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Overview & Scrutiny Committee Business Improvement Sub-Committee

Tuesday, 2nd May, 2017 at 6.00 pm
Hastings & Knepp, Parkside, Chart Way, Horsham

Councillors: Brian O'Connell (Chairman)
Nigel Jupp (Vice-Chairman)
Andrew Baldwin
Paul Clarke
Jonathan Dancer
Tim Lloyd
Michael Willett
Leonard Crosbie (ex officio)
David Coldwell (ex officio)

You are summoned to the meeting to transact the following business

Tom Crowley
Chief Executive

Agenda

	Page No.
1. Apologies for absence	
2. Minutes	3 - 4
To approve as correct the minutes of the meeting held on 24 th January 2017	
3. Declarations of Members' Interests	
To receive any declarations of interest from Members of the Sub-Committee	
4. Announcements	
To receive any announcements from the Chairman or the Chief Executive	
5. To receive the report on the S106 Funding Review	5 - 8
6. Review of the Planning Obligations Panel	
<ul style="list-style-type: none">• Terms of Reference and membership of POP• The criteria used for making applications to the fund• Operating procedure followed by officers• The future of POP and funding for unparished wards in the town where it is unlikely there would be any new homes in the future	

7. **Review of the Planning Obligations Panel - Background Papers**

9 - 28

- Planning Obligations Panel – Terms of Reference
- Report to Council 11th December 2013: 'Section 106 Contributions for Open Space, Sport and Recreation – Proposed Changes to Terms of Reference and membership of Planning Obligations Panel'
- Report to Cabinet 7th January 2010: 'Update and Review of the Planning Obligations Procedure'

Business Improvement Sub-Committee
24 JANUARY 2017

Present: Councillors: Brian O'Connell (Chairman), Andrew Baldwin, Paul Clarke, Nigel Jupp, Tim Lloyd and Michael Willett

Apologies: Councillors: Jonathan Dancer

Also Present: Councillor Leonard Crosbie, Chairman of Overview & Scrutiny Committee

14 **APPOINTMENT OF VICE-CHAIRMAN**

RESOLVED

That Councillor Nigel Jupp be appointed Vice-Chairman of the Sub-Committee for the rest of the Council Year.

15 **MINUTES**

The minutes of the meeting held on 11th October were approved as a correct record.

16 **DECLARATIONS OF MEMBERS' INTERESTS**

There were no declarations of interest.

17 **ANNOUNCEMENTS**

There were no announcements.

18 **TO RECEIVE UPDATE FROM THE S106 FUNDING TASK & FINISH GROUP**

The Chairman of the Task and Finish Group, which had met on 11th January, clarified and confirmed the Terms of Reference which had been agreed. Members of this group had also agreed that a review of the Planning Obligations Panel (POP) should be undertaken by the Sub-Committee.

The Chairman of the Sub-Committee advised Members that POP considered applications relating to s106 funds for Community Facilities and Open Space, Sport and Recreation that were not allocated to a specific site. The existing fund would gradually diminish because, with the introduction of CIL (Community Infrastructure Levy), all s106 contributions were for site-specific measures only.

Members agreed that POP served a useful purpose in helping to determine how unallocated funds were allocated to Parish Councils and community groups for enhancing community facilities and projects.

Members agreed the following Terms of Reference of the review:

- To look at the transparency of the process (current Terms of Reference and membership of POP);
- The criteria used for making applications to the fund;
- Operating procedure followed by officers;
- The future of POP and funding for unparished wards in the town where it was unlikely there would be any new homes in the future.

An additional meeting would be arranged in April to carry out the review, which would be reported to the Sub-Committee on 2nd May 2017.

The Community Development Officer (Grants and Funding) would be invited to attend. The Monitoring Officer would also be invited to advise on the jurisdiction of Parishes and the District Council with regard to the allocation of non site-specific s106 monies.

The meeting closed at 7.00 pm having commenced at 6.00 pm

CHAIRMAN

Business Improvement Sub-Committee

Draft Final Report on S106 Funding Review

Executive Summary

The Business Improvement Sub-Committee has undertaken a review of s106 Funding. The review examined the process and procedures for the allocation and holding of S106 monies and this report confirms that monies from Section 106 procedures are accountable and available to interested and qualified parties.

Recommendations

1. To investigate the possibilities for an appropriate way to fund Parishes and Wards with no planned developments.
2. To investigate an appropriate way to fund unparished areas (eg Horsham Town) that will have community projects but no developments.
3. To continue to send the same Section 106 reports to Ward Members as sent to Parish Councils, thereby allowing Members to stay updated and work better with Parish Councils on Section 106 monies.

Reasons for Recommendations

- 1 To ensure the availability of Section 106 monies is known by the Members and Parish Councils to they can be used as and when intended.
- 2 To correct a possible lack of availability of Section 106 money for Parishes and Wards with no developments.

