

## **Summary of Consultation Responses**

The Council consulted on the following documents for a period of six weeks between 16 April 2018 and 30 May 2018:

- Draft Infrastructure Delivery Plan
- Draft Regulation 123 List
- Draft Planning Obligations SPD

The consultation was sent directly to relevant infrastructure providers including Staffordshire County Council, Environment Agency, Severn Trent Water, Western Power Distribution and the relevant Clinical Commissioning Group. The consultation was also sent directly to people on the Council's Local Plan consultation database and was advertised on the Council's website.

Responses were received from 10 individuals or organisations in respect of one or more of the documents. A summary of the comments received on each of the documents and how they have influenced the preparation of the document has is set out in the table below.

## Draft Planning Obligations Supplementary Planning Document

Individual or organisation	Comments made	Council's response
<p>Tetlow King on behalf of West Midlands HARP Planning Consortium</p>	<p><b>Exemptions</b> We recommend that the Council include a line in the SPD that states that contributions should not be sought from affordable units. We would like this to be set out clearly in either the 'Developers Contributions' section on page 3 or in a new section. Contributions should not be sought from affordable units or where developments are restricted to occupancy from existing residents as affordable housing developments are generally made available for people on the local housing register and therefore place no additional pressure on local infrastructure.</p> <p><b>Open Space</b> The first line of this section indicates that the Council may use a combination of CIL and S106 payments to enhance existing green spaces. It is prudent to note that double charging on schemes (i.e. financing a scheme through both Section 106 and CIL) falls foul of PPG (Paragraph: 093 Reference ID: 25-093-20140612) which clearly states that: "Where the levy is in place for an area, charging authorities should work proactively with developers to ensure they are clear about the</p>	<p><b>Exemptions</b> The comments on affordable units are noted. Affordable housing units are eligible for an exemption from CIL and, whilst they are not exempt from the possibility of other planning obligations, the Council acknowledges that marginal viability of mainly or wholly affordable schemes. The viability section of the document has been updated to better reflect how the Council deals with such developments.</p> <p><b>Open space</b> The comments on 'double dipping' are noted. The Open space section of the document sets out the specific circumstances in which obligations will be sought through s106 agreements to ensure that there is no 'double dipping'. The Council appreciates that the original wording of the first paragraph could be misleading and so it has been amended for clarity. The draft regulation 123 list was also unclear about the distinction and so this has also been amended for clarity.</p> <p><b>Evidence base</b> The comments in relation to updating the Local Plan evidence base are noted. The Council will be seeking to undertake a Local Plan review in due</p>

authorities' infrastructure needs and what developers will be expected to pay for through which route. There should be not actual or perceived 'double dipping' with developers paying twice for the same item of infrastructure." This section should be amended to make it clear that open space enhancements which are directly for site-specific mitigation and related to each individual development, will be secured through S106 planning obligations, or through identification in the Regulation 123 List. This change is needed as the Regulation 123, S106 Pooling Restrictions (2015) prevents councils from collecting more than five separate planning obligations for a project or type of infrastructure. An applicant could face legal challenge if planning permission granted without appropriate mitigation or if they enter into a S106 agreement which includes contributions towards infrastructure where the pooling restriction has been exceeded.

We ask that the evidence base updated to inform development across Tamworth, including an update to the Recreational Open Space Review which was last produced in 2011.

#### S106 Agreements

Reference is made to utilising S106 Agreements to secure affordable housing. Where S106

course and will consider as part of that review what evidence needs updating to support the Plan.

#### S106

The comments on standard s106 clauses are noted. The Council is currently working on a replacement to the existing standard s106 template which will be made available online alongside the revised SPD. The comments will be taken into consideration when drawing up the revised template.

	<p>Agreements are used we would ask that consideration is given to enabling Registered Providers greater flexibility and less onerous requirements when negotiating affordable housing through using appropriate Mortgage Protection Clauses. This will assist housing associations in maintaining a deliverable development programme.</p> <p>We recommend that the Council uses the National Housing Federation model clause within its S106 Agreements. This model clause recommends the use of ‘reasonable’ endeavours (instead of ‘best’ endeavours) as this unlocks higher borrowing levels and in turn provides greater capacity for delivery of additional affordable housing. We have enclosed the National Housing Federation model clause for ease of reference.</p>	
<p>Mrs Lizzie Marjoram instructed as planning solicitor by Barwood Strategic Land II LLP (“Barwood”).</p>	<p>1. The proposed SPD contains the following statement which should be deleted:</p> <p>“Neighbouring authorities The Council will seek contributions from developments in neighbouring authority areas where those developments would impact on infrastructure within Tamworth. The Council will also work with its neighbours to ensure that, where development within Tamworth would impact on their infrastructure,</p>	<p>The policy basis for seeking contributions towards infrastructure within Tamworth is included in the adopted Tamworth Borough Local Plan 2006 – 2031 as policy IM1 Infrastructure and Developer Contributions, therefore the contents of the SPD is not creating policy, but seeks to clarify the implementation of existing policy.</p> <p>The Council agrees with the statement that Tamworth Borough Council policies cannot compel neighbouring authorities or developments in</p>

