

Planning Obligations Supplementary Planning Guidance
Report of Changes post Consultation September 2016
Pembrokeshire County Council and Pembrokeshire Coast National Park Authority

Annex 1: Consultation Responses – Section A				
Ref. number	Individual/ Organisation	Representation summary	PCC Response	Recommended change to SPG (if required)
1	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 1:</i> Support approach of Planning Obligations SPG setting out maximum contributions that will be sought from developer's to support development. With the provisos given on the other pages considered in order to give certain policies more clarity and avoid long drawn out debate in the future between applicants/agents/officers.	Support noted. Section B of this Annex sets out changes to the draft SPG following internal consultation. As a result of these changes it is recommended that the draft SPG be amended to provide an indication of general costs, but not use the term 'maximum contributions', recognising that contributions must be related to the development proposal and that therefore it is not possible with certainty to identify a maximum contribution, given that individual development proposals may vary.	See reference number 8 noted below in Section B in response to internal consultation.

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2	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 2:</i> Support thresholds set out in the SPG for residential development. Similar comments apply regarding provisos, being taken into account to make the understanding of the process, especially for 'lay' clients, an easier task.	Support noted.	No change to SPG required.
3	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 3:</i> Support onsite and offsite contributions for Recreational and Amenity Open Space being based on Fields in Trust standards. However note that greater clarity is needed in the definition of "off site provision" and its distance from the application site.	Support noted. A revised section on Open Space is proposed in the SPG to improve the clarity of this section. Standards however are still based on the Fields in Trust standards.	A revised section on Open Space is proposed to improve the clarity of this section.
4	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 4:</i> Support the section on how the Authorities will administer planning obligations and publicly provide information on monitoring. However some guidance needs to be provided as to how the larger sites S106 obligations are broken down into a series of payments at key stages of the development in order to avoid future hassle/delays in the negotiation process.	Support noted. The SPG already notes in paragraph 6.2 that in the case of large sites, payments will be phased around key stages of developments. As these stages will vary according to the size of an individual development, it is not possible for the SPG to prescribe specific parameters.	No change required to the SPG.

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5	Mr Gareth Scourfield (Pembroke Design Ltd)	<p><i>Representation 5:</i> Could greater emphasis be given to the use of Standard S106/UU documents not being allowed to be altered by our 'legal eagles' in order to speed up the process of determination.</p>	<p>Agree – insert a sentence into paragraph 6.5 to state that the Authorities strongly encourage the use of the template UU available for Affordable Housing.</p>	<p>Amend paragraph 6.5 to read: For straightforward obligations that contain only financial obligations, the Council encourages the use of Unilateral Undertakings, which are a simplified form of Section 106 Planning Obligation. A Unilateral Undertaking template for commuted sums for Affordable Housing, containing standard clauses is available to download on both Authorities' websites. In the majority of cases, use of this template will result in the speedier conclusion of Section 106 planning obligation. Applicants will be required to meet the Council's reasonable costs incurred in checking the Unilateral Undertaking.</p>
6	Mr Gareth Scourfield (Pembroke Design Ltd)	<p><i>Representation 6:</i> Where provision of facilities is to be 'elsewhere', rather than on site, surely some sort of reasonable distance should be given in the guidelines?</p>	<p>It is not possible to specify precise distances as this will depend on the nature of the facility proposed. The Council's LDP policy which</p>	<p>No change proposed to the SPG.</p>

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			refers to provision of facilities elsewhere in certain circumstances includes the caveat that this is provided their location can adequately service the development. Acceptable distances are identified for open space within the SPG, but provision of facilities such as schools, biodiversity mitigation measures, highways facilities and community facilities will all vary in terms of what is a reasonable distance to serve a development.	
7	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 7:</i> Better guidance is needed on how the LA assesses discounts on highway contributions, especially on residential developments.	Agree – revised wording in this section will note that individual impacts of a development will be identified in order to establish a financial contribution.	Amend paragraphs 3.24,3.25 and 3.26 to read: Levels of contributions to transport infrastructure are assessed having regard to the size of the development, the estimated increase in population and estimated additional transport impact. Contributions towards infrastructure improvements

