

**Brecon Beacons National Park**

**Local Development Plan**

**Supplementary Planning Guidance**

**Policy 28: Affordable Housing Contributions**

**Adopted by the National Park Authority**

**26<sup>th</sup> September 2014**

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## Introduction

The Brecon Beacons National Park Authority (BBNPA) is a special purpose Local Planning Authority (LPA) and therefore holds the responsibility of carrying out the statutory planning function for the National Park area. The National Park Authority (NPA) is not however the Housing Authority. The strategic housing function rests with the constituent Unitary Authorities (UA's) which have the statutory duty to establish and address the level of affordable housing need .

In producing its Local Development Plan (LDP) the NPA outlines how the planning system will contribute to addressing this need by establishing requirements for contributions to affordable housing.

This Supplementary Planning Guidance (SPG) clarifies the processes involved in the delivery of Affordable Housing contributions as required by Policy 28 of the LDP.

## Affordable Housing Pre-application Process

This document sets out the pre-application process which must be followed prior to the submission of all applications which involve a net housing gain.

The purpose of the process is to establish, prior to the submission of an application,

- the amount of Affordable Housing to be contributed according to Policy 28
- the type, mix and tenure of housing needed.
- whether the contribution will be on site or commuted sum.
- the resolution of viability disputes

Applications cannot be determined positively unless this Affordable Housing Pre-Application Process has been followed and each stage documented to show that the relevant Strategic Housing Officer has been involved and has agreed the affordable housing element required for the proposal.

Appendix 7 sets out a flow chart of the process.

### Step 1. Establish Net Housing Gain.

The first step in any residential application is to determine whether the proposed scheme involves net housing gain. (See “Appendix 1: What is Net Gain?”).

<b>If the proposal does involve net housing gain then proceed to Step 2</b>
---

### Step 2 Determine whether provision required on site or as commuted sum

Onsite provision of Affordable Housing shall be the norm where the amount of Affordable Housing to be provided equates to a whole number of units. For example a development in Brecon of 10 houses, 2 of those would be provided as affordable housing.

In exceptional circumstances the NPA will consider whether they are satisfied that onsite provision is not appropriate.

Where the amount of Affordable Housing to be provided contains a requirement for the provision of a fraction of a unit the obligation will be satisfied by the payment of a Commuted Sum calculated according to the formula set out at Appendix 5 of this document. The administration of Commuted Sums is set out in Appendix 6.

This may arise

- a) Where the proposal is for a single unit

Or

- b) On larger sites where all whole numbers of units will be provided on site and any fractions of units will be requested as a commuted sum. (e.g. Where the provision equates to 4.25 Units. The 4 units would be requested on site, whilst the contribution of 0.25 units would be the commuted sum element).

**If the proposal does require onsite provision move to Step 3. If the proposal does not require onsite provision see Section 6 Calculation of commuted sum and prepare Unilateral Undertaking accordingly.**

### **Step 3. Contact the relevant Unitary Authority Affordable Housing Officer**

**(See Appendix 2: Contact Details of UA's") to calculate:**

- a. **amount of Affordable Housing to be provided according to Policy 28 (See "Appendix 3: Affordable Housing Contribution Targets")**
- b. **type mix and tenure of housing needed**

At this stage (where onsite provision of affordable housing is to be made) the Strategic Housing Officer (SHO) may involve a Registered Social Landlord (RSL) if the tenure requirement is Social Rented or Intermediate Housing requiring their involvement)

### **Step 4 Resolve any Scheme Viability Disputes**

If there is disagreement between parties regarding the viability of the scheme with the contribution sought apply the process set out in Policy 28. (See "Appendix 4: Scheme Viability Dispute Process").

## Appendix I: What is net gain?

In accordance with Policy 28 of the LDP the NPA will require an affordable housing contribution from development which results in net gain in housing numbers. The following examples set out what the Authority defines as 'net gain'

1. On new developments where no housing exists the total number of dwellings proposed is the net gain.
2. Where the number of new dwellings proposed is equal to the number of existing dwellings they replace, there is no net gain.
3. Where a subdivision of existing dwelling(s) is proposed, the net gain is the final number of dwellings proposed minus the original number of dwellings on site.
4. Where a change of use from non-residential to residential is proposed, the total resulting number of dwellings proposed is the net gain.
5. Where existing dwellings not previously available on the open market are proposed for conversion to dwellings available on the open market the number of dwellings proposed is the net gain.