Background Papers

1. *Report to Council dated 11 December 2013 by The Chief Executive "Section 106 Contributions for Open Space, Sport and Recreation – Proposed Changes to Terms of Reference and membership of Planning Obligations Panel"*
2. *Business Improvement Working Group's Final Report on S106 Review by Cllr. Brian O'Connell, April 2016*
3. *Overview and Scrutiny Committee Minutes 28 November 2016 S0/37 (b)*
4. *Task and Finish Review Group Notes 11 January 2017 (not for publication)*
5. *Task and Finish Review Group Agenda 8 February 2017 (pp 3-46 inclusive Restricted)*

Background Information

The purpose of this report is to give reassurance that the process and procedures for the allocation and holding of S106 monies are working satisfactorily.

The S106 Task and Finish Review Group was established under the Business Improvement Sub-Committee by the Overview and Scrutiny Committee on 28 November 2016. The Task and Finish Review Group first met on 11 January 2017 and agreed the following Terms of Reference:

- To ascertain the total amount of unspent and unallocated s106 funding.
- To ascertain the amount of s106 funding allocated to each type as set up by the Council, including Open Space Sport and Recreation and Community Facilities.
- To ascertain the total amount of s106 monies given to WSCC and their percentage allocation of the funds across types of use.
- To ascertain the amount of commuted sums for affordable housing including: where it is held and what is going to be done with it.
- To review the process of s106 reporting for Parish and Neighbourhood Councils.
- To clarify the amount of money remaining to be allocated by the Planning Obligations Panel.

At a meeting of the Task and Finish Review Group on 8 February 2017, the Planning Obligations Officer provided details of:

- The total amount of Section 106 Funds being held by HDC.
- The allocated and unallocated S106 funds being held by type for both HDC and WSCC contributions.
- A spreadsheet of S106 agreements entered into since 1 April 2014.
- An example of a spreadsheet sent to the Parish councils.

The Planning Obligations Officer confirmed by email on 2 February 2017 that a summary of unspent S106 funds per Parish/Neighbourhood Council area would be sent on a quarterly basis to all Councillors.

At the Review Group's meeting on 8 February the Head of Finance gave a detailed summary of figures on Allocated and Unallocated S106 funds. The monies are being held on the balance sheet in three areas:

- Capital grants and receipts in advance – Capital with Conditions
- Useable reserves – Capital grants and contributions unapplied – Capital with no conditions
- Useable Reserves – Reserves

West Sussex County Council monies are held under Long Term Liabilities –S106 Contributions

The Planning Obligations Officer was asked if the Allocated and Unallocated S106 funds report could be produced again alongside the new Balance Sheet on 31 March 2017, noting that this will be dependent on availability of information from Finance.

The Review Group concluded that the objectives of the review that were relevant had been met and a report should go to the Business Improvement Sub-Committee based on the work done by this group.

Next Steps

To review the recommendations 1 and 2 in the next Municipal Year and to continue to send out reports as mentioned in recommendations 3.

Councillor Michael Willett
Chair S106 Review Task and Finish Group
April 2017

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Planning Obligations Panel

Membership:

Chairman and Vice-Chairman of Planning Committee (North)
Chairman and Vice-Chairman of Planning Committee (South)
Cabinet Member for Planning and Development
Cabinet Member for Leisure and Culture
Cabinet Member for Community and Wellbeing
One Minority Group Member*
One Independent Member*

* If not already represented within the ex-officio members

Terms of Reference:

To consider applications relating to the allocation of non site-specific funds for Community Facilities (CF) and Open Space, Sport and Recreation (OSSR) and related purposes received under agreements made pursuant to section 106 of the Town and Country Planning Act 1990 and to make recommendations to the Development Manager on the determination thereof.

Applications for sums under £2,500 will be determined by the Development Manager and reported to the Panel for information.

Local Members, representatives of Parish and Neighbourhood Councils and applicants are to be given the opportunity to address the Panel in relation to relevant applications.

Guidance on Open Space, Sport and Recreation (OSSR) applications:

In assessing applications for OSSR funding allocations the Development Manager and the Panel should attach particular weight to proposals which:

- a) address a deficiency in provision of or secure improvements to Open Space, Sport and Recreation facilities in the prescribed area;
- b) relate to the original development from which the contribution was generated on a local, neighbourhood, sub-district or strategic level;
- c) are identified in a District/Parish/Community Action plan;
- d) show creative design elements;
- e) secure additional funding from other sources.

Applications may be made by Parish Councils or other properly constituted local bodies for projects relating to CF and OSSR schemes in their area. Prior to any applications being considered, ward Members will be consulted and their views sought. Bodies other than parish councils wishing to apply for funding should consult and seek support from their local Parish or Neighbourhood Councils.

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Report to Council

11th December, 2013

By the Chief Executive

DECISION REQUIRED

Not exempt



Horsham
District
Council

Section 106 Contributions for Open Space, Sport and Recreation – Proposed Changes to Terms of Reference and membership of Planning Obligations Panel.

Executive Summary

This report proposes changes to the terms of reference and membership of the Planning Obligations Panel to put in place a robust and transparent process for the allocation of funds collected through section 106 agreements for open space, sport and recreational (OSSR) facilities that are not restricted to specific sites. The agreements which secured the funds do specify the geographical area (usually defined as the parish) which must benefit from the use of the funds.

