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Date:

Dear Councillor

## **SOUTH HAMS OVERVIEW AND SCRUTINY PANEL - THURSDAY, 8TH FEBRUARY, 2018**

I refer to the agenda for the above meeting and attach papers in connection with the following item(s).

<b>Agenda No</b>	<b>Item</b>
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| 8. | <b><u>Section 106 Agreements Schedule</u> (Pages 1 - 8)</b> |
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Yours sincerely

Darryl White  
Senior Specialist – Democratic Services

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# Agenda Item 8

Report to: **Overview and Scrutiny Panel**  
Date: **7 February 2018**  
Title: **Section 106 Agreements (Update)**  
Portfolio Area: **Support Services – Councillor Wright**  
  
Wards Affected: **ALL**

Urgent Decision: **N** Approval and clearance obtained: **Y**

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**Recommendations:**

**That the Overview and Scrutiny Panel note the progress made in monitoring and administering by the new S106 Officer.**

**1. Executive summary**

- 1.1 The new s106 Officer role in place since October 2017 is responsible for monitoring s106 Obligations and control of financial administration arising from s106 Agreements. Considerable progress has been made in bringing records up to date and introducing a clearly defined process for categorising different stages of applications and monitoring financial conditions.

**2. Background of S106 Agreements**

- 2.1 Under S106 of the Town and Country Planning Act 1990, as amended, contributions can be sought from developers to be put towards the costs of providing community and social infrastructure, the need for which has arisen directly as a result of a new development taking place.

- 2.2 The purpose of the S106 Fund is therefore to support and enable local communities to provide affordable housing and improve open spaces, sport recreation and community facilities and the public realm in order to enhance the quality of life across the South Hams District.
- 2.3 It is important to note that S106 contributions may only be spent on new facilities or improvements to facilities where the new development has, at least in part, contributed to the need for that facility or will have an impact on existing facilities. This means that funding will be invested in facilities based within the same locality or catchment area in which the contributing development is located. The legislation also restricts the extent to which contributions can be pooled for larger projects.
- 2.4 The level of funding contribution is negotiated with developers during the planning application process. However the District Council normally only receives the payment of a S106 monies either when the development work commences or more often, when it is partially complete.
- 2.5 The District Council is the accountable body for the spending of S106 monies that relate to such provision as affordable housing, public open space, sport and recreational facilities and the public realm. The District Council must therefore allocate all funds in accordance with the S106 legal agreement that the District Council will have already entered into with the land owner or developer.
- 2.6 Legal agreements can include the County Council as a signatory to the agreement where developer contributions will be required for education, highways and transportation, civic amenity and library facilities, as key examples.
- 2.7 Legal agreements will normally specify a time period within which any submitted contributions must be spent (where no phasing is otherwise agreed as part of the agreement).

### **3. Monitoring of Section 106 agreements**

- 3.1 The list of S106 Deposits were shown in Appendix C of The Capital Programme Monitoring Report presented to the Executive on 1<sup>st</sup> February 2018 (Agenda item 8):

<http://mg.swdevon.gov.uk/documents/s12997/Capital%20Programme%20Monitoring.pdf>

Appendix C sets out the Section 106 contributions that the Council is in receipt of, which totals £5.498 million. This is made up of £5.227 million of S106 Deposits which have conditions attached, a further £0.038 million where there are no conditions attached, a further £0.117 million in Capital Grants Unapplied and Capital Grants Receipts in Advance of £0.115million.

- 3.2 The role of the s106 Officer (Case Manager) is that of monitoring and control of s106s Agreements. Specific work includes:
  - Review and categorisation of each Agreement for improved monitoring and maintaining an up to date record of the status of individual s106 Agreements

- Timely invoicing of funds
- Highlighting non-compliance
- Liaising with developers, officers and Members
- Providing regular updates for the Open Space Sport and Recreation (OSSR) webpage

3.3 A clear process is in place to administer all receipts and balance to the ledger. To date, sixty per cent (60%) of s106 Agreements have been reviewed and categorised according to three stages from a financial point of view:

- **Pre commencement**, - development work yet to commence, planning application in and approved.
- **Under Development** – development has commenced, stage payment/s received, actively monitored.
- **Paid in Full** – all monies invoiced and paid, development work is ongoing, monthly monitoring of spend.

The target date for completion of categorisation of remaining s106 Agreements is 31<sup>st</sup> March 2018.