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				<p>may be sought from development with a net gain of five dwellings or more where a need is generated. The contribution will allow the Highway Authority to mitigate the impact from the additional trips <i>generated</i> with the level of contribution being commensurate to the impact of a development.</p> <p>Previous contributions based on trip generation analysis have historically not exceeded £2500 per dwelling. The precise levels required may vary from this, depending on the levels of necessary infrastructure required to deliver a specific development. These contributions will be spent on public transport, cycling and walking services and infrastructure.</p> <p>The use of any contribution will depend on the size of the development and the requirements identified. An individual assessment will be undertaken for each proposal.</p>
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				<p>For example a development of 5 dwellings could make a transportation contribution of £5,000 which might be used to provide a new footpath connecting the new houses to the existing footpath network. On a larger development of 100 dwellings, contributions might be necessary to provide a new bus service or the diversion of an existing route. Other examples of the use of contributions include the provision of improved street lighting, controlled and uncontrolled pedestrian crossings, cycle and pedestrian routes, cycle lock up provision etc. This is not an exhaustive list. Applicants who can demonstrate that particular developments generate fewer trips may have a case for making a reduced contribution. In considering any discount, the Highway Authority will assess the existing availability of, and accessibility to, high quality public transport, cycle and pedestrian facilities, along with easy access to nearby</p>
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				employment, education, leisure and shopping facilities by methods other than the private car.
8	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 8:</i> Surely public art should be more greatly encouraged on a wider spread of new developments, and not just the larger projects?	Public art will be encouraged on site through the design process and can generally be promoted via appropriate conditions on smaller sites. The SPG aims to identify circumstances where planning obligations may be required, which will generally be for larger projects.	No change proposed to the SPG.
9	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 9:</i> A clearer indication of acceptable distances for off-site planting of new trees should be considered.	This section of the SPG will now be removed, see changes proposed under internal feedback (section B below).	See section B internal changes proposed.
10	Mr Gareth Scourfield (Pembroke Design Ltd)	<i>Representation 10:</i> Better and more informative information is required on the District Valuer's fee scales are needed if they only provide valuation advice and other parties do the viability assessments.	Appendix 4 sets out indicative fee scales for the District Valuer to undertake viability assessments. Precise quotations will be provided on a case by case basis, depending on the	No change proposed to SPG.

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			individual circumstances of a development site.	
11	CADW	<p><i>Representation 1:</i> Consider that a section regarding the historic environment could be added to the document and suggest that such a section could be worded as follows:</p> <p>“ The preservation and/or enhancement of historic assets may be required as an integral part of a development proposal. In many cases such measures may be addressed through the imposition of a planning condition. Planning obligations (as an alternative, or in addition to planning conditions) may be used where mitigation, compensation or enhancement measures require a long-term or complex commitment, or where a financial contribution and/or transfer of land is required. The nature and scale of the obligation will reflect the impact of development. The Authorities may seek a wide variety of historic environment obligations, including, but</p>	The SPG aims to provide additional information on the most commonly sought types of Planning Obligation and to provide detailed information on the methodology to be used (where applicable). The SPG clarifies that contributions for other types of infrastructure may still be sought where an application generates a particular need for a specific infrastructure obligation. Instead of inserting a new section, an amendment to paragraph 1.14 is proposed, including the historic environment in the list of other examples of contributions which may be sought.	<p>Amend paragraph 1.14 to read:</p> <p>Contributions for other types of infrastructure including for example (but not limited to) regeneration, waste, the historic environment and renewable energy may still be sought where an application generates a particular need for a specific infrastructure obligation.</p>

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		<p>not exclusively limited to:</p> <ul style="list-style-type: none"> • Securing on-site works to enhance and restore the historic asset; • Restricting development in identified/sensitive areas; • Financial contributions for future management of the historic asset; • Transfer of land for the purposes of conservation.” 		
12	CADW	<p><i>Representation 2:</i></p> <p>You will wish to reconsider the reference to the Minister for Cultural and Sport in paragraph 3.60 of the documents.</p>	<p>Agree – amend to refer to Welsh Government.</p>	<p>Paragraph 3.47 to read: The Welsh Government oversees the library services provided by local authorities through the non-statutory Welsh Public Library Standards and Assessment Framework (the Standards’). The purpose of the Standards is:</p>
13	Marloes and St Brides Community Council	<p><i>Representation 1:</i></p> <p>This document should be re-drafted so that contributions towards “Affordable Housing” become contributions towards “Affordable Housing and/or Community Land Trusts”. In moral terms we see both sorts of project as equally deserving of support.</p>	<p>Both the Council and the Pembrokeshire Coast National Park Authority recognise the important role that Community Land Trusts can have in delivering Affordable Housing for local communities. Both</p>	<p>No change proposed to SPG.</p>

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			<p>Authorities have existing Supplementary Planning Guidance documents on Affordable Housing which recognises that Community Land Trusts can deliver Affordable Housing successfully for local communities. This draft SPG on Planning Obligations cross-references these existing Affordable Housing SPG's and does not seek to amend their content. No further change is therefore proposed.</p>	
14	Marloes and St Brides Community Council	<p><i>Representation 2:</i> In this draft document Affordable Housing developments are exempted from certain Planning Obligations; it should be re-drafted so that, throughout, Community Land Trusts are granted the same exemptions. Again, in moral terms both sorts of project are equally deserving.</p>	<p>Both Authorities have policies which specify that in cases where a proposal would not be financially viable in terms of the policy requirements of the Plan, that priority will usually be given to Affordable Housing provision. As noted in response to Representation 1, both Authorities SPGs on Affordable Housing</p>	No change proposed to SPG.

