

## **Developer Contributions Supplementary Planning Document (SPD): Comments received and recommended responses**

### **Appendix B to the Executive Report - 8 December 2020**

Please note: The comments received and the recommended responses do not take account of the proposed changes set out in the government's consultation document 'Changes to the Current Planning System' or the White Paper 'Planning for the Future - August 2020'

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
1	Highways England	<p>Having considered the draft, we would comment that whilst Section 278 of the Highways Act 1980 is referred to as a funding / approval mechanism for developer-funded highway improvements clarification is needed within the SPD that for works involving the strategic road network (SRN), Section 278 is the only approval mechanism available to cover developer-funded works on the SRN – Section 106 and CIL are not legally recognised to covering works to the SRN. This means that in cases where works to the SRN are necessary, a developer would need to enter into a separate Section 278 agreement with Highways England and provide the funding required to us. We feel it may be useful to make this distinction within section 4.3 of the SPD.</p> <p>For further details on our approach to section 278 agreements and developer funded works, we'd recommend that the SPD references or links to the Highways England policy advice document 'The Strategic Road Network: Planning for the Future - A guide to working with Highways England on planning matters', which is publicly available online here:  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461023/N150227_-_Highways_England_Planning_Document_FINAL-lo.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/461023/N150227_-_Highways_England_Planning_Document_FINAL-lo.pdf</a></p> <p>This provides further details and contains useful information for developers preparing planning proposals and associated third party works.</p>	Noted. Section 4.3 and Section 9 have been amended to make this clear and the suggested link added.
2	Environment Agency	<p>Thank you for consulting with us on the above SPD, we have reviewed the document and can comment as follows:-</p> <p>In relation to our remit we support the following sections of the SPD:</p> <ul style="list-style-type: none"> <li>- 1.1.6 Flood Defence and Alleviation Schemes inc SUDs</li> <li>- 11.1 Drainage and Flood Risk Management</li> <li>- Policy IC4 Infrastructure and Planning Contributions</li> </ul>	Support noted.
5	Sarah Williams	Thank you for sending links to the draft SPD. My hope is that it safeguards & develops green spaces & greenways through the urban areas offering safe	Whilst the comment does not address the specific content of the SPD, it is generally supportive of the policy approach of

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		usable routes for cyclists, pedestrians & horses. That cycleways are not token gestures that stop abruptly, are permanently full of parked cars or (unreasonably) expect the cyclist to dismount & become a pedestrian. That thought is given to these green routes connecting and that a cyclist on a green route has, wherever possible, a separate space from pedestrians. I hope too, that any new developments are required to work to very high standards of sustainability & energy efficiencies. I would also hope that there is a plan to plant another million trees, without waiting for the next millennium, & enrich the towns biodiversity. Perhaps the draft covered my 'Wishlist'? There is lots happening to the town and it has improved tremendously, thank you for all your efforts to make Burnley a lovely place to be. Keep up the good work :).	the Local Plan and SPD with regard to the provision of GI and other infrastructure, whilst allowing sufficient viability to enable a scheme to be of high quality.
6	Mrs Janet Richardson	Having received the above document, and, as to the best of my ability to make sense of "jargon" I feel that again, to the best of my ability and untrained eye, the proposed plans for the town, providing all and every safeguard regarding; flood alleviation, education, health, public spaces, play areas, and road infrastructure etc. are strictly monitored and implemented as set out in the document, with no favour, to any particular developer, or scheme, then it is my hope that, with particular regard to affordable housing, that the plans for the town are carried out with care and consideration.	Comments noted – no changes requested.
7	Mrs Carole Hales	Thank you for the Email, but it seems to me that even after spending a lot of time trying to understand it, I cannot. The layout is so convoluted and complex It is very difficult to make any sense of it.  Is this a purposeful attempt to confuse the people who are trying to reply? .... and are interested in the towns wellbeing. Is there a simplified version of this that the normal people on the street could possibly understand.	Officers responded to the comment acknowledging that this particular SPD is a rather technical document, but inviting the respondent to ring them if she had any particular questions.
9	Burnley Wildlife Conservation Forum	I have studied this draft S.P.D on the council's website & especially in respect of wildlife habitats the contents of 3.4 Burnley Green Spaces strategy (page 10), 8.1 green infrastructure & 8.2 Open spaces for housing development (page 36) & 11.2 Biodiversity matters (page 44)  Whilst there are no specific comments to make formally on behalf of B.W.C.F regarding this S.P.D, its contents have been noted & will be taken with consideration, alongside the Local Plan, with regard to planning applications, whenever appropriate, in respect of any losses of wildlife habitat features.	Comments noted.
10 a	CPRE	I am writing to you on behalf of CPRE Lancashire concerning the consultation for the Developer Contributions Supplementary Planning Document.	The role of CPRE and quotes from national policy noted.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>We welcome that the Council is progressing this SPD in light of changes to local authority funding. In future it is more vital than ever that developer contributions are appropriate and adequate for the quantum of development outlined in applications, as there is no alternative means of providing needed infrastructure. It should be the case moving forward that Burnley's planning decisions lead to a good standard of infrastructure and avoid deficits or gaps of any kind. Infrastructure deficits lead to community facilities becoming under strain, and operating at over-capacity, and this seriously erodes the quality of life of local communities.</p> <p>We are aware of recent planning application decisions that have frustrated local people when developers have negotiated the level of contribution to below a standard acceptable when considering local plan policies. Viability assessments have wrongly capped developer contributions, when developers have been able to afford more. This seems to be an odd situation. It may be the viability assessments need to be updated to better reflect today's land values. We hope the new SPD will make sure developers contribute properly to developments they bring forward.</p> <p><b>CPRE Lancashire</b>  The Campaign to Protect Rural England Lancashire (CPRE Lancashire) was established almost 90 years ago, and since then it has sought to ensure for a beautiful and thriving countryside that enriches all our lives.</p> <p>The Countryside sustains us in every way. Its beautiful landscapes provide the food we eat and a haven for the nature and wildlife we love. It is where many of us feel most alive. But it is under threat – from pollution, litter, irresponsible development and a host of other pressures. The countryside doesn't stand still. It is always adapting and evolving. If it is going to thrive, it needs our help now. Change in our countryside is necessary, but for it to be positive it must meet the needs of both rural and urban communities. We want a thriving countryside for everyone to enjoy – today and for generations to come. We're CPRE, and we stand up for positive progress.</p> <p><b>National Planning policy and Developer Contributions</b>  The Government sets out in the National Planning Policy Framework (NPPF) that Councils should ensure all new development is sustainable in the long term by guaranteeing an adequate level of developer contribution. This relies on the</p>	Comments on the SPDs approach to viability are responded to below.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>Council setting out the minimum requirements for infrastructure and planning contributions expected from developers when applications are submitted. The NPPF states:</p> <p>Paragraph 34. Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required, along with other infrastructure (such as that needed for education, health, transport, flood and water management, green and digital infrastructure). Such policies should not undermine the deliverability of the plan.</p> <p>Paragraph 57. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.</p> <p>Paragraph 62. Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required (Applying the definition in Annex 2 to this Framework), and expect it to be met on-site unless: a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and b) the agreed approach contributes to the objective of creating mixed and balanced communities.</p>	
10 b	CPRE	Note that off-site provision is not the normal position. The normal position is on-site. This point needs to be highlighted and reiterated in the SPD.	The Local Plan has already been adopted following examination, and its policies, including the overall approach to affordable housing provision, were found to be consistent with national policy. The SPD is written to support these policies and explain in more detail how they will be applied. An SPD cannot introduce new policy or supporting guidance that is not consistent with the Local Plan.
10 c	CPRE	Unfortunately, the NPPF is focused on developer viability and all too easily allows developers to negotiate down or avoid contributions on the basis of viability and profit being lower than 25-20%. It is therefore very important that	Comments on viability:  The legal case referred to does not say that viability

Ref:	Consultee	Comments	Recommended Response
		<p>local plan policies clarify the position and tighten up the wording on what is expected as a minimum contribution.</p> <p>Developers are required to deliver housing types and tenures specified in Local Development Plans. The legal judgment in case of [2018] EWHC 991 (Admin) established that land value must be informed by policy, and consequently, it is not acceptable for the Council to grant permission for an application that is deficient in developer contribution. Therefore the policy must be right. If not, it would be contrary to the principle of plan-led sustainable development, and it would set a worrying precedent for Burnley's communities.</p> <p>Local Plan Policy IC4 for Infrastructure and Planning Contributions</p> <p>The Council has the following local plan policy concerning contributions:</p> <p>Policy IC4- Infrastructure and Planning Contributions – point 5) Contributions will be negotiated on a site-by-site basis and will only be sought where these are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.</p>	<p>considerations cannot or should not be taken into account at the application stage. What it indicates is that developers buying sites should agree a price based on the knowledge of the planning requirements as set out in the Local Plan and where applicable, national policy; and cannot use any overpayment as a reason for paying less contributions or failing to meet planning requirements. Providing the price paid for the land is appropriate, developers can still ask the Council to take viability consideration into account for matters that are not 'necessary and critical' (as set out in the SPD) or could not have been foreseen at the time of the application or allocation. The SPD in setting the proposed ceilings has already assumed an appropriate land price which formed part of the already tested Plan Viability Assessment. If a developer wishes to argue for lower contribution based on higher price paid then such a request is likely to be refused. It is of course sometimes the case that land has been purchased under a previous policy regime and ultimately each application has to be considered on its merits.</p> <p>It is not entirely clear what CPRE suggesting. Either contributions need be standardised in some way, or they need to be bespoke, application by application. National policy and planning precedence on affordable housing contributions and mechanisms such as CIL, all adopt/encourage a formulaic approach which will by its very nature not capture every last penny of potential contributions or allow identical levels of developer profit. The alternative to having a formulaic approach such as that proposed in the SPD would be to assess viability through a bespoke assessment submitted with each application and have no set formulas or amounts.</p> <p>The approach taken in the SPD is considered to be the most appropriate one for Burnley and is consistent with higher-level policy in the Local Plan and with national policy. The precise way the formulas should be set is of course matter for debate. The SPD and the policies it supports do offer flexibility to vary the formulas where clearly justified.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			<p>It is not clear whether CPRE objects to the proposed contributions ceilings per se or just the amounts set. The local plan viability assessment which underpins the affordable housing percentages and contribution ceilings could be updated if this is what CPRE are suggesting, but this would delay the SPD production by up to a year. They may not ultimately change in any significant way. The assumptions used in the local plan viability assessment included 20% developer profit and with the proposed index-linking, the ceilings are still considered sufficiently robust to progress the SPD to adoption; but clearly it needs to be kept under review. CPRE do not state which assumptions they consider to be wrong? In the planning application case believed to be that referred to, the developer has been able to agree to offer amounts requested by infrastructure providers in excess of the ceiling, in part by varying the standard assumptions on affordable housing mix - as indeed the SPD allows.</p> <p>The Local Plan Viability Assessment followed the recommended approach set out in national policy and was tested as part of the plan-making process.</p> <p>At this point in time there are not considered to be any change in circumstances since the plan was brought into force that requires a different approach. There may be changes to the building regulations in 2020 to require higher energy efficiency measures and legislative changes to mandate biodiversity net gain for certain developments and these additional costs may be able to be built into the formulas. If they cannot, a new Viability Assessment may be required. Any such increases in development costs, unless matched by a proportionate greater increase in house prices, would clearly reduce the amounts available for other non-critical infrastructure.</p>
10 d	CPRE	<p>Developer Contributions SPD</p> <p>CPRE Lancashire is pleased that Paragraph 5.1.3 Conditions will normally relate to affordable housing or other infrastructure provision by the developer on-site.</p>	<p>Specific Comments on SPD:</p> <p>Para 5.1.3. It is not clear why CPRE consider that off-site housing via sums can be challenging? The categories in Table 1</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		We understand that due to land availability providing off-site housing via sums can be challenging. Therefore we are a little concerned that Table 1: Prioritisation Categories only has one priority category that requires on-site provision.	all relate to on and off-site matters?
10 e	CPRE	In Paragraph 5.3.11 we recommend a more ambitious target for the contribution ceiling for its residential base appraisals at £750 contribution for each housing unit to include limited contributions for education and other infrastructure. As previously said the way Government funds local planning authorities is changing and the Council must make sure it covers costs associated with education arising from a new development. The Council will not be able to fund education from alternative sources of income.	Para 5.3.11. The £500 is the sum used in the residential base appraisals of the previously tested local plan viability assessment, but it does not affect the proposed ceilings.  National policy does not state that developers must fund in full education contributions regardless of viability considerations. Alternative funding is available (See response to LCC/DfE comments).
10 f	CPRE	In Table 2: Indicative Contribution Ceilings and Affordable Housing %, we would expect to see the contributions for greenfield development in all locations to be higher than that of brownfield development, as to actively encourage a brownfield first approach and to comply with NPPF's 'Making effective use of land' as set out in NPPF Section 11. Burnley Council should do everything within its gift to prioritise vacant and underutilised brownfield land to be reused in advance of loss of greenfields. Making brownfield land more viable is a good start.	Table 2: The contribution ceilings are higher for comparable greenfield sites. The Local Plan and SPD, in allowing viability to be taken into account and adopting a flexible approach, is indeed allowing allocated and windfall brownfield sites to come forward.
10 g	CPRE	The Notice under Town and Country Planning (Pre-Commencement Conditions) Regulations 2018 now ensures contributions are to be discussed with applicants before a decision is made. For pre-commencement type conditions, legislation now requires formal notification to applicants. 5.4.1 captures this new requirement.	Para 5.4.1. Noted.
10 h	CPRE	The Council will be required to monitor development contributions and it must make sure the SPD is workable in this regard. In Paragraph 6.3.3 we suggest the timescale be increased to 10 years as five years in development terms is not that long, and there can be genuine reasons why spending the money may take time. Resources of Councils have been reduced in recent years and it means the capacity of the Council will be limited. Thereafter, money that is not spent can be reimbursed to the developer. We do not agree the Council should be obliged to pay any interest accrued; it is not a bank.	Para 6.3.3. As the SPD states, the claw-back period for any unspent monies will be negotiated as part of the agreement e.g. to reflect the size and likely build-out rate of the development in question and the point at which the infrastructure is required, and may be longer than 5 years. If the infrastructure has been determined to be necessary to make the scheme acceptable, sufficient time must be allowed for it to be provided and it should of course actually be provided to support the development in question (which will need to start within 3 years (or less). Text has been added in response to points made by others to indicate that the time-period may also be shorter than 5 years where justified. Case

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			law has established that developers are entitled to a refund of unspent monies with interest whether or not the agreement actually states so. As funds should normally only paid by a developer at the point when they are required or likely to be spent, then paying back unspent monies should be a rare occurrence.
10 i	CPRE	<p>Affordable Housing</p> <p>We disagree with the Government's definition of affordable housing, which has become completely meaningless. Inflated land prices, a rise in private house prices and a failure to build enough social rented homes have driven rental prices to a point where 80% of market rate is out of reach for so many people.'</p> <p>Instead, we're calling on the government to change this definition and set affordable rent levels according to people's net income, rather than market rates. Using the lower of these two indicators will help to even out the huge discrepancy in 'affordable' rent prices in different parts of the country while providing a boost to families in need of homes they can genuinely afford.</p> <p>Also, CPRE analysis of new government data on homelessness has revealed a worrying trend: the number of households classified as homeless in rural towns and villages across England has increased by 85% over the past year. Nationally, homelessness has seen a significant increase over the past year, rising by 45%. However, rural communities have experienced a surge in homelessness almost double the national increase, rising from 9,312 to 17,212 over that year.  <a href="https://www.cpre.org.uk/news/new-cpre-research-shines-a-spotlight-on-the-rural-housing-crisis/">https://www.cpre.org.uk/news/new-cpre-research-shines-a-spotlight-on-the-rural-housing-crisis/</a>.</p>	It is agreed that the current national policy definition of affordable housing is too wide and concerns in this regard were raised in the Council's response to the 2018 NPPF consultation. Further changes in this area of national policy are proposed. Planning applications have to be determined in accordance with the development plan; but material considerations such as new national policy do have to be considered and weighed.
10 j	CPRE	<p>Summary</p> <p>In summary, CPRE Lancashire is pleased to see Burnley Council is progressing an up to date Developer Contributions SPD to ensure developments provide adequate infrastructure commensurate with the scale of a development. It is only by providing suitable and sufficient infrastructure that developments can be truly sustainable in the long term. Affordable housing, that is exactly what is needed in rural communities, and we hope the Council will keep this at the forefront of its mind when adopting this SPD.</p>	Overall support for a developer contributions SPD is noted.
11	Canal & River	Thank you for your consultation upon the draft Developer Contributions SPD.	What was para 8.2.12 has been moved to 8.1.3 and expanded