3.4 Management of non-financial conditions is currently under review.

3.5 The Green Infrastructure officer role, funded through the Open Space, Sport and Recreation s106 contributions (which was part of a partnership project, and whose contract ended in July 2017 during her maternity leave) is due to return on 1<sup>st</sup> March. The role of this officer is that of securing new funds from development, and for delivering projects with the existing secured funds. It is anticipated that this will see more timely and successful utilisation of the s106 funds collected to date.

3.6 The S106 officer co-ordinates the production of updated lists of OSSR s106s by Parish/Town, the first of which was circulated to all Members, Town and Parish Councils, Neighbourhood Plan groups, with associated press releases following the July Report. The latest updated list along with supporting information is available to all at:

<https://www.southhams.gov.uk/article/4066/Funding-for-Open-Space-Sport-and-Recreation-Projects->

The list has been a useful awareness raising tool and has resulted in significant levels of contact from Town and Parishes.

#### 4. **Monitoring reports on S106 funding**

4.1 A schedule of Section 106 funds which are held by the Council are reported to Members on a quarterly basis. The latest report was to the Executive on 1<sup>st</sup> February 2018.

4.2 The Affordable Housing Supplementary Planning Document September 2008 details the management and spend of Affordable Housing contributions. Officers from Affordable Housing, OSSR and Finance will produce a further Appendix

which details the S106 contributions by Ward/Parish and splits these into the categories of Affordable Housing, OSSR and 'Other'. This will be provided in Members' Bulletins.

## **5. Update on Progress**

5.1 To be presented to Overview & Scrutiny in Qtr 1, 2018/19.

To include:

- Position of review of all agreements (due to be completed by 31 March 2018.)
- Update on review work relating to non-financial conditions. Target completion date 30 June 2018.
- An Appendix detailing issues of non-compliance issues and actions taken.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>S106 agreements are secured under Section 106 of the Town and Country Planning Act to support projects that mitigate the impact of development. The Council has an obligation to spend the funds in accordance with the terms of the agreement.</p>
Financial	Y	<p>The Council's Financial Procedure Rules require that where expenditure over £30,000 is proposed, that this needs to be agreed by Executive.</p> <p>The expenditure relates to s106 funds specifically for the purpose of mitigating impacts from development. The parameters for expenditure (in particular the location and type of project that can be supported) are prescribed in the s106 agreement.</p> <p>Appendix C sets out the Section 106 contributions that the Council is in receipt of, which totals £5.498 million. This is made up of £5.227 million of S106 Deposits which have conditions attached, a further £0.038 million where there are no conditions attached, a further £0.117 million in Capital Grants Unapplied and Capital Grants Receipts in Advance of £0.115million.</p>
Risk	Y	<p>There is a risk of funds not being collected or spent in accordance with the s106 agreement. To address this, where any s106 funds are passed to community groups to develop and deliver projects, offers of grants will be made with appropriate terms and conditions securing the interest of the Council and ensuring that the requirements of the s106 agreements are adhered to. If ambiguity exists over the appropriateness of a project, agreement of the developer will be sought.</p> <p>There is a risk of funds not being collected in accordance with the s106 agreement. A key objective of the s106 Officer is to ensure all monies are collected.</p> <p>Some s106 agreements have 'clawback' clauses allowing the developers to be re-paid the money if it is not spent within a certain timeframe. Thus there is a risk of communities losing out if money is</p>

		<p>not spent within the specific timeframes. Careful monitoring will prevent this from happening.</p> <p>There is a risk of funds not being spent in accordance with community aspirations and that community benefits may not be secured for the long term. Any recipients of grant offers will need to hold necessary powers and have a suitable organisational structure in place. Where necessary Community Use Agreements will be implemented to secure long term community use.</p> <p>There is a risk that the requirements of the Council's Financial Procedure Rules will not be met. All payments will be made in accordance with the Rules and contracting/tendering procedures where relevant.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	N/a
Safeguarding	N	N/a
Community Safety, Crime and Disorder	N	N/a
Health, Safety and Wellbeing	N	N/a
Other implications	N	none