## Appendix 2: Contact details of Unitary Authority Strategic Housing Officers

<b>Powys County Council</b> Terry Flynn Email: <a href="mailto:Terry.flynn@powys.gov.uk">Terry.flynn@powys.gov.uk</a> Phone: 07836 686329	<b>Monmouthshire County Council</b> Shirley Wiggam Email: <a href="mailto:shirleywiggam@monmouthshire.gov.uk">shirleywiggam@monmouthshire.gov.uk</a> Phone: 01633 644474 Mobile: 07769616662
<b>Carmarthenshire County Council</b> Matt Miller Housing Services Manager Email: <a href="mailto:mmiller@carmarthenshire.gov.uk">mmiller@carmarthenshire.gov.uk</a> Phone: 01554 899320	<b>Merthyr Tydfil County Borough Council</b> Email: <a href="mailto:jonathan.davies@merthyr.gov.uk">jonathan.davies@merthyr.gov.uk</a> Phone 01685 725247
<b>Torfaen</b> Lesley Groves Email: <a href="mailto:Lesley.groves@torfaen.gov.uk">Lesley.groves@torfaen.gov.uk</a> Phone: 01495 742632	<b>Blaenau Gwent</b> Nicola Somerville Email: <a href="mailto:Nicola.Somerville@blaenau-gwent.gov.uk">Nicola.Somerville@blaenau-gwent.gov.uk</a> Phone: 07807745217
<b>Rhondda Cynnon Taff</b> Adam Provoost Email: <a href="mailto:adam.w.provoost@rhondda-cynnon-&lt;br/&gt;taf.gov.uk">adam.w.provoost@rhondda-cynnon- taf.gov.uk</a> Phone: 01443 425581	

## Appendix 3: Affordable Housing Contribution Targets

### a) Targets

Policy 28 of the LDP sets out the Affordable Housing contribution targets relating to each of the three identified Housing Submarket Areas as follows.

- i) Abergavenny, Hay-on-Wye and Crickhowell submarket: 30% affordable
- ii) Brecon, Carmarthenshire and Rural Hinterland submarket: 20% affordable
- iii) Heads of the Valleys (HoV) and Rural South submarket: 0% affordable

### b) Table of Targets for LDP Settlements

The table below shows the location of Settlements (as identified in the LDP Settlement Hierarchy) in relation to the Affordable Housing Submarket Areas and sets out the relevant affordable housing contribution target for that area.