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			recognise that Community Land Trusts can deliver Affordable Housing. On this basis, no change is proposed to this draft SPG.	
15	St Davids City Council	<i>Representation 1:</i> I write to inform you that at a meeting on 11th July 2016, having considered the many amendments and improvements contained in the draft guidance documents, St Davids City Council unanimously resolved to support the adoption of the Planning Obligations SPG.	Support noted.	No change proposed to SPG.

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Annex 1: Internal recommendations for amendments to SPG – Section B			
Ref. number	Internal recommendation	Recommended change to SPG	
1	Amend glossary to include additional references to Highway Authority and Local Planning Authority.	Highway Authority	A Highway Authority is a name given to a body responsible for the administration of public roads. In Pembrokeshire, Pembrokeshire County Council is the Highway Authority for the whole County (including the Pembrokeshire Coast National Park Authority).
		Local Planning Authority	A Local Planning Authority (LPA) is the local authority that is empowered by law to exercise statutory town planning functions for a particular area of the United Kingdom. In Pembrokeshire the Pembrokeshire Coast National Park Authority is the LPA for the area of the Pembrokeshire Coast National Park. Pembrokeshire County Council is the LPA for the

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			area of Pembrokeshire excluding the Pembrokeshire Coast National Park.
2	Insert amended and additional text to glossary to provide additional clarity to the definitions used.	Insert minor additional text to definitions of “Planning Obligation”, “Section 106 Agreements”, “Section 278 Agreements” and “Unilateral Undertakings” to improve clarity.	
3	Amend references throughout document to refer to “Local Planning Authority” where appropriate, to ensure that it is clear that the determining Authority will be the Local Planning Authority rather than the joint Authorities of the Council and the Pembrokeshire Coast National Park Authority.	Amend references throughout SPG to refer to Local Planning Authority where appropriate.	
4	Clarify that those obligations not covered by the CIL Regulations must take into consideration the Welsh Government Circular on Planning Obligations.	<p>Amend paragraph 1.3 to read:</p> <p>The tests in Circular 13/97 Planning Obligations apply to all Planning Obligations, including those not covered by the CIL Regulations. The tests make it clear that a Planning Obligation must be:</p> <ul style="list-style-type: none"> • Relevant to planning; • Necessary to make the proposed development acceptable in planning terms; • Directly related to the proposed development; • Fairly and reasonably related in scale and kind to the proposed development; and • Reasonable in all other respects. 	

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5	Amend paragraph 1.9 to ensure that it is sufficiently clear that the Local Planning Authorities are progressing an interpretation of a specific infrastructure project.	Amend paragraph 1.9 to read: In addition, under CIL Regulation 123 an LPA cannot collect pooled contributions for the same infrastructure project from more than 5 developments which could be funded from CIL. When assessing whether 5 separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure project, the LPA are required to review agreements that have been entered into since 6 th April 2010.
6	Amend paragraph 1.14 to clarify that other contributions in addition to those highlighted in the SPG may also be sought.	Amend paragraph 1.14 to read: Contributions for other types of infrastructure including for example (but not limited to) regeneration, waste and renewable energy may still be sought where an application generates a particular need for a specific infrastructure obligation.
7	Clarify position regarding charging for pre-application advice.	Amend paragraph 1.17 to read: Planning officers are also able to give pre-application advice, which will be current for six months from the initial enquiry date. There is a charge for this service, see the Local Planning Authority's website for more information. This will give developers confidence that Officers will not seek to amend Planning Obligation requests during this timescale

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8	Amend references throughout document to remove reference to 'maximum' contributions but instead refer to contributions generally required from development. This is a more appropriate expression, reflecting the fact that contributions should be related to the nature and scale of the development proposed.	Amend document throughout to remove reference to 'maximum' contributions and refer instead to contributions 'generally required' from development.
9	Simplify Section on Sustainable Transport Facilities by cutting paragraphs not essential to explaining planning obligations.	Remove non-essential paragraphs, for example on Transport Assessments and Transport and Travel Plans.
10	In Section on Education, clarify that Planning Obligations will state which project contributions will be used for.	Amend paragraph 3.36 to read: Education officers will advise as to whether or not a contribution is required, based on an assessment of the adequacy of local facilities. Consideration will also be given to the potential for other contributions to be delivered in that area, given the limitations placed on Local Planning Authorities regarding the ability to pool contributions from only 5 obligations in Regulation 123 of the CIL Regulations. The Planning Obligation will specify the particular project for which the contribution will be used.
11	Amend reference within Community Facilities section to seeking contributions from developments of over 20 units in both urban and rural areas, to ensure a greater consistency of approach.	Amend reference in paragraph 3.42 to read: Planning Obligations for community facilities will only be considered on residential developments of over 20 units and where there is an evidence of need that accords with the tests laid down in Regulation 122 of the CIL Regulations. In the case of library provision, more detail is set out below.