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
	Trust	<p>We are the charity who look after and bring to life 2000 miles of canals &amp; rivers. Our waterways contribute to the health and wellbeing of local communities and economies, creating attractive and connected places to live, work, volunteer and spend leisure time. These historic, natural and cultural assets form part of the strategic and local green-blue infrastructure network, linking urban and rural communities as well as habitats. By caring for our waterways and promoting their use we believe we can improve the wellbeing of our nation. The Trust is a statutory consultee in the Development Management process.</p> <p>Our waterways are multi-functional assets providing multiple economic, social and environmental benefits. In addition to being a form of green and blue infrastructure, important for leisure, recreation and tourism uses, they can provide local and strategic sustainable transport routes.</p> <p>Having viewed the draft document, we wish to make representations with regards to part 8.1: Green Infrastructure.</p> <p>Development in the vicinity of the canal can have a significant impact on our infrastructure, for example as a result of increased use of the waterway and towpath by pedestrians and cyclists, and it is essential that this impact is mitigated into the future. Negative impacts from the erosion of our towpaths would, for example, need to be mitigated via contributions towards their improvement to accommodate additional usage brought by development.</p> <p>We generally welcome the general text of section 8.1, which recognises the need for improvements to meet deficiencies to Green Infrastructure. However, we do have concerns that the wording of section 8.1 could result in a situation where necessary improvements to mitigate against the impact of development on Green Infrastructure (which could be funded through direct contributions such as s106) are not sought if improvements to the Green Infrastructure network are undertaken elsewhere.</p> <p>We therefore advise that an additional paragraph is inserted in this section to make it clear that direct contributions will be sought where improvements are required to assets in proximity to the development in order to meet the needs of that development and to mitigate against any harm that could be caused to that asset from the demands of the new development.</p>	to clarify this point.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>This would make it clear to decision makers that the content of section 8.1 does not override the requirements of section 5.1 with regards to the provision of contributions required to mitigate against the impacts of development.</p> <p>I hope the above is of use. Please do not hesitate to contact me with any queries you may have.</p>	
12	Cliviger Parish Council	<p>Cliviger Parish Council wishes to endorse the attached document prepared by the Campaign for the Protection of Rural England. We agree with everything included in it.</p> <p>We would also like to add the following observation:</p> <p>"We are concerned over the developer's ability to mount a viability challenge to the amount of any previously agreed payment if the amount of same later placed the viability of the development at risk through some previously unforeseen circumstance or event. It would be an open invitation to any developer to see if such a challenge could be seen to be remotely successful."</p>	<p>See response to CPRE comments.</p> <p>The SPD sets out in Section 5.5 the legislation and national policy in relation to developers seeking to renegotiate contributions. There are limitations on the ability to renegotiate agreements in relation to existing planning permissions – and any variation would need to be justified; but a developer is free at any time to submit a new planning application and ask for all matters to be reconsidered – the failure to provide adequate contributions could be a reason for refusal.</p>
13	Habergham Eaves Parish Council	<p>Habergham Eaves Parish Council wishes to endorse the attached document prepared by the Campaign for the Protection of Rural England. We agree with everything included in it.</p> <p>We would also like to add the following observation:</p> <p>"The parish council feels it is only fair that any contributions made by a developer are for the benefit of the community affected by the development and not put in a pot to spread around the borough. We feel this would go some way to easing the pain of often unwanted developments and will allow a community to grow together, not just be developed without any thought to the existing community."</p>	<p>See response to CPRE comments.</p> <p>Section 106 contributions need to be justified in terms of addressing the impact of the specific development in question and spent on appropriate and specific infrastructure as set out in the legal agreement. Unlike CIL, S106 contributions do not go into a 'pot' to be spent on wider infrastructure across the borough.</p>
14	Mrs Rebecca Hay	<p>I wish to endorse the attached document prepared by the Campaign for the Protection of Rural England. I agree with everything included in it.</p> <p>I would also like to add the following observation:</p> <p>It would be good to see the council be more forward thinking re renewable energy. In Scotland, it is policy for councils that developers have to provide adequate solar panels on all new homes and developers comply with this.</p>	<p>See response to CPRE comments.</p> <p>The comment regarding renewable energy is not directly relevant to the content of the SPD but rather the Local Plan and building regulations. The SPD is written to support the policies of the Local Plan and how they will be applied. It cannot introduce new policy or an interpretation thereof that is not consistent with the Local Plan.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>In my opinion, the current contributions policy allows developers to provide as little as they can and the council just gives away sites without a thought for the existing community or infrastructure. The Red Lees Road site at Cliviger is a classic example. If the public had not protested, the council would have allowed a special area of landscape to go cheaply. In the end the extra concessions were not much and were down, I understand to the developer self imposing extra contributions, so the site was lucky to get more. But the point is, this was not down to the planners, who appear to have done little, until pressurised, to get the best deal for the site and the existing community. By doing this, the council creates apathy and mistrust in the existing community and this can not be healthy for our town.</p>	<p>This suggestion that the Council gives no thought for the existing community or infrastructure is not accepted. All relevant benefits, impacts and requests for contributions are carefully considered. At the site referred to, the developer has agreed to a contribution of £980,832.54 for education plus £396,355 for affordable housing – the highest contribution sum ever seen in the borough and this sum is in excess of the ceiling set out in the SPD. An increased sum was achieved in part by varying the standard assumptions on affordable housing mix - as indeed the SPD allows. A balance needs to be struck, e.g. as CPRE points out in its response, replacing social rented housing with discounted houses for sale (which are not affordable or attainable for some) allows increased amounts to be available for other contributions e.g. for education.</p> <p>Contributions are to be used to mitigate the specific impacts of development, not to solve existing problems or create a benefit for existing residents (though they may) and cannot be lawfully used to make good a deficit in public sector funding provided through general taxation. Developers may offer further mitigation than the Local Plan requires, but all contributions, whether required or offered unilaterally, must satisfy the statutory (Regulation 122) tests to avoid a situation where planning permission can be 'bought'.</p> <p>The response to the CPRE comments set out the reasons for and limitations of adopting a formulaic approach to contributions rather than applicants doing individual site by site viability assessments. It has to be remembered that the requests themselves are formulaic. The main aim of the SPD is to provide greater transparency in how contributions are sought and spent to ensure robust decision making. Indeed, officers would assert that the very existence of the draft SPD and proposed ceilings has already better informed responses and discussions with regard to these matters at the planning application stage.</p>
15	Ribble Valley	Thank you for consulting Ribble Valley Borough Council on the 'Developer	Noted.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
	Borough Council	Contributions Supplementary Planning Document (SPD)'. I have considered the document at an officer level and can confirm that the Authority has no observations or comments to make.	
16 a	Department for Education	<p>1. The Department for Education (DfE) welcomes the opportunity to contribute to the development of planning policy at the local level.</p> <p>2. Under the provisions of the Education Act 2011 and the Academies Act 2010, all new state schools are now academies/free schools and DfE is the delivery body for many of these, rather than local education authorities. However, local education authorities still retain the statutory responsibility to ensure sufficient school places, including those at sixth form, and have a key role in securing contributions from development to new education infrastructure. In this context, we aim to work closely with local authority education departments and planning authorities to meet the demand for new school places and new schools. We have published guidance on education provision in garden communities and securing developer contributions for education, at <a href="https://www.gov.uk/government/publications/delivering-schools-to-support-housing-growth">https://www.gov.uk/government/publications/delivering-schools-to-support-housing-growth</a>. You will also be aware of the corresponding additions to Planning Practice Guidance on planning obligations and viability.</p> <p>3. We would like to offer the following comments in response to the proposals outlined in the above consultation document.</p>	Introductory comments noted.
16 b	Department for Education	<p>Education provision</p> <p>4. We note that paragraph 10.2.1 highlights that the County Council is responsible for calculating the number of additional school places required. We would recommend that when education needs from very large developments are assessed and there are plans to utilise capacity in existing schools, instead of, or in addition to a new onsite school that you only consider the capacity of primary schools within the statutory walking distance. This ensures large developments are environmentally sustainable and promotes active and healthy lifestyles. The DfE guidance on securing developer contributions for education provides further advice on delivering schools in strategic developments and new settlements.</p>	<p>4. The approach suggested by DfE is less restrictive than that currently used by LCC (and BBC) in determining capacity and the requirement for any contributions. LCC use a 2 mile radius for primary schools and 3 for secondary schools and applies these to all developments of 10 units or more, whereas the statutory walking distance is 3 miles for children 8 and over (measured along a walking route). The DfE response only recommends the use of these statutory walking distances for primary provision (they do not comment on secondary provision) and also suggest that that these should only come into play for very large/large developments. Adopting the DFE approach would a wider catchment than LCC use and not necessarily one based on the statutory walking distance. This would significantly alter the amounts currently being sought towards secondary school places at some sites in the borough</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			and greater flexibility would better reflect the capacity issues raised as a result of the decisions by DfE to open a free school and by LCC to close Hameldon Community College. There are no 'very large' developments proposed in the Local Plan that could or should deliver an on-site schools (See also response to LCC comments).
16 c	Department for Education	<p>5. The approach set out within paragraphs 10.2.2 and 10.2.3 does not follow the recommended method for calculating the cost of providing new primary and secondary school places, as it is not based on the DfE's most recent school place scorecards. The latest scorecards published by the DfE are available on the DfE website, and can be accessed here. The table below provides the per pupil cost of provision based on the DfE's most recent scorecard, adjusting the national averages to reflect the position in the north west (and before adjusting for inflation).</p> <p>Type of provision: Primary - Secondary  Permanent expansion £15,226 - £20,861  Temporary expansion: £7,228, - £8,155  New school: £17,922 - £21,983</p> <p>An assessment of costs based on the most recent scorecard available will help to provide the development industry with greater clarity over the cost of providing new school places. In addition, we recommend the use of index linking when developer contributions are discussed at planning application stage and in planning obligations, so that contributions are adjusted for inflation at the point they are negotiated and when payment is due. In addition, it would be helpful if these paragraphs could highlight the additional costs linked to providing special schools. We also recommend that developer contributions for special or alternative school places are set at four times the cost of mainstream places, consistent with the space standards in Building Bulletin 104. We understand that further guidance will also be provided by Lancashire County Council in the near future, in relation to this matter. The new methodology for calculating the per pupil cost of provision currently being developed by Lancashire County Council should also reflect the latest DfE guidance.</p>	<p>5. The approach set out at para 10.2.2 and 10.2.3 reflected LCC's approach and DfE highlighted a difference in how the amounts are calculated. LCC has been made aware of this comment and has now updated its or methodology (see 24 l)</p> <p>LCC suggested in its response that the specific figures be removed from the SPD and a link to LCCs document added instead. This seems to be the best approach and the SPD has been amended accordingly.</p> <p>The SPD already indicates that agreed sums will be appropriately index-linked and precisely how this is done in any given case will be set out in the Agreement.</p>
16 d	Department for Education	6. Paragraph 10.2.11 highlights that '..it is not clear at the time of drafting this SPD how the reductions in Central Government funding to take account of developer contributions will work in practice.' Paragraph 10.2.11 could be rephrased for clarity, to make it clear that in the first instance, where new	6. Section 10.2 has now been updated and amended, and addresses the points raised – although DfE's suggested wording does not address viability impacts. (See response to LCC comments).