In June 2005 Council agreed a process for dealing with the allocation of non site specific community facilities funds generated through section 106 agreements attached to planning permissions. This included the creation of what has become known as the Planning Obligations Panel.

The panel was not constituted as a committee of the Council and did not have delegated authority but instead was designed to act as a consultative body to enable the relevant officer to make decisions on the allocation of non site specific s106 funds for community facilities in the light of its conclusions. A different arrangement was made for non site specific OSSR contributions. This has proved ineffective and the matter has been revisited. In doing so consultations have been carried out recently with parish and neighbourhood councils to raise awareness of the OSSR funds and potential uses.

The Council currently holds £717,000 of uncommitted non site specific section 106 contributions for the provision of OSSR facilities.

Further work is underway to prepare for the implementation in April 2015 of the Community Infrastructure Levy. This will be linked to the adoption of the District Planning Framework and will, for the most part, replace s106 agreements as a means of securing financial contributions for infrastructure and facilities. New procedures will need to be put in place and there is also an opportunity to review and revise other aspects of the s106 process including the monitoring and publication of the collection and distribution of funds. A further report on these matters will be brought to Cabinet in the new year.

Recommendations

Council is recommended to:

- i) Delegate decisions relating to allocation of non site-specific funds for community facilities, open space, sport and recreation and related purposes received under agreements made pursuant to section 106 of the Town and Country Planning Act 1990 to the Head of Planning and Environmental services in consultation with the Planning Obligations Panel.
- ii) Reconstitute the Planning Obligations Panel to include the Chairmen and Vice Chairmen of the two Development Control Committees, the Cabinet Members for Living and Working Communities, Arts, Heritage and Leisure and Safer and Healthier Communities plus one Liberal Democrat Member and one Independent Member.
- iii) Agree the criteria to guide decisions on allocation of funds set out in paragraph 3.6 of the report.

Reasons for Recommendations

- i) To establish a transparent and robust process for the allocation of non site specific s106 funds.
- ii) To ensure appropriate member input to the process.
- iii) To guide future decisions on the allocation of funds.

Background Papers: Correspondence with Parish and Neighbourhood Councils

Consultation: Parish and Neighbourhood Councils

Wards affected: All

Contact

Tom Crowley ext 5101

Background Information

1 Introduction

The purpose of this report

- 1.1 This report proposes changes to the terms of reference and membership of the Planning Obligations Panel to put in place a robust and transparent process for the allocation of funds collected through section 106 agreements for open space, sport and recreational (OSSR) facilities that are not restricted to specific sites.

Background

- 1.2 Since the advent of the planning system in 1948, local planning authorities have had the ability to negotiate and enter into agreements with developers. They are able to secure covenants and obligations that go beyond matters that can be controlled by conditions attached to planning permissions. Currently these agreements are entered into under Section 106 of the Town and Country Planning Act 1990.
- 1.3 The Horsham District Local Development Framework to 2018 (Planning Obligations Supplementary Planning document June 2007) provides guidance regarding the definition and scope of such provisions. In addition to site specific infrastructure funding contributions (e.g. Sustainable Transport & Highways), financial contributions have also been made under these arrangements which can be divided into
- (a) funds allocated for community facilities
 - (b) funds provided for Open Space, Sport & Recreation Facility enhancements where developments are contributing to off-site provision
- 1.4 In June 2005 Council agreed a process for dealing with the allocation of non site specific community facilities funds generated through section 106 agreements attached to planning permissions. This included the creation of what has become known as the Planning Obligations Panel. This was referred to in the report at the time as follows:
- The application be presented to a Panel comprising the Cabinet Members for Strategic Planning, Leisure and Cultural Services and Community Partnerships and Housing and the Chairmen and Vice Chairmen of the two Development Control Committees. The response of Local Members will be reported to the Panel and will have the opportunity to address the meeting along with Parish and Neighbourhood Council Members and the chairman of the Community Strategy Transport Group.*
- 1.5 The panel was not constituted as a committee of the council and did not have delegated authority but instead was designed to act as a consultative body to enable the relevant officer to make decisions on the allocation of non site specific s106 community facilities funds in the light of its conclusions. A different arrangement was made for non site specific open space and recreation contributions. This has proved ineffective and the matter has been revisited. In doing so consultations have been carried out recently with parish and neighbourhood councils to raise awareness of the OSSR funds and potential uses.

1.6 Scope of Open Space, Sport & Recreation Facility Contributions

The Planning Obligations Supplementary Planning document states that “any new residential development can normally be expected to generate the additional need for Open Space, Sport and Recreation opportunities that is proportional to the scale of the development. As far as is possible, the need should be met through provision on site. Where it is not considered appropriate to provide all categories of open space, sport and recreational facilities on-site, the developer will be expected to make financial contributions to the Council that can be pooled towards the cost of providing new or extended off-site facilities and open space. New or enhanced existing facilities for which contributions are sought should clearly relate to the development site at the local, district-wide or sub-regional level as appropriate.”

