or more of a dwelling, the approach will be to round up. For example, in a scheme of 30 dwellings, applying 35% gives 10.5 homes. This would be rounded up to 11 homes. Where a calculation produces a figure below 0.5, e.g. 0.1, 0.2, 0.3 or 0.4, the Council will seek that figure as a financial contribution. In such cases, the Council will expect the applicant to calculate the contribution as a proportion of a unit, based on the figures included at paragraph 6.1.64 of this document.

Financial Viability

- 6.1.9 The Policy states the Council will assess the viability of developments when applications depart from adopted policy. Given the level of housing need in the District, the Council will expect 35% of housing on qualifying sites to be affordable unless the applicant can provide sound evidence that this cannot

be achieved without making the scheme unviable. The Council's approach to financial viability is explained in Section 5.

Exceptional Circumstances

6.1.10 As indicated in the HDPF (paragraph 6.8), the Council will consider the acceptance of provision off-site in exceptional circumstances subject to the provision of robust and evidenced reasons to the Council. Circumstances where the Council may consider the acceptance of off-site provision include the following:

- Where housing need priorities could be better met in an alternative location; and
- Where the integrity or viability of the particular form of development might be compromised by the integration of affordable housing for reasons that can be clearly set out and justified.
- Where there would be fewer than 10 affordable units on site, evidence should be provided to the Council that a Registered Provider was unwilling to take on the units.

The Provision of Land

6.1.11 The provision of land may apply where the Council considers that such a contribution either on the proposed development site or on an alternative site would enable the Council to meet the identified housing needs of the District more effectively. Land should be serviced to its boundaries and be of sufficient area to provide the equivalent on-site provision. An appropriate timescale will be applied. Financial contributions may also be sought in addition to land where the site area is insufficient to provide the equivalent on-site provision.

Sites providing 5 to 14 dwellings

6.1.12 Policy 16 of the HDPF states that on development sites of between 5 and 14 dwellings the Council will require 20% of the dwellings being provided as affordable or, if on-site provision is not achievable, a financial contribution equivalent to the cost of the developer providing the units on-site. The Council will normally round to the nearest number of whole units as a starting point representing the on-site provision requirement or its equivalent.

6.1.13 The policy makes clear that the Council will take account of any particular costs associated with the development, and that the viability of the development will be a consideration. Details of how the financial contribution will be calculated are set out in para 6.1.65s onwards.

Financial Viability

6.1.14 The policy states that the Council will assess the viability of developments when applications depart from adopted policy. Given the level of housing need in the District, the Council will expect developments of this size to provide 20% of housing to be affordable or equivalent financial contributions unless the applicant can provide sound evidence that this cannot be achieved without making the scheme unviable. The Council's approach to financial viability is explained in Section 5.

Delivery

Planning application process

6.1.15 Before making a planning application, applicants should contact the Council **as part of a pre-application enquiry**, to discuss the affordable housing requirements of the proposed scheme. The purpose of the discussion is to establish how affordable homes will be delivered, funding implications and opportunities; and to help provide all parties with certainty as the proposals move forward. The discussions will need to include the following as appropriate:

- Clarify the amount, type, size, tenure of affordable housing to be provided.
- Identify the **Housing Association/Affordable Housing Registered Provider** **so that the applicant can** contact the provider to discuss the delivery of the affordable housing element of the development.
- Agree the arrangements for the provision of affordable housing with the **Housing Association – Registered Provider** prior to the submission of a planning application.
- Agree with the Council the Heads of Terms of the s106 Agreement that will be required to ensure the delivery of the affordable housing

6.1.16 The applicant should complete an Affordable Housing Statement (AHS) following the pre-application discussion with the Council. This should outline the proposed methods of meeting the affordable housing requirements of the scheme and be submitted to the Council as part of any subsequent planning application. If an application (for 5 units or more) does not include an AHS, or that Statement is unacceptable, the application may not be validated and will be returned to the applicant. Once the affordable housing provision has been agreed with the Council, the Council will draft an appropriate s106 agreement. The s106 Agreement should be finalised and ready for completion prior to the determination of the application.

Size mix and tenure split

6.1.17 **Developments should provide a mix of affordable housing sizes to meet the needs of the district's communities, as set out in the latest SHMA (Table 17 below), or in any updated future SHMA.** The affordable housing mix shown in

the table below reflects the affordable housing size requirements and waiting list demands identified during the production of the HDPF. Housing mix will also need to reflect the requirements of affordable housing providers, which is generally focussed on provision of homes of up to three bedrooms. Overall, there is an increasing need for smaller homes, particularly 2 bed properties.

Recommended affordable housing mix by bedroom size				
1 bed	2 bed	3 bed	4 bed	Total
20%	45%	25%	10%	100%

Source: Table 17, Chilmark Consulting Ltd, NW Sussex HMA Affordable Housing Needs Model Update, October 2014

6.1.18 The overall housing target is to provide 70% of the total as social/affordable rented properties and 30% as intermediate/ shared ownership properties (HDPF, paragraph 6.8). The tenure split should aim to meet the Council's assessment of housing need. However, it is recognised the tenure split on each site may need to vary from this figure (e.g. 50:50). The split will need to be determined in the light of up-to-date information, particularly on local need and supply.

6.1.19 The Council expects individual sites to deliver the target tenure split. However, on smaller sites the Council may negotiate a revised mix having regard to the overall target and the site specifics. This may mean that some sites will be expected to deliver a single tenure in order to meet the District-wide target.

6.1.20 Where the Council agrees to a reduction in the overall level of affordable housing provision due to viability reasons, the tenure mix may need to be revised to take account of the tenure for which there is the greatest need at the time the application is being assessed. It is likely that where less than the target percentage in Policy 16 is being provided, developers will be required to provide predominantly affordable rented housing.

6.1.21 In terms of rented affordable housing the Council will accept both Social Rent and Affordable Rent. However, the Council will not support providers seeking upfront payments from tenants in the form of deposits, rent in advance or administration costs in relation to social or affordable rented properties.

6.1.22 For intermediate affordable housing the Council would normally expect this to be delivered as shared-ownership housing, subject to its affordability, unless that position changes following up-to-date guidance published by the Council or on its behalf.

Affordable Housing Providers

6.1.23 The Council expects that affordable housing would usually be provided by **Registered Providers**. ~~Housing Associations, also known as Registered or Affordable Housing Providers.~~ However, in exceptional circumstances the Council may use its discretion to allow other providers approved by the Council to deliver affordable housing units, subject to affordability and satisfactory management and allocations arrangements being in place. This will, at all times, be strictly in line with the National Planning Policy Framework (NPPF), Homes and Communities Agency (HCA) guidance and the Council's Housing Register and Nominations Policy requirements.

6.1.24 The Council's preference is for affordable housing to be provided and managed by ~~Housing Associations~~ **Registered Providers**. The Council works with a number of ~~preferred~~ Registered Provider partners that meet the following criteria:

- Own and manage stock in the District
- Commitment to developing in the District
- Commitment to the Council's housing policies
- Ability to fund and deliver affordable housing

A list of the Council's ~~preferred~~ Registered Providers is available on request.

6.1.25 Although the Council will work to ensure affordable housing is delivered by ~~preferred~~ partner ~~housing associations~~ **Registered Providers**, it cannot be prescriptive on this issue. If a developer proposes to provide affordable housing other than through a ~~preferred~~ **partner registered** provider, the Council will consider this, taking account of the following:

- Whether the organisation has any other affordable housing in the District or in neighbouring local authority areas
- Past commitment and performance in the District
- Local management base and arrangements for interaction with tenants
- Management arrangements for external amenity space
- Rent levels
- Nomination arrangements
- Participation in community initiatives; ~~and other criteria~~
- Track record in delivering and funding affordable housing
- **Other relevant factors including the performance of the provider.**

In all cases the provider of on-site affordable housing will need to meet the requirements in the remainder of the Affordable Housing section of this document.

Maintaining accommodation as affordable housing

6.1.26 In order to ensure that the need for affordable housing in Horsham District continues to be met in the future, it is considered that there should be provisions that either preserve the status of the affordable housing, replace it, or if it is no longer used for affordable housing, that resources derived from it are recycled to replace the dwelling(s) that have been lost.

The Council will therefore require provisions in the s106 agreement that:

- Keep the units within the definition of affordable housing, and
- Require any purchaser (other than an occupier) to preserve the accommodation as affordable housing, or replace it within the District like for like, and
- Require any purchaser to take on the obligations in the Nomination Agreement or enter into a replacement Nomination Agreement

Recycling of receipts

6.1.27 There are a number of reasons why affordable housing dwellings may be lost, for example:

- a tenant's statutory acquisition of a rented dwelling.
- shared ownership staircasing to 100%.
- discharge of the Charge on a shared-equity dwelling.

In all cases the Council expects the dwelling to be replaced within the District, or any receipts arising from the disposal of the dwelling to be recycled to provide further affordable housing in the District.

The Section 106 agreement will include requirements relating to:

- Review and clawback; Affordable Housing requirements are applied where they are required to make an application acceptable in planning terms. Thus review mechanisms should not be used to reduce the base level of affordable housing contributions that are required as part of the planning permission. This would require a new or modified planning permission.
- Continued use of affordable dwellings in perpetuity;
- The retention of obligations relating to the affordable dwellings;
- Requirements to replace the affordable dwellings;
- ~~Requirement to recycle any receipts or grant arising from the disposal of all or part of an affordable dwelling.~~

6.1.28 All the above requirements concerning recycling of receipts are subject to current Homes and Communities Agency (HCA) policies or requirements. The obligations will be amended as appropriate to reflect any changes arising from the HCA.

