

Somerset County Council

► Section 106 Agreements

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Section 106 Agreements

Management Summary

Section 106 (S106) Agreements or Planning Obligations are an established and valuable mechanism for securing planning matters arising from a development proposal. They are commonly used by Local Authorities (LAs) to bring development schemes in line with the objectives of sustainable development as articulated through the relevant local, regional and national planning policies.

Planning obligations can be provided by developers "in kind" (where the developer builds or provides directly the matters necessary to fulfil the obligation), by means of a financial payment, or in some cases a combination of both. Planning obligations in the form of financial contributions can be made by developers as a one-off contribution towards the total cost, or as a series of payments phased over time, depending on how the payment schedule negotiated.

In terms of highways obligations, the provision of traffic calming measures, a new roundabout or other junction improvements are a few examples where such an Agreement would be necessary. Highway works can be secured by other means, such as S278 Agreements and contributions can also relate to transport matters, such as contributions towards bus services.

Development schemes of a significant size that will impact on existing education provision will require a contribution towards school facilities. These payments are usually calculated using recognised formulae based on an estimated number of pupils for primary, secondary, and sixth form education that are likely to be generated from each house that is built.

Other types of contribution can include affordable housing, community infrastructure and open space provision, which are the responsibility of the District Council.

At Somerset County Council, S106 Agreement negotiations are primarily dealt with by officers in the Traffic and Transport Development team for highways contributions and Estates officers within Corporate Property for education contributions. Currently there is no central management information available to provide an overview of the financial context of all such contributions owing to the Council. However, we looked at a sample of ten schemes with agreed contributions for both highways and education and the total exceeded £57m.

Legislation was introduced in 2010 that allows local councils to set a Community Infrastructure Levy (CIL), rather than a S106 contribution. Within Somerset, the adoption of CIL has been staged by the District Councils with each adopting their own timetables for public inquiry and consultation. Currently only West Somerset Council and Exmoor National Park are yet to formally adopt CIL, however at the present time only Taunton Deane and Sedgemoor Councils have adopted charging schedules.

A CIL allows councils to raise funds from developers carrying out building projects in their area, for spending on infrastructure as identified in the District Council's Infrastructure Delivery Plan.

Summary of Significant Corporate Risks

The following table records the inherent risk (the risk of exposure with no controls in place) and the manager's initial assessment of the risk (the risk exposure on the assumption that the current controls are operating effectively) captured at the outset of the audit. The final column of the table is the Auditors

summary assessment of the risk exposure at Corporate level after the control environment has been tested. All assessments are made against the risk appetite agreed by the SWAP Management Board.

Areas identified as significant corporate risks, i.e. those being assessed as 'high' or 'very high' risk areas in line with the definitions attached should be addressed as a matter of urgency.

Risk	Inherent Risk Assessment	Auditors Assessment
The contributions due under a Section 106 Agreement are not received, or the actions required from the developer do not materialise.	High	Medium

Summary of Significant Findings

The following were identified as key findings for the service and therefore categorised, in accordance with the definitions attached, as a level '4' or '5' priority in the action plan.

- There is no formal policy that documents the agreed approach to agreeing and obtaining S106 contributions from developers.
- There is a lack of co-ordination in the recording and monitoring processes for S106 contributions by different sections of the Council, with highways contributions being added to a database and education contributions being recorded in a manual spreadsheet.
- There are no defined minimum standards for data entry of the detail of legal agreements into the systems used for monitoring of contributions.

Further details of audits' findings can be viewed in the full audit report, which follows this Management Summary.

Conclusion and Audit Opinion

 **Partial**

I am able to offer Partial assurance in relation to the areas reviewed and the controls found to be in place. Some key risks are not well managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives.

The absence of an overarching policy means that there is a risk of an inconsistent approach by officers in the negotiation of planning obligations, which could result in insufficient contributions being secured from developers. This is mitigated to some extent by the fact that the officers currently involved in such negotiations are both qualified and experienced in their fields. However, it is important that a policy is developed to ensure there is a common understanding of the Council's approach that is consistent with other relevant strategies and to allow more detailed operational guidance to be developed.

The recent decision to seek a replacement for the Atrium system used by Traffic & Transport Development, presents an ideal opportunity for a cross-Council review of how all S106 contributions should be recorded and monitored, with a view to minimising the use of separate and manual systems for the same purpose.