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		development generates the need for school places, that developer contributions are expected to meet the relevant need, through the provision of land and/or funding for land and construction. The County Council reports to DfE the number of school places funded by developer contributions and DfE Basic Need funding allocations are adjusted to take this into account.	
16 e	Department for Education	<p>7. Paragraph 10.2.8 states that 'Local Plan Viability Assessment did not factor in large-scale pooled contributions towards education, partly in view of the limitations imposed by the pooling restrictions in place at the time, and as this position will fluctuate across the plan period..'. Viability assessments should always take account of education along with other forms of infrastructure, in accordance with Planning Practice Guidance on viability, so that informed decisions can be made about infrastructure funding priorities, deliverability of sites being considered for allocation, and the extent of developer contributions that can be supported and required. Burnley should provide an estimate of the expected need arising from housing and population growth over the plan period, assuming that no existing schools close. The five-yearly review of plans will provide a mechanism for providing updates on the changing levels of demand across the local authority area.</p>	<p>7. Burnley's Local Plan and its approach to viability, as informed by the Plan Viability Assessment, was adopted following independent examination by a government appointed Inspector and was found to be consistent with national policy as it existed at the time. Whilst further national guidance has now been issued in relation to education contributions and makes clear that these can be justified, and whilst pooling restrictions have been lifted, there has been no fundamental change in the national policy approach to viability which can still be taken into account. Burnley's Local Plan is a comprehensive one and was accompanied not only by a Plan Viability Assessment but an IPD and it included a detailed housing trajectory which is updated annually. The trajectory sets out how each site is expected to come forward. This comprehensive information allows the very decisions about infrastructure funding priorities that DFE are suggesting, to be made. The point about that assuming there are no school closures is an interesting one as one such school has closed since the Plan was adopted, despite there being a projected shortfall in secondary school places to accommodate the growth set out in the local plan and number of its specific sites.</p> <p>Burnley's planning framework is regularly reviewed to see if any updating is necessary (rather than waiting for the new style 5-yearly statutory 'review' i.e. a formal statement of whether an update is required). The IDP is also currently being updated in liaison with LCC and other key infrastructure providers. Burnley is more fortunate than most in having an up-to-date comprehensive adopted Local Plan and a 5-year land supply for housing, which gives the greatest clarity possible to education providers. In some areas where there is neither an up-to-date plan date or 5-year supply, major</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			housing developments are being granted on a windfall/unplanned basis. (See also response to LCC's comments). There seems to be a lack of understanding of the viability constraints in areas like Burnley, even on greenfield urban fringe sites, and the need nevertheless to deliver the housing development required by the Plan in quantitative and qualitative terms.
16 f	Department for Education	<p>Developer contributions</p> <p>8. Considering the proposed development levels, the Council and developers may be interested in DfE loans to forward fund schools as part of large residential developments. Please see the Developer Loans for Schools prospectus for more information.<sup>1</sup> 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>	<p>8. LCC did not identify the need for any new schools within any of the Local Plan's allocated sites. This would have had needed to be included in the allocation and would have necessitated a much larger site area. Given the recent closure of a secondary school and the continued availability of its modern buildings, it is presumed the construction of a new secondary school is neither necessary, nor could it be justified. The IDP that supported the Plan at the time of examination did indicate the possibility of requiring a new primary school, but LCC's preferred approach in the borough to date has been, where necessary, to expand existing schools. Contributions could be used towards a new school if necessary and preferred, but an appropriate site would need to be found.</p>
16 g	Department for Education	<p>Conclusion</p> <p>9. Finally, I hope the above comments are helpful in shaping the Burnley Developer Contributions SPD, with specific regard to the provision of land and funding for schools. Please advise DfE of any proposed changes to the emerging policies and/or evidence base arising from these comments.</p> <p>10. Please do not hesitate to contact me if you have any queries regarding this response. DfE looks forward to working with Burnley Council to aid in the preparation of sound policies for education.</p>	<p>9. No major changes to the approach set out in the draft SPD are proposed. The matters raised by the DFE response will be raised with LCC.</p>
17	Historic England	Thank you for consulting Historic England on the above document. At this stage we have no comments to make on its content.	Noted.
18	Burnley Civic Trust	Burnley Civic Trust fully endorses the attached report prepared by The Campaign for the Protection of Rural England.	See response to CPRE comments.
19	Mrs Ruth Ferguson	<p>Comments on document</p> <p>1. As an overview I believe new houses should only be built when there is an</p>	<p>1. Comment not relevant to SPD content.</p> <p>2. Whilst this comment is more of a comment on the Local</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>absolute need....need should be based on population trajectories of the area.</p> <p>2. It is imperative that brownfield sites are utilised by the planners and developers first...to encourage regeneration of our communities and ensure Burnley is an attractive place to live, and for our population to be proud. Derelict housing is never an attractive proposition, and it does not encourage the positive representation of our area. There are many brownfield areas in Burnley which can be developed, to upgrade the town and to not spoil our surrounding greenfield.</p> <p>3. Developers should be challenged on innovation with regard to provide more environmentally friendly housing which should be as self-sufficient as possible in terms of use of utilities - use sustainable materials and methods, solar roofing on all homes, insulation from recycled materials, fixtures and appliances that conserve water, use onsite water management including using a rain water in place of simply piping water off property and as a natural way of filtering runoff in your yard, energy star windows etc.... Nordic countries are very good at this. Developers should be awarded contracts on more bias towards this as opposed to the cheapest possible price.</p> <p>4. More social care housing is needed in particular to accommodate of our elderly ...totally inadequate at present.</p> <p>I appreciate that developers are asked to support education etc. through contributions. Although this is positive I believe it is too easy an option for developers to make a token financial gesture for these things. Money for education etc should be funded through other mechanisms. We should make sure developers use the equivalent of that 'financial contribution' in the construction of their houses - both materials and methods. This is their area of expertise and we should insist they do it. It ultimately helps house owners going forward for many years and helps the environment and the towns green credentials.</p>	<p>Plan strategy, the SPD, in setting out the approach to contributions that takes into account viability considerations and the particular challenges for brownfield sites, will help support their development.</p> <p>3. This comment is not directly relevant to the content of the SPD, but rather the Local Plan and building regulations. The SPD is written to support the policies of the Local Plan and how they will be applied. It cannot introduce new policy or an interpretation thereof that is not consistent with the Local Plan. However, the SPD, in setting out the approach to contributions that takes into account viability considerations ensures that the design and environmental quality standards of a scheme as required by the Local Plan are still able to be given full weight in the planning balance.</p> <p>4. Whilst this comment is not directly relevant to the content of the SPD but rather the Local Plan, the SPD in prioritising affordable housing over other noncritical infrastructure does support its provision. Any benefits from the provision of other specialist forms of housing would be balanced in any decision and with contribution requests made.</p> <p>National policy requires developers to make education contributions where justified and viability allows. It is agreed that non-critical contributions should not be made at the expense of a scheme's quality.</p>
20	Sport England	<p>Thank you for consulting Sport England on the above planning document.</p> <p>We want to help the planning system provide formal and informal opportunities for everyone to take part in sport and be physically active. As part of this effort, we've produced the Planning for Sport Guidance. The downloadable document below is ideal for anyone involved in, or looking to engage with, the planning</p>	<p>General comments noted.</p> <p>Support for the high priority given (Priority 1) for any site where Sport England has objected to the loss of an existing site and support for Paras 8.3.2 and 8.3.3 noted.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>system in England.</p> <p>This includes local authority officers and councillors, planning inspectors, developers and consultants, through to parish/town councils, neighbourhood forums, public health leads, sports clubs/organisations, community groups and individuals.</p> <p>The document can be downloaded here:  <a href="https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport">https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport</a></p> <p>We have also produced guidance to help assess the needs for sport through new housing development, entitled 'CIL and Planning Obligations Advice Note' (November 2018) which gives detailed guidance on how to make provision for sport and physical activity as part of new housing developments. This document can be downloaded here:  <a href="https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport/community-infrastructure-levy-and-planning-obligations-advice-note">https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport/community-infrastructure-levy-and-planning-obligations-advice-note</a></p> <p>Sport England supports the inclusion of 'sport, leisure, recreational, cultural and other social and community facilities' within the type of facilities for which contributions may be sought within Policy IC4 of the Local Plan.</p> <p>Sport England supports the use of the Green Spaces Strategy 2015-2025 to identify priorities for funding in relation to outdoor sport and amenity green spaces, in line with Policy HS4.</p> <p>Sport England supports the use of the Rossendale, Pendle and Burnley Playing Pitch Strategy to identify priorities for protection, enhancement and new provision for outdoor sport, up to 2026, and we support the high priority given (Priority 1) for any site where Sport England has objected to the loss of an existing site, or where new provision is a high priority (Paras 8.3.2 and 8.3.3).</p> <p>We hope these comments are helpful, please contact the writer below if you have any further queries. We would be happy to assist in the development of the guidance with regard to sites for outdoor/indoor sport and physical activity.</p> <p>We look forward to further consultation in due course.</p>	

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
21 a	Barratt David Wilson	<p>We write on behalf of BDW Trading as Barratt Homes ("BDW/the Representor") to set out its representations on Burnley Borough Council's ("the Council") Developer Contributions Supplementary Planning Document Supplementary Planning Document – Consultation Draft (January 2020 ("DCSPD").</p> <p><b>ABOUT BDW</b></p> <p>BDW is one of the UK's largest, most successful and best-known national house builders. Annually the business builds many thousands of high-quality homes throughout the UK including in the North West of England.</p> <p><b>WHY IS BDW MAKING REPRESENTATIONS?</b></p> <p>BDWH is making representations because of its core business activities and experience of delivering housing developments of all types, on large and small sites and in all circumstances. It hopes its experience of working within the UK's planning systems, including the implications of having to fund a wide range of contributions through obligations, and the implications of these for development viability, will assist the Council strike the right balance with the guidance and advice it hopes to provide through the DCSPD to developers like it.</p> <p>A key message that BDW wishes to make in connection with the representations it makes, is that it is keen to invest and build in the Borough, and in making the comments it has it is confident that there will greater prospects of this happening.</p> <p>Given its role in building large numbers of quality homes across the UK, BDW, in addition to making the representations it has through this letter, would be happy to meet the Council to contribute further knowledge and information to assist it get the DCSPD right.</p> <p><b>REPRESENTATIONS OF BDWH</b></p> <p>The representations of BDW are set out below. We confirm paragraph and page numbers to assist in referencing to which part of the DCSPD specific comments relate to.</p>	BDW's interest in investing and building in the borough in the future is noted. The response to the consultation is appreciated as it is important to have a view from the development industry perspective and BDW was the only private sector housebuilder to respond.
21 b	Barratt David Wilson	General Comments	General Comments:

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>BWDHL is of the view that the DCSPD is too long, detailed, overly complex and in parts difficult to follow.</p> <p>While it fully understands the scope of the document will need to be extensive given the topic range it needs to cover, each topic is covered in detail, in part because there is a considerable amount of background information that simply isn't needed. It is appreciated that this might be seen as being helpful to parties like BDW when responding on the consultation exercise, but it is of the view that the DCSPD should be as short and to the point as it can be.</p> <p>BDW is also keen to see an acknowledgement at the outset of the DCSPD that development contributions, i.e., planning obligations, are to assist in mitigating the impact of unacceptable development, this so as to make it acceptable in planning terms. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms. They must be:</p> <ul style="list-style-type: none"> <li>- necessary to make the development acceptable in planning terms;</li> <li>- directly related to the development; and</li> <li>- fairly and reasonably related in scale and kind to the development.</li> </ul> <p>These tests are set out as statutory tests in regulation 122 (as amended by the 2011 and 2019 Regulations) and as policy tests in the National Planning Policy Framework ("NPPF"). These tests apply whether or not there is a CIL charging schedule for the area.</p> <p>These points are important and should be made clear.</p>	<p>With regard to the length and complexity of the SPD - this is a highly complex area of the planning system and there is no suggestion from BDW as to which parts should be removed or simplified – elsewhere additional text is also suggested. The document is not considered to be unnecessarily lengthy for an SPD. The SPD is not only aimed at a professional audience who may already understand the law and national policy around contributions, but also for the public, to allow more effective engagement in planning applications. As such, the background information is considered helpful. Any text that was primarily to inform the consultation and is no longer necessary is proposed to be removed.</p> <p>The SPD clearly acknowledges and makes clear that development contributions, i.e. planning obligations, are to assist in mitigating the impact of development so as to make it acceptable in planning terms and are required to meet the relevant statutory tests.</p>
21 c	Barratt David Wilson	A matter that is covered in more detail and at several points throughout the representations is viability. This is a very key and often serious issue for a developer like BDW when promoting a development, i.e., the ability to hone a development proposals so that it meets policy tests and general land use considerations and delivers the likes of affordable units at the expected policy level but still makes an acceptable level of profit. This topic should be covered at the outset of the DCSPD to confirm that the Council understands its importance and relevance and that weight needs to be given to it in planning decisions.	To add reference to viability in the introduction (without explanation) is not considered appropriate.
21 d	Barratt David Wilson	A further related point, is that BDW feels that it would assist consideration of this matter if the DCSPD provided some guidance on the many types and wide ranging nature of topics and factors that can be regarded as genuine when	The 'topics and factors' referred to by BDW that were and are relevant to assessing viability are included in the assumptions set out in detail in the Local Plan Viability Assessment and