6.1.29 In addition, when considering changing the tenure of affordable dwellings to tenures outside of the definition of affordable housing (as per the NPPF), applicants are advised to consider the implications of the CIL Regulations (see Regulation 49) with respect to the 'clawback' of any social housing relief from CIL that was claimed when the dwellings were granted permission. The CIL Regulations currently set the clawback period as seven years from the commencement of the development.

Funding of affordable housing

6.1.30 In formulating proposals for affordable housing, applicants should be aware of the limitations on the funding of affordable housing and the price that affordable housing providers can typically pay for affordable housing dwellings. This is a direct consequence of ensuring affordability to the occupants. ~~It will need to be explored with reference to the location and scheme proposals.~~

6.1.31 The Council's latest assessment indicates that providers should pay developers in the range approximately 40 to 75% market value for affordable homes, dependent on the type(s) and mix of tenure appropriate as affordable housing on a particular site. Very broadly, in the case of a mixed tenure scheme (i.e. including both priority needs rented and intermediate tenure (such as shared ownership) a developer may expect to receive not more than approximately 50-60% market value for the affordable element overall. This point needs to be included amongst the very early consideration of development proposals.

Infrastructure contributions and affordable housing

6.1.32 ~~The Council is proposing to implement a Community Infrastructure Levy Charging Schedule (CIL) in accordance with further consultation being progressed in parallel with this additional guidance – all related to the HDPF. The Council's CIL Charging Schedule was agreed by Council on 26 April 2017 and will be implemented from 1 October 2017.~~ It sets out a standardised local charge on new development to help fund infrastructure to support new growth across the District. ~~Following the implementation of a CIL Charging Schedule,~~ new affordable housing units meeting the definition in the CIL Regulations ~~are will be~~ entitled to apply for 100% relief from CIL. It should

be noted that such social housing relief is subject to the 'clawback' provisions of the CIL Regulations where homes on which relief has been granted cease to be affordable dwellings.

Affordable housing scheme

6.1.33 Generally, all aspects relating to the provision and delivery of affordable housing should be included in a Section 106 Agreement. There may be circumstances, particularly with Outline applications, where the details of affordable housing provision have not been finalised but as a minimum the percentage and mix of affordable housing proposed shall be stated in the planning application. The Section 106 Agreement will contain a requirement for the submission and approval of an Affordable Housing Scheme. The Affordable Housing Scheme would normally need to be submitted and approved prior to the commencement of the development but developers could include an Affordable Housing Scheme with their application to avoid pre-commencement requirements. The most common details to be provided in the Affordable Housing Scheme are listed in Appendix 4.

Scheduling affordable housing delivery

6.1.34 The Council will normally include triggers in the legal agreement to ensure that the affordable housing is not delivered significantly in advance of later than the market housing. These may vary from site to site, but a guide would be:

- Not to allow the commencement of development until a contract has been entered into with a Registered Provider to deliver the affordable housing in accordance with an Affordable Housing Scheme approved by the Council.
- Not to allow or permit occupation of more than 50% of market dwellings until the affordable housing has been completed and transferred to the Registered Provider and is ready and available for occupation.
- To provide the Affordable Housing units serviced and roads complete and to allow access in perpetuity.

Legal agreement

6.1.35 The Council will expect the developer to enter into an appropriate Section 106 Agreement covering all aspects of the on-site delivery of affordable housing outlined above. The content of the agreement can vary considerably from site to site so the Council does not produce a standard Section 106 Agreement.

6.1.36 Mortgagee in Possession clauses will be included in the legal agreement; together with limitations on the occupation of the affordable housing. The

Council will consider requests for variation of Section 106 agreements where appropriate, e.g. ~~Such clauses may be varied by agreement~~ to meet the borrowing requirements of Affordable Housing Providers.

6.1.37 The Council will draft an appropriate agreement for which a fee is payable. The fee will depend on the complexity of the Agreement. An estimate of the fee payable can be obtained from the Council's Legal Services.

Affordability

6.1.38 Affordable housing is provided for 'eligible households whose needs are not met by the market'.

6.1.39 Affordable Housing Providers should consider the impact of different rent levels on different household types, and ensure that all household types in need of affordable housing can be catered for, including larger families requiring three or four bedroom accommodation. Providers need to take this into account in setting their rent policies for new build housing, and also in their approach to converting existing stock from target to affordable rents.

6.1.40 Affordable rents, including service charges, should be set no higher than current Local Housing Allowance rates in the District or 80% of market rent, whichever is the lower.

Calculation of market rents

6.1.41 The Homes and Communities Agency/Royal Institute of Chartered Surveyors have issued guidance for Housing Associations on how to calculate market rents in *The regulatory framework for social housing in England from April 2012: Annex A: Rent Standard Guidance*

~~Universal Credit~~ Benefit Cap

6.1.42 From October 2013 the Welfare Reform Act imposed an upper cap on the total amount of benefit an individual household not in work can receive. The current benefit cap can be found on the Department for Work and Pension's website www.gov.uk/benefit-cap. Where total benefit entitlement is higher than the cap, entitlement will be reduced to the cap. This is likely to present particular challenges for setting rent levels for family sized homes of three or more bedrooms where a high Affordable Rent level would cause the total benefit needed by the household to exceed the cap.

Shared ownership housing

6.1.43 Shared ownership housing must be:

- For eligible households who cannot afford to purchase on the open market, and
- Significantly more affordable than existing similar second hand market properties in the same area of the District
- Affordable to the majority of applicants on the Help to Buy Agents List which live or work in the District. The Help to Buy agents for Horsham District are bpha Limited (www.bpha.org.uk)

Nominations

6.1.44 Policy 16 is intended to meet identified local housing need. It is therefore important that households with an established local connection with the District are nominated to affordable housing provided through the Horsham District Planning Framework.

6.1.45 Providers of affordable housing will be required to enter into a nomination agreement with the Council. The Council's usual requirement is to include a draft Nomination Agreement in the Section106 Agreement signed by the landowner or developer. The Council will normally require:

For rented housing:

- Initial lets – 100% nominations
- Relets – 75% nominations

6.1.46 Nominations will be made from the Council's Housing Register directly to the Housing Association. Horsham District Council does not operate Choice Based Lettings. In all cases, allocations or prioritisation for affordable housing will be in accordance with the Council's Housing Register and Allocations Policy. https://www.horsham.gov.uk/_data/assets/pdf_file/0019/30619/Housing-Register-And-Nominations-Policy-2016.pdf

6.1.47 Shared ownership housing is allocated through the Help to Buy Agent for the District.

Financial Viability

6.1.48 There may be circumstances where the application of the relevant target in Policy 16, in combination with any other s.106 requirements necessary to make the proposed development acceptable in planning terms and the relevant CIL liability, makes the proposed development financially unviable in the view of the applicant. In these cases the applicant will need to demonstrate that the proposed development can only be made financially viable with a reduced affordable housing provision. This must be

demonstrated through a viability submission made to the Council, which should adopt an 'open book' approach.

6.1.49 In brief, the viability submission should include as the key elements of:

- A summary clearly stating the request to vary the usual affordable housing requirements and setting out (with explanation) **the level of affordable housing to be provided and** the reasons that in the applicant's view make the site unviable when policy-compliant affordable housing provision is included;
- Detailed appraisal(s) making clear with supporting information and all sources stated how the applicant's assumptions come together to inform the submitted viability view. Section 5 and Appendix 2 refer to the detailed expectations in these respects.

6.1.50 If an applicant wishes to make a viability submission, this should be included as part of the planning application, alongside the Affordable Housing Statement. A draft Unilateral Undertaking may also be included at the applicant's discretion. It should be noted that planning applications without the required information or documentation may not be validated.

Basis of the financial viability assessment

6.1.51 The minimum requirements to be provided by the applicant are outlined in Appendix 2, but each assumption relating to the proposed scheme: revenue (vales), costs, land value and profit must be supported with component figures included sources made clear; the submitted approach, assumptions and reasoning will need to be clearly explained in detail.

6.1.52 The Council will assume that: the cost of meeting the affordable housing requirements in Policy 16, **CIL and other infrastructure requirements** should be reflected in the price paid, or price to be paid, for the land, and should be based on:

- No public subsidy or grant;
- Payment by the provider of the affordable housing should be based on the provision meeting current HCA Guidance;
- Any site constraints and the development scope (including as influenced by planning policies) including abnormals should be reflected in the price paid, or to be paid, for the land; and
- In accordance with the relevant viability guidance (see section 5 /Appendix 2) the land value to be used in the calculation or as a land value benchmark should be the current land value, not necessarily the amount paid for the land.

6.1.53 The Council will **normally instruct a viability consultant to** carry out an assessment of the viability submission and related appraisal to determine

whether the information and data submitted supports the Applicant's request to vary the affordable housing requirements on the basis of financial viability.

- 6.1.54 The Council ~~may~~ **will, in most cases**, instruct external consultants to review a viability submission independently. If external consultants are to be instructed the Applicant will be required to **cover the consultant's costs pay the fees**. The applicant will be advised of the fees payable and the amount will need to be paid to the Council prior to the FVA being assessed.