SECTION 106 DEPOSITS as at 31/12/17					
BALANCE SHEET CLASSIFICATION: LONG TERM LIABILITIES - REVENUE					
Classif. Code	SITE	Date Received	Restriction/Committed End Date	Conditions	TOTAL S106 DEPOSITS as at 31-12-17 £
<b>REVENUE</b>					
<b>Langage Energy Centre (9/49/1020/98/1)</b>					
1007	- Landscape Fund (PG01)		25 years, interest (rate not specified)	Reduce the landscape and visual impact of power station	(164,165.17)
1008	- Local Liaison Group (PG02)		25 years, interest (rate not specified)	Funding of local activities in the electoral wards of the Council immediately surrounding the Phase 1A and the wards of SHDC and/or PCC	(6,478.81)
1009	- Public Art (PG03)		25 years, interest (rate not specified)	Public art in or in the vicinity of the Phase 1A Land	(116,136.77)
1010	- Migrant Workers (PG04)		No restriction/committed end date	Provide information and advice relating to migrant workers employed in relation to the development	(1,551.18)
1011	- Air Monitoring Equipment (PG05)		25 years, interest (rate not specified)	Purchase, maintain and operate appropriate mobile air quality monitoring equipment	(28,909.64)
1012	- Ecology Park (PG06)		25 years, interest (rate not specified)	Laying out and planting of the Ecology Park	(34,841.03)
1013	- Ecology Park Mtc (PG07)		25 years, interest (rate not specified)	Maintenance of the Ecology Park	(34,841.03)
2020	- Construction of Starter Units (PG08)			Construction of the Starter Units and procure a site for the Starter Units on either the Energy Park or land within South Hams District	(1,195,047.08)
2021	- Bus interchange - Deep Lane junction (PG09)		25 years, interest (rate not specified)	Cost of establishing a bus interchange facility in the vicinity of the Ridgeway/Deep Lane junction	(28,453.19)
2022	- Enhanced bus services (PG10)		25 years, interest (rate not specified)	Securing and supporting enhanced bus services to the Phase 1A Land and the Energy Park	(227,628.54)
2028	Langage Consultants Fees (MP)			Master plan	(30,568.38)
2035	Land at Blackawton (New Parks Farm), Blackawton (06/2313/09/F)	05/09/11	25 years, no interest	Required as a result of the development - spent on Open Space Sport Recreation contribution within or directly relating to the parish of Blackawton or on such other Blackawton Community project as the Council shall see fit	(2,596.00)
2038	Steam Packet Inn, Kingswear (30/2177/08/F)	03/09/12	5 years, no interest	Open Space Sport and Recreation contribution	(2,465.25)
2384	Land West of Ermington (21/1425/12/F)	12/02/13	5 years, interest at NatWest base rate	Open Space Sport Recreation contribution	(126,900.00)
2411	Maypool House Youth Hostel (30/2787/10/F) - Dwelling One	20/03/12	No restriction/committed end date	Affordable Housing contribution (£10,000.00) and Open Space (£4,868.75)	(33,415.54)
2806	Maypool House Youth Hostel (30/2787/10/F) - Dwelling Two	10/02/16	No restriction/committed end date	Affordable Housing contribution	(43,614.51)
2428	Former Old Chapel Inn, St Anns Chapel, Bigbury (05/0227/11/F)	02/05/13	No restriction/committed end date	Affordable Housing contribution, Open Space Sport and Recreation contribution towards open public space	(109,776.00)
2429	Milizac Close (Underhay) Yealampton (62/2948/11/O)	13/05/13	5 years, interest at BoE base rate +4%	Sport and Recreation contribution towards improved facilities for formal sport and recreation relating to the development	(16,697.80)
2460	Loughrigg Coronation Rd, Salcombe (41/0652/11/F)	20/08/13	10 years, interest rate not specified	Affordable Housing contribution, Open Space Sport and Recreation contribution	(20,577.75)