1.7 For the sake of clarity, the definitions included in the LDF of the two funding sources are provided as follows:

- (a) Community facilities: *‘...provides pooled financial contributions towards enhancing existing community buildings and other community managed facilities’.*
- (b) Open Space, Sport and Recreation: *‘This provision can include indoor and outdoor sports, recreation and leisure facilities as well as equipped play space for children and more informal open space’.*

(Horsham District LDF; Planning Obligations Supplementary Planning Guidance p56/61.)

1.8 It should be noted that this is primarily an arrangement to use developer funds that come from agreements that pre-date the introduction of the Community Infrastructure Levy Regulations in April 2010 which transformed the tests set out in guidance on the allocation of contributions (Circular 05/05) into statutory requirements. These Regulations require identification at the outset of the application process of the infrastructure that will be adversely affected by the development or that will be required as a result of it and the infrastructure that will therefore attract contributions.

2 Statutory and Policy Background

Statutory background

2.1 Under s106 the Town and Country Planning Act 1990 Local Planning Authorities have power to enter in agreements to regulate the use of land and to secure infrastructure and appropriate financial contributions.

3 Details

3.1 The Council currently holds £717,000 of uncommitted developer contributions for the provision of OSSR facilities. Full details are contained in the Council’s s106 database which is regularly updated. A summary of the current position relating to the OSSR sums is included at Appendix 1.

- 3.2 All allocations have a prescribed use identified in the Section 106 agreement which generally identifies the parishes or wards which should benefit from the contribution. It is important to note, however, that in some cases a contribution could be used towards a project which is outside the Parish or Neighbourhood boundary, where it could be demonstrated that there would be a benefit to the ward within which the development took place. It may therefore be appropriate to allocate funding outside of a Parish or Neighbourhood boundary, but the funding stream for each project will need to be considered on a case by case basis.
- 3.3 In reviewing the current approach to the use of the OSSR funds all Parish and Neighbourhood Councils were contacted and a workshop was held on 22nd October. The purpose of this exercise was to draw attention to the funds and to stimulate discussion about potential projects.
- 3.4 A number of potential projects in Horsham have been identified and are being explored by officers. These will be reported to the panel in the new year subject to Council agreeing the revised terms of reference and composition. They include:
- Trinity Cricket Club, Horsham – New Clubhouse and Community Facilities
 - The College of Richard Collyer, Horsham – Disabled Sports Facilities
 - Bennett’s Field Recreation Ground, Horsham – Refurbishment of Changing Rooms
 - Hardy Close, Horsham – Landscaping and Parking.
- 3.5 Parish and Neighbourhood Councils have been advised about the proposed changes to the panel’s terms of reference and will be encouraged to put forward proposals relating to the funds generated from and for the benefit of their areas. In addition officers will continue to examine the scope for promoting and supporting schemes especially where there could be the ability to lever in additional funding from other sources to meet community needs and corporate priorities.
- 3.6 In assessing applications for OSSR funding allocations it is proposed that the Head of Planning and Environmental Services and the Panel should attach particular weight to proposals which::
- a) address a deficiency in provision of or secure improvements to Open Space, Sport and Recreation facilities in the prescribed area;
 - b) relate to the original development from which the contribution was generated on a local, neighbourhood, sub-district or strategic level;
 - c) are identified in a District/Parish/Community Action plan;
 - d) show creative design elements.
 - e) Secure additional funding from other sources.
- 3.7 Applications may be made by Parish Councils, or other properly constituted local bodies for projects relating to OSSR schemes in their area. Prior to any applications being made, ward members will be consulted and their views sought. Bodies other than parish councils wishing to apply for funding should consult and seek support from their local Parish or Neighbourhood Councils.

- 3.8** The Council's Lotteries and Grants Officer will provide guidance and support regarding the process, and Parks & Countryside Officers will continue their advisory role regarding technical guidance such as children's play, sports fields etc.

4 Next Steps

- 4.1 Subject to Council approving the changes the new arrangements will be publicised and the re-constituted panel will meet in the new year to consider appropriate applications.

5 Staffing Consequences

- 7.1 The bulk of the work associated with these changes will fall to the Lottery and Grants Officer and Parks & Countryside Officers. The impact will be kept under review.

8 Financial Consequences

- 8.1 The proposed process will ensure that developer contributions are allocated by an accountable and auditable methodology.

Agenda Item 7(d)(i)

Report to Cabinet

7th January 2010

By the Cabinet Member for Planning & the Environment

DECISION REQUIRED

Not exempt



**Horsham
District
Council**

Update and Review of the Planning Obligations Procedure

EXECUTIVE SUMMARY

This report details the work carried out to update and improve the Council's planning obligation procedures. It builds upon the work of the Business Improvement Working Group in its examination of the procedure for monitoring and management of planning obligation agreements and the procedure in place for the allocation of funds arising from the agreements. The report has the following aims:

- i) To provide a summary of the statutory and local planning policy framework for planning obligations.
- ii) To provide details of the operation of the existing planning obligation procedure from when it was set up in 2005 to date, examining its strengths and weaknesses.
- iii) To detail the current improvements planned for the system

RECOMMENDATIONS

The Cabinet is recommended:

- i) To agree that a threshold of £2,500 is adopted as the level below which applications would not need to be referred to the Planning Obligations Panel.
- ii) To note the work to date and proposed improvements detailed in the report

REASONS FOR RECOMMENDATIONS

- i) To speed up applications for funding and reduce the work required to support the Planning Obligations Panel
- ii) To ensure that the system of administering 106 contributions is transparent and efficient.

