

Report to: **Overview and Scrutiny Panel**
Date: **6 July 2017**
Title: **Section 106 Agreements**
Portfolio Area: **Support Services – Councillor S Wright**

Wards Affected: **ALL**

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

Author: Lisa Buckle Role: **Finance Community of Practice Lead**
Alex Rehaag **Place and Strategy Specialist**

Contact: **Email lisa.buckle@swdevon.gov.uk**
01803 861413

Recommendations:

That the Overview and Scrutiny Panel:

- 1. notes the amount of Section 106 funding held at 31 March 2017 as set out in Appendix A (totalling £4.413 million) and the future reporting arrangements;**
- 2. approves the flowchart showing the process for spending S106 funding for Affordable Housing; and**
- 3. approves the draft application form for S106 funding for Affordable Housing.**

1. Executive summary

- 1.1 Appendix A sets out the Section 106 contributions that the Council is in receipt of, which totals £4.413 million. This is made up of £4.288 million of S106 Deposits which have conditions attached, a further £0.038 million where there

are no conditions attached and a further £0.087 million in Capital Grants Unapplied.

- 1.2 Appendix A sets out the amount of S106 funding held by the Council at 31 March 2017 and also the purpose of the S106 funds (e.g. affordable housing contribution or open space, sport and recreation which is also known as OSSR).

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 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 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. Open Space, Sport and Recreation (OSSR), Community and Landscape projects

3.1 A report to the Executive on 10th September 2015 set out various delegations in relation to the spending of Open Space, Sport and Recreation (OSSR), Community and Landscape projects. This report gave an update on all of the OSSR schemes. It also stated that consultation with Ward Members and Town and Parish Councils will be undertaken to finalise the specific details of identified projects or to agree priorities for spend through the OSSR Plans.

3.2 The figures for OSSR in Appendix A total £1.3 million.

4. Affordable Housing S106 contributions

4.1 Appendix B sets out a flowchart showing the process for spending S106 Deposits for Affordable Housing for Members' approval.

4.2 In addition, Appendix C sets out a suggested draft application form for S106 funding for Affordable Housing for Members' approval.

4.3 In addition to the Section 106 receipts shown in Appendix A for affordable housing (these total £0.79 million), there is anticipated to be a further £1 million of funding for affordable housing when/if the trigger points are met on developments in the future from signed S106 agreements.

5. Accounting arrangements for Section 106 Deposits

5.1 Section 106 deposits are shown under the Creditors section of the Council's Balance Sheet as it is money that has been paid to the Council with conditions attached as to how that money is spent, in accordance with the S106 agreement. This totals £4.288 million at 31 March 2017. In addition, there is £0.038 of S106 funding with no conditions attached and this is shown in Earmarked Reserves. There is a further £0.087 million of funding in Capital Grants Unapplied.

6. Monitoring fee of Section 106 agreements

6.1 The list of S106 Deposits are shown in Appendix A. Some of these S106 Agreements have a clause within the S106 Agreement which states that the Council shall be entitled to use up to a five per cent (5%) part of the total payments and contributions payable pursuant to the provisions of the Agreement, towards the costs to be reasonably and properly incurred by the Council in monitoring compliance with the S106 Agreement and in assessing the details submitted to the Council for approval pursuant to the S106 Agreement.

6.2 For clarity, the figures shown in Appendix A are before any monitoring fee has been deducted by the Council.

6.3 In 2015 a case against Oxford County Council held that a monitoring fee was an administrative function of the Council and could not be sought by the County Council. The Court accepted that there may be occasions where monitoring fees could be sought, for example, on large scale developments where obligations are phased.

7. Future monitoring reports on S106 funding

- 7.1 A schedule of Schedule 106 funds which are held by the Council will be reported to Members on a quarterly basis as part of the report to the Executive on the monitoring of the Capital Programme.
- 7.2 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 the Members' Bulletin at a future date.

8. 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>Appendix A sets out the Section 106 contributions that the Council is in receipt of, which totals £4.413 million.</p> <p>The Council's Financial Procedure Rules require that where expenditure over £30,000 is proposed, that this needs to be agreed by Executive. A report to the Executive on 10th September 2015 set out various delegations in relation to the spending of Open Space, Sport and Recreation, Community and Landscape projects.</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>
Risk	Y	<p>There is a risk of funds not being 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>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 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

Appendices

Appendix A – Summary of S106 Deposits as at 31st March 2017

Appendix B – Flowchart showing the process for spending S106 Deposits for Affordable Housing

Appendix C – Draft application form for S106 funding for Affordable Housing

Background

Report of Lead Specialist for Place and Strategy – Executive 10 September 2015 – Release of S106 Funds for Open Space, Sport and Recreation, Community and Landscape projects.