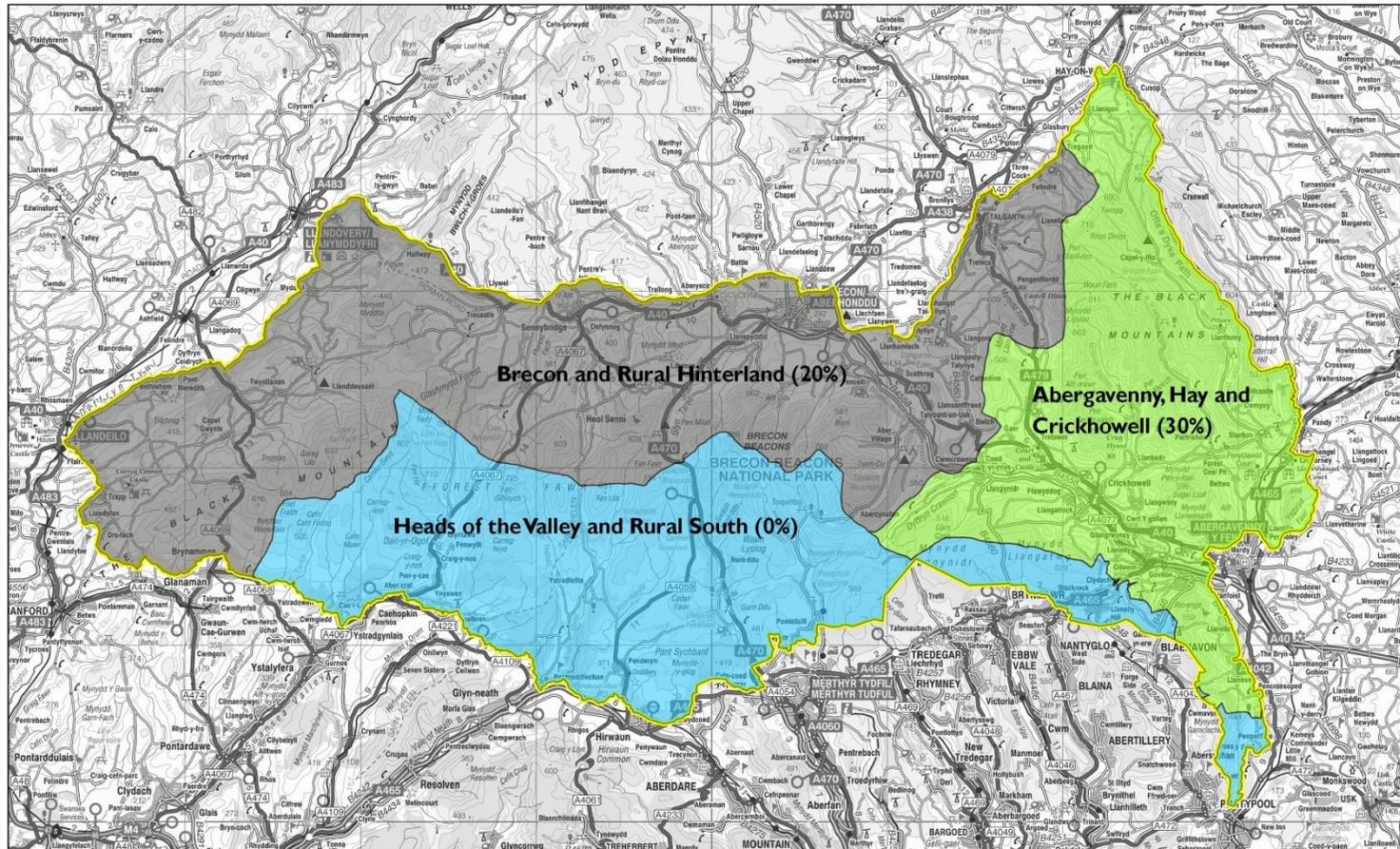
Settlement (Hierarchy Level)	Submarket Area	Proportion Sought	Unitary Authority
Brecon (1)	Brecon and Rural Hinterland	20%	Powys County Council
Bwlch (3)	Brecon and Rural Hinterland	20%	Powys County Council
Cefn Bryn Brain (3)	HoV and Rural South	0%	Carmarthenshire County Council
Crai (3)	Brecon and Rural Hinterland	20%	Powys County Council
Crickhowell (2)	Abergavenny Hay and Crick	30%	Powys County Council
Gilwern (3)	Abergavenny Hay and Crick	30%	Monmouthshire County Council
Govilon (3)	Abergavenny Hay and Crick	30%	Monmouthshire County Council
Hay on Wye (2)	Abergavenny Hay and Crick	30%	Powys County Council
Libanus (3)	Brecon and Rural Hinterland	20%	Powys County Council
Llanbedr (3)	Abergavenny Hay and Crick	30%	Powys County Council
Llanfihangel Crucorney (3)	Abergavenny Hay and Crick	30%	Monmouthshire County Council
Llangors (3)	Brecon and Rural Hinterland	20%	Powys County Council
Llanigon (3)	Abergavenny Hay and Crick	30%	Powys County Council
Llanspyddid (3)	Brecon and Rural Hinterland	20%	Powys County Council
Pencelli (3)	Brecon and Rural Hinterland	20%	Powys County Council
Pennorth (3)	Brecon and Rural Hinterland	20%	Powys County Council
Pontneddfechan (3)	HoV and Rural South	0%	Powys County Council
Pontsticill (3)	HoV and Rural South	0%	Merthyr County Borough Council
Sennybridge & Defynnog (2)	Brecon and Rural Hinterland	20%	Powys County Council
Talgarth (2)	Brecon and Rural Hinterland	20%	Powys County Council
Talybont on Usk (3)	Brecon and Rural Hinterland	20%	Powys County Council

### c) Table of Targets by Postcode Area

The table below shows the location of Settlements (as identified in the LDP Settlement Hierarchy) in relation to the Affordable Housing Submarket Areas and sets out the relevant affordable housing contribution target for that area.