Transparency and confidentiality

- 6.1.55 **The Council will seek to ensure the transparency of viability evidence wherever possible, in line with paragraph 4 of the Planning Practice Guidance on Viability. However, the Council recognises that certain information or data within such a submission may be commercially sensitive. The Council will make a judgement as to what information is released for public view.**

- 6.1.56 A viability appraisal and submission (submission meaning the appraisal plus explanation and conclusion, information and sources – as per Appendix 2) is only current at the time it is prepared. Financial viability will vary over time and with the changing economic and property markets. On **large** sites that are expected to be built or sold over a number of years, and particularly where the planning application is in Outline, viability may need to be considered at multiple / varying points – for example at pre-application / initial application stage and subsequently for each phase, which will need to be updated when the Reserved Matters application is made or prior to the commencement of each phase.

Outcome of the assessment of scheme viability

- 6.1.57 Where the Council is satisfied that the usual policy requirements for affordable housing cannot be met in full due to financial viability, the Council will decide on the appropriate level of reduction or other revision to the affordable housing requirement to enable the scheme to remain financially viable, **informed by the applicant's FVA and the Council's consultant's review.**
- 6.1.58 Where the level of affordable housing provision is reduced due to an accepted viability submission position, clawback or top-up by way of an affordable housing financial contribution may be pursued by the Council, if the development of the site proves to be significantly more financially viable as it progresses than the initial position suggested would be the case. **The S106 will normally secure a minimum level of affordable housing and the clawback or top-up will seek additional onsite provision up to the policy compliant percentage of affordable housing. If additional onsite provision is not possible, and this position is justified, a contribution will be required up to the value of a policy compliant affordable scheme.**

6.1.59 If the Council decides that a clawback or similar arrangement is required this will be incorporated into a s106 Agreement and will usually be based on the actual costs, values, revenues etc. of the completed development compared with the viability submission made with the application or agreed subsequently.

Financial Contributions in Lieu of On-site Affordable Housing

6.1.60 Dixon Searle Partnership (DSP) has been working with the Council on its CIL Viability Assessment. Using the same **principles that were used for the CIL assessments**, viability base appraisals and inputs, DSP has considered the appropriate level at which financial contributions in lieu of on-site affordable housing should be sought by the Council in circumstances where that route is agreed in principle and is to be applied consistent with the on-site equivalent starting point.

6.1.61 Where necessary, the same principles and methods of review etc. in respect of viability, will be applied as in an on-site affordable housing scenario as set out in the earlier paragraphs in this section.

6.1.62 Broadly aligned with the CIL principles (in terms of a proportional floorspace based approach) and aimed at providing clarity as well as a relatively simple route to calculation, the Council's approach is based on a financial contribution to be charged per square metre of Gross Internal Area ('GIA') totalled across the dwelling units themselves, but excluding communal and other areas outside the homes. This makes the requirement equivalent to the on-site starting point as per the Council's Policy 16, whereby any communal areas do not add to the affordable housing requirement. In the case of doubt, the gross internal area of a dwelling will be as defined by **the Royal Institution of Chartered Surveyors Valuation Office Agency's** most recent Code of Measuring Practice or equivalent.

6.1.63 This approach seeks to secure financial contributions broadly equivalent to the cost of providing on-site affordable housing, provides transparency and ensures that scheme viability is treated consistently with the approach to setting, and therefore taking account of, the CIL charges.

6.1.64 Where agreed as applicable, the above approach produces the following requirements aligned to Policy 16. In each case the rates assume affordable housing sought on a best-fit basis, including on tenure mix, with the Council's policy. To be applied to the total GIA of the dwelling units within the application scheme:

- Equivalent to 20% affordable housing: A financial contribution at a rate of £155 per square metre;

- Equivalent to 35% affordable housing: A financial contribution at a rate of £280 per square metre
- The above affordable housing financial contribution rates are considered appropriate ~~for guidance~~ **as at September 2017** and will be reviewed from time to time as may be necessary to reflect the influences of the housing market together with other changes such as in affordable housing tenure, funding and delivery.

Other parameters consistent with s.106 generally will be applied, for example in respect of agreed payment triggers / timings and indexing where a financial contribution will be paid at a future point.

Illustrative calculation of Affordable Housing Financial Contributions

6.1.65 An eligible development includes 6 x market houses; comprising 4 @ 100 square metres GIA each (400 sq. m) and 2 @ 85 square metres GIA each (170 sq. m). The GIA total relevant to the calculation is therefore 570 sq. m. In an on-site scenario, this would attract 20% affordable housing.

570 Square Metres x £155 = £88,350 financial contribution in lieu of on-site affordable housing.

Payment requirements for financial contributions

6.1.66 Generally the Council will expect the following requirements to be incorporated in the Section 106 Agreement or Unilateral Undertaking:

- ~~The amount to be paid set at the date of the application or date of the Planning Committee resolution~~
- ~~A trigger as to when payment is required.~~
- ~~Indexation from a set time before the date of the agreement the date of the Resolution to Grant or Unilateral Undertaking until the date of payment. Indexation will be on an annual basis in accordance with the Retail Price Index BCIS General Building Cost Index and/or BCIS All-in TPI Index~~
- Payment to be made on the commencement of development for amounts up to £50,000. For amounts over £50,000 the payment schedule will be 50% on commencement and 50% when half of the (market sale) units have been occupied. Indexation will continue until the final payment is made
- Applicant to notify the Council when payment trigger is reached
- Penalty interest to be payable on late payments
- The Council will have 10 years in which to spend the contribution
- The Council may spend the money in any part of the District for the provision and / or improvements to affordable housing
- **Provisions for additional contributions if a Section 73 or Section 96 application results in an uplift in floor area;**

- Provisions for claw back where a reduced amount of affordable housing is agreed on reasons of viability, and where a development will be built out over a number of phases.

Collection of financial contributions

- 6.1.67 The Section 106 Agreement or Unilateral Undertaking will contain a milestone that triggers the payment of the contribution, usually (but not always) this will be the carrying out of any Material Operation Commencement of Development. When the payment is triggered the Applicant should notify the Council that the payment is now due.
- 6.1.68 On receipt of the notification the Council will issue an invoice for the amount payable including any indexation.
- 6.1.69 The Council will monitor Building Control and other sources, including CIL Commencement Notices, and will issue an invoice if the Applicant fails to advise the Council that the payment has been triggered. Indexation applies until the date of the invoice, so in these circumstances the amount may be higher than if the Applicant had advised the Council when the payment was triggered. Penalty interest is payable at the rate set out in the agreement if the invoice is not paid within the required timescale. Penalty interest is payable to all unpaid contributions and accrues from the date of the trigger of payment to the date of actual payment.

Using financial contributions

- 6.1.70 The Council may choose to support a variety of affordable housing enabling initiatives within the district, including but not limited to funding:
- The Council or Housing Associations Registered Providers to buy land for affordable housing for local need
 - Development of affordable housing by the Council or Housing Associations Registered Providers for local need
 - Purchase of affordable housing by the Council, Housing Associations, Registered Providers, the Council or other charitable bodies for local need
 - Refurbishment, conversion, or redevelopment of existing affordable housing where the property no longer meets an identified need
 - Conversion of existing affordable housing where the proposed completed dwelling cannot be (or is unlikely to be) provided in other ways
 - Other innovative methods of providing affordable housing for local need
- 6.1.71 The Council will normally aggregate financial contributions from different sites and will spend contributions in the way that best achieves the Council's priorities for affordable housing. The number of units resulting from

expenditure may be more, or less, than the number of units used in calculating the original contribution. Financial contributions may be used to fully fund a project or to top up funding from other sources.

6.1.72 Decisions on the expenditure of financial contributions will be made in accordance with the Council's Constitution and Scheme of Delegation, details of which are available on the Council's website. <https://www.horsham.gov.uk/councilanddemocracy/councillors/committees-and-council-business/constitution>

Category 2: Other standard planning obligations not restricted by the CIL Regulations

- 6.2.1 This category refers to planning obligations that may be required to make development acceptable in planning terms, but which do not seek to secure works or contributions for infrastructure, as defined by Section 216(2) of the Planning Act 2008 (as amended). CIL Regulation 123 does therefore not restrict these planning obligations. Where appropriate, and where the tests set out in CIL Regulation 122 (and also in the NPPF) can be met, the Council may seek planning obligations within this Category to secure specific measures or contributions. **It might be the case that a number of these areas can be dealt with as part of the Planning Application and by condition.**
- 6.2.2 The measures and contributions anticipated to be required under 'Category 2' are not considered to constitute infrastructure. Where however, specific measures required for any given development proposal would represent the need for improved or additional infrastructure, the Council may nevertheless require a planning obligation to secure such measures, if these are required to mitigate the impact of the specific development proposal. This is reflected in the Council's 'Regulation 123 list', and further details are provided for a range of purposes under 'Category 3'.

Category 2.1 – Mitigation to address impacts of development on biodiversity and protected European Sites (Non-infrastructure)

Policy basis: *HDPF Policies 31 (Green Infrastructure and Biodiversity), 35 (Climate Change) and 38 (Flooding).*

- 6.2.3 Policy 31 of the HDPF requires new development to contribute to the enhancement of existing biodiversity and to create and manage new habitats where appropriate. The principle behind the policy is that new development will be expected to deliver a net gain in biodiversity. In some cases, specific biodiversity mitigation may be required in order to comply with Policy 31. Such measures could include the creation and management of new habitats, or relocating protected species that may be harmed by new development. Where such measures cannot be achieved through the imposition of planning conditions, a planning obligation may be required.
- 6.2.4 Development within parts of the District has the potential to impact on the integrity of two sites within the South Downs National Park that are protected for nature conservation under European Union legislation, often known as 'European sites'. The European sites relevant to Horsham District are the Arun Valley Special Protection Area and the Mens Special Area for Conservation. The law requires that development that may give rise to a significant harmful impact on these sites may only proceed where mitigation

or avoidance measures can be demonstrated to avoid the harmful effects on the protected sites.