suitable contributions are secured towards infrastructure in neighbouring authority areas. On the basis that development outside of Tamworth's administrative boundary would not fall within the charging zone for Tamworth's CIL, all contributions sought from development in neighbouring authority areas will be through S106 agreements which will be negotiated in collaboration with the relevant neighbouring authority. This includes where the neighbouring authority has CIL in place but development in Tamworth is not included on their list of infrastructure projects on which CIL is to be spent (regulation 123 list).

2. Tamworth Borough Council cannot lawfully create such a policy through a SPD; please see the enclosed and recent William Davis case. If the SPD is adopted in this form it cannot be enforced because it would be ultra vires.

3. Regardless of whether it forms part of a DPD or a SPD we assert that Tamworth Borough Council cannot through policy require or compel neighbouring authorities or neighbouring developments to enter such a s106 agreement. The only correct procedure for this is via the duty to co-operate between neighbouring authorities and inclusion within Regulation 123 lists. This was a matter addressed in great detail

neighbouring areas to enter into an agreement to provide contributions to Tamworth infrastructure. The Council can, and will where appropriate, request that neighbouring authorities seek contributions on its behalf. However it is ultimately the responsibility of the relevant neighbouring authority to consider whether to seek such a contribution from the developer. The text of the 'Neighbouring authorities' section of the document has been amended to make it clearer that the Council will work in cooperation with neighbouring authorities to secure appropriate contributions.

Points 4 and 5 of the response are noted.

	<p>at the Arkall Farm inquiry.</p> <p>4. For the reasons given above it would be wrong for Tamworth Borough Council to lead the Secretary of State into an error of law by suggesting that such policy can be lawfully made or enforced through a SPD. Barwood reserves its position if the Council adopts the SPD in this form.</p> <p>5. If Tamworth Borough Council adopts the SPD in this form and encourages (in writing or verbally) the Secretary of State to take this matter into account in his determination of the Arkall Farm application, Barwood is entitled to make submissions to the Secretary of State in response. You must therefore please copy us on any correspondence or make us aware of any contact to encourage this and give us the opportunity to respond to the Secretary of State to avoid an error of law in the determination of the Arkall Farm application.</p>	
Highways England	<p>Highways England considers that the Planning Obligations Supplementary Planning Document is helpful in terms of clarifying the scope of the various mechanisms used to secure developer contributions and their interaction.</p> <p>We would request however that the sections on 'highways' and on 'section 278 Agreements' are both amended to take due account of the key</p>	<p>Comments noted. Changes have been made to the wording of the document to reflect the comments made in relation to the role of Highways England.</p>

role of Highways England in relation to their operation. Suggested amended text is provided below:

#### Highways

“Staffordshire CC has responsibility for the local highways network within Tamworth, which is the majority of roads in the Borough – whereas Highways England has responsibility for the Strategic Road Network (SRN) which comprises sections of the A5(T) and M42.

As statutory consultees, the highways authorities will be consulted on planning applications where the development would be likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving the public highway. The highways authorities will engage with applicants to identify the impacts arising and any necessary mitigation.

Mitigation may be sought through the imposition of planning conditions which, if physical works are required, may require an Agreement under S278 of the Highways Act 1980 (as amended) to be entered into with either the County Council or with Highways England.

In some cases, mitigation may be secured through the use of S106 Agreements and this may include the payment of a financial contribution towards any necessary works. In this case the relevant highways authority will be

	<p>party to any negotiation, although it is only the County Council who can be signatory to the Agreement (not Highways England)”  Section 278 Agreements  2nd Paragraph  “Within Tamworth, Staffordshire CC has responsibility for the local road network and Highways England has responsibility for the Strategic Road Network. S278 Agreements may be made between each (or both) of these authorities in order to deliver necessary highways improvements. Whilst Tamworth BC may impose planning conditions, which necessitate a S278 Agreement being entered into, it is not normally party to any S278 Agreement.”</p>	
Education and Skills Funding Agency	<p>The ESFA welcome the use of s106 contributions for schools. To demonstrate that the approach is robust the ESFA recommends that the document include clearer signposting to the relevant County Council documents including Staffordshire County Council Obligations SPD, and, for example, details of any new survey of new developments (subsequent to the MORI study 2005/6) used to inform up-to-date pupil yield calculations for different size residential units; any discount applied for an assumed proportion of children who are privately or home educated; and the build cost data (and price index, where relevant)</p>	<p>The comments on signposting to the relevant County Council documents are noted. A reference is included within the SPD to other relevant documents but not to a specific link to document available from outside bodies as these could quickly become out of date.</p>