	Postcode Sector	Contribution	LDP Submarket Area	LDP Settlements	County
CF	CF44 0	0%	Heads of the Valleys and Rural South		Rhondda Cynon Taf
	CF44 9	0%	Heads of the Valleys and Rural South	Pontneddfechan; Ystradfellte; Penderyn	Powys/RCT/Neath Port Talbot
	CF48 2	0%	Heads of the Valleys and Rural South	Pontsticill	Merthyr
HR	HR3 5	30%	Abergavenny, Hay and Crickhowell	Hay on Wye; Llanigon	Powys
LD	LD3 0	20%	Brecon and Rural Hinterland	Talgarth	Powys
	LD3 7	20%	Brecon and Rural Hinterland	Brecon (East); Talybont-on-Usk; Llangors; Pencelli; Bwlch; Pennorth; Llanfrynach	Powys
	LD3 8	20%	Brecon and Rural Hinterland	Brecon (SW); Libanus; Crai; Defynnog; Sennybridge; Felin Crai; Llanspyddid; Trecastle	Powys
	LD3 9	20%	Brecon and Rural Hinterland	Brecon (North); Cradoc	Powys
NP	NP22 4	0%	Heads of the Valleys and Rural South		Powys
	NP23 4	0%	Heads of the Valleys and Rural South		Blaenau Gwent
	NP23 5	0%	Heads of the Valleys and Rural South		Powys
	NP4 8	0%	Heads of the Valleys and Rural South		Torfaen
	NP4 9	0%	Heads of the Valleys and Rural South		Torfaen
	NP7 0	30%	Abergavenny, Hay and Crickhowell	Maesygartha	Monmouthshire
	NP7 0	0%	Heads of the Valleys and Rural South	Clydach; Llanelly;	Monmouthshire
	NP7 7	30%	Abergavenny, Hay and Crickhowell		Monmouthshire
	NP7 8	30%	Abergavenny, Hay and Crickhowell	Llanfihangel Crucorney,	Monmouthshire
	NP7 9	30%	Abergavenny, Hay and Crickhowell	Govilon; Gilwern	Monmouthshire

	NP8 1	30%	Abergavenny, Hay and Crickhowell	Crickhowell; Cwmdu; Glangrwyney; Llangenny; Llangattock; Llangynidr; Llanbedr; Tretower; Llangenny	Powys
SA	SA9 1	0%	Heads of the Valleys and Rural South	Ynyswen	Powys
	SA9 2	0%	Heads of the Valleys and Rural South	Cefn Bryn Brain; Rhosamman	Carmarthenshire
	SA10 9	0%	Heads of the Valleys and Rural South		Powys
	SA18 1	20%	Brecon and Rural Hinterland		Carmarthenshire
	SA18 2	20%	Brecon and Rural Hinterland		Carmarthenshire
	SA18 2	0%	Heads of the Valleys and Rural South		Carmarthenshire
	SA18 3	0%	Heads of the Valleys and Rural South		Carmarthenshire
	SA19 6	20%	Brecon and Rural Hinterland		Carmarthenshire
	SA19 7	20%	Brecon and Rural Hinterland		Carmarthenshire
	SA19 9	20%	Brecon and Rural Hinterland	Capel Gwynfe;	Carmarthenshire
	SA20 0	20%	Brecon and Rural Hinterland		Carmarthenshire



Scale: 1:294,018

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## Appendix 4: Scheme Viability Dispute Process

If it can be reasonably demonstrated in writing by the applicant to the satisfaction of the NPA that there are significant factors which mean that the scheme is unviable at the target affordable housing contribution as set out in Policy 28, the NPA will seek to verify this using the 3 Dragons Development Appraisal Toolkit (DAT) (or equivalent process in operation with the NPA at the time) with a final recourse to the District Valuer or equivalent viability assessor.

Disputes of viability referred to an independent valuer will be charged at cost to the Developer.

Affordable housing will still be required at a level proven to be viable through the above verification process.

## Appendix 5: Calculation Formula for Commuted Sum

Commuted sums will be calculated on the basis of a percentage of Welsh Government Acceptable Costs Guidance (ACG) (based on recent WAG update of ACG)

Acceptable cost guidance issued by the Welsh Government is a recognised measure of the cost of providing affordable housing in different communities across Wales.

Therefore the calculation of commuted sums will be based on the principle of equating the developer contribution with the accepted Welsh Government grant level of 58% of the Acceptable Cost Guidance.

The formula for the calculation of a commuted sum will therefore be

$$\text{Commuted Sum Contribution} = \mathbf{A} \times \mathbf{B} \times \mathbf{C}$$

Where

A = number of units

B = 58% of ACG (for relevant property type and band area)

C = % for relevant submarket area (see Appendix 3)

## **Appendix 6: Administration of Commuted Sum**

Any Commuted Sum payable shall be held in an ear marked reserve by the National Park Authority to facilitate the provision of Affordable Housing in the National Park.