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>viability matters are being considered. For example, while a site might appear eminently developable it could, for example, be affected by hidden issues like mineshafts, which impact foundation design and cost. This is an example but of one such matter. Clearly, it would be difficult to cover all possible areas in detail but the bones of a basic but comprehensive list would be helpful.</p>	<p>these include e.g. abnormalities for potential mining legacy. There is no wish to add to the length of the SPD to cover matters set out in the Plan Viability Assessment which was tested as part of the Local Plan Examination process. However, further cross reference to the study and indications of the factors considered has been added to para 5.3.1. At para 5.3.16, the SPD also makes clear that if applicant feels a lower ceiling is justified, in the first instance they will be expected to explain why the assumptions used to set the ceiling would not apply in their case, and where there is no agreement on this, undertake their own open book viability assessment - which an applicant is entitled to do in any event.</p>
21 e	Barratt David Wilson	<p>BDW is conscious that the DCSPD relates mainly to Policy IC4. Other Local Plan policies, for example, Policy SP5, can also impact upon viability; and related to this the Council is also keen to investigate and impose controls which might look to achieve more than Building Regulations related controls do regarding, for example, energy/renewables. This can also seriously challenge delivery and viability but strictly speaking is outside of the ambit of planning and the DCSPD. It would be useful if this is addressed through the DCSPD, i.e., the effect of other non-planning controls on affecting the viability of development, and as such that this should be given weight as another materials consideration to be given weight in planning decisions, possibly to allow a more lenient approach with some planning policy driven requirements.</p>	<p>With regard to the comments on Policy SP5, as Para 7.3.18 (was 7.3.17) of the SPD notes, a number of other (then emerging) plan requirements were also costed in the 2017 Viability Assessment, but e.g. the policy clauses requiring higher environmental and/or design standards on certain greenfield sites were removed by the Inspector, so these have not been factored into the assumptions used to calculate the ceilings. Higher design standards are now clearly supported by the revised NPPF and where schemes propose very high quality standards or higher levels of energy efficiency (above the high quality expectations of the local plan), the negative effect on viability can be considered in the planning balance. Reference has been added to a new para 7.3.19 to the government proposing staged uplifts to the Building Regulations which will increase construction costs. Once these changes are confirmed and take effect, the ceilings may need to be revisited.</p>
21 f	Barratt David Wilson	<p>BDW's Specific Comments and Representations DCSPD Introduction (paragraph 1.1+, page 5+)</p> <p>At paragraph 1.1.1 to 1.1.3 the Representor notes that the DCSPD supplements policies of the Burnley Local Plan 2012-2032 adopted in July 2018. However, in similar vein to the point made above, the elaboration of some of the policies is more detailed and complex than the specific policies themselves, and there are instances where the Representor takes the policies beyond the position their</p>	<p>Specific Comments:</p> <p>Introduction and Coverage:</p> <p>SPDs by their very nature elaborate on Local Plan policies. Whilst it is acknowledged that some Local Plans will include specific affordable housing percentages, the reason for Burnley's Local Plan not doing this is explained in the Local Plan and was justified at its Examination. The SPDs notes at its</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>wording suggests they should be.</p> <p>Given the DCSPD will be a SPD it can be no more than a material consideration in planning decisions, which is another reason why it should properly reflect policies of the Local Plan it refers to. This is an important point and one that BDWH feels should be defined early in the document.</p> <p>Coverage of DCSPD (paragraph 1.1.6+, page 5+)</p> <p>Regarding coverage of the DCSPD, the document confirms it covers contributions towards Infrastructure, affordable Housing and other matters. While Local Plan Policy IC4 lists several items for which contributions may be sought, it also suggests that the list is not exhaustive. For the reasons covered earlier, the Representer is of the view the DCSPD should be simplified and shortened.</p> <p>While BDW can see the benefit of the list as set out in the draft document and referred to above, it requires clarification in the DCSPD that the list is not to be applied universally in all instances, by which it means contributions should only be sought for those items justified by reference to the proposed development, the location and profile of the site and reference to policy; and that applications should be dealt with on their merits and the list is no more than a ready reckoner of items covered under the DCSPD.</p>	<p>second para that it is not formal development plan policy and in particular that the ceilings (para 5.3.14) are supplementary guidance only and not development plan policy, and as such there may be instances where the circumstances of a particular site or development are such that a lower ceiling or higher ceiling should apply. All 'necessary and critical' infrastructure must however be funded in full. The SPD does not conflict with any of the Local Plan policies and supports the Plan's flexible approach to affordable housing provision and non-critical infrastructure that is particularly important in some cases to bringing forward development at all and in ensuring it is of high quality design and construction.</p> <p>The list of possible contribution matters referred to is an extract from Local Plan Policy IC4 which is on reflection unnecessary as Policy IC4 is reproduced in the SPD's Appendix. It is proposed to be deleted from the introduction.</p>
21 g	Barratt David Wilson	<p>What is a developer contribution and related matters (paragraph 1.3.1+, page 6+)</p> <p>This covers the question what is a developer contribution? The DCSPD confirms that it refers to any form of contribution made by a developer to directly deliver or pay towards (via sums of money or contributions in kind) new or improved affordable housing, infrastructure or services etc. BDW is of the view this should be refined to confirm that contributions can be sought, which in themselves might not directly pay for a desired objective, rather they will contribute towards the overall costs. This is the 'war chest' approach.</p> <p>In addition, and building on the same point, there might be instances where a developer is agreeable to pay the full cost of a piece of infrastructure, which by reference to the level of contribution provided outstrips what is justifiable by reference to planning policy and other relevant tests applying to contributions</p>	<p>Para 1.3.1 confirms that contributions can pay towards as well as pay for in full or directly deliver infrastructure. This is explained in more detail at para 4.2.4. The situation described by BDW where a developer agrees to pay the full cost of a piece of infrastructure when this is beyond the level that can be justified for its scheme and so should be part funded by another developer, whilst possible, will be very rare and so it is not considered that this needs to be specifically referenced in the SPD.</p> <p>The brief reference to CIL at para 1.3.4 of the SPD is considered helpful and is proposed to be retained.</p> <p>Regarding Unilateral Undertakings, Para 1.3.3 is only a brief introduction. These are explained at Section 4.2. Both</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>(covered later). In this scenario, it is fair and reasonable to work out what the developer should have paid and for the Council to seek similar contributions from developers of other developments that will benefit from the same piece of infrastructure, which are then paid back to the first developer. This involves a clawback procedure which can be managed through a s106 agreement. JFP has knowledge and experience of this approach and would be happy to share this with the Council.</p> <p>On appropriate mechanisms (paragraph 1.3.2), there are several mechanisms that the Council can use to secure contributions from developers and these fall into three broad categories: planning conditions, planning obligations and CIL.</p> <p>As the Council does not operate a CIL scheme then there is no need for CIL to be referred to. Indeed, it is confusing for it to be referred to at all in the DCSPD. If at some point in future the Council commits to introduce CIL, then the DCSPD will need to be comprehensively overhauled. Indeed, the charging schedule that would be introduced through CIL, and the linked 123 Schedule, will cover items that might otherwise be covered through a s106 agreement.</p> <p>It would be helpful to provide clarification in this part of the DCSPD that a s106 agreement, which is usually progressed post the determination of a planning application and once a resolution to grant permission has been secured, thus allowing the decision notice to be issued/planning permission granted, can be offered in the form of a s106 unilateral undertaking. These have the same effect and oblige a developer but can be offered in an agreed and signed form (by the developer who obligates himself) prior to determination. These can speed up the process and create certainty as decision notices can be issued immediately after determination.</p> <p>Clarification should also be provided that where an obligation involves the paying of monies to secure delivery of a benefit or item of work, this will need to involve use of a s106 agreement, since planning conditions are usually regarded as inappropriate where a direct financial contribution is required.</p> <p>In a similar vein, planning conditions are appropriate if a developer needs to deliver new highway and/or transportation infrastructure, since these oblige the developer to enter into a s278 agreement (under Highways Act 1980) with the highway authority as its authority is required regarding mechanisms to be agreed for delivery of the new infrastructure.</p>	Unilateral Undertakings and Agreements are normally signed before planning permission is granted so no change to the text is considered necessary. It is also considered that Section 4 adequately explains the limited circumstances when conditions can be used to secure monetary contributions e.g. via a subsequent Section 106 or 278 Agreement.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
21 h	Barratt David Wilson	<p>Policy context overview (paragraph 2.1.1+, page 6+)</p> <p>The DCSPD confirms at paragraph 2.1.3+ that the Local Plan requires development to provide or contribute towards the provision of the infrastructure that is needed to support it. It sets out that planning contributions will be sought where development creates a requirement for additional or improved services and infrastructure and/or to address the off-site impact of development, to satisfy other policy requirements. This paragraph should be expanded to confirm that obligations can only be sought where they satisfy relevant tests and can be fully justified by reference to the actual impacts and effects of the proposed development. This is to ensure that whatever obligations are sought are fair, reasonable and fully justified.</p> <p>At para 2.1.5 the DCSPD confirms that contributions may be sought to fund a single item of infrastructure or to fund part of an infrastructure item or service; and that contributions may be sought for the initial provision and/or ongoing running and maintenance costs of services and facilities. The Representor asks that clarification be provided that when such a contribution is sought this will be made clear. Also, that when a contribution is sought to part fund say an item of infrastructure that this is also made clear. It should also be made clear, and appropriate measures put in place, that this contribution will be ringfenced to pay for this item of infrastructure and none other. Also, what the residual amount is and how this will be sought, for example, from other developers promoting schemes elsewhere but which will benefit.</p> <p>At paragraph 2.1.5 the DCSPD confirms that contributions will be negotiated on a site-by-site basis. This is supported by the Representor as it would be unacceptable, for example, to use other precedents as an example unless they are directly compatible. As such any contribution sought, regardless of what it is required for, should be unequivocally directly related to the proposed development; and obviously fair and reasonable in terms of its scale and kind to the development.</p> <p>At paragraph 2.1.6 the DCSPD confirms that planning obligations are to assist in mitigating the impact of development and/or to make it acceptable in planning policy and/or land use terms. The Representor supports the statement in this paragraph that planning obligations should only constitute a reason for granting planning permission if they meet the above tests. Conversely, the Council should avoid refusing a planning application if what are regarded as desired and policy</p>	<p>Policy context overview</p> <p>Section 2 is proposed to be amended to remove unnecessary repetition of text elsewhere and has absorbed 3 paragraphs from the introduction so that it sets out an overview of the Local Plan context. The first sentences of para 2.1.5 and para 2.1.6 are proposed to be moved to a new para 5.1.6 where these important points are better placed.</p> <p>It is not clear whether the additional clarification requested at what was para 2.1.5 relates to the SPD or at the application stage. A further para at 5.4.5 has been added to make clear that Agreements will of course specify the particular projects they are intended to fund and that the monies will be 'ring fenced' for this purpose. (This is also indicated at para 6.3.3.)</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		supported obligations cannot be met if this would render the proposed development unviable.	
21 i	Barratt David Wilson	<p>At paragraph 3.2.1 the DCSPD refers to the Infrastructure Delivery Plan (“IDP”) which was prepared to support the Local Plan. This document reviews and evaluates social, environmental and economic infrastructure that will be required to support new development and levels of growth set out in the Plan. The DCSPD refers to it as a ‘living document.’ If this statement is to be given weight it is clear that from the point of approvals of the DCSPD the IDP will need to be up to date and thereafter regularly updated. The most recent version is Version 2 dated July 2017. It is already three years old. The Representor requests that a timetable for review forms part of the DCSPD and that this is adhered to.</p> <p>The Representor is conscious, as is confirmed at paragraph 3.3.1, that the Council has a two-tier local authority structure. Lancashire County Council (“LCC”) provides services such as highway maintenance, education, minerals and waste planning and social care. The Borough Council provides services such as local planning and building control, environmental health and domestic waste collection.</p> <p>LCC has produced a non-statutory Infrastructure and Planning policy document setting out and its approach to seeking planning contributions and how it will engage with the planning process to ensure the impacts of proposed developments on the infrastructure and services that it provides are recognised. The current document is dated September 2017 and covers highways, education contribution methodology and drainage and Flood Risk Management. The fact there are two similar DPDs is bound to cause confusion. It is critical that the DCSPD makes it clear what will be asked for by way of contributions and which authority will be doing the asking and will benefit from the contribution. This is to guarantee clarity and probity and minimise scope for what it terms ‘double requests’ which it has experience of.</p>	<p>Section 3</p> <p>Para 3.2.1 - The IDP is currently being updated and para 3.2.1 has been amended accordingly.</p> <p>The added complexity of the two-tier local authority structure in Burnley is acknowledged and the resulting separate documents. Burnley Council has sought to actively engage with LCC on the production of the SPD to seek to align the approaches and has cross-referenced all relevant documents. Ultimately, other than for County matters, the borough Council is the determining authority for planning applications and can therefore ensure all requests are properly justified, considered and balanced. The SPD will assist greatly in this regard.</p>
21 j	Barratt David Wilson	<p>Types of Contribution Explained (chapter 4, page 11)</p> <p>The Representor’s only comment is a basic one and that is to ask for clarification that in most cases planning conditions cannot be used to deliver financial obligations. In this case a s106 agreement is regarded as the appropriate approach.</p>	<p>Section 4</p> <p>The SPD makes clear the limited circumstance where a condition can be used to deliver a financial payment.</p>
21 k	Barratt David	Are Contributions Required (chapter 5, page 14)	Section 5