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12	Move the table within the Libraries section to the Appendices and clarify that this is an indication of how costs might be assessed.	<p>Amend paragraph 3.53 to read:</p> <p>It is important to ensure that library services have the facilities to meet library standards. The total cost to ensure that Welsh Public Library Standards are met for every new dwelling is set out in Appendix 2. Ongoing service delivery costs are covered by Council tax, the amount in the table below reflects the upfront delivery costs to the Authority created by new development. The precise level of contribution required to support library services in Pembrokeshire will vary, depending on the needs of the service in a particular area at a particular time. Appendix 2 however, provides an indication of how costs might be assessed.</p>
13	Within the Libraries section clarify that contributions will be spent within the geographic zone within which they are identified.	<p>Add the following sentence to the end of paragraph 3.54:</p> <p>Planning Obligations will therefore specify that contributions towards library services will be spent on infrastructure within the geographic zone within which a development is located.</p>
14	Delete example of planning obligation contributions for libraries.	Delete table.
15	Within the Biodiversity section clarify that a Planning Obligation may be used to restrict development until the transfer of land for the purposes of conservation	<p>Amend paragraph 3.65 and paragraph 3.66 to read:</p> <p>Ecological mitigation and/or enhancement may be required as an integral part of a development proposal. In many cases such measures may be addressed through the imposition of a planning</p>

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	<p>has taken place.</p>	<p>condition. Planning Obligations (as an alternative, or in addition to planning conditions) may be used where mitigation, compensation or enhancement measures require a long-term or complex commitment, or where a financial contribution and/or restriction on development until a transfer of land is required. The nature and scale of the obligation will reflect the impact of development. The Local Planning Authority may seek a wide variety of biodiversity obligations, including, but not exclusively limited to:</p> <ul style="list-style-type: none"> • Improving habitat and monitoring for protected species; • Securing on-site works to enhance and restore existing features such as woodlands, hedgerows and ponds; • Habitat creation, protection and monitoring; • Restricting development in identified/sensitive areas; • Financial contributions for future management, and • Restricting development until transfer of land for the purposes of conservation. <p>Where a European Protected Species (EPS), such as dormouse, is present certain provisions will be required to ensure the ongoing protection and management of the site. In most cases where dormice have been recorded on site,</p>
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		<p>the hedgerows and a designated buffer will be protected in perpetuity and a plan required for their ongoing management. In such cases, a Planning Obligation will be sought restricting development until the transfer of land (outside the ownership of the curtilage of the individual properties) and payment of a financial contribution for the ongoing management of the area of land has taken place. Each case will be considered on a case by case basis, in consultation with Natural Resources Wales.</p>
16	<p>Remove the references to a Tree Replacement charge. Concern that first approach should be to retain Trees on site wherever possible. Instead of this section a Joint Tree SPG is proposed which will prioritise on site retention. General section on Biodiversity will still enable off-site tree replacement where appropriate, but based on an individual assessment of the cost of replacement.</p>	<p>Remove references to a Tree Replacement charge.</p>
17	<p>Clarify that in some cases a period longer than 5 years will be referred to within the Planning Obligation to enable greater flexibility for the timing of spend if required.</p>	<p>Amend paragraph 6.1 to read:</p> <p>Section 106 Agreements will specify that all contributions will be used for a stated purpose. Where this has not been achieved within 5 years of being paid (or such longer periods in appropriate circumstances), the monies will be re-funded at a level that takes into account loss of interest over that time.</p>

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18	Clarify that legal costs will be payable, regardless of whether or not the agreement completes.	<p>Amend paragraph 6.3 and 6.4 to read:</p> <p>Section 106 Agreements will be drafted by the Pembrokeshire County Council’s Legal Services Team.</p> <p>Applicants will be required to pay the Council’s reasonable costs incurred in drafting and completing the agreement and will be required to secure the same by way of solicitors undertaking, payable regardless of whether the agreement completes or payment in advance.</p>
19	Note that continual failure to pay Planning Obligations may result in formal legal proceedings being issued.	<p>Amend paragraph 6.9 to read:</p> <p>Interest will be charged on the late payment of contributions, to reflect the additional administrative burden placed on the Local Planning Authority. Continued failure to pay may result in formal legal proceedings being issued.”</p>
20	Minor clarifications and amendments to wording throughout document to improve clarity.	Minor clarifications and amendments to wording throughout document to improve clarity.