The time limit for the retention of a commuted sum shall form part of a Section 106 Agreement.

The point at which the Commuted Sum becomes payable shall be defined by the same Section 106 Agreement.

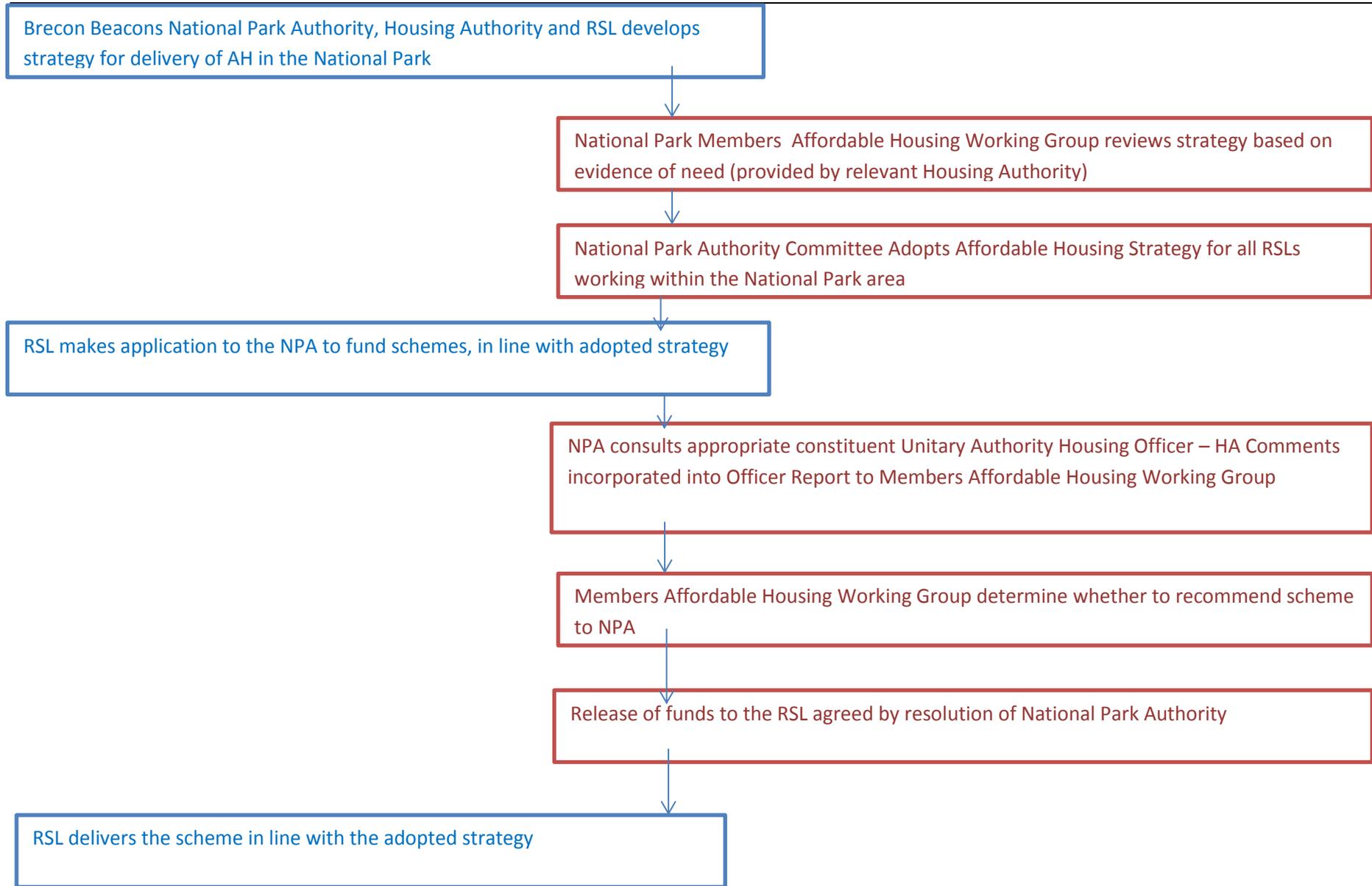
The Authority will work to ensure that it makes the best use of any affordable housing commuted sums it receives to assist in the delivery of affordable housing.