- 6.2.5 A Habitat Regulations Assessment (HRA) was carried out to support the preparation of the HDPF and can be found on the Council's website. The HRA provides a detailed commentary on the circumstances in which the integrity of the protected sites may be harmed by development and it identifies the types of avoidance and mitigation measures that may be required in order to avoid harmful effects.
- 6.2.6 Where it is identified that the development proposal would require avoidance or mitigation measures in order to avoid a significant harmful impact, these measures are likely to be required either through the imposition of planning conditions or, where this is not appropriate, through planning obligations.
- 6.2.7 Under Category 2, a planning obligation may be required to secure mitigation measures that do not comprise infrastructure, and which is therefore not restricted by the CIL Regulations. For example, a planning obligation may be sought to secure financial contributions towards a new or existing management programme to help ensure that the integrity of the protected sites is maintained.

Category 2.2 - Mitigation required due to the implementation of local Air Quality Action Plans

Policy basis: HDPF Policy 24 (Environmental Protection), Storrington Draft Air Quality Action Plan; Cowfold Air Quality Action Plan.

- 6.2.8 In two parts of the District (Storrington and Cowfold) the air quality has fallen below certain thresholds, particularly associated with vehicle emissions. The Council has therefore declared Air Quality Management Areas (AQMAs) in these locations and has developed Air Quality Action Plans (AQAPs) to address the air quality issues.
- 6.2.9 The AQAP for Cowfold (2013) and the Draft AQAP for Storrington (2012) can be found on the Council's website. These documents set out details about the causes and effects of the identified air quality issues and include a range of measures identified to address the issues. In accordance with HDPF policy 24, new development within or adjacent to the AQMAs may be required to incorporate specific measures to mitigate the impact of the development on air quality. In addition, financial contributions may be sought to help fund existing or new management programmes designed to implement the AQAPs in each location.

Category 2.3 - Mitigation required due to the implementation of any relevant management plan for protected landscapes

Policy basis: *HDPF Policy 30 (Protected Landscapes), High Weald AONB Management Plan 2014-2019, South Downs National Park Local Plan (emerging)*

6.2.10 Parts of the District fall within protected landscapes, in particular the High Weald AONB, within the east of the District, and the South Downs National Park which includes parts of the south of the District.

6.2.11 Any development proposals within or in close proximity to these protected landscapes have the potential to harm the landscape character and the local distinctiveness of these landscapes and therefore risks undermining the purposes for which they are protected. Sometimes these harmful impacts can be addressed through mitigation measures that can be secured either through planning conditions or through planning obligations, to make development acceptable. Appropriate mitigation may include the need to secure for financial contributions towards the implementation of any relevant management plans in effect for the protected landscapes.

6.2.12 In the case of the High Weald AONB, the Management Plan is available on the High Weald AONB's website and this should be consulted by those preparing planning applications within or in close proximity to the AONB.

6.2.13 Whilst this SPD relates only to those parts of Horsham District that fall outside of the South Downs National Park, development proposals within the District that are close to the Park's boundaries have the potential to adversely impact on landscapes within the National Park. Therefore, those preparing planning applications close to the National Park's boundaries should consider any relevant guidance or requirements within the emerging South Downs National Park Local Plan, and its supporting evidence documents (including the South Downs Integrated Landscape Character Assessment).

Category 2.4 – Mitigation required to protect the historic environment

Policy basis: *HDPF Policy 34 (Cultural and Heritage Assets).*

6.2.14 Policy 34 of the HDPF makes it clear that new development will be expected to integrate into the historic environment and respond to local character and distinctiveness. Planning obligations may offer opportunities to fund improvements to, and/or mitigate the adverse impacts of development on the District's historic environment. Where appropriate, based on the circumstances of the development proposal, the following sorts of measures may be sought through a planning obligation:

- Repair, restoration or maintenance of a heritage assets and their setting;
- Production and implementation of conservation management plans;

- Increased public access, public open days and the dissemination of information about the historic environment;
- Improved signage to/from heritage assets and interpretation panels/historical information at the site;
- Measures for the preservation, in situ, of archaeological remains and sites or the investigation and recovery where considered necessary to excavate; and
- The recording of remains and appropriate publication and placing on the Historic Environment Record.

Category 2.5 - Public bus service enhancements (Non-infrastructure)

Policy basis: *HDPF Policies 5 (Horsham Town); SD1 (Land North of Horsham) and; 40 (Sustainable Transport).*

6.2.15 Enhancements to public bus services are sometimes required as a consequence of new development in order to reduce the impact of additional vehicle movements on the District's road network and to reduce the potential for social exclusion as a consequence of new development. This is particularly the case with large strategic development, such as that planned to the North of Horsham.

6.2.16 Within Category 2, non-infrastructure bus service improvements may be required, including revenue support to help establish a new bus service or to sustain an existing route as a new strategic development is built out. The Council's Infrastructure Delivery Plan includes these sorts of measures in relation to the North of Horsham Development. In addition, other development, for example within Horsham Town or the Districts other larger settlements, may also be required to contribute towards bus service improvements, where these were justified to mitigate the impact of new development.

6.2.17 Improvements to bus service infrastructure, such as bus stops and dedicated bus lanes, may also be sought by the Council through planning obligations, and these are covered within Category 3 below.

Category 2.6 - Travel Plans and 'Smarter Choices' contributions

Policy basis: *HDPF Policies SD9 (Transport Infrastructure) and 40 (Sustainable Transport).*

6.2.18 Larger developments, which could give rise to adverse impacts on the District's road network through additional vehicle movements, are sometimes required to deliver a range 'soft' measures aimed at encouraging people to use sustainable modes of travel rather than private vehicles. These measures often include a Travel Plan setting how the travel behaviour of future

occupiers of the new development will be influenced away from private car use. The measures within a Travel Plan are sometimes known as 'smarter choices' after a Department for Transport guidance document of that name published in 2005.

6.2.19 Many of the 'smarter choices' measures do not relate to infrastructure and are therefore not restricted by the CIL Regulations. Generally, it is the applicant's responsibility to prepare a Travel Plan, but the Council will seek to secure the implementation of the measures within the Travel Plan through the use of planning obligations.

Category 2.7 - Traffic Regulation Orders (TROs)

Policy basis: *HDPF Policies 40 (Sustainable Transport) and 41 (Parking).*

6.2.20 Some new development, especially within urban areas, may have an impact on the effectiveness of the local road network or may impact on-street parking within close proximity of the proposed development. In such cases, West Sussex County Council, acting as the Local Highway Authority, may seek to impose parking restrictions or other changes to the way vehicles use the street network, in order to mitigate the impact of a new development.

6.2.21 Generally, Traffic Regulation Orders (TROs) will be used for this purpose. These are statutory orders which can be imposed either on a temporary or permanent basis to effect the required restrictions or other changes. Where requested by the Local Highway Authority, the Council may seek to secure the TRO through a planning obligation. Where it is justified by the circumstances of the proposed development and its likely impact, the Council may also seek a financial contribution towards the costs of preparing and implementing the TRO.

Category 2.8 - Restrictions to the use of land necessary to make a planning application acceptable in planning terms.

Policy basis: *HDPF Policies 4 (Settlement Expansion); SD1 (Land North of Horsham) and; SD9 (Transport Infrastructure).*

6.2.22 To ensure that the overall development strategy, set out within the HDPF, is deliverable and to encourage the most efficient use of land, the Council may require a planning obligation to restrict the use of land in order to make development at the site acceptable in planning terms.

6.2.23 The need to secure a planning obligation for this purpose will be considered on a case-by-case basis, however a planning obligation for this purpose may be sought, for example, avoid a proposed development prejudicing the provision of access to an adjacent site.

6.2.24 Policies SD1 and SD9 of the HDPF set out the need for the development proposals for the Land North of Horsham to safeguard the land identified on the Policies Map as a future railway station which may provide significant sustainable transport and economic growth advantages. It is likely that the Council will seek to use a planning obligation to achieve the safeguarding required by the HDPF.

Category 3: Standard planning obligations excluded from the Regulation 123 List

6.3.1 The CIL regulations allow for planning obligations to continue to be used to secure new or improved infrastructure, where such obligations both meet the three criteria test (Regulation 122) and where such infrastructure types or projects are excluded from the Council's list published under Regulation 123. In addition, Regulation 123 ~~limited~~ **limits** the extent to which contributions for infrastructure may be 'pooled' to no more than five separate planning obligations for that purpose, signed since April 2010.

6.3.2 ~~At the time CIL is introduced, the Council intends to publish a 'Regulation 123 list' and a draft version of that list was included within the consultation on the Draft CIL Charging Schedule. The Council's CIL Charging Schedule (April 2017) includes its Regulation 123 List at Annex 1.~~ The guidance within Category 3 of this SPD should be read alongside the Council's Regulation 123 list.

6.3.3 If and when the Council seeks to review the Regulation 123 list, this will be preceded by consultation, in accordance with the National Planning Guidance. At the same time, the Council will consider whether the proposed changes to the Regulation 123 list would require a partial review of the SPD, in order to maintain a consistency of approach.