	<p>used to inform the s106 charges. Bedford Borough Council and Essex County Council have developer contribution guides with detailed sections on education contributions that may be useful references for refining the education sections of this SPD.</p>	
<p>Tetlow King Planning on behalf of Rentplus UK Ltd</p>	<p>The SPD can facilitate greater affordable housing delivery by being clear on the interpretation of Local Plan Policy HG4, indicating that the Council will respond flexibly to development proposals that meet or exceed the affordable housing target with a variety of tenures, particularly where this will avoid the need for off-site contributions. The Council's aim to ensure that affordable housing is accessible to those who cannot meet their housing needs in the market is more achievable with the inclusion of rent to buy as this addresses the primary barrier to home ownership by tackling the lack of a mortgage deposit. This is achieved through a combination of a secure affordable rented period (whichever is the lower of 80% of open market rent, including any service charge, or Local Housing Allowance), giving time to save, and a 10% gifted deposit to enable tenants to buy their own home in 5, 10, 15 or 20 years. The specific Rentplus model is not delivered at an intermediate rent, as set out in the draft NPPF definition, but with a rental cost that responds</p>	<p>The SPD does not set out any specific definitions of affordable housing as to do so would risk the document becoming out of date when national policy and guidance changes. The wording of the 'Affordable housing' section of the document has been updated to clarify that negotiations over the number of units and mix of sizes and tenures of affordable housing to be provided on site will reflect national policy and guidance in place at the time.</p>

	<p>directly to local affordability, being more accessible and affordable to working households who aspire to home ownership. The final version of the SPD should note the expanded definition of affordable housing to remain in conformity with national policy and to support more households into home ownership over the whole plan period.</p>	
Environment Agency	<p>We have no comments to make on the above document.</p>	<p>No response required.</p>
Historic England	<p>We do not wish to comment in detail in this instance, but offer the following general comments which I hope you find helpful.</p> <p>Planning obligations can have a notable part to play in the support of the Local Plan's heritage strategy, including through funding the conservation or enhancement of the historic environment through CIL and S106 agreements, and avoiding or helping to address 'heritage at risk' through careful application of CIL levy rates. We encourage careful consideration to be given to the draft SPD in these respects. Our advice note on 'The Historic Environment in Local Plans' has more information on this subject and can be accessed here:  <a href="https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans/">https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans/</a>.</p>	<p>The comments of Historic England are noted.</p>

## Draft Infrastructure Delivery Plan

Highways England	It is noted, under the 'specific provision initiatives' under the Transport section that reference is made to the need for schemes on the A5 and M42. We can confirm that this remains the case but at this stage we have no further evidence to confirm the details of these. We are continuing to work with applicants as proposals come forward through the planning process to confirm their contribution to strategic infrastructure.	No response required.
Natural England	<p>We have no specific advice to offer in relation to the plan's proposals but offer the following general comments:</p> <p>Natural England welcomes this infrastructure delivery plan as the primary means by which suitable infrastructure will be identified consistent with local plan policy - IM1 Infrastructure and developer contributions</p> <p>With regard to our remit focusing on landscape and biodiversity we note the following components of policy IM1 as being of special relevance:</p> <p>(a) "...green and blue infrastructure and the open space network...in accordance with policies EC2, EC4, EC5, HG2, HG3, EN2, EN3, EN4 and EN6".</p> <p>(b) "provision of appropriate sport and recreation facilities and new and improved open space in accordance with policy SU7"</p> <p>(c) "improving accessibility and links by means of public transport, cycleway and pedestrian access to, community facilities and open space to deliver strategic urban extensions and housing allocations in accordance with</p>	No response required.