The Authority will work in partnership with Housing Authorities and RSLs operating within the area to develop a 5 year rolling strategy for the delivery of affordable housing within the National Park. The Authority will then use any affordable housing commuted sums to provide a subsidy to RSLs to help deliver this strategy.

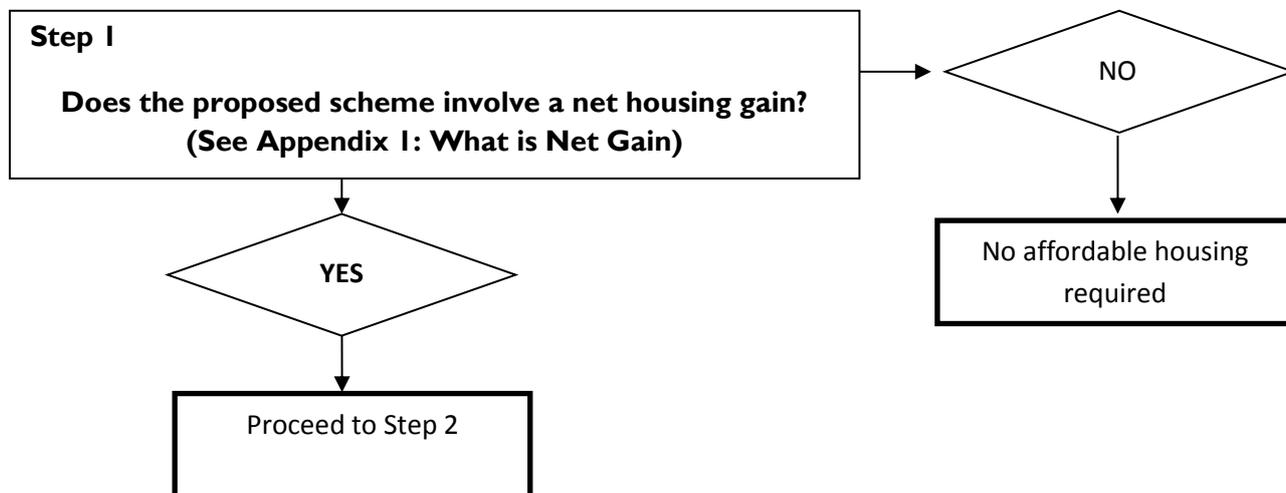
The process for the administration of commuted sums is set out below.