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
	Wilson	<p>The Representor agrees that, as is set out at paragraph 5.1.1 of DCSPD, where appropriate, i.e. where it is necessary to make the development acceptable in planning terms, including by mitigating impacts, developers will be required to provide the necessary infrastructure or contribute to its provision through Section 106 contributions. However, it is critical that any contributions asked for must pass planning condition related tests of being: necessary; relevant to planning and to the development to be permitted; enforceable; precise; and reasonable in all other respects. This is a critical approach that has to influence any consideration of whether a planning condition related contribution is justifiable.</p> <p>Similarly, as covered at paragraph 5.1.5, s106 Agreements must meet the three tests that are set out as statutory tests in the Community Infrastructure Levy Regulations 2010, and as policy tests in the National Planning Policy Framework. These require contributions to be: 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.</p> <p>The Representor takes comfort from the point made at paragraph 5.1.6 of the DCSPD, that the Council will only seek contributions where a genuine need arising from the proposed development is generated. This is also a critical point. The Representor asks for how the DCSPD/the Council will deal with situations where another party asks for a contribution that does not satisfy relevant tests. The DCSPD needs to clarify that in this instance the Council will intervene on the developer's behalf, since it is the Council and only the Council that can do this in its role as local planning authority.</p> <p>At paragraph 5.2.1 on page 14, the DCSPD confirms that all contributions required by or to achieve compliance with local or national policies will be assessed during the consideration of a planning application. There may be instances where due to viability considerations, all contributions sought cannot be afforded if the otherwise plan-compliant development is to go ahead, which the Representor is pleased to see acknowledged. For certain matters, the adopted Plan specifically allows flexibility in its requirements to recognise viability challenges. In such cases, contributions may be prioritised and/or waived. The waiving of certain contributions on viability grounds would not necessarily be considered to make the development unsustainable in planning terms. This is also an important point to see in the DCSPD.</p>	<p>Section 5.1 sets out the separate legal tests for conditions and contributions. The tests are slightly different but do have some wording in common to fulfil similar purposes.</p> <p>Para 5.1.6 - As set out above, other than for County matters, the borough Council is the determining authority for planning applications and can therefore ensure all requests are properly justified, considered and balanced. The SPD will assist greatly in this regard with its categorisation, prioritisation and ceilings. Paras 5.2.5-5.2.7 set out that negotiation will be undertaken where necessary. This will be led by the Borough Council's case officer.</p> <p>Para 5.2.1 - Support for the overall approach to viability is noted.</p> <p>Para 5.2.2 - It is not considered that this point is contradictory. This is an important point to make in the SPD and one which is fully consistent with its overall approach i.e. that necessary and critical Priority 1 infrastructure must be provided and will not be subject to viability considerations. These types of costs will have already been demonstrated to be viable (by the Local Plan viability assessment) to ensure that the physical development is of an appropriate standard. The SPD makes clear the assessment of what is necessary and critical on any given scheme will vary – see footnote to Table 1. The SPD does not state that all necessary infrastructure has to be in place at the outset; this will be determined on a scheme by scheme basis and in the light of the plans of external infrastructure providers – and as para 5.4.5 (now 5.4.6) states, any payments due will normally be commuted until after the commencement or completion of specific phases or units within the development.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>At paragraph 5.2.2 on page 14 of the DCSPD, however, the above point is contradicted. It confirms that, where contributions are considered entirely necessary to make the scheme acceptable in planning terms, such that in their absence, the scheme would be wholly unsatisfactory, and the applicants is unwilling to agree to these, viability will not be relevant and applications will be refused. In the DCSPD, such infrastructure is described as 'necessary and critical,' for e.g. infrastructure to secure highway and pedestrian safety. While this might be the case, the DCSPD also needs to confirm that there might be instances where necessary contributions might be delivered through other means or can be brought forward and secured at a later date, but in a way that makes the development acceptable, and/or the benefits of the development are such that the Council agrees to accept a less form of provision, perhaps on a temporary basis.</p> <p>Accordingly, while prioritisation is a point that needs to be covered, further information and guidance is required to assist consideration of situations where a different approach to determining priorities might be given. In this regard while the table of priorities on page 15+ of the DCSPD is useful, it should not be seen as being cast in stone, as it will in certain instances need to be interpreted with some flexibility.</p>	
21 I	Barratt David Wilson	<p>Indexation (Chapter 6, page 23+)</p> <p>As we have also acknowledged, the suggested approach to collecting contributions and related amounts set out in the DCSPD are not governed by CIL Regulations, nevertheless the DCSPD confirms that the indexation that will be used to both calculate the initial agreement amounts and any post-agreement changes prior to payment, will reflect the approach contained within the CIL regulations. This is said so as to ensure that obligations provide for the actual costs of the infrastructure for which they are levied.</p> <p>Building on the point the DCSPD confirms that Regulation 40 of the Community Infrastructure Regulations 2010 required Local Authorities to obtain the All-in-Tender Price Index, as published by the Building Cost Information Service (BCIS) of the Royal Chartered Surveyors (RICS) on the 1st November each year to calculate the proportionate increase in contribution rates for the following year. And the Government has asked the Royal Institution of Chartered Surveyors to produce a bespoke index for the Levy, based on the Building Cost Information</p>	<p>Indexation</p> <p>It is not entirely clear what the representor's concern is here, but the mechanism for the delivery of infrastructure and the contribution amounts are all subject to negotiation and of course, being agreements, have to be satisfactory to both parties. The SPD makes clear that developers can choose to deliver the required infrastructure directly.</p> <p>Para 6.3.3 - Support for repayment of unspent monies noted. As the SPD states, the claw-back period will be negotiated as part of the agreement e.g. to reflect the size and likely build out rate of the development in question and the point at which the infrastructure is required. If the infrastructure has been determined to be necessary to make the scheme acceptable, sufficient time must be allowed for it to be provided. Text is proposed to be added to indicate that the</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>Service's (BCIS) All-in Tender Prices Index, to be known as the 'RICS CIL index'. The DCSPD confirms that this new index will be produced annually, be made publicly available and will not change through the year.</p> <p>The DCSPD goes onto confirm how contributions for affordable housing will be calculated by using the rates set out in this SPD, adjusted as set out in the DCSPD; it is also the same for open space contributions, and similar approach is to be followed for other types of infrastructure.</p> <p>An issue that the Representor has with indexation, and the standard approach set out in the DCSPD, is that this does not take account of situations where a developer, like the Representor, is able to deliver the required piece of infrastructure for a sum of money that is less than the level of contribution required or defined through the application of other aspects of the DCSPD.</p> <p>Accordingly, while the Representor isn't saying that indexation isn't acceptable or the approach proposed to calculate it also isn't acceptable, it is of the view that the starting point in all assessments is defining what is required to make a development acceptable. This is the correct policy driven approach. Then an assessment is needed on what is the cost of delivering this. This should lead to a broad budget assessment of what level of contributions need to be secured through the planning permission (through s106 agreement). But if the actual item can be delivered for less than the defined budget then this should be sum sought.</p> <p>On the subject of whether local planning should authorities have to pay back unspent planning obligations, which is covered at paragraph 6.3.3 on page 25, the Representor is very much of the view that this should be the case. As such, if an obligation is sought and secured through a planning permission but what it was required for is not delivered as per the scope and within an agreed timeframe, then the value of the obligation should be paid back to the developer, with interest accrued.</p> <p>Accordingly, it is important that Council guidance on s106 agreements includes a section with appropriately worded clauses stating when and how the funds will be used by and which makes provision for their return, with interest accrued, after an agreed period of time, where they are not.</p> <p>The Representor notes from the DCSPD that this period is usually five years,</p>	time-period may also be shorter than 5 years where justified.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>which it agrees with, but it is also concerned to note that this might be longer if deemed appropriate. It does not regard this as acceptable. There will be few instances where a period in excess of five years can be regarded as acceptable, especially when, in the case of the Representor and the types of development it is involved in, this could fall several years after the development, which delivered the contribution, was completed.</p> <p>It would only be in exceptional circumstances that a time period in excess of five years could be regarded as acceptable, and this would have to be with the full and tacit agreement of the developer, and measures should be put in place to ensure that the need for the obligation and delivery of whatever it is designed to deliver, is reviewed regularly and the position monitored. Indeed, one also has to question whether in this situation the seeking of such an obligation would satisfy relevant guidance and policy on the use of obligations.</p>	
21 m	Barratt David Wilson	<p>Affordable housing (Chapter 7, page 26+)</p> <p>The need for affordable housing is defined in the latest edition of NPPF, which also defines what affordable housing is, which in summary is housing for sale or rent, for those whose needs are not met by the market, and other than where identified as such, includes provisions for the housing to remain at an affordable price for future eligible households, or for the subsidy to be recycled for alternative affordable housing provision.</p> <p>The Representor is a major national housebuilder and as such it is fully aware of the need for and the benefits of providing affordable housing through developments, and the many different approaches that are used to deliver it through planning permissions. As such it agrees with the inclusion of the broad table at paragraph 7.1.3, which lists different types of affordable housing, which is then defined in greater detail at Appendix B of SDSPD.</p> <p>Regarding starter homes, this is dealt with at paragraph 7.2.6 of the DCSPD. The origin of this initiative is the Housing and Planning Act of May 2016. However, the relevant provisions of the Act have yet to be fully enacted, which the Representor notes. However, as is acknowledged in the DCSPD, the Representor is keen to point out that starter homes fall within the definition of 'affordable housing' according to the latest edition of NPPF. According to the Act they are homes for purchase for first time buyers, now defined as people in the 23-39 year old age range, and are properties to be sold at a 20% discounted rate, albeit</p>	<p>Affordable Housing</p> <p>It is not agreed that the provision of starter homes should be the norm for all affordable housing requirements. Policy HS2 and the evidence that underpins it recognises the substantial need for more affordable housing to rent and a need for intermediate housing. Starter homes - which are likely to be replaced by First Homes nationally - are very restrictive e.g. they can only be bought by people under 40. The Local Plan needs to address the housing needs of all. Policy HS2 and the SPD make clear the flexibility over affordable housing provision and tenures generally to ensure viability and successful delivery. Section 7.3 sets this out and para 7.3.7 (and the Local Plan itself) explains the changes to national policy and how these affect the interpretation of Policy HS2 which remains the starting point for the determining of applications.</p> <p>Support for the flexibility of Policy HS2 and towards viability is noted. No further changes/flexibility is considered necessary.</p> <p>Site HS1/4 – This site is considered to be a greenfield Type 1 site. BDW do not explain or offer any evidence as to why this should be greenfield Type 2. It is open to any applicant to</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>subject to a £250,000 price cap.</p> <p>According to the DCSPD, the Council's Local Plan Viability Study, specifically on this subject, concluded that starter home provision in lieu of more traditional types of affordable housing would generally aid viability, which the Representor is pleased to see acknowledged, however, it also concluded this could still be an issue on brownfield sites. The Representor is of the view that while this might be the case, this also applies to all forms of affordable housing, i.e., the effect of providing affordable housing, in all cases, reduces viability because of impact on profitability. As such, consideration of the provision of starter homes in all developments which require the provision of affordable housing should be regarded as the norm rather than the exception; indeed, in some instance it might actually assist in reaching a point of viability.</p> <p>In the context of Burnley, and affordable housing and approaches to delivery of it, of great relevance is Local Plan Policy HS2, which is covered at paragraph 7.3.1+ on page 28+.</p> <p>The DCSPD notes that, influenced by the types of sites that were allocated in and supported by the 2006 Local Plan, and by the concentration of housing market renewal activity, the NPPF approach of requiring private sector developers to provide a proportion of affordable housing on site or contribute monies through a section 106 Agreement for off-site provision, were rarely successful in Burnley, least if this was without public sector subsidy.</p> <p>However, as is confirmed at paragraph 7.3.2, an alternative and successful approach for the delivery of affordable housing in Burnley was to work directly with Registered Providers to build houses on sites made available by the Council from its landholdings, or through compulsory purchase. The Representor notes this and understand why this is the case, and confirms that this can, and should, remain a potentially useful approach to delivery of such housing, including through a financial contribution to enable provision elsewhere.</p> <p>Linked to this point, the Representor notes that, at paragraph 7.3.4, the DCSPD points out that the 2016 Strategic Housing Market Assessment (SHMA) suggested an affordable housing split by tenure of: 80% Affordable Rent or Social Rent, and 20% Intermediate tenure. This reflected the national definition of affordable housing which prevailed at this time, but as already pointed out this has been overtaken by new policy in the latest NPPF, and this should be</p>	<p>provide such evidence, and as para 5.3.16 sets out, in order to agree a lower ceiling, in the first instance the applicant will be expected to explain why the assumptions used to set the ceiling would not apply in their case and where there is no agreement on this, undertake their own open book viability assessment - which an applicant is entitled to do in any event.</p> <p>7.3.19 - Repetition of this point about flexibility that is made elsewhere in the SPD and in the Local Plan itself is not considered necessary here. The applicant is entitled do their own viability assessment to support an application if they wish but the Council will not require this if the contributions are agreed up to the ceiling amounts.</p> <p>Para 7.3.21 (now 7.3.23) - Re Affordable Housing Statements. Whilst an indication can be given at the pre- app stages to inform this Statement, experience shows that it is only when a formal application is made that the precise requests for all contributions becomes apparent and some adjustment of the affordable housing offer may be necessary.</p> <p>Para 7.3.22 (now 7.3.24) - Earlier para 5.3.14 also discusses this point.</p> <p>Para 7.3.23 (now 7.3.25) - 20% developer profit was used for the Local Plan Viability Assessment and is built into the calculation of the ceilings.</p> <p>Para 7.3.27 (now 7.3.29) - This would be set out in the agreement (see earlier response on claw-backs).</p> <p>Para 7.3.29 (now 7.3.31) - Some such schemes will still have sufficient viability to allow modest affordable housing provision/contributions and this is accommodated in the ceiling. No change is considered necessary.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>noted in DCSPD.</p> <p>Regarding how Policy HS2 should be interpreted, the Representor is supportive of the fact the DCSPD seeks to assist this process (at paragraph 7.3.5). The importance of the development plan in planning decisions, as set out in planning legislation, means that Policy HS2 has to be the starting point for determining the requirement for affordable housing when a development is proposed.</p> <p>As is confirmed at paragraph 7.3.6, Policy HS2 requires that any housing development of over 10 units provides for affordable housing, unless it can be demonstrated that the site, which would otherwise be supported by the policies in the Local Plan and meets the requirements of policies SP4 and SP5, would not be viable with affordable housing provision on-site or off-site by way of a contribution. This is an important approach and the Representor is supportive of the role that therefore needs to be played by viability assessments as and when planning applications for new housing developments are assessed.</p> <p>Indeed, as is confirmed at paragraph 7.3.8, the Representor is pleased that the DCSPD notes that Burnley's circumstances are such that flexibility in how policy on affordable housing is applied and the importance to be given to viability assessments, continues to be an important consideration. As such this approach should continue to be followed in terms of defining what is required in terms of the overall requirements, whether the requirement should be for on or off-site provision and the types and tenure of affordable housing provided.</p> <p>Accordingly, the Representor is fully supportive of the fact that Policy HS2 allows for affordable housing provision to be waived/varied where justified; and, like the DCSPD, notes that this approach is consistent with the then and current national policy. Indeed, in the Representor's view the delivery of housing, by reference to the fact this is a Government priority, is the key point to be given weight, not whether a scheme fully satisfies policy requirements on affordable, even where it is clear such provision would kill acceptable levels of viability.</p> <p>The DCSPD notes, at paragraph 7.3.9, that the Government has now confirmed its policy intention for a minimum of 10% of housing on major sites to be to its new definition of 'affordable home ownership.' As the DCSPD notes, this appears to equate to the definition of affordable housing in the latest version of NPPF (glossary at d) which includes shared ownership and discounted homes for sale at 20% below market value.</p>	

Ref:	Consultee	Comments	Recommended Response
		<p>The Representor, like the Council (at paragraph 7.3.10 of the DCSPD), notes that although the NPPF sees this minimum as part of the overall affordable housing that might be provided through a development, the need to supply this element of affordable home ownership could preclude the delivery of affordable housing to rent or part rent/part buy, which might be regarded as a more acceptable form of affordable provision. The Representors would point out that NPPF states that this policy might not apply if, <i>inter alia</i>, it would significantly prejudice the ability to meet identified affordable housing needs of specific groups. These are not defined, but it is the Representors view that these could and should be defined by the Council and could, for example, include those unable to purchase housing by virtue of their income or the lack of mortgage availability, which is picked up in the DCSPD. The reason for making this point is that the Representor is very much in support of a flexible approach and one bespoke to Burnley's specific needs, which will differ on a site by site and area by area basis, but provides best scope to meet relevant needs, albeit as long as this does not over burden the development through making an otherwise potentially viable development unviable.</p> <p>This point, to a degree, is picked up at paragraph 7.3.11, in relation to Policy HS2, but the Representor is of the view it should be stressed to a much greater degree.</p> <p>For the same reasons, and in relation to tenure splits, and as covered at paragraph 7.3.18 of the DCSPD, the document assumes a tenure split/model/record for affordable housing providers in Burnley to assume: 70% Affordable Rent, 10% Social Rent and 20% Intermediate to calculate the affordable housing %, off-site affordable housing contributions and contribution ceilings. This does not necessarily mean this will be the required split on any given site. (See para 7.3.28) but is a general recommended approach. For the same reasons given above, the Representor notes this, but suggests that this should be seen as no more than the starting point, and each site, area and development should be assessed on its merits, and so as to deliver what is actually needed, assuming it is viable and works from a delivery perspective.</p> <p>A related point relates to a site BDW is interested in (part of the HS1.4 allocation) which requires a 10% affordable or Type 2 Greenfield contribution (5% in SPD). BDW would point out that the latter option works better from a viability and deliverability perspective and as such would ask for this to be</p>	

Ref:	Consultee	Comments	Recommended Response
		<p>reflected in the DCSPD.</p> <p>On Proposed Affordable Housing Percentages, covered at paragraph 7.3.19+ of the DCSPD, so as to satisfy the requirements of Policy HS2, specifically Clause 1) c), it is suggested that the housing sites types set out at Table 2 (page 18) of the DCSPD will provide at least the indicated minimum percentage of units, and the units shall either: be constructed by the developer on-site; or be constructed by the developer off-site (where agreed to appropriate under Policy HS2 clause 3) i); or be provided for by an equivalent commuted sum towards off-site provision where agreed to be appropriate (under Policy HS2 clause 3) i)). The Representor notes this but thinks, so as to reflect earlier guidance on the subject, that a further clause should be added to this to the effect of subject to a viability assessment and assessment of specific needs, i.e., tenures and other types of affordable.</p> <p>The Representor is supportive of the general points made at paragraph 7.3.21 of the DCSPD, which related to where provision is proposed off-site, where it complies with Policy HS2 clause 1) c). Ideally this and the general approach to delivery should be outlined, discussed and agreed through a pre- application meeting. If this finds that such an approach is acceptable, and an appropriate level of contribution, is agreed, it is reasonable for the Council to ask that this, and related points, is set out in an Affordable Housing Statement, provided when the planning application for the scheme is made. Indeed, it should be stressed, and perhaps a new sub-section needs to be provided to cover the point, but an Affordable Housing Statement is a local validation checklist requirement for all major housing applications.</p> <p>Building on key points made earlier, the Representor is pleased that the DCSPD (at paragraph 7.3.22+) covers the circumstances where the required provision or contribution specified will be waived/reduced. It specifically confirms that, under Policy HS2 clause 1) c), this will be where: i.) a Viability Assessment is submitted by the applicant, which utilises an 'open book' approach, and clearly shows the scheme, which meets other policy requirements e.g. design and provides for all priority 1 contributions, to be unviable with the required affordable housing contributions; and/or: ii.) requests for other contributions in addition to affordable housing (on or off site as applicable) exceed the per unit ceilings set out in Table 2 of the DCSPD.</p> <p>Indeed, it is of the view that this point should be introduced/brought in earlier.</p>	

Ref:	Consultee	Comments	Recommended Response
		<p>The Representor is also of the view, and is broadly supportive of the suggested approach, set out at paragraph 7.2.23, that where ii) applies, the Council will approach the securing of obligations through an apportionment approach, i.e., determine what proportion of the total range and value of contributions can be afforded before the scheme is pushed into the bounds of being unviable. Linked to this, the Representor is of the view that the DCSPD should confirm the general approach to determining what is and what isn't a viable development by reference to RICS guidance on the subject. This is generally a development that secures a developer profit of 20% on costs (all costs).</p> <p>Regarding the potential to deliver affordable through a contribution to another scheme off-site provision, covered at paragraph 7.3.24+, the DCSPD confirms that the amount of contribution will be calculated using the offsite affordable housing calculator set out in the DCSPD. The calculator assumes the following standard tenure split: 70% Affordable Rent; 20% Intermediate and 10% Social Rent. It proposes to use the estimated open market value (OMV) of a typical three bedrooomed semi-detached house on site of the size and specification required for a typical Affordable Rent product. As this would or may not be actually provided on site, this figure will need to be agreed.</p> <p>The Representor is of the view that while the suggested percentage splits set out above can and should form the starting point, they should not be applied without flexibility; also that some broad understanding, and flexibility, needs to be applied to how, and based on what, the open market value of a typical three bedrooomed semi-detached house is arrived at. Clearly, there could be a broad range of opinions and potential values. Further clarity would benefit developers on the approach that will be followed, albeit the key tenet should be that the approach will be a joint approach involving both parties.</p> <p>The Representor also acknowledges that, as covered at paragraph 7.3.27, the type and tenure or the actual units to be provided or supported through off-site contribution, will be determined by the Council in discussion with relevant Registered Providers, having regard to the Council's Housing and or Empty Homes Strategy. A related point, and one covered earlier is that it is critical that any contribution provided to deliver affordable provision off site is subject to the same claw back clauses should provision not occur within the agreed period and/or as per the agreed approach.</p>	

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>Paragraph 7.3.29 on page 31 covers the NPPF point about vacant buildings that are proposed to be reused or redeveloped for housing. In this circumstance, any affordable housing contribution, based on numbers of units to be provided, should be reduced by a proportionate amount. PPG confirms that, where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. The Representor is supportive of this approach. It would say though that there is nothing to stop the Council taking this a stage further, linked to viability related points, that in most cases there is every possibility that the scheme will be sufficiently unviable for no affordable to be due, and this is the Council's expectation. Indeed, perhaps to be read as a suitable incentive, perhaps the DCSPD should make it clear that it will a policy driven approach that in this situation no affordable will be sought</p>	
21 n	Barratt David Wilson	<p>Open space and green infrastructure etc. (Chapter 8, page 36+)</p> <p>Chapter 8 confirms that developers will be expected to contribute towards open space and green Infrastructure. This is covered in the Local Plan through Policy SP6. This seeks to protect, enhance and extend the multifunctional green infrastructure network.</p> <p>Complementing this the Council's Green Infrastructure Strategy (2013) informed the development of the policies within the Local Plan and will be used alongside the Local Plan and the Council's Green Spaces Strategy when determining the type of open space to be provided to meet the requirements of Policy HS4, and the requirements of Policies SP6 and IC5.</p> <p>At paragraph 8.1.3 of the DCSPD, it is confirmed that the Council's Green Space Strategy 2015 – 2025 identifies the Borough's public greens spaces, sets local quantity, quality and accessibility standards for each type of open space and use these local standards to identify surpluses or deficiencies and was used to inform the requirements for housing developments in Local Plan Policy HS4.</p> <p>This also covers Open Space Requirement for housing developments, and it is confirmed at paragraph 8.2.1 of the DCSPD, that Policy HS4 of the Local Plan sets out the standards for open space provision in new housing developments, including equipped children's play space. The Policy also sets out when this</p>	<p>Open Space and GI</p> <p>Para 8.2.2 - Achieving the minimum space/play provision for housing developments is considered necessary and critical to a scheme's fundamental acceptability and the Plan's Vision and Objectives and as such viability will not be taken in consideration so as to support sub-standard schemes in this regard. These standards have already been demonstrated to be viable for all greenfield sites (by the Local Plan viability assessment) to ensure that the physical development is of an appropriate quality. Wider GI open space and GI considerations can take viability into account. The sites allocated or supported by the plan can satisfy the requirements of HS4 with some flexibility in other non-critical matters. Developing housing estates without adequate open/play space or access thereto is not justified or acceptable in terms of housing market renewal, environmental quality and addressing health inequalities. The SPD explains the clear policy expectations which should be helpful to developers, not seen as a 'threat'.</p> <p>Para 8.2.3 – This means that the site densities used to calculate the viability of site types in the Local Plan Viability</p>