Background papers	Consultation	Wards affected	Contact
Report to Planning Obligations Panel 12/12/06 Internal Audit Report Section 106 Agreements December 2007 Report to Cabinet 31/7/08		All	Ray Lee Extn No. 5228

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BACKGROUND INFORMATION

1 INTRODUCTION

The purpose of this report

- 1.1 This report explains the non-IT issues relating to section 106 planning obligation agreements. It sets out the statutory and local planning policy framework for planning obligations and traces the systems in place i.e. the business processes for the management and monitoring of the agreements.

Statutory background

- 1.2 Section 106 of The Town and Country Planning Act 1990 (As Amended) and Part 2 of and Sections 46 – 48 of the Planning and Compulsory Purchase Act 2004.

Relevant Government policy

- 1.3 Section 106 of the Town and Country Planning Act 1990 introduced the concept of planning obligations, comprising both planning agreements and unilateral undertakings. It enables a planning obligation to be entered into by means of a unilateral undertaking by a developer enforceable by the local planning authority as well as by agreement by a landowner and a local planning authority.

- 1.4 Government guidance on the use of planning obligations is set out in circular 02/05 Planning Obligations¹. This requires planning obligations to be sought where they meet the following tests:

- i) necessary;
- ii) relevant to planning;
- iii) directly related to the proposed development;
- iv) fairly and reasonably related in scale and kind to the proposed development;
- v) reasonable in all other respects.

- 1.5 It is not unlawful for a planning agreement to include matters that are in excess of what is necessary, relevant and reasonable. Case law² has confirmed a broader interpretation of the type of developer contribution that can be agreed under a s106 planning obligation. It has required the connection between an obligation and development to be great than 'de minimus'. As a result local authorities are accepting contributions from developers that go beyond the definition of Circular 1/97 – including contributions that are related to the development but do not meet the 'necessary' requirement of the Secretary of State's policy tests.

- 1.6 The Government has considered a number of operations to secure the benefits arising from the development of land. Having abandoned proposals for the introduction of the Planning Gain Supplement in 2007, proposals for a Community Infrastructure Levy (CIL) were agreed as part of the Planning bill and it is expected to be rolled out during 2009 and 2010. Although planning obligations will remain in a reduced form for site-specific mitigation and affordable housing. The CIL will:

- enable local authorities to apply a levy to all new developments (residential and commercial) subject to a low de minimus threshold;

¹ Department of the Environment Circular 02/05 Planning Obligations

² Tesco Stores Ltd. V Secretary of State for the Environment (1995)

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- be based upon a costed assessment of the infrastructure requirements arising specifically out of the development contemplated by the development plan for the area, taking account of land values and potential uplift.
- break the current planning obligation regime's required link between a contribution and a particular development and local authorities will be empowered but not required to charge on most types of new development in their area.

The Government recognises the impact of introducing CIL advising that 'CIL will demand new skills in local authorities and the Government will work with other organisations to ensure that staff have the necessary skills in good time to allow the smooth implementation of CIL. Existing work on increasing skills in local authorities can also play an important role here'³

Relevant Council policy

- 1.7 The Horsham District Council Local Development Framework Core Strategy (adopted in February 2007) provides the policy framework for the future planning of the District, including the general principles for seeking planning obligations from proposed development. Policy CP13 provides the context for seeking infrastructure requirements for new development. The Core Strategy supported by the Supplementary Planning Document on Planning Obligations (http://www.horsham.gov.uk/strategic_planning/PlanningObs/), which was adopted June 2007, provides details on services and facilities and the priorities of provision that will be required when land is proposed for a development and where a planning obligation would be sought.

Background

- 1.8 During the last three years there has been a significant improvement in the management and monitoring of legal agreements with:
- i) the operation of the planning obligations procedure;
 - ii) an increased awareness by Parishes, Neighbourhoods and non profit distributing organisations of the potential for funding of a range of projects through community facility contributions and,
 - iii) an improved working relationship with West Sussex County Council regarding the transfer of County funds.

A summary of the progress during the last 3 years is set out in Appendix 1.

- 1.9 Considerable progress has been made in tackling some of the issues associated with the existing procedure as identified by the Planning Obligation Panel, the Business Improvement Working Group and by officers involved in the process.

³ Communities and Local Government – The Community Infrastructure Levy August 2008

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ACTION	STATUS		COMMENT
To introduce a Corporate Data base	Achieved	✓	
To make copies of legal agreements available through the Councils website.	Achieved	✓	Copies available through Public Access
To provide guidance to Planning Obligations Panel on definitions of capital projects	Achieved	✓	Guidance note provided to panel.
Review of procedures for release of funds to West Sussex County Council	Achieved	✓	Protocol agreed

1.10 However issues remain as indicated by the check list below:

ACTION REQUIRED	STATUS		COMMENT
To provide Parish / Neighbourhood access to data base	In progress		To be provided by Dec 2009.
Review of business process and staff time/resources involved in s106 process	In progress		Review complete and detailed below.
Review of number of applications presented to the planning obligations panel and exploration of thresholds for applications to be presented to the panel.	In progress		Recommendation for Cabinet set out below.
The introduction of an appeals mechanism be investigated.	In progress		See recommendations below
The composition of the planning obligations panel be reviewed	In progress		See discussion below.