Category 3.1 – Transport and Highways

Policy basis: *HDPF Policies 5 (Horsham Town); 6 (Broadbridge Heath Quadrant); SD1 (Land North of Horsham); SD9 (Transport Infrastructure); SD10 (Southwater Strategic Site); SD11 (Land South of Billingshurst); 39 (Infrastructure Provision) and; 40 (Sustainable Transport).*

6.3.4 New development generally gives rise to additional transport movements, and in some cases this may cause adverse impacts on the District's road and other transport infrastructure. To ensure that development is acceptable, such impacts should be addressed through the design of the scheme or through planning conditions that may be imposed. Where it is not possible to address the site-specific impact to transport infrastructure, the Council may seek to secure measures or contributions through planning obligations.

6.3.5 The Infrastructure Delivery Plan (IDP) sets out details about the transport improvements that are anticipated to be required in order to **deliver** successfully **the strategic allocations of the** development strategy established by the HDPF. The Infrastructure Delivery Schedule (Appendix A of the IDP) indicates that the Council intends to use a combination of funding sources to deliver the infrastructure projects listed:

- Receipts from the Community Infrastructure Levy (CIL)
- Planning Obligations and Section 278 Agreements
- Other sources, including capital budgets of West Sussex County Council, Horsham District Council and a number of Parish Councils

6.3.6 As set out in the Regulation 123 list, CIL will be used to fund, in whole or in part, a range of general transport infrastructure improvements, the need for which is not related to any specific development proposal. These improvements are generally required due to the cumulative impact of development, including that proposed to be brought forward through Neighbourhood Plans.

6.3.7 Planning obligations (and Section 278 Agreements) will be used to secure transport infrastructure improvements, or to secure safe access arrangements required as the result of a specific development proposal, included, but not limited to, the strategic developments planned at North Horsham, Southwater and Billingshurst.

6.3.8 The sorts of transport improvements that may be required to mitigate the impact of larger and strategic developments are listed in the IDP and may include the following:

- Creation of safe access for vehicles and pedestrians;
- Creation of new or enhancement of existing cycle and pedestrian routes to link the development site with existing settlements or the countryside;
- Public transport improvements, such as bus lanes and stops/shelters;
- Highway and junction improvements to create additional capacity to meet the needs of the development proposal;
- Road safety improvements and safe crossings;
- Traffic calming in nearby areas which might be impacted by additional traffic;
- Traffic management measures, such as CCTV, or signage and lane painting;
- The provision (or removal) of street furniture, traffic lights, crossings, signage and trees
- 'Smarter choices' measures such as the establishment of a 'car club' or electric vehicle-charging infrastructure.

6.3.9 The Local Highway Authority (West Sussex County Council) is consulted on all planning proposals that may impact on the highway network and will provide advice on the scope and nature of planning obligations required to mitigate the impact of development on transport infrastructure.

6.3.10 In addition to the sorts of measures listed above, West Sussex County Council is likely to seek either a planning obligation, or an agreement under Section 38 and/or Section 278 in order to secure the provision of on-site facilities (such as internal roads and bus infrastructure) to an acceptable or 'adoptable' standard.

Category 3.2 – Education

Policy basis: *HDPF Policies SD1 (Land North of Horsham); SD8 (Education); SD10 (Southwater Strategic Site); SD11 (Land South of Billingshurst) and; 39 (Infrastructure Provision).*

6.3.11 West Sussex County Council currently has responsibility for assessing the need for school places and for planning new schools. Most new residential development creates a need for additional school places and the Council considers that receipts from CIL will, in the future, be the most appropriate source of developer funding to ensure that the impact of development across the District is addressed through the creation of additional school place capacity where and when it is required.

6.3.12 For the largest planned developments, and in particular the North Horsham strategic development, specific on-site school infrastructure is required to mitigate the impact of the development. ~~In such cases CIL is not considered an appropriate mechanism to provide the level of certainty required in terms of the timing of school infrastructure delivery and planning obligations will be used for this purpose. Reflecting the outcomes of the viability evidence, the viability consultants recommended that a differential charge zone be created to include both the North of Horsham Strategic Development Area and Kilnwood Vale. It was recommended that a £0 per sq.m CIL rate be applied within this 'strategic sites' charge zone for residential development. The recommendation was accepted by the Independent CIL Examiner. It is important to note that the Council's CIL charge rate structure reflects the special requirements of the North of Horsham development and the need to rely on planning obligations to mitigate the impact of the development. This is also reflected in the Council's Regulation 123 list.~~

6.3.13 The Land North of Horsham application (16/1677) was considered at Committee on 22 May 2017. It was resolved that it be determined by the Director of Planning, Economic Development & Property, in consultation with the Chairmen and Vice-Chairmen of the Planning Committee (North) and the Planning Committee (South) and the Cabinet Member for Planning & Development, with a view to granting permission, subject to the completion of a Legal Agreement to secure the details as set out in the Heads of Terms and appropriate conditions. During determination both the Legal Agreement and planning conditions may be added to, removed or varied.

6.3.14 For the North of Horsham site, planning obligations will be used to secure a range of education facilities, as set out in Policy SD8 of the HDPF and in Appendix A of the Horsham IDP. These facilities will include the transfer of land, direct infrastructure works to deliver the primary and special schools and early years provision and financial contributions towards the delivery of a secondary school and towards additional tertiary education places within Horsham.

6.3.15 It should be noted that planning obligations (financial contributions) are also being used to secure education facilities on the strategic sites at Southwater and Billingshurst, as set out in the IDP. These developments will not pay CIL contributions however, as they were permitted prior to CIL being introduced, and are therefore not covered by the Regulation 123 list.

6.3.16 Where a planning obligation is used to secure on-site education facilities, West Sussex County Council will advise on the specification, location and delivery of all school infrastructure. Applicants are encouraged to engage with the County Council at an early stage to open a dialogue on the size and location of school sites within any planned strategic development. Where a planning obligation is used to secure financial contributions in lieu of whole on-site education facilities, then the amount will be based on the real costs of the school development.

Category 3.3 – Leisure, Sport and Open Space

Policy basis: HDPF Policies SD1 (Land North of Horsham); SD5 (Open Space, Sport and Recreation); SD6 (Landscape Buffer, Landscape Character, Biodiversity and Green Infrastructure); SD10 (Southwater Strategic Site); SD11 (Land South of Billingshurst); 39 (Infrastructure Provision) and 43 (Community Facilities, Leisure and Recreation).

6.3.17 With the introduction of CIL the majority of leisure, sport and ‘strategic’ open space improvements will be delivered using accumulated CIL funds. However, larger developments will be required to provide on-site facilities to meet the needs of the future residents of the development. Depending on the scale of the proposed development site, the range of on-site provision

expected could include: formal and informal open space; indoor and outdoor sport facilities and; children's play equipment.

6.3.18 On-site provision of this sort is often considered to be a requirement to make development on larger sites acceptable in planning terms, for example, avoiding adverse impacts on the capacity of and quality of existing open space, leisure or sports facilities. Where required for this purpose, the on-site facilities will be secured through a planning obligation. As this provision is required to meet the needs of the development, CIL funds will not be used to deliver the same piece of infrastructure and this is clarified by the exclusion for this type of infrastructure within the Council's Regulation 123 list.

6.3.19 Policy 39 of the HDPF requires appropriate infrastructure provision to be provided, when new development comes forward, in order to avoid adversely impacting on existing residents. Policy 43 supports the delivery of new and enhanced open space, sport and children's play facilities as part of new development proposals. The standards for sport, recreation and open space provision are set out in the Council's adopted "Sport, Open Space and Recreation Assessment" (February 2014) (or in national standards. For ease of reference these will be pulled together and made available in an additional Appendix (Appendix 5) when this is completed.

6.3.20 In the case of strategic development planned within the District, and in particular at Land to the North of Horsham, the HDPF provides specific requirements for on and off-site sport, leisure and open space facilities that are required to mitigate the impacts of the development and which will be secured through planning obligations. These facilities are also set out in Appendix A of the IDP. In relation to the North of Horsham, the key requirements include:

- Formal open space, including: allotments; 3.2 hectares of playing pitches; multi-games use areas, kick-about areas, skate parks and children's play areas;
- Informal open space, including: a Nature Park, other semi-natural greenspace, green linkages and strategic green corridors; and
- A new cemetery of up to 10 hectares.

6.3.21 Where sports pitches are being provided, these would need generally be expected to be accompanied by the provision of suitable buildings to accommodate toilets, changing rooms, showers and games equipment storage. The Council will also expect require parking to be provided at a level appropriate to the size of the sports facility.

6.3.22 In addition to the anticipated on-site facilities, further new infrastructure may be required within neighbouring communities, such as North Horsham and

Warnham, to address the wider impacts of the new strategic development on existing sports, leisure and open space facilities.

6.3.23 For all on-site open space, the Council will need to be satisfied that suitable arrangements have been made for their long-term maintenance and that they will be kept as public open space in perpetuity. Where facilities will remain in private hands a management plan may need to be agreed, with implementation of the plan secured by planning obligation. Alternatively, a financial contribution may be sought by the Council as part of any transfer of new facilities to the Council or to any relevant Parish Council.