Ref:	Consultee	Comments	Recommended Response
		<p>should be provided on-site or when contributions towards off-site provision may be acceptable.</p> <p>A key point that follows from this and one the Representor wants to see dealt with differently to how it is currently dealt with in the DCSPD, covered at paragraph 8.2.2 of the DCSPD, is that, whilst each scheme will be judged on its merits against the Local Plan as a whole, where contributions for open space are required under Policy HS4, the need for open space etc. will normally be prioritised as a key delivery expectation, i.e., necessary and critical, and thus lack of adequate provision will normally result in a scheme's refusal.</p> <p>This is an overstated point and one that comes across as a threat. A key tenet of the approach advocated in the DCSPD is that the circumstances of Burnley, when considered as a whole, are such that viability is a key concern. Other areas of the Country, for example, part of the south east and south are very strong in terms of economic performance and wealth creation and as such in these areas, viability is less of an issue. This is not the case in an area like Burnley Borough which has, in parts and in the past, suffered market failure, and areas continue to underperform or fail.</p> <p>As such, a better approach would be to confirm that the key driver in any consideration of what is required is the effect of obligations expected to deliver open space and green infrastructure on or off site is viability and effect on delivery of the development. Indeed, the need for new modern quality housing in Burnley is such that in most cases the Council shouldn't consider refusal, as a starting position, because a desired obligation cannot be delivered. The approach should be to try to find an alternative, but still acceptable, solution to the required need, whatever that might be.</p> <p>At paragraph 8.2.3 of the DCSPD it is confirmed that the cost of open space provision on site was 'partly factored' into the Plan Viability Study's base appraisals (accounted for in the site density and in the £500 per dwelling base contribution). The Representor asks for clarification as to what this actually means. This is because how this has been accounted for could have major implications for the level of provision required.</p> <p>In a similar vein, stated at paragraph 8.2.4 of the DCSPD, it is suggested all relevant greenfield site types were found to be viable with such contributions/provision and as such provision/contributions being 'necessary</p>	<p>Assessment assumed the areas of open space required by Policy HS4 were provided – on-site where stated in the policy - and the resulting number of units reduced accordingly. Additionally, the Local Plan Viability Assessment assumed £500 per dwelling contributions for contributions which could be used for off-site open space for smaller schemes. The SPDs ceilings do not use this £500 as they calculate the entire amount left available for all contributions once the basic policy requirement e.g. for on-site open space under Policy HS4 are met. The densities used to calculate the ceilings assume the areas of open space required by Policy HS4 are provided.</p> <p>Para 8.2.4 - The text at issue is a quote from the Local Plan Viability Assessment's findings and greenfield site types were found to viable at the densities and with the open space requirement proposed. A number of other greenfield allocated sites have progressed to detailed application stage. The Local Plan and SPD make clear the mechanisms available for developers to challenge the assumptions used in the SPD ceilings for non-critical matters. The Local Plan Viability Assessment itself was tested as part of the Local Plan examination and such studies deliberately do not use specific sites, but rather typologies as their purpose in to inform the overall policy approach of the Local Plan to ensure its overall deliverability. The evidence in the Viability Assessment and used to calculate the ceilings used in the SPD demonstrates that in general greenfield sites are able to deliver policy compliant schemes with 20% developer profit, (as indeed are many brownfield sites), and as such the Local Plan Policy requirements are not 'over-ambitious'. It is important that if BDW do want to develop housing sites in the borough they understand that the Council's expectations for greenfield sites is that the specific Local Plan policy requirements and Priority 1 contribution matters should be met. In the unlikely event that a particular allocated site does not prove to be viable for an acceptable standard of development, other sites would be looked at, if necessary, to satisfy any unmet housing requirements.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>and critical' will not normally be waived on the grounds of viability. The Representor asks how this can be the case? There is no such thing as a standard or relevant greenfield site type as each site is different in scale and profile and as such it is an ambitious statement to make that all relevant sites will be viable, certainly not to the degree a blanket approach is suggested that required provision will never be waived, which, as has already been touched on, will mean that any scheme not proposing full/necessary provision will be refused. This statement/section needs to be altered to reflect, that, yes there is a defined starting point in carrying out an assessment of what open space etc., might be required through the application of policy and standards, but this is a starting point, and normal viability related considerations will apply.</p> <p>Building on this point, and the Representor would point out that the DCSPD contradicts itself to a degree on this point (at paragraph 8.2.6), as it confirms that where an applicant does wish to challenge open space contributions/provision or part thereof on the grounds of viability, be that on an allocated or windfall site (which in reality is any site/all sites), Policy IC4 in the Local Plan requires applicants to provide viability evidence through an 'open book' approach, to allow for the proper review of evidence submitted and for reasons of transparency. The Representor is perfectly happy with this suggestion, and suggests that this be retained but the earlier paragraphs be watered down and made less absolute delivery focused as they are currently drafted.</p> <p>Regarding provision off-site in lieu of provision on site, this is covered at paragraph 8.2.8 of the DCSPD, and contributions for off-site provision in lieu, where agreed to be appropriate under Policy HS4, will be calculated as follows: £350 per bedroom. The Representor makes no comment on this ratio but asks that the point about subject to impact on viability which could see the target figure of £250 per bedroom being reduced.</p> <p>Regarding on-site provision and maintenance (paragraph 8.2.9+ of DCSPD), where open space is being provided on-site by a developer, if the developer doesn't wish to set up a management company to meet the ongoing costs of maintenance, the Council will consider the adoption of suitable, well designed on-site open space, for which contributions of commuted sums for maintenance will be calculated on a 15-year basis at guide cost of £8/ sqm, which will be calculated and agreed for each development. This is fine unless the cost of such an agreement renders a development unviable, in which case the Council will</p>	<p>Para 8.2.8 - The specific point BDW is trying to make is not clear but the wider viability matters are responded to above.</p> <p>Para 8.2.9 - The wider viability matters are responded to above.</p> <p>Para 8.3.3 - It is considered that the SPD makes sufficiently clear that Priority 1 contributions will not take account of viability but that Priority 2 matters can. This particular paragraph is referring to public open space which will normally be maintained by the Council or playing fields or pitches. If the loss of these facilities would take provision to below the relevant standards, this would be a Priority 1 matter. However, very few of the plan's housing allocations include such facilities and where this was known to be an issue at the time of the Plan's adoption, specific reference to retention and/or replacement provision was set out in the allocation requirements.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>have to weigh the benefits of the development and the open space against it having to take on the maintenance of the space at a lower contribution, i.e., a sum less than £8/sqm.</p> <p>On potential loss of unprotected open space, covered at paragraph 8.3.3 of the DCSPD, it is noted that where a development proposal would result in the loss of existing unprotected open space the need for replacement provision will be assessed against the strategy and standards set out in the Green Spaces Strategy 2015 and the Burnley Play Area Strategy 2017-2026 or Playing Pitch Strategy. Contributions towards replacement provision may then be prioritised as priority 1 or priority 2c. The Representor asks that this also be subject to impact on viability, and this be stated in this paragraph.</p>	
21 o	Barratt David Wilson	<p>Highways and transport infrastructure (Chapter 9, page 39)</p> <p>The Representor makes not specific comments on highways and transport infrastructure as highways and transport infrastructure which has to be delivered through a proposed development and which might be regarded as necessary and appropriate will be determined by LCC in its role as Highway Authority.</p> <p>In most cases required infrastructure will be covered through planning condition which will be imposed on a planning permission which will link to the need for the infrastructure etc. to be delivered through use of a s278 agreement under the Highways Act 1980.</p> <p>A point that is related to this is that the Representor asks that the DCSPD makes it clear that the Council will use its influence to ensure that only necessary and appropriate new infrastructure and/or levels of contribution to cover transportation needs of the development will be supported by it. The Representor has experience of where a highway authority has asked for contributions above and beyond what could legitimately be requested but the local planning authority wasn't prepared to intervene to ensure only what could be legitimately asked for would be delivered through a proposed development.</p> <p>The need for new good quality housing is such that the Representor would hope the Council would be prepared to act as arbiter in such situations and would ask that a subtle form of words be introduced to make this clear.</p>	<p>Highways and Transport</p> <p>As set out above, other than for County Matters, the borough Council is the determining authority on planning applications and can therefore ensure all requests are properly justified, considered and balanced. The SPD will assist greatly in this regard with its categorisation, prioritisation and ceilings.</p>
21 p	Barratt David	Education (Chapter 10, page 41)	Education

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
	Wilson	<p>The Representor is aware, as is confirmed at paragraph 10.1.1 of the DCSPD, that Lancashire County Council is the Education Authority (LEA) responsible for primary and secondary education provision in the Borough.</p> <p>As is stated at paragraph 10.1.3, other than for 'County Matters' and its own development on its own land, for e.g. for a new school, the County Council is not the determining authority for planning applications in the Borough and its advice on education provision matters and any request for contributions towards education provision must be weighed as a material consideration by Burnley Council in deciding on an application and determining any contributions to be made. The County Council cannot insist upon or enforce requests for contributions to its services other than where it is the determining authority.</p> <p>While this might be the case, and the Representor is pleased to see this set out in the DCSPD, it is its understanding through involvement in housing developments in other districts/boroughs in Lancashire, that the Council will apply LCC drafted guidance on contributions required to boast provision of lower and higher school places in the Borough? Clarification is required on this in the DCSPD. It is important that clarity is provided on when and how and to what degree contributions will/might be sought.</p> <p>Indeed, as is confirmed at, paragraph 10.2.8 of the DCSPD, the Local Plan Viability Assessment did not factor in large-scale pooled contributions towards education, partly in view of the limitations imposed by the pooling restrictions in place at that time, and as this position will fluctuate across the plan period. However, the DCSPD is designed to provide clarity and across all topic areas of what types and level of contribution a development might be expected to contribute and as currently drafted this is not the case. And it is worth pointing out that the levels of contributions LCC has/might seek towards the provision of education places where there is a deemed shortfall is substantial and is often the key area which impacts most on viability.</p>	<p>The section of the SPD on education contributions (Section 10.2) has been updated and amended.</p> <p>LCC's published methodology will still be used as the basis for calculating the required primary school places and potential contributions to address any shortfalls in primary places.</p> <p>The DfE response raised an issue with regard to the distances used to calculate the need for school places, in particular for secondary schools (see separate responses to LCC/DfE comments). The updated SPD text explains how this matter will be approached (i.e. for secondary school places the Borough Council will adopt a more flexible approach with regard to the 'reasonable distances' than the LCC methodology sets out). Viability impacts can be considered.</p> <p>LCC have asked for specific costs per place to be removed from the SPD and a link to their website added instead in order that these will always be up to date (they are updated annually) and this change has been made. The DfE response highlighted differences between the DfE recommended approach to the calculation of costs and LCC's approach. LCC has now updated its policy (Sep 2020).</p> <p>Pre-application advice and the updating of the IPD will also assist developers in understanding the likely contributions required.</p>
21 q	Barratt David Wilson	<p>Other matters (Chapter 11, page 43)</p> <p>On other matters, the only key point the Representor asks be introduced, which should be at the outset of the chapter, is that, while there is scope for the Council, based on feedback/consultation responses from statutory and non-statutory consultees, to ask for obligations/contributions towards a very wide</p>	<p>Other Matters</p> <p>The SPD sets out clearly that all contribution requests must be properly justified and will be categorised and prioritised as set out in the SPD; and where necessary the ceilings applied.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		range of other matters, any request should be fully justified, directly related to the development, proportionate and fully justified in all other regards. And should any request render a scheme unviable, then consideration will be given to whether the request, by reference to the level of contribution that is sought, should be asked for in full.	
21 r	Barratt David Wilson	<p>Monitoring and review (Chapter 12, page 47)</p> <p>The Representor is strongly of the view that the application of and the effects of the DCSP is properly monitored and regularly reviewed this to ensure it continues to be pitched at the right level and is effective as a planning toll designed to secure appropriate levels of contributions and benefits from developments in a way that does not render them unviable.</p> <p>The Representor hopes that these representations are useful to the Council and would be happy to meet to go through key points made if the Council would find it useful.</p>	<p>Conclusion</p> <p>Whilst BDW do not say so directly, through their specific comments they seem to object the approach of the SPD to prioritise and regard some evidenced contributions/plan requirements as critical and necessary and instead consider that all should be subject to viability considerations. This is not accepted. It is quite right and proper to ensure that development, which is effectivity permanent, is of an appropriate standard in line with the evidenced and tested policies of the adopted local plan.</p>
22	Theatres Trust	We are supportive of the SPD's content. In particular that part 8.3 gives scope for contributions to be utilised for the future restoration of the Burnley Empire. Footnote 23 confirms that this section is applicable to theatres. We also welcome that projects within this category can be Priority 1. Restoration of the Empire could act as a catalyst for wider improvement within that part of the town centre, as well as positively enhancing the social and cultural opportunities available for local people.	Whilst the support for section 8.3 is noted and no change is proposed, it is unlikely that contributions towards the Empire Theatre could be required from any development of the type and scale envisaged in the local plan and justified a Priority 1, or even Priority 2 where viability constraints would be factored in - but this cannot be entirely ruled out.
23 a	Natural England	<p>While we welcome this opportunity to give our views, the topic this Supplementary Planning Document covers is unlikely to have major effects on the natural environment, but may nonetheless have some effects. We therefore do not wish to provide specific comments, but advise you to consider the following issues:</p> <p>Green Infrastructure</p> <p>This SPD could consider making provision for Green Infrastructure (GI) within development. This should be in line with any GI strategy covering your area.</p> <p>The National Planning Policy Framework states that local planning authorities should 'take a strategic approach to maintaining and enhancing networks of habitats and green infrastructure'. The Planning Practice Guidance on Green</p>	<p>The SPD does not set new policy on Green Infrastructure but rather supplementary guidance on contributions (which can include for GI) in line with the policies of the adopted Local Plan, which was in turn informed by the GI Strategy. The benefits if GI are already set out in the Local Plan. It is not clear what NE is suggesting here.</p> <p>Matters such as the level of bat or bird boxes required is not considered appropriate for this SPD. These are more appropriate matters for other guidance e.g. design guide SPDs.</p> <p>Similarly, the comment on landscaping and trees and design principles are not relevant to the SPDs content. These matters addressed by the Local Plan policies.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>Infrastructure provides more detail on this.</p> <p>Urban green space provides multi-functional benefits. It contributes to coherent and resilient ecological networks, allowing species to move around within, and between, towns and the countryside with even small patches of habitat benefitting movement. Urban GI is also recognised as one of the most effective tools available to us in managing environmental risks such as flooding and heat waves. Greener neighbourhoods and improved access to nature can also improve public health and quality of life and reduce environmental inequalities.</p> <p>There may be significant opportunities to retrofit green infrastructure in urban environments. These can be realised through:</p> <ul style="list-style-type: none"> <li>- green roof systems and roof gardens;</li> <li>- green walls to provide insulation or shading and cooling;</li> <li>- new tree planting or altering the management of land (e.g. management of verges enhance biodiversity).</li> </ul> <p>You could also consider issues relating to the protection of natural resources, including air quality, ground and surface water and soils within urban design plans.</p> <p>Further information on GI is included within The Town and Country Planning Association's "Design Guide for Sustainable Communities" and their more recent "Good Practice Guidance for Green Infrastructure and Biodiversity".</p> <p>Biodiversity enhancement</p> <p>This SPD could consider incorporating features which are beneficial to wildlife within development, in line with paragraph 118 of the National Planning Policy Framework. You may wish to consider providing guidance on, for example, the level of bat roost or bird box provision within the built structure, or other measures to enhance biodiversity in the urban environment. An example of good practice includes the Exeter Residential Design Guide SPD, which advises (amongst other matters) a ratio of one nest/roost box per residential unit.</p> <p>Landscape enhancement</p> <p>The SPD may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural</p>	