2. The Section 106 Database

- 2.1 The introduction of the new database has resulted in improvements to the business process and the introduction of a common database (previously information was fragmented between departments) has reduced the potential for error and enabled agreements to be tracked.
- 2.2 The next stage with the database is to make it available to the Parish Councils and other stakeholders. In order to do this it is intended that the database be made available over the internet. This should be in place by December 2009

3. The Business Process

- 3.1 In December 2007 Internal Audit examined the processes and procedures for the administration of s106 agreements and interviews were held with key officers involved in the s106 process in Development Management; Compliance; Legal

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- Services; Community Services and Finance. The business process has not changed significantly since this time.
- 3.2 The business flow diagram as existing is as illustrated in Appendix 2. The existing flow is largely historical utilising available resources within the individual departments, with the processing of s106 agreements (from initiation, drafting / completion; securing / payment of contributions / obligations and monitoring) falling between several departments with the lack of an overview has been hindered by the absence of a common database. This has now been addressed.
- 3.3 The work to monitor and manage 106 contributions is currently split between the:
- Community Grants Officer who guides applicants through the application process and presents applications to the panel.
 - Conditions Monitoring Officer who scans in all the legal agreements and oversees the database. During the last 2 years since this single point of contact was introduced, nearly £1 million of outstanding 106 sums have been pursued.
 - Planning Liaison Officer who is responsible for co-ordinating interdepartmental liaison and the servicing of the Planning Obligations Panel

4. The Planning Obligations Panel

- 4.1 The Planning Obligations Panel comprises:
- the Cabinet Member for Strategic Planning
 - the Cabinet Member for Housing and Community Services
 - the Cabinet Member for Leisure and Economic Development,
 - the Cabinet Member for Environment and Sustainability
 - the Chairman and Vice Chairman of the two Development Management Committees.

It is currently chaired by the Independent Councillor for Henfield, Sheila Matthews and it is made up principally of Cabinet Members of those specific areas that would be responsible for those particular sums.

- 4.2 It meets every two months to consider applications submitted by Parishes, Neighbourhoods and non-profit distributing organisations for the allocation of s106 funding to projects. The applications relate to the use of Community Facilities Contributions which are for an unspecified purpose but are required to be spent on improvements and/or enhancement of community facilities benefiting the parish or neighbourhood of the originating development. Details of what can be applied for are detailed in information provided to applicants (appendix 3).
- 4.3 The level of contribution required for Community Facilities is set out in the Supplementary Planning Document on Planning Obligations (http://www.horsham.gov.uk/strategic_planning/planningobs/) with a range of facilities including amenity open space and allotments; local and neighbourhood equipped child play areas; youth activity areas; indoor and outdoor outdoor sports facilities falling within the general arena of community facilities.
- 4.4 The system is well established. Parishes/Neighbourhoods are consulted on applications, along with Service Heads and comments received are reported to the Panel. A copy of the Planning Obligation Agenda is sent to Parish/Neighbourhood Clerks, members of the Planning Obligations Panel and Local Members and key personnel engaged in the s106 process. The Parish/Neighbourhood, Local Members and Service Head may attend and address the Panel along with the applicant. The Panel will make a recommendation to the Head of Planning and Environment regarding the application. The applicant has one year in which to draw on the funds.

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4.5 The Cabinet report of July 2008 raised questions regarding the composition of the Panel and issues which have emerged with the operation of the Panel and/or the system of funding are:

a) The frequency of the meetings: - On average the panel will consider 6 applications/meeting. The closing date for applications is 6 weeks before the date of the meeting. This allows for consultation and the submission of any additional information. If the number of applications to be referred to the panel were to be reduced, through the introduction of thresholds (see 3.4 e below) this could result in fewer meetings.

b) Information to Service Heads – They are now consulted on new applications and through the new database can keep track of incoming sums and expenditure.

c) The use of s106 across Parish/Neighbourhood boundaries. There is nothing in the existing arrangements that would prevent a joint bid. It is important that each Parish/Neighbourhood prepare a wish list either through the Parish Action Plan (if available) or independently of this to enable some reference to the wider objectives of the Community Strategy.

d) The ring fencing of large sums to a specific project. Whilst applications to the panel for the release of funding are for a specific project or purpose identified by the applicant, either the Parish or non profit distributing organisation, there have been projects involving Parish, District and County liaison such as Storrington Village Centre Improvement and Pulborough Village Centre Improvement. In the case of the former funding was sourced from a number of smaller agreements which were considered under one application by the Planning Liaison Panel and in the latter, a single lump sum was ring fenced for improvements to Pulborough with the use of funding agreed by the then Head of Property and Economic Development and the Cabinet Member for Economic Development. The ring fencing of funds in this way enables the planning and delivery of larger projects and programmes and providing that the principle allocation is agreed by the Panel and subject to consultation, expenditure can then take place up to the agreed level by the budget holder and recorded in the new database as invoices for payment are received.