Practice guidance provided by DCLG for Planning Obligations states that *“the use of phased payments over a period of time will require a longer-term relationship between the LA and developer. As such the LA and developer will need to have monitoring systems to alert parties to outstanding contributions”*. The current use of systems was found to be inconsistent in respect of the way that agreements are entered into the database to enable effective monitoring of payments when they become due. The absence of checklists to ensure minimum standards are complied with and the fact that some system functionality is not being fully utilised, has led to officers becoming more reactive than proactive in the pursuit of contributions. In addition our work identified that all of the above meant that the audit trail for contributions was very difficult to follow and often not complete. The result is that it is not possible to measure easily whether trigger points have been met and contributions received promptly and in full.

The timing of the project to identify a replacement for Atrium again, provides an ideal opportunity to:

- a) review the desirable functionality of the new system;
- b) the preferred approach for recording of agreements and
- c) monitoring of developer compliance with conditions.

The recommendations in this report relating to the need for minimum standards have been made in anticipation that, in line with best practice, a single system for recording all contribution types can be introduced. However, should the decision be taken to retain separate systems, then the required standards will need to be applied to both highways and education contributions, to ensure effective monitoring. It is noted that there are other teams within the Council, not included within the scope of this audit, who should be party to this decision as primary users of the current system.

Detailed Audit Report

Objectives & Risks

The key objective of the service and risks that could impact on the achievement of this objective were discussed and are identified below.

Objective: To secure from developers, as part of the planning process, contributions towards the creation and improvement of the infrastructure necessary to support and sustain the local community.

Audit Objective: Processes are in place to ensure that developers deliver their planning obligations as included in Section 106 agreements.

Risk: The contributions due under a Section 106 Agreement are not received.

Method & Scope

This audit has been undertaken using an agreed risk based audit. This means that:

- the objectives and risks are discussed and agreed with management at the outset of the audit;
- the controls established to manage risks are discussed with key staff and relevant documentation reviewed;
- these controls are evaluated to assess whether they are proportionate to the risks and evidence sought to confirm controls are operating effectively;
- at the end of the audit, findings are discussed at a close-out meeting with the main contact and suggestions for improvement are agreed.

Findings

The following paragraphs detail all findings that warrant the attention of management.

1.1 [S106 Policy](#)

We were unable to establish that Somerset County Council have a formal policy detailing how S106 agreements will be sought, from the interviews conducted with various officers who are involved with the agreement and monitoring of planning obligations.

Our research of policies held by other local authorities concluded that whilst their documents tend to vary in terms of depth and scope, they do provide clarity and robust information of how

local authorities work with developers to understand the viability of development and to support justified requests for planning obligations.

Calculation and Scheduling of Developer Contributions

Contributions towards highways works are determined by planning obligations legislation, under Section 106 of the Town and Country Planning Act 1990. For the provision of highways infrastructure to be delivered by the Local Authority, an agreed amount is usually negotiated between the Authority and the developer, based on a contribution towards actual cost and taking into account any other relevant factors.

Developer contributions towards the provision of education were until 2009, most commonly determined by the Basic Need Cost Multiplier formula provided by the Department for Children, Schools and Families (DCSF). After this time, the DCSF ceased to provide annual updates to the multiplier figures. However many Councils have continued to use the formula as a basis for calculation, with an additional indexation amount applied to account for inflationary factors. The present cost multipliers used in Somerset are not formally documented in a policy and were last reported to Scrutiny Committee in 2013.

Typically, it was noted that the smaller development schemes within our sample required a single lump sum contribution from the developer towards highways provision, which was usually timed towards the start of the development. However, there is no policy guidance that provides a definition of what constitutes a small development and when such payment methods should be applied.

In trying to establish common practice, we identified that a number of other local authorities publish an approved policy document for guidance purposes. The more robust examples provide a detailed overview of how authorities assess the impact of existing and new development proposals, on for example education facilities, by identifying the likely number of pupils that will be generated, allowing for existing capacity and identifying mitigation needed to arrive at the cost of additional school facilities.

Whilst Somerset do not have an overarching S106 policy, there is a risk that officers, developers and other stakeholders do not have clear guidance on the Council's strategic approach for planning obligations, the basis for how contributions are agreed and calculated and how they will be monitored.

1.1a I recommend that the Economic & Community Infrastructure Operations Director should ensure that a formal policy for S106 is documented and approved by Members, to ensure that the agreed approach is consistent with the broad objectives of other strategic plans. The policy should also include guidance on how and when agreements will be applied and the basis for calculation of developer contributions, including the education contribution formula.