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>resources more sustainably; and bring benefits for the local community, for example through green infrastructure provision and access to and contact with nature. Landscape characterisation and townscape assessments, and associated sensitivity and capacity assessments provide tools for planners and developers to consider how new development might make a positive contribution to the character and functions of the landscape through sensitive siting and good design and avoid unacceptable impacts.</p> <p>For example, it may be appropriate to seek that, where viable, trees should be of a species capable of growth to exceed building height and managed so to do, and where mature trees are retained on site, provision is made for succession planting so that new trees will be well established by the time mature trees die.</p> <p>Other design considerations</p> <p>The NPPF includes a number of design principles which could be considered, including the impacts of lighting on landscape and biodiversity (para 180).</p>	
23 b	Natural England	<p>Strategic Environmental Assessment/Habitats Regulations Assessment</p> <p>A SPD requires a Strategic Environmental Assessment only in exceptional circumstances as set out in the Planning Practice Guidance here. While SPDs are unlikely to give rise to likely significant effects on European Sites, they should be considered as a plan under the Habitats Regulations in the same way as any other plan or project. If your SPD requires a Strategic Environmental Assessment or Habitats Regulation Assessment, you are required to consult us at certain stages as set out in the Planning Practice Guidance.</p> <p>Should the plan be amended in a way which significantly affects its impact on the natural environment, then, please consult Natural England again.</p> <p>Please send all planning consultations electronically to the consultation hub at <a href="mailto:consultations@naturalengland.org.uk">consultations@naturalengland.org.uk</a>.</p>	<p>The SPD has already been 'screened' for the need for Strategic Environmental Assessment (SEA) and Natural England concurred with the Council's view that this was not necessary. Formal Habitats Regulations Assessment is not considered necessary either as there are no likely significant effects of the SPD itself. SEA and HRA have already been undertaken for the Local Plan and its policies and the development it supports.</p>
24 a	Lancashire County Council	<p>Thank you for consulting the County Council on the above planning document. I provide the following officer level comments, I hope they are helpful.</p> <p>Education</p> <p>Lancashire County Council holds the statutory responsibility to deliver schools places across Lancashire for Lancashire children. This statutory duty does not</p>	<p>Council officers have been seeking to understand from the County Council how developer contributions or lack of them effects the basic needs allocation and the clarification given is welcomed and para 10.2.11 (now 10.2.6) has been updated accordingly - see also DfE response. However, what is still not entirely clear is that how this affects the wider Lancashire</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>relate to district council boundaries. Therefore, where education contributions are not sought by district councils, the additional pupils from those developments may not be mitigated by additional provision within the district council boundaries.</p> <p>It should also be noted that Basic Need allocations are also calculated on a Lancashire wide basis. Therefore, whilst there can be a local need under an education contribution assessment, within the Basic Need allocations this assessment of need may be balanced out by a large surplus in a neighbouring area or further away, which negates the payment of any Basic Need allocation. Without secured education contributions to mitigate the impact of developments, Lancashire County Council will object to those developments on the grounds of sustainability.</p>	<p>strategy for school places in the medium to longer term e.g. surpluses elsewhere in Lancashire would presumably be addressed by school closures and the budget spent where there are currently or predicted future shortfalls?</p> <p>Further Consultation:</p> <p>Further clarification on how the longer-term strategy for school provision is taking account of Burnley's growth and local plan allocations was sought from LCC - see further response at 24 i.</p>
24 b	Lancashire County Council	Para 6.3.3 refers to a five year clawback. The latest Department for Education guidance (Securing developer contributions for education) recommends 'that planning obligations allow enough time for developer contributions to be spent (often this is 10 years, or no time limit is specified)'. Our position is that either ten years or no clawback is more suited to the provision of education places that are traditionally delivered over a longer time period than other contributions. Officers will continue to request this clawback time period and would ask that greater flexibility is provided to conform to the national guidance.	Re para 6.3.3 - It is not considered appropriate for section 106 agreements not to include a claw-back if the money is not spent as set out in the agreement. It is hoped that the need to claw-back money would be a very rare occurrence. Contributions can involve very substantial sums of money and agreement to them may well have affected other aspects of the scheme design and/or other contribution requests, so it is important that they are robustly justified and spent on the required infrastructure. As the SPD states, the claw-back may be longer than 5 years where justified and this will be negotiated as part of the agreement to reflect the size and likely build-out rate of the development in question.
24 c	Lancashire County Council	Para 10.2.1 refers to the site specific assessment of impact on school places as being a tariff based contribution. This is not the case. To be clear, the assessment is based on detailed forecasting and housing information directly related to the development and is not a tariff based approach levied against all housing developments. Only where there is a direct need for impact mitigation arising from the housing development is a contribution required. May I suggest that the text is revised to say "In respect of housing developments, where there is a projected shortfall of primary or secondary places at schools within a reasonable distance, the County Council will request a planning contribution be made towards new provision through the expansion of existing schools, or the provision of a new school".	Re para 10.2.1 - The consultation draft SPD described education contributions as 'a tariff-style contribution'. This is a descriptive rather than a legal term but it is accepted education contributions calculated according to LCCs methodology are not 'tariff' contributions as for example CIL is. This reference is proposed to be deleted. See later response to points about addressing impacts.
24 d	Lancashire	I would recommend not including a specific figure in para 10.2.3 as the	Re para 10.2.3 - the DFE response has asked for the figures to

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
	County Council	<p>Department for Education guidance on seeking developer contributions has recently changed and Lancashire County Council have yet to agree on the cost per place going forward under the new guidance. The figures you quote will be out of date by the time you publish the SPD and therefore a link to our education methodology could be included here instead, noting that the costs included in the methodology are those to be used (<a href="https://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers/">https://www.lancashire.gov.uk/council/planning/planning-obligations-for-developers/</a>).</p> <p>The link to this document is currently a footnote to the text, whereas other linked documents appear as hyperlinks within the text. The inclusion of a specific figure in your SPD will cause confusion for developers, as it will not be regularly updated and may be a cause of challenge or appeal.</p> <p>However if Burnley BC insist on these figures being included then the sentence needs to be changed from "The cost per place from the 1st April 2019 is:" to "The cost per place from the 1 April 2019 to 31 March 2020 is:", to make it clear than these figures will expire on 31 March 2020 and be replaced with new figures from 1 April 2020.</p>	be updated and further text added – see separate response. On balance, the removal of the detail of the specific amounts and replacement with a link as suggested by LCC is considered to be more appropriate as these figures are updated annually.
24 e	Lancashire County Council	Para 10.2.7 should be amended to recognise that windfall sites of the scale to generate the need for a new school may come forwards during the Plan period.	Re para 10.2.7 (now 10.2.8) - Plan-compliant additional windfall sites of a scale necessary to generate a new school are unlikely and would no doubt require a review of the SPD and possibly the Local Plan. No change is considered necessary.
24 f	Lancashire County Council	The final sentence of para 10.2.10 states that education contributions are not critical or necessary, as they are also funded by Government. This is incorrect, and contradicts the second sentence of the same paragraph, which recognises that national planning guidance states that central Government funding to local education authorities (the County Council) will be reduced to take account of developer contributions. The latest Department for Education guidance (Securing developer contributions for education) makes clear that Central Government Basic Need Grant, the Department for Education's free school programme and other capital funding do not negate housing developer responsibility to mitigate the impact of their development on education. This section of your SPD requires redrafting to clarify why Burnley Borough Council believe Government should pay for the impact of new housing on local school places, effectively requiring the County Council to subsidise housing developers.	Para 10.2.10 now 10.2.4 states that education contributions that would prejudice viability <u>can</u> be reduced or waived as not being critical and necessary and the supporting text to the SPD at section 5.2 makes clear that the prioritisation categories are "illustrative not definitive or exhaustive, as in each case a piece of infrastructure may not be relevant to the scheme or may be more or less important to its acceptability." It is not agreed that education contributions should normally fall into the necessary and critical Priority 1 category but remain in the necessary and important category Priority 2 – a category which recognises that they can be justified but that in most cases in Burnley, viability can be taken into account. It is frustrating that the two Council's cannot agree on this fundamental point which is recognised in LCC's own contributions policy at para 3.6 and in national planning

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			<p>policy, case law and appeal precedent.</p> <p>The right of the County Council to ask for education contributions is accepted and such contributions are normally regarded as 'necessary and important' and must be funded where viability allows. As the SPD sets out, plan-compliant adjustments to schemes can be made to improve viability and thus allow for greater education contributions to be made. In respect of primary school contributions, where the location of a development has a clear effect on specific school these could be regarded as necessary and critical but otherwise would be a high priority within category 2; ultimately, each scheme needs to be judged on its particular merits.</p> <p>Both Council's work with the legislation and national policy set by the government. Whether these establish the best or right approach to planning contributions and the impacts on sales prices is not a matter for this SPD. It is important to remember that the planning system is not a means to make good a deficit in public sector funding provided through general taxation.</p> <p>For allocated sites and small windfall sites with defined development boundaries, these are not unplanned developments. The borough's Local Plan was adopted after being found sound and legal compliant at Examination and the Council is required to implement the Plan and a deliverable and developable supply of housing sites - and the viability challenges faced were evident at the time.</p> <p>Developers of course need to make a profit (20% in the formula), but they are also delivering the Plan's housing requirement. It is also important to remember that not all new housing developments are being required to make contributions and that any needs arising from schemes of 10 or less and those benefitting from PD rights are being fully taxpayer funded - as are schemes relying on spare capacity already funded by the tax payer.</p> <p>It is also the case that decisions of the County Council to</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			expand or close an existing school e.g. Hameldon Community College, or by the DfE to allow a Free School to establish, significantly affect local capacity and the need or otherwise for contributions for certain pre-planned developments, as do population changes and changes to national policy on a wide range of planning and non-planning matters. This means that in most cases, the requirement for new or improved infrastructure over a plan period cannot be predicted with certainty at the outset.
24 g	Lancashire County Council	<p>It should also be noted that the calculation of the Central Government Basic Need Grant is working on a future forecast need for around 3 to 4 years in the future (Department for Education process is currently changing hence the uncertainty). Hence there is a significant time delay between developer contributions being declared on government returns and the impact on future funding. It is not entirely clear that the reduction of the County Council's future funding is of relevance to the Developer Contribution SPD, as the delay in funding means that the funding is for future need, whilst the developer contributions are for a current or emerging need. Due to the difference in methodology (Basic Need being calculated on a Lancashire-wide need, developer contributions being calculated on a 2/3 mile radius), there may be no relevance of basic need to a developer contribution SPD.</p> <p>The statement at para 10.2.11 that education provision will be delivered in the absence of developer contributions is incorrect. The statement implies that where developer contributions are not secured by Burnley Borough Council, Lancashire County Council will spend an alternative pot of money to meet the needs of the development. There is no guarantee of additional funding from other sources and at present there is no additional funding available for Lancashire. Furthermore, the latest DfE guidance (Securing developer contributions for education) makes it clear that developer contributions are expected to meet the relevant need of that development, through the provision of land and/or funding for land and construction (please also see the representation submitted by John Pilgrim of the Department for Education).</p> <p>Where the local planning authority is unable or unwilling to secure the full education contribution to mitigate the impact of that development, Lancashire County Council will object to that development on the grounds of sustainability.</p>	<p>It is not clear what point LCC are making regarding timing, but the properties that the new school places will serve, will begin to be occupied at the earliest from around 18 months to up to 5 years from the grant of full planning permission - longer for an outline and would of course fill spare capacity first.</p> <p>The availability of basic needs funding as an alternative to contributions is relevant to the decision-making process on a planning application – as is the fact that this may not fund additional place at local schools within a reasonable distance when they are initially required, thus making development less sustainable in the shorter term. Para 10.2.11 (now 10.2.6) has now been updated accordingly. In the longer term, Lancashire-wide school planning will presumably refocus resources where there are current or predicted future shortfalls? Given the fact the Local Plan was adopted 2 years ago and many of the allocated sites were identified in its earlier drafts, this forward planning should have already occurred?</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
24 h	Lancashire County Council	<p>I cannot yet provide an update on para 10.2.12, officers are currently working through the impact of the recent guidance changes and their impact on our own methodologies. We will update our own methodologies in due course, including the pupil yields once the detailed methodology is published by the Department for Education.</p> <p>I welcome the intention at para 10.2.13 that Burnley Borough Council intend to work constructively with the County Council on aligning the county and borough approaches. I hope the comments above can provide a starting point for these discussions. Please contact me if you wish to discuss any of these comments.</p>	<p>It is noted that LCC has reviewed its own contributions policy and is reviewing its provision strategy. LCC is also inputting into an update of Burnley's IDP. A wider meeting with LCC on education contributions was planned for March 2020 but was postponed due to the coronavirus pandemic.</p> <p>The DfE response highlighted that LCC's current policy approach is more restrictive than DfE recommends and this called in to question whether some contribution requests are properly justified, particularly at secondary school level. Greater flexibility in distances may or may not affect individual assessments (see also response to DfE comments).</p> <p>Lancashire County Council were approached for comment on this particular point in the light of the DfE response and asked to consider whether the distance used for assessing the need for secondary school places i.e. 3 mile radius is appropriate or whether an alternative approach should be used. See response below.</p>
24 i	Lancashire County Council - further comments October 2020	<p>The first point we must make is that Lancashire has a single housing methodology that is used consistently across all 12 district council areas in Lancashire, and is a clear transparent process and fairly applied to all developments equally. We cannot consider a change to the methodology for a single district. The methodology is regularly reviewed in light of changing guidance, and has been recently reviewed in 2020 and republished with some minor changes, but no overall change to the method of assessment (i.e. we continue to use the 2 / 3 mile radius).</p> <p>The methodology, whilst seeking to ensure that requests are CIL compliant, is also an approach which applies the test of reasonableness. To anticipate and assess each possible permutation of walking route taken to every local school for each individual development would require a disproportionate amount of resource which is simply not available, nor possible within the planning window, particularly since the county council is dealing with planning applications across all Lancashire districts. Instead the council approximates the walking distances via a direct radius from the centre of the development as given by district or developer through the application. This is a reasonable compromise which has been tested in front of planning inspectorate and accepted a reasonable</p>	<p>(See responses above in relation to the detail of the points being discussed below.)</p> <p>Whilst LCC's wish to have a consistent methodology across Lancashire is understood, LCC has been aware for some considerable time about the Borough Council officers' concerns with the education contributions methodology and is, or should be, fully aware of the viability challenges that the Borough faces in comparison with some other parts of Lancashire, which means that even if the methodology remains unchanged, secondary school contributions may not be able to be funded in full or at all. Given the sums being requested for secondary contributions at many sites and the difficulties this is causing in balancing other contribution requests and scheme quality, greater flexibility is required moving forward. It is noted that the County Council accept that the decision to close Hamilton College (caused in part by DfE's decision to allow the establishment of a Free School elsewhere in the borough) has resulted in requests for</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>approach. Although the comments from the DfE make a valid point, it is only guidance and in their own words "<i>the guidance is not intended to replace local approaches</i>".</p> <p>In specific reference to the suggestion to use a wider radius for secondary schools; part of the reasoning for us using the 3 mile radius for secondary schools is that the places at schools within 3 miles of development will in high probability be accessible by the pupils from the development. Therefore the places at the schools within three miles will directly mitigate the impact of the development. To consider school places outside of the 3 miles radius would suggest that it is acceptable to direct pupils to schools beyond the acceptable walking route, when closer school places exist and the suggested mitigation may not provide a 'sustainable' mitigation route to meet the tests of CIL as being directly linked to that development. Therefore to reasonably comply with CIL regulations and provide consistency in the approach taken for primary contributions, we use 3 miles for secondary schools.</p> <p>Your reference to the changes in national guidance and lifting of pooling restrictions has been welcomed. The recent DfE guidance for securing developers contributions has been applied to the update to our education methodology and has been approved by LCC cabinet.</p> <p>As with any landscape, there are foreseen changes and unforeseen. The rapid reduction of viability of Hameldon College from both a financial and attainment perspective led to closure, in large part due to the unforeseen opening of a new free school and UTC in the area by DfE when additional places were not yet needed. This ultimately leaves a shortfall of secondary school places in an area where the existing schools were mainly under PFI contracts. The council is investing heavily in addressing this current shortfall with provision of additional places in new accommodation at Unity College.</p> <p>Currently the School Place Provision Strategy is under review and will consider any changes proposed by the DfE. This will be put before LCC cabinet for approval and districts will have the opportunity to feedback at the consultation stage. It would be pre-empting the consultation process and response to discuss the updated version before cabinet approval to consult.</p> <p>The recent DfE guidance did make clear that where housing development leads to a shortfall of places, housing developer contributions would be expected to</p>	<p>contributions from some developments which would otherwise not have been made.</p> <p>It is disappointing that agreement could not be reached with LCC in respect of a revised approach to secondary school contributions. The difficulties or undertaking individual assessments with all permutations of bus and walking routes is accepted so it is agreed that a formulaic approach is still justified. A revised formula is therefore proposed and Section 10.2 of the SPD has been amended to state that "where a request for a secondary place contribution is received from LCC, the borough council will do its own assessment using aspects of the LCC methodology i.e. the pupil yield formula, cost per place, but using a revised 'reasonable distance' being the greater of the borough boundary or a 3 mile radius." It is not accepted that this would be unsustainable or unreasonable in terms of travel for secondary school pupils. Even with this more flexible distance, viability impacts can and must still be considered - see response under 24 f.</p> <p>LCCs comment about the contributions not funding the costs in full is noted.</p> <p>There is still no explanation of how the school provision strategy is taking account of Burnley's growth and local plan allocations but the opportunity to comment on the updated strategy that LCC indicate will be provided, is noted and welcomed.</p>