e) The threshold of applications. The analysis set out in appendix 1 illustrates that approximately 36% of the applications to the panel were below £2,500 with approximately 24% above £10,000. The BIWG has previously suggested that £2,500 be considered as the level below which the application would not need to be referred to the panel. Anything below this could be referred to Members of the Panel for approval (mirroring the approach taken in respect of seeking delegated approval on planning applications where there is an objection). Whilst the savings that this new approach could generate are small, it would speed up the processing of application below £2,500 and reduce the amount of staff time required to prepare for and support the panel. On the negative side the Business Improvement Working Group raised concerns about the Panel not being able to see all applications. This can be addressed by a short report to each panel meeting detailing the delegated decisions made since their last meeting. Therefore on balance it is proposed that the threshold should be implemented.

5. The right of appeal against the refusal of a grant.

5.1 The s106 contribution is secured to mitigate or compensate for the impact of the development. Any financial sum is payable to Horsham District Council as the Local Planning Authority and is held for use on projects and schemes. The

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number of applications which have been refused by the panel is low, only 6 representing 5.76% of all applications to date. Whilst there are occasions which individual organisations and Parishes have been disappointed by a decision, this is not generally the case. Rather than introducing an appeal process against the refusal of the award of funding which raises the question of time, resources and administration involved plus the issue of the arbiter of any decision, Parishes/Neighbourhoods and non profit distributing organisations will be encouraged to produce their own list of projects, to be included within a s106 bid register (similar to the 'blue' book approach by County) which could be referred to in presenting applications to the panel.

6. NEXT STEPS

6.1 The final actions to be completed in this review are:

- Provide access to the database for Parish and Neighbourhood Councils
- Encourage Parish and Neighbourhood Councils to establish their own list of projects for inclusion in a section 106 register

7. CONSULTATIONS

7.1 The Chairman of the Planning Obligations Panel and all officers currently involved in the existing s106 process have been consulted in the preparation of this report.

8. STAFFING CONSEQUENCES

8.1 There are no staffing implications as a result of this report

9. FINANCIAL CONSEQUENCES

9.1 There are no financial implications resulting from this report.

10. HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS

10.1 The Council is obliged a) not to contravene and b) give positive effect to the Convention of Human Rights as Scheduled in the Human Rights Act 1998. The relevant rights affecting the ownership and enjoyment of property are founded in Article 8 (right to private and family life) and Article 1 of the First Protocol (right of property). The proposals set out in this report are intended to fairly and proportionally balance private right with public aspirations.

11. HOW THE PROPOSAL WILL HELP TO REDUCE CRIME AND DISORDER

11.1 The Council is obliged in its decisions to have regard to its duty to reduce crime and disorder. The proposals in this report will not have a direct impact on the Council's duty but the duty will be discharged in individual development proposals.

12. HOW THE PROPOSAL WILL HELP TO PROMOTE RACE RELATIONS

12.1 The Council is obliged in its decisions to have regard to its duty to promote harmonious race relations. The proposals in this report will not have a direct impact on the Council's duty but the duty will be discharged in individual development proposals.

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Appendix 1

Development History

June 2005 – the Council approved a new procedure, the planning obligations procedure, for dealing with planning agreements under Section 106 of the Town and Country Planning Act. The new procedure was introduced to improve:

- the management of the process – to ensure that one person has an oversight of the whole process and that liaison takes place with Local Members, Parish and Neighbourhood Councils and the County Council;
- the monitoring of the process to ensure that planning obligations are complied with;
- audit trail from the receipt of a financial contribution to expenditure.

June 2005 – the procedure introduced a scale of fees for planning officers input and monitoring costs over and above the normal legal fees involved in the preparation and completion of legal agreements. The fee rates for monitoring applications are:

Type of agreement	Cost
Unilateral Undertakings	£240
Planning Agreement – small	£375
Planning Agreement – large	£1200

To the end of September 2008 £76,575 had been secured for the monitoring of legal agreements.

A complete list of costs for the negotiation, preparation and monitoring of planning obligations is set out in Appendix 4.

November 2005 first meeting of the Planning Obligation Panel. To the end August 2008 the Panel considered 104 applications, 51 from Parish Councils 46 from non profit distributing organisations and 7 from HDC (Parks and Leisure Services/Property and Economic Development) for the release of Community Facility Contributions towards a range of projects. A total of £841,858 has been allocated to projects. The average bid was for £9,282 and the breakdown is set out below:

APPLICANT	BID LESS THAN £2,500	BID £2,501-£5,000	BID £5001 - £10,00	BID £10,000 +
PARISH/NEIGHBOURHOOD COUNCIL	16 (+1 HDC)	7	11 (+2 HDC)	15 (+4 HDC)
NON PROFIT DISTRIBUTING ORGANISATION	23	6	9	10

In addition to the above the Panel considered 42 applications submitted by West Sussex County Council for the release of transport contributions. A protocol has now been agreed

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with West Sussex for the release of transport, education, library and fire service contributions (see below).