2652	Land Ven Farm Brixton (07/2022/12/F)	13/05/14	No restriction/committed end date	Sport & Recreation/Employment	(40,500.00)
2652	Land Ven Farm Brixton (07/2022/12/F)	13/05/14	No restriction/committed end date	Conservation of Tamar Estuaries Complex SPA	(967.30)
2652	Land Ven Farm Brixton (07/2022/12/F)	12/05/16	Capital spend, no interest specified	Open Space Sport and Recreation contribution towards open public space/sport/recreation scheme within the parish of Brixton	(12,000.00)
2691	Warland Garage (56/2793/11/F & 56/1520/12/F)	04/08/14	25 years, no interest specified	Affordable Housing contribution	(9,689.01)
2698	Boat House, Dartmouth Quay, Southtown, Dartmouth (15/2046/13/F)	17/08/14	5 years, no interest specified	Tree planting and management in Dartmouth	(8,000.00)
2705	Trennels, Herbert Road, Salcombe (41/0929/13/F)	21/10/14	25 years, no interest specified	Affordable Housing contribution (£93,001), Open Space Sport Recreation contribution (£13,650)	(106,651.00)
2714	Windward, Stoke Fleming	30/03/15	No restriction/committed end date	Open Space Sport Recreation contribution	(22,913.00)
2715	Harvey's Field (32/0844/12/F)	04/03/15	10 years, payable at 87.5% to owner and 12.5% payee of contribution, interest at 1% below Barclays base rate	Sports facilities contribution towards the provision of sports facilities required as a result of the development. £60,000 Employment (Rural Growth Network) administered by LEP	(61,507.10)
2716	Bonfire Hill, Salcombe (41/1915/13/F)	04/03/15	5 years, interest at 1% below Barclays base rate	Ecology contribution, Open Space and Play contribution, Sports Provision contribution, Open Space and Play maintenance contribution	(193,670.13)
2717	Old Grist Mill 53/1706/07/F	12/01/15	No restriction/committed end date	Open Space Sport Recreation contribution	(39,035.88)
2718	Sawmills Field, Dartington 14/1744/13/F	11/12/14	7 years, interest at 1% below Barclays base rate or 0% (whichever is higher)	Improved facilities for off-site open space and play provision in Dartington, improved sports facilities in Dartington	(148,670.33)
2749	Alston Gate, Malborough 33_46/1890/11/F	29/03/15	5 years, interest at 1% above Lloyds base rate	Public Open Space contribution	(30,000.00)
2789	Marridge Farm, Ugborough	25/09/15	No restriction/committed end date	Open Space Sport Recreation contribution	(13,650.00)
2802	Riverside, Totnes	07/12/15	No restriction/committed end date	Affordable Housing contribution, Open Space Sport Recreation contribution	(459,415.00)
2808	Leyford Close, Wembury (58/0176/13/O)	09/02/16	5 years, interest at NatWest base rate	Sports and Recreation contribution and Tamar Estuaries SAC Management contribution	(174,593.47)
2819	Churchstow (11/0046/14/F)	29/04/16	No restriction/committed end date	Affordable Housing contribution	(19,689.00)
2820	Follaton Oak, Totnes (56/2346/10/O)	15/04/16	7 years, interest at 1% below Barclays base rate	Green Travel Plan (£35k), and Open Space, Sport and Recreation contribution (£60k), Pedestrian Path contribution (£12k)	(137,358.14)
2835	Gara Rock Hotel, East Portlemouth (20/2104/13/F)	17/05/16	No restriction/committed end date	Affordable Housing contribution, Open Space Sport Recreation contribution	(341,318.50)
2838	Treetops, St Dunstons Road, Salcombe (41/3063/13/F)	30/06/16	5 years, interest at Lloyds base rate	Affordable Housing contribution, Open Space Sport Recreation contribution	(20,000.00)
2850	Sorley Tunnel (11/2425/07/F)	28/07/16	No restriction/committed end date	Open Space Sport Recreation contribution	(12,195.27)