Registered Social Landlord

National Park Authority



## Appendix 7: Process Flow Chart

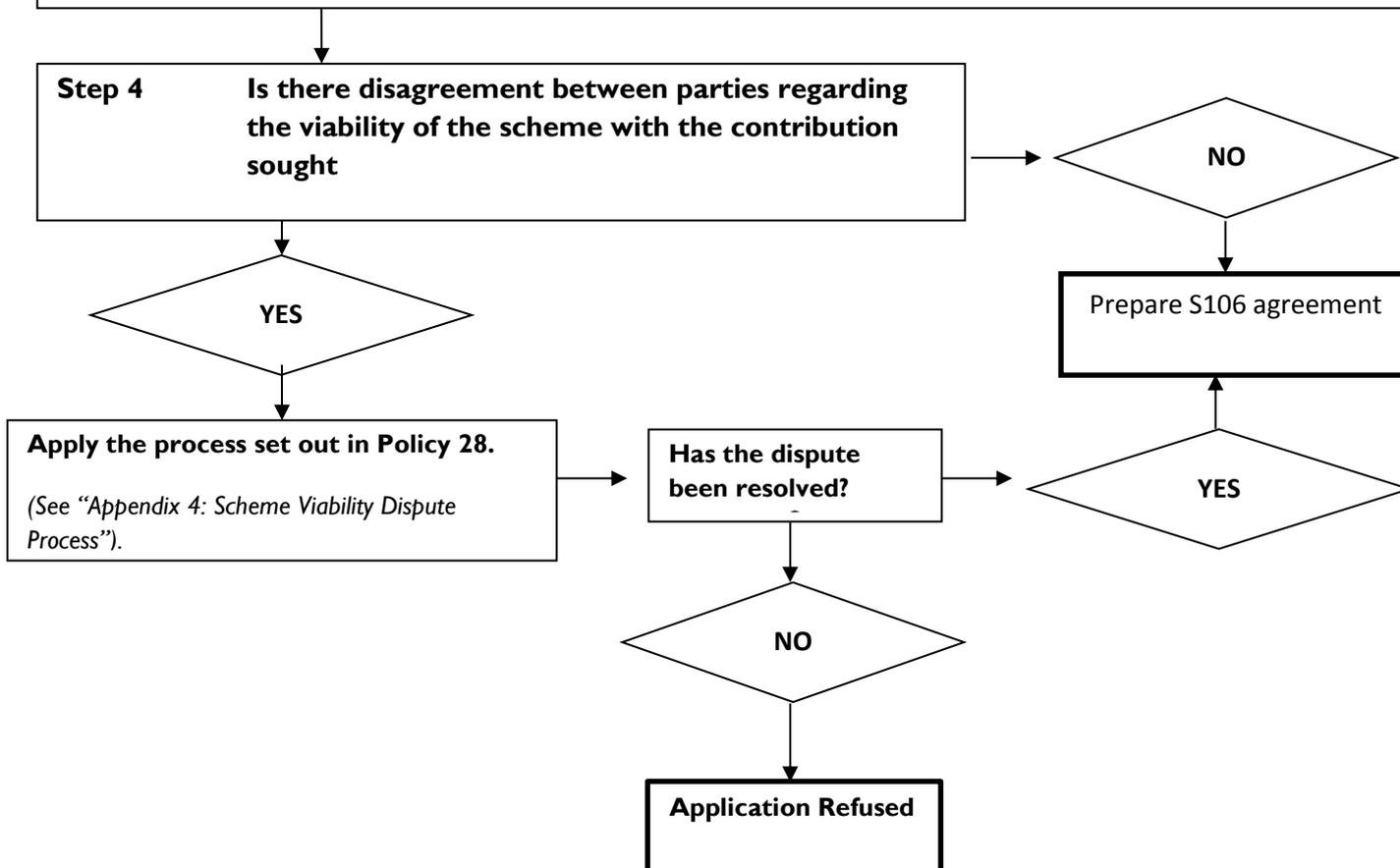




**Step 3 Contact the relevant Unitary Authority Affordable Housing Officer (See Appendix 2: Contact Details of UA's") to calculate:**

- a. amount of Affordable Housing to be provided according to Policy 28 (See "Appendix 3: Affordable Housing Contribution Targets")
- b. type mix and tenure of housing needed

*At this stage the Affordable Housing Officer (AHO) may involve a Registered Social Landlord (RSL) if the tenure requirement is Social Rented or Intermediate Housing requiring their involvement)*



## Appendix 8 Model Section 106 Agreement

DATED 20[ ]

GIVEN BY:

[OWNER DETAILS]

AND

[LENDER DETAILS]

TO

BRECON BEACONS NATIONAL PARK AUTHORITY

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### PLANNING OBLIGATION BY WAY OF UNILATERAL UNDERTAKING

Under Section 106 of the Town and Country Planning Act 1990 relating to

[ ]

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“Commencement of Development”	the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out;
“Development”	the development of the Site as set out in the Planning Application;
“Dwelling”	any dwelling (including a house, flat or maisonette) constructed on the Site pursuant to the Planning Permission;
“Implementation Notice”	a written notice to be substantially in the form attached at Appendix 1 to be served on the Authority in accordance with clause 3.1;
“Index”	the All Items Index of Retail Prices issued by the Office for National Statistics;
“Interest Rate”	[ ]% per annum above [ ];
“Occupation” “Occupy” and “Occupied”	occupation for the purposes permitted by the Planning Permission but not including occupation for personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations;
“Local Development Plan”	the Brecon Beacons National Park Local Development Plan adopted by the Authority on 17 December 2013;
“Plan”	the plan attached to this Undertaking;
“Planning Application”	an application for [outline]/[full] planning permission validated by the Authority on [ ] and allocated reference number [ ];
“Planning Permission”	the planning permission to be granted by the Authority pursuant to the Planning Application;
“Security”	a [legal charge] [mortgage] of the Site [and other property] dated [ ] made between (1) the Owner and (2) the Lender;
“Site”	the freehold land at [ ] registered at HM Land Registry under Title Number [ ] shown for identification edged red on the Plan and against which this Undertaking may be enforced;
“SPG”	the Authority’s Supplementary Planning Guidance on Policy 28: <i>Affordable Housing Contributions</i> adopted on [ ];
“Working Day”	a day (other than a Saturday, Sunday or public holiday in Wales) when banks in