	<p>policies HG1, HG2, EC5 and EC6.”</p> <p>(d) “cross-boundary infrastructure to help deliver and mitigate the effects of Tamworth related future development”.</p> <p>Within the theme of ‘Environmental and Strategic Green Infrastructure’ we welcome the identified projects and note the improvements completed in respect of the borough’s suite of local nature reserves.</p>	
Education and Skills Funding Agency	<p>The local planning authority should note that there are two routes available for establishing a new school. Firstly, where a local authority thinks a new school needs to be established, section 6A of EIA 2006 places the local authority under a duty to seek proposals from new school proposers (academy trusts) to establish an academy (free school) and to specify a date by which proposals must be submitted to the local authority. In this ‘local authority presumption route’, the local authority is responsible for finding the site, providing the capital and pre-/post-opening funding and managing the build process. Secondly, an academy trust can apply directly to the Department for Education during an application round or ‘wave’ to set up a free school. For further details please see:</p> <p><a href="https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption">https://www.gov.uk/government/publications/establishing-a-new-school-free-school-presumption</a></p> <p>Whilst Staffordshire consistently deliver schools via the presumption route, it would be helpful to include reference to these two different delivery routes and/or signpost the above details within the IDP.</p>	<p>The comments on different delivery routes for new school are noted. A reference to the Education and Skills Funding Agency as a potential funding source and delivery partner has been added to section 9 of the IDP.</p>

	<p>Section 9 'Education' confirms that additional need for primary and secondary school places is currently planned to be provided through expansions to existing schools, and new schools are to be funded through s106. For clarity, please add reference to the ESFA as a potential funding source (amount dependent upon the particulars of the scheme) and delivery partner for new schools.</p> <p>Forward Loan Fund In light of the specific provision initiatives identified with Section 9 of the IDP (the primary schools planned for Tamworth Golf Course SUE and Dunstall Farm SUE ) of the Infrastructure Delivery Plan, emerging ESFA proposals for forward funding schools as part of large residential developments may be relevant, for example if viability becomes an issue. The ESFA aims to be able to clarify forward funding options for schools in 2018. We would be happy to meet to discuss this opportunity further once the options have been finalised and if/when relevant. Any offer of forward funding would seek to maximise developer contributions to education infrastructure provision while supporting delivery of schools where and when they are needed.</p>	
Staffordshire County Council	An updated IDP that makes minor changes to education infrastructure provision for accuracy has been provided.	<p>The comments of SCC are noted. Section 9 of the IDP has been updated to incorporate the suggested changes.</p> <p>SCC has made additional comments in</p>

		relation to the regulation 123 list (see below) which have required amendments to the IDP.
Environment Agency	<p>Tamworth and Fazeley have benefited from a substantial system of flood defences which were initially constructed in the 1960s. These were improved between 2012 and 2014 when new defences were constructed at Coton and Fazeley. Over 3,000 properties in the area benefit from the presence of these defences which reduce the risk of flooding from the River Tame.</p> <p>Any new developments in areas benefitting from these flood defences should be required to contribute towards the costs of their maintenance.</p> <p>We support the inclusion of Flood Defences which has been carried forward from the current IDP.</p>	The Environment Agency's comments are noted. There is a reference contained within the IDP to developer contributions being a potential source of funding for maintenance of flood defences where they would meet the tests set out in section 122 of the CIL Regulations.
Historic England	<p>We do not wish to comment in detail in this instance, but offer the following general comments which I hope you find helpful.</p> <p>The Infrastructure Delivery Plan could make a notable contribution to the Local Plan's heritage strategy, through (for example, but not limited to); improvements to open spaces and public realm in historic areas, repairs and improvements to heritage assets such as historic bridges and registered parks &amp; gardens. We note the positive inclusion of heritage related identified projects, which are very welcome, and would encourage any additional opportunities to conserve or enhance the historic environment to be considered as above.</p>	The comments of Historic England are noted.

	<p>We encourage careful consideration to be given to the IDP in these respects to help you meet the requirements of conserving or enhancing the historic environment in line with paragraphs 7, 126 and 157 of the National Planning Policy Framework. Our advice note on 'The Historic Environment in Local Plans' has more information on this subject and can be accessed here: <a href="https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans">https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans</a></p>	
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### Draft Regulation 123 List