Category 3.4 – Community Facilities

Policy basis: *HDPF Policies SD1 (Land North of Horsham); SD3 (Local Centre) SD10 (Southwater Strategic Site); SD11 (Land South of Billingshurst); 39 (Infrastructure Provision).*

6.3.24 New or improved community facilities that may be required to address the impacts of new development within the District include health facilities (doctor and dentist surgeries), libraries and community halls and centres. With the introduction of CIL, such facilities would generally be expected to be funded through CIL receipts, in addition to funding from other sources, such as parish councils and the National Health Service.

6.3.25 For strategic development, and in particular Land North of Horsham, on-site provision is required in order to mitigate the impact of the development and to ensure that development is sustainable. In this case, the works to deliver the necessary facilities (or the financial contribution where facilities are not delivered by the developers) will be secured through planning obligation and this is reflected in the Council's Regulation 123 list.

6.3.26 Policy SD3 of the HDPF sets out the main requirements for the North of Horsham development, and further details are provided in Appendix A of the IDP. The anticipated on-site community facilities for the development would **likely** be located at the new local centre and include:

- Sufficient healthcare provision to meet the needs of the future residents of the development;
- A multi-use community centre to provide flexible space for a range of users; and
- Library provision, potentially delivered as a self-service facility within the new community centre.

6.3.27 The specification and form of provision in each case would need to be determined at the planning application stage and in the case of the healthcare facilities, the Clinical Commission Group will be consulted to advise on the

most appropriate form of provision. Likewise, West Sussex County Council will be consulted on the location, form and specification of the library provision.

Category 3.5 – Public Services

Policy basis: *HDPF Policies 33 (Development Principles) and 39 (Infrastructure Provision).*

6.3.28 Any strategic provision required in order to address the cumulative impact of development across the District on the provision of public services such as the facilities for the 'emergency services', public safety measures and householder recycling facilities are considered to be most appropriately funded through CIL receipts.

6.3.29 Additional site-specific measures may also be required as a consequence of new development in order to mitigate the impact of the development or to meet the specific needs of the future residents or occupiers. Such measures may include CCTV, fire hydrants and small-scale communal recycling points.

6.3.30 Where such measures are required, they will be secured through planning obligations. This is reflected in the Council's Regulation 123 list.

Category 3.6 – Flood Management Improvements

Policy basis: *HDPF Policies SD1 (Land North of Horsham); 35 (Climate Change) and 38 (Flooding).*

6.3.31 Where required, new or improved strategic infrastructure designed to reduce flood risks over a wide area, rather than for any specific development site, will be funded through CIL receipts and other available sources and not through the use of planning obligations.

6.3.32 Where, conversely, new or enhanced infrastructure is required to achieve flood risk management as a consequence of any specific development proposal, planning obligations may be sought to secure improvements that are necessary to make a development acceptable in planning terms. The Council's Regulation 123 list has been drafted to reflect this approach.

6.3.33 In relation to the mitigation of flood risk at specific development sites, HDPF Policies 35 and 38 make it clear that the first step should be to incorporate Sustainable Drainage Systems (SuDS), where this is appropriate. Where SuDS are provided, a planning obligation may be required to secure the management and maintenance of the SuDS over the anticipated lifetime of the development. It is often good practice to incorporate SuDS within the Green Infrastructure areas of any large development and where this approach

is used, it should be reflected in the management strategy to ensure that green infrastructure facilities remain usable for a great majority of the year.

6.3.34 Where additional or off-site flood management infrastructure is required, specifically to mitigate the impact of a development, financial contributions, secured through a planning obligation, may be sought to fund provision and the future management of such measures.

Category 3.7 – Biodiversity and Nature Conservation Improvements

Policy basis: *SD6 (Landscape Buffer, Landscape Character, Biodiversity and Green Infrastructure); SD10 (Southwater Strategic Site); SD11 (Land South of Billingshurst); 31 (Green Infrastructure and Biodiversity).*

6.3.35 As set out under 'Category 2' above, Policy 31 of the HDPF requires new development to contribute to the enhancement of existing biodiversity and to create and manage new habitats where appropriate, with the aim to deliver a net gain in biodiversity.

6.3.36 Where specific biodiversity mitigation or enhancement is required in order for any development proposal to comply with Policy 31, such measures may be secured through the use of planning obligations, where this cannot be achieved through the imposition of planning conditions. Such measures could include the creation and management of new habitats or the establishment of buffer zones, for example, within wider green infrastructure areas or corridors.

6.3.37 Within the parts of the District in close proximity to the two 'European sites' (see under Category 2.1 above), the law requires that development which may give rise to a significant harmful impact on these sites may only proceed where mitigation or avoidance measures can be demonstrated to avoid the harmful effects on the protected sites.

6.3.38 The Council's Habitat Regulations Assessment (HRA) of the HDPF provides a detailed commentary on the circumstances in which the integrity of the protected sites may be harmed by development and it identifies the types of avoidance and mitigation measures that may be required in order to avoid harmful effects.

6.3.39 Where it is identified that the development proposal would require avoidance or mitigation measures in order to avoid a significant harmful impact, these measures are likely to be required either through the imposition of planning conditions or, where this is not appropriate, through planning obligations.

6.3.40 Under Category 3, a planning obligation may be required to secure mitigation measures that comprise infrastructure. The Council considers that the high

degree of certainty required by the legislation, when securing the identified mitigation or avoidance measures makes funding of such infrastructure through CIL receipts inappropriate as the link between the paying of the CIL charges and the delivery of the required infrastructure is broken. This is reflected in the Council's Regulations 123 list.

6.3.41 The types of infrastructure required to mitigate the impact of a development proposal on the European sites would depend on which of the sites the mitigation was focused on addressing. For example, in relation to the Arun Valley SPA a planning obligation may be sought to deliver, or to secure financial contributions towards, infrastructure designed to manage the water levels within the SPA and to avoid any harmful impact on water levels as a result of additional water abstraction or run-off associated with new development.

Section 7: Implementation and Monitoring of Planning Obligations

Phasing of Delivery and Payments

- 7.1 Policy 39 (Infrastructure Provision) of the HDPF states that: *“Where there is a need for extra capacity, this will need to be provided in time to serve the development or the relevant phase of the development, in order to ensure that the environment and amenities of existing or new local residents is not adversely affected.”*
- 7.2 When the planning obligations are being negotiated, it may therefore be necessary to establish clear agreed trigger points for the implementation of each of the obligations being required. In some cases, different trigger points will be appropriate, for example, where specific on or off-site works are being required and for larger schemes a phased approach to infrastructure provision will need to be negotiated and agreed, based on the nature of the obligation and the stage at which the measure or mitigation is required.
- 7.3 The Council will expect service infrastructure (such as site access, sewerage, water, gas, electricity supply and telecommunications), related to a new development, to be provided in full by the developer and/or landowner. Such service infrastructure is considered as part of the development itself and is therefore not an additional requirement of this Council.

Complying with Planning Obligations

- 7.4 Planning obligations secured by way of a Section 106 agreement or Unilateral Undertaking are binding on the land and are therefore enforceable against all successors in title. They are registered as a local land charge and will remain on the register and therefore revealed on local searches until the planning obligation has been fully complied with or the planning permission to which the Section 106 agreement or Unilateral Undertaking relates has expired.
- 7.5 If the Council has evidence that that a planning obligations is not being complied with, the Council will consider the need to investigate this further and whether enforcement action should be taken if other measures fail to rectify the situation.

Indexation of Financial Contributions

- 7.6 Financial contributions will be subject to indexation by the Council in order to ensure that their value does not decline in the period between the signing of the agreement and the date on which the contributions are paid.

- 7.7 The method of indexation will be negotiated with the applicant and, once agreed, will be specified within the Section 106 agreement. The method will generally be based on the published Retail Price Index (RPI) or an appropriate index published by the Build Cost Information Service (BCIS), which is the responsibility of the RICS. In the event that there is a decrease in the relevant agreed index, the financial contribution payable shall not fall below the figure originally set out within the Section 106 agreement.

Monitoring the use of Planning Obligations

- 7.8 As the co-ordinating authority for all planning obligations in the part of Horsham District outside the South Downs National Park, the process of implementation is monitored by the Council to ensure that the whole process is legally compliant and consistent with national and local policies and with any protocols agreed with other infrastructure providers, notably West Sussex County Council.
- 7.9 The effective monitoring of planning obligations creates a financial burden for the Council, which may be considered an impact of new development. Therefore, where justified on a case-by-case basis, the Council may expect the developer or landowner to fund some or all of the necessary costs incurred by the Council in the course of monitoring and the administration of the Section 106 agreement.
- 7.10 ~~Such contributions will generally only be expected where the complexity or scale of the development and its planning application and accompanying planning obligations would lead to unusually high costs for the Council.~~ As with all requirements of a planning obligation, contributions for this purpose must be capable of meeting the tests set out in Regulation 122 and will be calculated based on an estimate of actual costs and not on any 'standard charge'.

Section 8: Next Steps

- 8.1 This is a draft Supplementary Planning Document (SPD) for consultation. The document sets out the Council's draft guidance on the securing of planning obligations and affordable housing from new development within the District. It has been prepared to support the new Horsham District Planning Framework (HDPF), which was adopted in November 2015, and the Community Infrastructure Levy (CIL) Draft Charging Schedule, which is being consulted on at the same time as this draft SPD.
- 8.2 As a draft SPD, this document is an expression of how Horsham District Council intends to approach the use of planning obligations. The draft SPD is subject to change however, in light of any consultation responses or changes to Government legislation and policy.
- 8.3 The Council intends to subject this draft SPD to public consultation, alongside the Draft CIL Charging Schedule. Following this, a final version of the SPD will be prepared to take account of any consultation responses received and any other relevant changes. Once the final version of the SPD has been formally adopted, it will be used by the Council in the determination of planning applications as a material consideration.