December 2006 – report to Planning Obligations Panel to compare the performance of this Council against the Practice Guidance produced by Communities and Local Government and Audit Commission⁴. The report concluded that:

- The practice and procedure associated with the use of planning obligations compares favourably with Government Guidance. The policy framework and skills are in place to secure contributions towards a wide range of projects and schemes.
- The Council performance on planning obligations compares favourably with the findings of the Audit Commission having regard to the development of a planning policy framework and the use of formulae, the identification of corporate aims, working with other organisations outside the planning authority, using standardised forms of agreements and developing a system to enable community involvement in the allocation of s106 funds through the planning obligations panel.

However, the report also indicated the need to review the planning obligation procedure, to include the management and monitoring of the process and identified:

- the need for a corporate data base to be accessed by key staff in planning, legal and finance to enable the input of data to improve the efficiency, management and monitoring of the process;
- the need for an up to date data base to be available to Parish Councils;
- the need for copies of Legal Agreements to be available for inspection through the Council's website.

March 2007 – Meeting of Planning Obligations Panel to review the operation of the Planning Obligation Panel, highlight problems and issues identified to date and identify the key areas to be included in a review. The Panel supported a review having regard to:

- the need for a corporate data base to be accessed by key staff in planning, legal and finance to enable the input of data to improve the efficiency of the management and monitoring of the process;
- the need for an up to date data base to be available to Parish Councils;
- the need for copies of Legal Agreements to be available for inspection through the Councils website;
- the need for a review of the guidelines regarding those projects which constitute capital projects and the definition of the scope of work falling within the category of repair;
- the need to review whether the allocation of funds to projects to date reasonably and properly relates to the application from which it is sourced, whether it compensates or mitigates for the impact of the development and whether it would stand up to scrutiny by independent auditors;
- the need to review the procedures for the release of money to WSCC.

⁴ Securing Community Benefits through planning obligations – improving Section 106 Agreements. Audit Commission 2007

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- the need to review the time and staff resources allocated to the operation of the procedure and consider whether the appointment of a Planning Obligations Officer would improve the efficiency of the system.

The Panel also recognised the implications arising of the introduction of the planning gain supplement (this was subsequently withdrawn) and the potential for a fall in receipts in some areas of the District through the introduction of CP5 relating to Built – Up Areas and Previously Developed Land – within the Core Strategy Framework.

June 2007 – Policy framework established through the adoption of the Planning Obligations SPD.

July 2007 – Specification prepared for Database.

September 2007 – Protocol agreed with West Sussex County Council for the Transfer of Contributions. Payment of sums held and schedule agreed for expenditure of transport contributions (i.e. TAD contributions to be used in connection with 'Blue Book' schemes – schemes to be progressed in the event of developer funding being agreed).

October 2007 - report to Scrutiny and Overview Committee Business Improvement Working Group setting out the scope of the review of the planning obligation procedure.

December 2007 - Internal Audit Report was published on the process and procedures for the administration of s106 agreements. This identified the following issues and weaknesses in the system:

- the need to review the total money outstanding;
- the need for clarification of the lines of communication since some officers within the s106 process were not confident that they were in receipt of all the information concerning s106 agreements. A data base system was identified as a priority.
- monitoring was sporadic and records were not up to date. Whilst the role of monitoring had been transferred to planning enforcement the role and responsibility was not defined and the whole issue needs to be properly resourced, ideally with a dedicated s106 monitoring officer.

April 2008 – initiation of County - wide discussions on s106 issues and systems to explore potential for county wide system for managing, monitoring s106 agreements, improving links/information exchange with WSCC and improving accountability for expenditure

May 2008 - Report by the Business Improvement Working Group to the Scrutiny and Overview Committee setting out how the Group sought to:

- map the current business process and evaluate the way information is tracked and reported on;
- research the best practice and technology employed by other councils to determine if it might be transferable to Horsham.

The Group recommended (subject to provisos) that the Council should acquire the s106 management system currently in operation at the London Borough of Lambeth which could be adapted by in house staff to meet the needs of the Council.

July 2008 – protocol prepared for scanning of legal agreements. Three-month trial period commencing 28 July 2008 for all new agreements. Process to be reviewed at the end of the period before rolling forward for older agreements.

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July 2008 – report to Cabinet on 31 July 2008. Cabinet resolved that:

- (i) That the recommendations of the Scrutiny & Overview Committee be accepted, as follows:
 - (a) That a decision on S106 software is made by October and the Council purchase the Lambeth system if no feasible alternative is available.
 - (b) That any system implemented by the Council should be based on the present business process with the provision of online access being essential.
 - (c) That once implemented, the s106 process should be re-engineered to improve overall process efficiency and that the IT system should be adapted accordingly.
- (ii) That the introduction of an appeals mechanism be investigated.
- (iii) That the composition of the Planning Obligations Panel be reviewed.

August 2008 – acquisition and set up of the Lambeth system at the Council.

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