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Highways England	<p>Highways England has previously confirmed that a number of key sections of the SRN will likely be impacted by development in Tamworth and that highways improvements on the M42 and A5 will be necessary, in order to accommodate the individual and cumulative impacts of future development (this is reflected in our comments on the current draft IDP). The nature of these improvements has however not been defined and it is clear that further assessment work will be necessary in order to define appropriate mitigation strategies. On this basis, Highways England is content that there are no SRN schemes included on the Regulation 123 List at present. It is anticipated that infrastructure needs associated with future developments will need to be defined through the transport assessment process, and that any requisite</p>	No response required.
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	infrastructure can be expected to be delivered through traditional S106 and S278 mechanisms.	
Natural England	We note the list's contents and have no specific comments to make at this stage.	No response required.
Education and Skills Funding Agency	We understand that Staffordshire County Council have worked closely with Tamworth Council in developing the Regulation 123 List and that S106 agreements are the preferred method for raising education contributions. The ESFA, therefore, has no comments to make in relation to proposed Regulation 123 List.	No response required.
The Woodland Trust	You refer on page 4 to "enhancement of open space owned by Tamworth Borough Council". The Woodland Trust has done some research which shows that selective conversion of green open space to woodland (perhaps less well used areas around the edge of parks and playing fields etc) can deliver considerable biodiversity and amenity benefits, as well as significantly reducing the Council's landscape management costs. See our report "Trees or Turf" at: <a href="https://www.woodlandtrust.org.uk/publications/search/?query=trees+or+turf">https://www.woodlandtrust.org.uk/publications/search/?query=trees+or+turf</a>	No response required.
Staffordshire County Council	Staffordshire County Council as Lead Local Flood Authority have identified that most of the problems we deal with in Tamworth are with regard to existing surface water infrastructure that is reaching the end of its design life or has been	The proposed flood alleviation works are noted. In order to be included on the regulation 123 list the projects would need to be included on the IDP initially. The IDP has been updated to include the identified projects with a view to potentially including



adversely affected by other factors. Currently, if a flooding problem arises in Tamworth, the LLFA has two accepted routes for funding. Flood Defence Grant in Aid (from DEFRA) and applying for local levy funding through Regional Flood and Coastal Committees. In order to obtain such funding we have to produce business cases and cost benefit analyses through a detailed process. Unfortunately this whole process was designed for the Environment Agency to get funding for large scale schemes on Main Rivers which might protect hundreds or thousands of properties. This usually consists of detailed flood modelling and analysis of the problems. That often costs more than the works that are needed to solve the small scale problems we encounter.

As a result, the smaller scale problems that we are seeking to resolve do not often qualify under this assessment system and we only tend to end up with property level defences, rather than a more pragmatic engineered solution. If smaller scale funding was available through a process like CIL, it might give us the ability to resolve some of these smaller scale flooding problems which are problematic to a small number of residents, but do not qualify under the current funding system.

Currently in Tamworth, there are a number of small scale repetitive flooding problems of this kind, the

them on the regulation 123 list in future. However it is not considered appropriate to include the projects on the regulation 123 list until such time as further details of the projects, including potential costs, have been established.

	<p>problem areas are listed below. These might be added to the list of Identified Projects for the future.</p> <p>Persistent Historic Flood Problems in Tamworth:</p> <ul style="list-style-type: none"> <li>• Amington Road under viaduct – road floods because of high levels in Main River</li> <li>• Amington Hall Lodge, Ashby Road – House flooded from ageing land drainage system</li> <li>• Dunstall Lane, Ventura Park – Roadside ditch with confusion as to ownership</li> <li>• Emberton Way and Whitley Avenue, Amington – Ageing land drains</li> <li>• Glascote Road/Neville Street – Ageing land drainage infrastructure</li> <li>• Hedgeing Lane, Winecote – Ageing land drainage infrastructure</li> <li>• Jonkel Avenue, Tamworth - Ageing land drainage infrastructure</li> <li>• Kettle Brook culverts - Ageing land drainage infrastructure</li> <li>• Lichfield Road Industrial Estate – Confusion as to ownership of land drainage, debris problems and water held back during events in the Tame.</li> <li>• Orchard Street, Tamworth - Ageing land drainage infrastructure</li> </ul>	
<p>Environment Agency</p>	<p>There are currently no flood risk management schemes in the Tamworth BC area included in the FCRM Investment Programme.</p>	<p>No response required.</p>

Historic England	<p>We do not wish to comment in detail in this instance, but offer the following general comments which I hope you find helpful.</p> <p>CIL funding can be used for ‘infrastructure’, which can include (but is not limited to) historic bridges and green and social infrastructure such as registered parks and gardens, civic spaces and public realm in historic places. We encourage opportunities to be taken to identify ways in which CIL funding can be used to reinforce the borough’s policies with respect to conserving or enhancing the historic environment to help you satisfy paragraphs 7, 126 and 157 of the NPPF. Similarly, you may wish to consider discretionary relief where the viable reuse of a vacant heritage site would be less viable if it was subject to CIL, or the asset’s setting degraded by increased density or design restrictions as a result of viability/CIL requirement interaction. Our advice note on ‘The Historic Environment in Local Plans’ has more information on this subject and can be accessed here: <a href="https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans/">https://historicengland.org.uk/images-books/publications/gpa1-historicenvironment-local-plans/</a>.</p>	The comments of Historic England are noted.
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