2860	Plot 2 Godwell Lane, Ivybridge (27/1758/11/F)	07/10/16	No restriction/committed end date	Open Space Sport Recreation contribution	(120,000.00)				
2861	Barn Conversions at Butlas Farm (07/1601/08/F)	08/11/16	No restriction/committed end date	Open space, sport and recreation contribution within or directly related to the parish of Brixton	(16,254.51)				
2862	Lutton Farm Barns, Ivybridge (12/0053/07/F)	08/11/16	No restriction/committed end date	Public Open Space contribution	(8,965.15)				
2863	Land at SX 8638 5117, Ivatt Road, Dartmouth (15/0587/13/F)	08/11/16	No restriction/committed end date	Open Space, Recreation and/or sports facilities within Dartmouth	(17,889.58)				
2866	Tumbly Hill, Kingsbridge (28/1571/06/F)	08/11/16	10 years, no interest specified	Public Open Space contribution towards the provision of public open space required as a result of the Development	(7,725.10)				
2867	Centry Farm, Kingsbridge (28/0731/08/F)	08/11/16	25 years, no interest specified	Public Open Space contribution shall be spent on Open Space Sport and Recreation for the use of the public within or directly related to the Parish of Ledstone/Kingsbridge	(686.73)				
2868	Venn Barn, Venn Lane, Stoke Fleming (51/1771/07/F)	08/11/16	25 years, no interest specified	Open Space, Sport and Recreation within, or directly related to, the Parish of Dartmouth	(3,534.25)				
2869	Waddeton Barton Farm (52/1249/10/F)		Not specified	Open space, sport and recreation on sports and recreation facilities within the District	(58,650.50)				
2878	South Embankment, Dartmouth (15/2092/15/F)	15/12/16	25 years, no interest specified	Open Space Sport and Recreation contribution for the purposes of providing, improving or enhancing the open space, sport and recreational facilities within Coronation Park Dartmouth	(4,875.00)				
2894	Land at Ashburton Road (Meadowside), Totnes (56/2246/13/F)	27/03/17	5 years, interest at NatWest base rate	Affordable Housing contribution, Sports Pitch contribution in the vicinity of the development	(127,900.91)				
2944	Land at Moorview, Marldon (34/2184/13/O)	07/07/17	10 years, interest at 1% below Barclays base rate	Off-Site Play Area contribution and/or Sport and Recreation contribution	(179,131.03)				
2945	Knighton Road, Wembury (58/1352/12/F)	18/05/17	5 years, interest at NatWest base rate	Schools contribution	(1,158.00)				
2946	Higher Hatch Farm, Kingsbridge (32/0215/11F)	06/06/17	25 years, no interest specified	Open Space, Sport and Recreation contribution	(6,000.00)				
2972	Home Field, West Alvington (59/2482/14/F)	05/09/17	No restriction/committed end date	Open Space, Sport and Recreation contribution	(73,900.18)				
2973	Land off Palm Cross Green, Modbury (35/0059/15/F)	23/08/17	No restriction/committed end date	Open Space, Sport and Recreation contribution	(57,050.33)				
2974	Holywell Stores, Bigbury (05/2557/13/F)	-	25 years, no interest specified	Affordable housing contributions	(73,856.26)				
2993	Land at Fairfield, South Brent (0354/14)	10/08/17		Off-Site Public Open Space Contribution	(91,652.50)				
2994	Land SE of Torhill Farm, Ivybridge (27_57/1347/14/F)	19/07/17	No restriction/committed end date	Road safety works to be undertaken by the developer (not to exceed £100,000.00)	(100,000.00)				
3000	Land at Woodland Road, Ivybridge (27/1859/15/F)	31/10/17	10 Years no interest specified	Tamar SAC Contribution & 50% Open Space, Sport and Recreation Contribution	(80,355.12)				
3001	Land adjacent to Elwell House, Totnes (56/1214/14/F)	-	25 years, no interest specified	Affordable Housing contribution	(17,415.06)				
3028	Stowford Mill, Harford Road, Ivybridge (27/1336/15/F)	-	No restriction/committed end date	Ivybridge Mill Group Archives Contributions	(10,000.00)				
<b>Subtotal ccS0500</b>					<b>(5,133,487.01)</b>				
<b>Sherford</b>									
2600	Sherford Review Panel Set up Contribution				(8,690.50)				
2601	SRP Annual Contribution				6,609.34				
2602	Fees - Parish Council				0.00				
2603	Fees - Monitoring				(10,265.98)				
2604	Economy - Economy & Training				(1,611.75)				
2893	Sherford Delivery Team				(80,000.00)				
<b>Subtotal ccS0501</b>					<b>(93,958.89)</b>				
<b>TOTAL S106 DEPOSITS (WITH CONDITIONS)</b>					<b>(5,227,445.90)</b>				
PG28	Rathvendon, Bigbury (1023)			No conditions	(7,312.50)				
PG36	Sedgewell Sands, Marine Drive			No conditions	(7,372.00)				
PG26	St Johns Ambulance, Dartmouth 15/1389/12/F			Affordable Housing - provision, enhancement, management	(23,000.00)				
<b>TOTAL S106 DEPOSITS (NO CONDITIONS) ccS0842</b>					<b>(37,684.50)</b>				
<b>Capital Grant Unapplied (Cost centre S0803)</b>									
	Fallapit House, East Allington			Affordable Housing	(87,124.50)				
	Tesco Site, Kingsbridge				(30,000.00)				
<b>TOTAL CAPITAL GRANTS UNAPPLIED</b>					<b>(117,124.50)</b>				
<b>Capital Grants Receipts in Advance (Cost Centre S0510)</b>									
	Penn Torr, Salcombe			Affordable Housing	(84,000.00)				
	23 Western Road, Ivybridge			Affordable Housing	(31,291.00)				
<b>TOTAL CAPITAL GRANTS RECEIPTS IN ADVANCE</b>					<b>(115,291.00)</b>				
Notes:									
1. The amounts shown above are before any monitoring fee has been deducted, where this is set out in the S106 Agreement. (See Section 6 of the covering report which explains this in more detail)									
2. The deposits as at 31st December 2017 reflect income already received by the Council or where a debtor has recently been raised to a third party.									