Consultation

- 8.4 All responses on the draft SPD that are received within the consultation period will be considered prior to preparing a final version of the SPD for adoption by the Council.
- 8.5 Comments on the draft Planning Obligations and Affordable Housing SPD should be made online or be sent to the Council by:
- Email:** strategic.planning@horsham.gov.uk
- Post:** Strategic Planning Team, Parkside, Chart Way, Horsham, RH12 1RL
- 8.6 The consultation period on the draft Planning Obligations and Affordable Housing SPD runs from 6 May 2016 to 17 June 2016. Please note that all comments will be made public.
- 8.7 For further information, please visit the Council's website at: www.horsham.gov.uk. Alternatively, please call the Strategic Planning Team on 01403 215398.

Glossary

Affordable Housing: For the purpose of this Supplementary Planning Document and in accordance with the Horsham District Planning Framework, the Council's definition of 'affordable housing' is defined in the National Planning Policy Framework (NPPF) (March 2012):

Affordable housing: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Homes that do not meet the above definition of affordable housing, such as 'low cost market' housing, may not be considered as affordable housing for planning purposes in accordance with the NPPF definition of affordable housing.

Affordable Rented Housing: The NPPF defines Affordable Rented Housing as:

Housing let by local authorities or private registered providers of social housing to households who are eligible for social rented housing. Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Air Quality Management Strategy (AQMS): A designation made by a local authority where an assessment of air quality results in the need to devise an action plan to improve the quality of air.

Amenity: A positive element or elements that contribute to the overall character or enjoyment of an area. For example, open land, trees, historic buildings and the inter-relationship between them, or less tangible factors such as tranquillity.

Area of Outstanding Natural Beauty (AONB): A statutory landscape designation, which recognises that a particular landscape is of national importance. The primary purpose of the designation is to conserve and enhance natural beauty of the landscape.

Authority Monitoring Report (AMR): Section 113 of the Localism Act 2011 requires every authority to produce a report, at least annually, containing information on the implementation of the local plan (Horsham District Planning Framework) and the extent to which the planning policies set out within the local plan are being achieved. This enables the effects of a policy to be monitored transparently to enable a plan to respond quickly to changing circumstances and to implement change where a policy may not be working as anticipated.

Biodiversity: The whole variety of life on earth. It includes all species of plants and animals, their genetic variation and the ecosystems of which they are a part.

Charging Schedule: The document prepared by the Council to introduce Community Infrastructure Levy. It sets out the rates (in pounds sterling per square metre) at which different types of development will be charged.

Community Facilities: Facilities available for use by the community. Examples include village halls, doctors' surgeries, pubs, churches and children play areas; may also include areas of informal open space and sports facilities.

Community Infrastructure Levy (CIL): The Community Infrastructure Levy is a new levy that local authorities in England and Wales can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want – for example, new or safer road schemes, park improvements or a new health centre. There are several stages in the introduction of this levy, including consultation on the levy of charge proposed on new development. The charging schedule goes through independent examination before being adopted by the Council and applied to new development.

Conditions (or 'planning condition'): Requirements attached to a planning permission to limit or direct the manner in which a development is carried out.

Development Plan: The adopted suite of documents, which set out the parameters for all development in the District. It comprises the adopted Horsham District Planning Framework, the West Sussex Waste Local Plan, The West Sussex Minerals Plan, and any Neighbourhood Plans that have been brought into effect ('made').

Ecological (or Ecology): The interactions and relationships between plants, animals and their environment.

Enabling Development: A development that would normally be rejected as contrary to established policy, but which may be permitted because the public benefits would demonstrably outweigh the harm to other material interests.

Environmental measures: Actions taken as part of a new development designed to protect the environment and mitigate the impact of the development on the local environment.

Environmental infrastructure: The basic facilities, services, and installations needed for the functioning of key systems such as the sewerage network, sustainable drainage systems as well as improvements made to water courses and habitats.

European Sites: Defined in Regulation 8 of the Conservation of Habitats and Species Regulations 2010, these include a range of ecological sites designated for the protection of rare, endangered or vulnerable natural habitats and species of exceptional importance within the European Union. Designations include Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and Ramsar sites, which generally overlap SACs and SPAs.

Evidence Base: Collection of baseline specific data for the District which is used to inform the development of all Local Plan policies and Supplementary Planning Documents.

Green Infrastructure: A network of multi-functional green (and blue) spaces, urban and rural, capable of providing a wide range of environmental and quality of life benefits for local communities.

Gross internal floorspace: Broadly speaking the whole enclosed area of a building within the external walls taking each floor into account and excluding the thickness of the external walls.

GIA will include:

- areas occupied by internal walls (whether structural or not) and partitions
- service accommodation such as WCs, showers, changing rooms and the like
- columns, piers, whether free standing or projecting inwards from an external wall, chimney breasts, lift wells, stairwells etc
- lift rooms, plant rooms, tank rooms, fuel stores, whether or not above roof level
- open-sided covered areas (should be stated separately)

Habitat: The natural home or environment of a plant or animal.

Habitats Regulations: Refers to the Habitats and Conservation of Species Regulations 2010, which provide for the designation and protection of European sites, and the adaptation of planning and other controls for the protection of European sites.

Habitat Regulations Assessment (HRA): The statutory process and documentation required by the Birds and Habitats Directives of the European Union to assess the effects of a plan on a nature conservation site of European importance. The aim is to enable a judgement to be made as to whether there will be an adverse impact on the site's integrity.

High Weald Joint Advisory Committee: This organisation set up to manage the High Weald AONB.

Homes & Communities Agency (HCA): The Homes and Communities Agency is the Government's national housing and regeneration agency for England. It provides investment for new affordable housing and to improve existing social housing, as well as for regenerating land. It is also the regulator for social housing providers in England. Further details can be found at: www.homesandcommunities.co.uk.

Housing Associations: *See Registered Providers.*

Horsham District Planning Framework (HDPF): The HDPF is the overarching planning document for Horsham District, and replaced the Core Strategy and General Development Control Policies documents which were adopted in 2007. The HDPF sets out the planning strategy for the years up to 2031 to deliver the social, economic and environmental needs of the whole district.

Infrastructure: A collective term for services such as roads, electricity, sewerage, water, education and health facilities.

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

Intermediate Rent: This is housing available at a rent above social rent costs but below market rent levels. Rents are typically no more than 80% of market levels. Generally intermediate rented properties are reserved for specific groups of tenants and short-term tenancies.

Local Plan: Local Plans set out a vision and a framework for the future development of the area, addressing needs and opportunities in relation to housing, the economy, community facilities and infrastructure – as well as a basis for safeguarding the environment, adapting to climate change and securing good design for the area they cover. They are a critical tool in guiding decisions about individual development proposals, as Local Plans (together with any Neighbourhood Development Plans that have been made) are the starting-point for considering whether applications can be approved. It is important for all areas to put an up to date Local Plan in place to positively guide development decisions.

Masterplan: A type of planning brief outlining the preferred use of land and the overall approach to the layout in order to provide detailed guidance for subsequent planning applications.

Material consideration: A matter that should be taken into account in deciding a planning application or on an appeal against a planning decision.

Mitigation: A measure that is carried out to reduce the impact of a certain activities / development on the environment.

National Planning Policy Framework (NPPF): The key document, introduced in March 2012, setting out Government policy in relation to planning in England. The NPPF is part of the Governments reforms to make the planning system less complex, more accessible and to promote sustainable growth.

Neighbourhood Development Plans (NDP): Written by Parish Councils and Neighbourhood Forums to guide local land use planning issues. They set out policies and plans for an area, such as the identification of new sites which are acceptable for new local shops. They should not cover broader local concerns or strategic issues such as major development or major public transport infrastructure.

Open market value: The value a property might reasonably fetch if sold on the open market where there is a willing buyer and a willing seller.

Planning Condition: See *'Conditions'*

Planning gain: Refers to items that a developer would not normally regard as commercial necessities for the development, but which are nevertheless required in the public interest if the site is to produce an acceptable development.

Planning Obligation: A legally binding agreement, signed under Section 106 of the Town and Country Planning Act 1990 (as amended), between the local planning authority and persons with an interest in a piece of land. Planning obligations are used to secure funds or works for significant and essential elements of a scheme to make it acceptable in planning terms. Planning obligations will have been set out in an agreement often known as a 'Section 106 Agreement' and may be used to prescribe the nature of development, to compensate for loss or damaged created by development or to mitigate a development's impact on surrounding built and natural environment.

Planning Practice Guidance (PPG): Online guidance introduced in March 2014, which provides further detail as to how the policies within the National Planning Policy Framework (NPPF) should be applied.

Previously developed land: See *Brownfield*

Protected species: Plant and animal species afforded protection under certain Government Acts and Regulations.

Public art: The creation of an art or craftwork project designed and/or made by professional artists and craftspeople, which enhances the appearance of the public realm.

Registered Provider (RP): An independent housing organisation registered with the Homes and Communities Agency under the Housing and Regeneration Act 2008. They may be Housing Associations, Industrial and Provident Societies, registered

charities or private companies. Registered Providers may now be profit-making organisations.