Ref:	Consultee	Comments	Recommended Response
		<p>fully mitigate the impact of the development: "As far as possible (and often in relation to primary schools only), new settlements and urban extensions should be expected to meet their full education requirement. Where an onsite school is required, it should be large enough to meet the need generated by the development. As a general rule, the capacity of existing primary schools beyond the statutory walking distance does not need to be taken into account when calculating developer contributions for permanent onsite schools in new settlements and urban extensions. This promotes sustainable and healthy travel patterns for young people."</p> <p>There should be no assumption on any individual housing application that alternative funding may exist. In the majority of cases there is no alternative funding available, and without education contributions secured the County Council will be unable to guarantee that it can provide investment in education provision to mitigate the impact of that development.</p> <p>The updated education contribution methodology states: "<i>In identifying a shortfall in local provision and asking for a developer contribution, Lancashire County Council is, in effect, objecting to the application on sustainability grounds. A developer contribution that mitigates the impact of the development will, in most cases, overcome the objection. If a developer does not agree to payment of the requested education contribution or the local planning authority does not pursue Lancashire County Council's request on its behalf, Lancashire County Council cannot guarantee that children yielded by the development will be able to access a school place within reasonable distance from their home, so the development could be considered to be unsustainable. If the development is still approved without any education contribution or a reduced contribution, Lancashire County Council would be seeking clarification from the local planning authority on how the shortfall of education places will be addressed. For infrastructure requirements that are to be funded by community infrastructure levy the School Planning Team will contact the CIL decision making authority to seek confirmation that the full education contribution requirements can be secured through housing developer contributions prior to the planning application being considered for approval. Should the confirmation of the full education contributions not be provided the School Planning Team would object to the planning application.</i>"</p> <p>Basic Need funding is used mostly on larger strategic projects to address place shortfalls which occur without housing impact included. For example, there is</p>	

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>significant investment within Burnley to provide additional places at Unity College and Shuttleworth College. This represents the use of several years of Lancashire wide funding in one hit to partly resolve secondary place provision based on primary school population and migration, and the unforeseen closure of Hameldon College. Any further secondary place shortfalls created due to housing development are not necessarily covered by this investment, therefore may still require further education contributions to mitigate their development.</p> <p>It should also be noted that there are significant shortfalls between the basic need funding rate and the education contribution rate, and the actual costs of developing additional places. In most cases where education contributions are secured against a school, this will not fully cover the costs of provision, and the County Council will have to "top-up" any capital scheme from its own funds, including Basic Need.</p> <p>We are aware that Local Planning Authorities would welcome some indication of future projects and areas of anticipated need and our soon-to-be-published School Place Provision Strategy seeks to provide more of this kind of information going forward.</p> <p>We appreciate your understanding and action on this matter (which avoids any confusion around the cost per place, as mentioned before we have updated our methodology which has been approved by cabinet, this includes the updated cost per place for mainstream.</p>	<p>This was LCC's response the officer suggestion that "With reference to the specific school place cost calculations, we are minded to accept your suggestion and remove these from our SPD and simply cross reference your website so that people always have the up-to -date information - and presumably you can discuss directly with the Department for Education whether the formula calculations need adjusting.</p>
25	Homes England	<p>I would firstly like to thank you for the opportunity to respond to the consultation on the Developer Contributions Supplementary Planning Document (SPD).</p> <p>Homes England is the government's housing accelerator. We have the appetite, influence, expertise and resources to drive positive market change. By releasing more land to developers who want to make a difference, we're making possible the new homes England needs, helping to improve neighbourhoods and grow communities.</p>	Comments noted.

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
		<p>Part of Homes England's role is to engage with Local Authorities at various stages during the preparation of Local Plans and associated planning documents with regard to housing matters. We believe that development of Burnley Borough Council's Developer Contributions SPD should primarily be a locally led exercise. In accordance with the National Planning Policy Framework (NPPF) it should be underpinned by relevant and up-to-date evidence which is adequate and proportionate, focused tightly on supporting and justifying the policies concerned and take into account relevant market signals.</p> <p>As you will be aware, Homes England control a significant amount of public sector land. We have a responsibility to make best use of this and we support the government ambition to release surplus public sector land for housing. In this context, we have been working collaboratively with the Council to bring forward the former Baxi site for housing and will continue to do so.</p>	
26 a	Calico Housing Ltd	<p>I refer to the above consultation on the draft Developer Contributions SPD and write on behalf of Calico Homes, a prominent Registered Provider that is both based in Burnley and actively delivering new affordable housing developments within the Borough. Calico Homes is a not-for-profit organisation and their developments have delivered significant social benefits for those in need of accommodation and local communities.</p> <p>It is noted that at Para 7.3.2 of the SPD, the Council identify the successes of working with Registered Providers to build houses on sites made available from the Council for the delivery of affordable homes. Calico are very proud of the good relationship built with the Council in the progression of such schemes and hope to maintain this in the future. They agree that given market circumstances, this is the best means of meeting affordable need, since the number of units to be delivered through other market housing developments is expected to be low.</p>	<p>Comments welcomed.</p> <p>With regard to affordable housing provision, the Local Plan and SPD recognise the point that Calico raise i.e. that the number of units to be delivered through market housing developments is expected to be low and that working directly with registered providers to provide affordable housing will continue to be necessary.</p>
26 b	Calico Housing Ltd	<p>A great many of the properties managed by Calico Homes however provide accommodation for people living in the Borough but are, until they occupy their home, existing concealed households. As such, occupants are often already utilising local infrastructure and the population of the settlement isn't effectively increasing as a result of Calico's development activity. The homes delivered by Calico are built to meet an existing need, rather than place significant new demands on local services and infrastructure.</p>	<p>Whilst a greater proportion of households occupying new affordable homes may be from currently concealed households than is the case with market housing, and a lower proportion from in-migration; as with market housing, a significant number will also be from newly formed households. The household growth to be accommodated in Burnley is a combination of indigenous change (concealed or newly formed households) and net in-migration, but even indigenous change can impact on infrastructure e.g. on specific schools, even if it does not in itself lead to overall</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			population growth. Where viability allows, all schemes should contribute to meeting their specific infrastructure burdens as set out in the SPD.
26 c	Calico Housing Ltd	<p>Calico Homes agree that CIL is inappropriate for Burnley and welcome the Contribution Ceilings specified within Table 2 of the SPD. However, it is important for the Council to recognise that many of the previously developed sites earmarked for the delivery of affordable homes can be extremely sensitive in terms of the cost of addressing inherent site abnormalities (such as ground contamination or the legacy of historic coal mining). Some of the associated costs will only become apparent once works are due to start on-site and the Council will be aware of many locations that were first granted permission but never delivered. Calico Homes often find that associated costs increase during the build-period through no fault of their own.</p> <p>To assist with the delivery of brownfield sites, Calico Homes consequently believes that contributions requested in connection with schemes for 100% affordable housing development should only be for the most essential infrastructure. A degree of pragmatism must consequently be applied by the Council bearing in mind potential remediation costs and the minimal population increase as a result of development. It is perceived that the social benefits associated with the delivery of such schemes represent a very significant material consideration and it is ultimately within the interest of all parties that every effort is made to support delivery.</p> <p>.</p>	<p>The support for the contribution ceilings is noted.</p> <p>The ceilings do not apply to 100% affordable housing schemes although they could be used as a guide where viability is an issue - otherwise a bespoke viability assessment may be necessary if significant contribution requests are made.</p> <p>As Section 5.3 of the SPD sets out, the ceilings draw their assumptions from the Local Plan Viability Assessment which included abnormal costs (including sums for coal mining legacy). The ceilings have been calculated based on a set of 'finer grained' standardised assumptions about policy compliant housing sites, the mix, density, sales and rental values; and for market led schemes, the affordable housing tenure mixes. Individual sites and schemes will of course vary from these the standard mixes and values etc and viability can be improved through policy compliant adjustments to the housing mix or density, or changes to affordable housing tenure mix e.g. to add a greater proportion of intermediate housing or discounted sales. The ceilings are supplementary guidance not development plan policy and as such there may be instances where the circumstances of a particular site or development are such that a lower ceiling or higher ceiling should apply. All 'necessary and critical' infrastructure must be funded in full. For other contribution requests, viability can be considered.</p> <p>In order to agree a lower ceiling, in the first instance the applicant will be expected to explain why the assumptions used to set the ceiling would not apply in their case. Where there is no agreement on this and where an applicant wishes to challenge local plan policy requirements or the thresholds, formulas, contribution ceilings on the grounds of viability, be that on an allocated or windfall site, they will be required to provide their own viability assessment.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
			<p>It is not considered necessary or appropriate to exempt affordable housing schemes - including those on brownfield sites - entirely from all but Priority 1 contributions. Any requests for contributions towards Priority 2 matters e.g. education would be considered on their merits and taking into account the scheme in question and its viability; and modest sums towards these Priority 2 matters may therefore be required.</p>
26 d	Calico Housing Ltd	<p>Where contributions are deemed essential, greater clarity is sought as to how requests are calculated. For example, it would be useful for the Council to produce a formula for the calculation public open space, so that amounts can be estimated prior to submission and confirmed as part of pre-application negotiations. Whilst such contributions are not always deemed 'essential' by Calico Homes, it would be useful for them and all developers to be able to budget for the costs in advanced. At present, the amounts are only requested at a late stage of the planning application determination process and this is instead likely to cause delays to the determination of proposals, if for example, the contributions triggered the need to commission a viability assessment.</p> <p>Since requests are also usually made by Lancashire County Council towards local education provision, it would be useful for Burnley Council to provide developers with an indication of the likely contributions at the pre-application stage. This would again assist greatly with budgeting and avoid delays if the amounts requested were deemed to impact upon viability</p>	<p>Pre-application discussions will include likely contributions on affordable housing and open space and the SPD will aid clarity in this regard. The amounts for off-site provision of open space and for the commuted sums for the maintenance of onsite open space are set out in Section 8 of the SPD.</p> <p>With regard to Education contributions, the SPD sets out and cross references Lancashire County Council's 'Methodology for Education Contributions in Lancashire' (but see 24 l above for the proposed approach to secondary school contributions) and pre-application advice on Education and Highway contributions is available directly from LCC which an applicant can then share with the Borough Council. The Borough Council case officers do generally offer to combine pre-application meetings.</p>
26 e	Calico Housing Ltd	Calico Homes welcomes the Council's approach towards the provision of viability assessments, if contributions are deemed unaffordable. However, since these reports could contain sensitive financial information, it is considered that the SPD should provide a commitment to ensuring that these are not uploaded to the Council's website.	<p>Policy IC4 in the Local Plan requires applicants to provide any viability evidence they wish to submit through an 'open book' approach to allow for the proper review of the evidence and for reasons of transparency. These do need to be available for public inspection in full or redacted form and similarly may or may not be added to the Council's website. The approach of the SPD should limit the need for individual viability assessments, but where one is submitted and an applicant considers this contains sensitive commercial information, they can discuss this with the case officer. In general, any information which an applicant wants the Council to take into account as a material consideration should be available for public scrutiny.</p>

<b>Ref:</b>	<b>Consultee</b>	<b>Comments</b>	<b>Recommended Response</b>
26 f	Calico Housing Ltd	<p>It is noted that the Council normally expect S106 agreements to include a clause stating when and how the funds will be used by and allow for their return, after an agreed period of time. If the money is not spent within the agreed period, the developer will be reimbursed with the outstanding amount, together with any interest accrued, unless the agreement is varied. It is also believed that the SPD should make a commitment to providing the developer with regular notifications as to when and where the money has been spent. It is considered unfair for the development to have to chase this but moreover, it will help to be able to demonstrate how contributions have directly improved the local infrastructure and service provision. It is trusted that the above comments will be attributed weight as the Council progresses towards the adoption of the SPD and I shall look forward to further news in due course. We would welcome any further opportunity to comment or discuss any changes that arise as a result of consultation responses</p>	<p>As section 6.1 of the SPD sets out, from December 2020, information on developer contributions must be published through an annual infrastructure funding statement. This will allow for a better understanding of how developer contributions have been used to deliver affordable housing and infrastructure in the area.</p>