	Cardiff are open for business.
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In this Undertaking:

clause headings shall not affect the interpretation of this Undertaking;

a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular;

unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

a reference to any party shall include that party's personal representatives, successors or permitted assigns and in the case of the Authority the successors to its respective statutory functions;

a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include any subordinate legislation made from time to time;

a reference to writing or written does not include faxes or e-mail;

a reference to "this Undertaking" or to any other agreement or document referred to in this Undertaking is a reference to this Undertaking or such other document or deed as varied or novated (in each case, other than in breach of the provisions of this Undertaking) from time to time;

references to clauses and plans are to the clauses and plans of this Undertaking;

an obligation in this Undertaking on a person not to do something includes an obligation not to agree or allow that thing to be done;

any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

#### STATUTORY PROVISIONS

The obligations contained in clause 3 of this Undertaking are planning obligations for the purposes of Section 106 of the 1990 Act and are entered by the Owner and the Lender with the intention that they bind the interests held in the Site and their respective successors and assigns.

This Undertaking shall come into effect on the date on which the Planning Permission is granted.

The obligations contained in clause 3 of this Undertaking are enforceable by the Authority in accordance with Section 106 of the 1990 Act.

It is acknowledged that the obligations contained in this Undertaking are:

necessary to make the Development acceptable in planning terms;

directly related to the Development; and

fairly and reasonably related in scale and kind to the Development.

#### OBLIGATIONS

The Owner undertakes to the Authority:

to serve on the Authority the Implementation Notice no later than [five] Working Days prior to Commencement of Development;

to give the Authority written notice of the date on which the first Dwelling is to be Occupied no later than [ten] Working Days before such date;

to pay the Affordable Housing Contribution to the Authority [prior to Occupation of the first Dwelling].

#### LENDER'S CONSENT

The Lender acknowledges and declares that this Undertaking has been entered into by the Owner with its consent and that the Security shall take effect subject to this Undertaking PROVIDED THAT the Lender shall otherwise have no liability under this Undertaking unless it takes possession of the Site in which case it too will be bound by this Undertaking as if it were a person deriving title from the Owner.

#### EXTENT OF LIABILITY

No person shall be liable for any breach of an obligation or restriction contained in this Undertaking after parting with all of its interest in the Site, except in respect of any breach subsisting prior to parting with such interest.

#### DETERMINATION

This Undertaking shall be determined and have no further effect if the Planning Permission:

expires before the Commencement of Development;

is varied or revoked other than at the request of the Owner; or

is quashed following a successful legal challenge



if sent by pre-paid first class post using recorded delivery, at 9.00am on the second Working Day after posting; or

if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

#### THIRD PARTY RIGHTS

No person other than the Authority and the successors to its statutory functions shall have any rights to enforce any term of this Undertaking under the Contracts (Rights of Third Parties) Act 1999.

#### SEVERANCE

If any court or competent authority finds that any provision of this Undertaking (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Undertaking shall not be affected.

If any invalid, unenforceable or illegal provision of this Undertaking would be valid, enforceable and legal if some part of it were deleted, the parties shall amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

#### GOVERNING LAW

This Undertaking and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales applying in Wales.

This Undertaking has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



or an authorised signatory  
of the Applicant

**SIGNED as a DEED by**

**[INDIVIDUAL OWNER]**

.....  
Signature

in the presence of:

Name:

Occupation:

Address:

**SIGNED as a DEED by**

**[COMPANY OWNER DETAILS]**

Acting by:

.....

Director

.....

Director/Secretary

**SIGNED as a DEED** by

[LENDER DETAILS]

.....

Director

.....

Director/Secretary

## **Appendix 9 Cascade for the use of Affordable Housing Commuted Sums**

Commuted sums shall be utilised to meet the affordable housing needs of the local community. The cascade for spending such monies is set out below

- a) Settlement, if no suitable schemes available then;
- b) Community/Town council area, if no suitable schemes available then;
- c) Adjoining Town/Community council areas within the National Park area, if no suitable schemes available then;
- d) Council administrative area within National Park, if no suitable schemes available then;
- e) Affordable submarket area, if no suitable schemes available then;
- f) Brecon Beacons National Park, if no suitable schemes available then;
- g) Adjoining Town/Community Councils outside of the National Park area; if no suitable schemes available then;
- h) Administrative area of the Council outside of the National Park.