Regulation 123 List: Under Regulation 123 of the CIL Regulations 2010 (as amended) a charging authority may publish a list on its website setting out the infrastructure projects or types which it intends to fund, in whole or in part, through the Community Infrastructure Levy. A local authority cannot secure planning obligations to fund infrastructure detailed on the Regulation 123 List.

Rented Affordable Housing: *Refer to Social Rented Housing or Affordable Rented Housing.*

Section 106 Agreement: *See 'Planning Obligation'*

Section 278 Agreement: A legal agreement completed between the developer and the Local Highway Authority, under Section 278 of the Highways Act 1980, where a development requires works to be carried out on the existing adopted highway. These agreements provide a financial mechanism for ensuring delivery of mitigation works identified and determined as necessary for planning permission to be granted.

Shared Equity: The purchaser acquires the whole of the property but effectively only pays a proportion of the value; the remaining value is secured by an equity loan. There have been, and are a variety of schemes available, some with government support.

Shared Ownership: Shared ownership is a mechanism for purchasing a property for those that cannot afford full homeownership. A percentage of the equity is purchased by means of deposit and mortgage. The retained equity is held by a Registered Provider (or similar). The owner takes out a lease, and pays rent on the retained equity. Generally initial purchases are 25-40% of the equity. Owners can usually purchase further shares of the property over time – this is known as “staircasing”.

Social Rented Housing: The NPPF defines Social Rented Housing as:

Housing owned by local authorities and private registered providers (as defined by section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

South Downs National Park (SDNP): The South Downs National Park is England's newest National Park, having become fully operational on 1 April 2011. The park, covering an area of 1,627 square kilometres in southern England, stretches for 140 kilometres (87 mi) from Winchester in the west to Eastbourne in the east through the counties of Hampshire, West Sussex and East Sussex.

Spatial Strategy: A broad overview of how spatial planning objectives can be achieved within the development plan.

Special Protection Area (SPA): *See European Sites.*

Strategic Site Allocation: A location for development of around 200 homes or more. Site-specific details are specified within policies in the Horsham District Planning Framework.

Strategic Road Network (SRN): A road network designated as of strategic importance, comprising motorways, trunk roads, and some other class 'A' roads of more than local importance.

Supplementary Planning Documents (SPD): Supplementary Planning Documents may cover a range of issues, both topic and site specific, which may expand policy or provide further detail to policies contained in a Development Plan Document, where they can help applicants make successful applications or aid infrastructure delivery.

Sustainable Development: Sustainable development is commonly defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Principles of sustainable development include social progress that recognises the needs of everyone, effective protection of the environment, prudent use of natural resources and high and stable levels of economic growth and employment. National policy holds that, taken collectively, the policies within the NPPF define 'sustainable development' as far as the planning system is concerned.

Total Access Demand (TAD): A method previously used by the County and District Councils in West Sussex to calculate planning obligation contributions for sustainable transport. The Community Infrastructure Levy (CIL) has now replaced TAD as a mechanism to secure the majority of transport infrastructure contributions.

Transport Assessment (TA): 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.

Transport Regulation Order (TRO): The legal document required to support a range of measures, which govern or restrict the use of public roads including double yellow lines, one-way streets, banned turns and bus lanes.

Travel Plan: A framework developed by businesses and organisations for changing travel habits in order to provide an environment, which encourages more sustainable travel patterns and less dependence on single occupancy private car use. For example, an employer may use the plan to introduce car-sharing schemes or secure

cycle parking facilities. Travel Plans must have measurable outcomes and should be related to targets in the West Sussex Local Transport Plan.

Viability: In planning terms relates to the assessment of a development scheme to establish that favourable conditions regarding the financial aspects will enable development to proceed.

West Sussex County Council (WSCC): The higher tier local authority in which Horsham District is located. WSCC is the statutory planning authority for highways, minerals and waste development for the District and is also the service provider in relation to other infrastructure and facilities, such as schools, libraries and adult social care.

West Sussex Local Transport Plan (LTP): A ten-year plan setting out key strategic transport objectives and outlining broad strategies that will be pursued to meet the objectives. The LTP must tie-in with the broader strategic planning framework set out in local and national policies.

Appendix 1: Household Occupancy Assumptions

The household size assumptions below are based on the average household size for typical dwelling sizes for the District taken from the Census 2011:

- 1 bed unit = 1.3 persons
- 2 bed unit = 1.8 persons
- 3 bed unit = 2.3 persons
- 4+ bed unit = 2.7 persons

Appendix 2: Financial Viability Appraisals

Guidance on development viability and the use of development viability appraisals in the planning obligations process is given in Section 5 (Development Viability) and in Section 6 (Detailed Guidance of Standard Planning Obligations) in relation to the securing of affordable housing. The following expectations should to be read in conjunction with those parts of the SPD.

Any Development Viability Appraisal submitted to the Council, in support of a developer's case for reviewing or reducing planning obligations identified as necessary by the Council, should contain as a minimum the following information and data:

1. The methodology used for the appraisal and details of any appraisal software or toolkits used.
2. Land values, both current and at the time of purchase (if different)
3. Price paid for the land; & costs taken into account when arriving at the price paid for the land (if the land is not owned by the applicant – details of any option agreements or agreements to purchase)
4. Gross and net area of development
5. Number size and type of units
6. Build costs (per square metre)(and comparison with appropriate published RICS data)
7. Abnormal or exceptional costs not reflected in the land value/price (Note: All abnormal and exceptional development costs should be supported by robust and costed specialist reports, including full technical data to support the stated costs)
8. Costs associated with bringing a heritage asset back into beneficial use or enabling development and/or costs of repairs (Note: all such costs should be supported by robust and costed specialist reports, including full technical data to support the stated costs)
9. Other costs (design, legal, consultants, planning etc.)
10. Cost of any other planning obligations including infrastructure requirements and financial contributions
11. Build programme and phasing
12. Interest rates, cap rates, loan costs, cash flows

13. Developer's profit and an explanation of its make up, and any company or financiers requirements
14. Anticipated phasing
15. Marketing and legal costs (and as a % of GDV)
16. Anticipated sales price for each unit type, and current assumed value of each unit type
17. Anticipated phasing of sales
18. Ground rents and services changes payable
19. Proposals for on-site affordable housing meeting the requirements of the SPD
20. Anticipated price to be paid by the affordable housing provider, and the assumption on which this is based.
21. Substitution values and revenues for less or no affordable housing on site

Depending on individual site circumstances, further information may be required, including:

1. Developer's Market Analysis Report
2. Details of company overheads
3. Copy of financing offer/letter
4. Copy of cost plan
5. Board Report on scheme
6. Letter from Auditors re: land values and write offs
7. Sensitivity analysis showing different assumption options (e.g. low, medium & high)
8. For mixed use schemes similar information and data will be required on the non-residential uses.

All information and data should be evidenced from an independent RICS-qualified expert or a reliable and reputable source in relation to secondary data. Figures included within the appraisal should be benchmarked.

Appendix 3: Affordable Housing Statement

All applications for residential development achieving a net gain of 5 or more units should be accompanied by an Affordable Housing Statement outlining the proposed methods of meeting the affordable housing requirements outlined in the Horsham District Planning Framework Planning Obligations and Affordable Housing Supplementary Planning Document. The applicant is advised to engage in pre-application discussions with the Council on the provision of affordable housing prior to submitting a planning application.

The statement should cover the following issues and if any information is unknown at the time of the application the reason should be stated in the relevant section.

1. Application site
2. Application Description
3. Has the applicant read the relevant guidance within the Planning Obligations and Affordable Housing Supplementary Planning Document?

Yes / No

4. Has the Applicant had discussion concerning affordable housing provision with the Council, if so with whom?

Yes/No

Officer:

Date(s):

5. Applicable number of affordable units when calculated against the relevant policy target in Policy 16 of the HDPF
6. Proposed Affordable Housing Provider
7. Proposed Number of affordable housing units to be provided on-site
8. Type and tenure of proposed on-site affordable housing
9. Is any off-site provision proposed?

Yes/No

Description of proposals, location, number of units, tenure, size etc.
Reasons why off-site provision is considered appropriate

10. Is any financial contribution in lieu of on-site provision proposed?

Yes/No

Calculated sum of financial contribution proposed

Reasons why a financial contribution is considered appropriate

11. Any other information re the affordable housing requirements or proposals

It is accepted that although outline applications will address these issues in general certain details may not yet be finalised.

Appendix 4: Affordable Housing Scheme

The Affordable Housing Scheme should generally meet the requirements outlined below.

It is anticipated that the Developer and Affordable Housing Provider will submit the Affordable Housing Scheme jointly. It is agreed by the parties that where any of the information required below is not available at the time of submitting the Affordable Housing Scheme such information shall be submitted or re-submitted (where an amendment is required) for approval prior to commencement of construction of any affordable housing unit within the relevant phase:

1. The total number of affordable units in the phase as a percentage of the total units in the phase
2. The anticipated tenure, size and type of each of the units
3. A site layout showing the location of the units
4. Plans showing the indicative internal layout of each type of unit
5. Confirmation that the units meet all the requirements set out in this Deed or any approved amendments to such requirements
6. Details of the proposed Affordable Housing Provider that will deliver the units
7. Confirmation that all of the units will be allocated either according to the draft Nomination Agreement set out in the Section 106 Agreement, or through the Home Buy Agent
8. Details of proposed rent and service charge for each type of unit and confirmation that these meet the affordability requirements set out in Section 5
9. Details of management arrangements.