1.2 Maintenance Payments – ‘Commuted Sums’.

In respect of developer maintenance payments that are typically applied to highways infrastructure, the Council do not secure maintenance payments for ‘normal’ infrastructure (normal road construction and associated highway drainage), only for ‘abnormal’ provisions which attract greater on-going maintenance and for which funding is not already covered by other means. These are usually referred to as Commuted Sums.

We were advised that there is Somerset common practice, which guides the way that such payments are calculated. However this practice is not currently documented in a formal policy.

There is a risk that if the basic principles for calculating commuted sums are not documented then they will not be consistently applied which could result in insufficient funds being available to maintain infrastructure.

1.2a I recommend that the Strategic Manager Traffic & Transport Development should ensure that the draft policy in respect of agreeing and obtaining payments for maintenance of highways infrastructure is finalised and approved as soon as possible. This should form part of the overarching policy recommended under 1.1a.

1.3 [Monitoring Systems for Highways & Education Contributions](#)

This finding should be viewed in the context of the current situation with regards to the Atrium system. As part of the Council's agreement with SWOne, there was a requirement for a system to be identified and procured to replace Genesis – the corporate property and asset database. Atrium was selected and Corporate Property are in the process of rolling out, with priority being given to higher risk areas, such as schools and asbestos records.

Atrium is also the incumbent system used by the Traffic & Transport Development team, for recording and monitoring highways S106 contributions. However, as the support contract is due to expire in 2017, there have been initial discussions and a working group set-up to identify a replacement system. The functionality currently provided by Atrium is felt to be insufficient to meet requirements by officers responsible for highways contributions.

S106 contributions relating to the provision of education, the Estates and Planning Advisor in Corporate Property is responsible for maintaining a manual spreadsheet to capture and monitor contributions agreed. The spreadsheet includes details of payment due dates and triggers and also payments received.

Since the Traffic and Transport Development team are currently involved in discussions regarding a replacement system for Atrium, there is the opportunity for consideration to be given to both education and highways contributions being recorded in a single database.

However, there are accepted differences. Highways are statutory consultees in the planning process and education are not, meaning that the requirements for recording and monitoring of information are not the same. Generally speaking, education contributions are more straightforward and do not have same requirements for recording of information.

However, whilst separate systems are used for the same purpose by staff in the Traffic and Transport Development and Estates teams, there is a risk of inefficiency and duplication of effort. Furthermore, the spreadsheet used by Estates does not have the in-built system controls for data validation to ensure consistency of input and detail. Spreadsheets can also be more vulnerable to potential issues such as duplication, input error and data loss. Furthermore reporting capability is also limited.

As a single system would be the best practice approach, the following findings identified in this report reflect the current separate systems as they were tested, but recommended improvements should be applied to the recording and monitoring of both types of contribution

and interpreted as such. If a decision is made to retain separate systems, then duplicate effort will be required to bring both monitoring systems into line with the required minimum standards. There does however, remain a question as to why Traffic and Transport Development are moving away from what was procured as corporate standard system.

1.3a I recommend that the Commercial and Business Services Director should review the decision with regard to the corporate standard system for S106 contributions, by way of a joint service evaluation to determine whether all contributions should be recorded and monitored on a single system.

1.4 [Recording of key information](#)

These findings apply to both education and highways contributions.

Testing of a sample of S106 legal agreements identified that they are largely based on standard templates but that there are acceptable variations between them. All agreements have standard clauses that are common, but the layout and order of the schedules must be bespoke to the scheme that they relate to. The legal agreement represents the finalised decisions reached, following what can be a period of complex and protracted negotiations, to establish contributions that are both financially viable for the developer, will meet the Authority's objectives and secure measures to support and sustain the local community.

In terms of the ability of this audit to retrospectively scrutinise the process for how agreements were negotiated and decisions finalised, it was not possible to establish a full audit trail through the Atrium database for highways contributions, nor the spreadsheet used for education contributions.

Evidence of negotiation is not entered into either monitoring system to support the final decisions and could only be established through supplementary evidence in the form of the email archive and manual files of those officers involved. Email is the most common method of communication between officers, developers and third parties and can provide some evidence, but where other means of communication are used, there is no process to update case notes within the Atrium database.

For Education contributions, there is no central repository for such evidence. In the case of the older agreements within the sample, we were advised that there would also be a boxes of manual files in archive, containing the history of the agreement.

Within the scope of the audit, it was not possible to review the information relating to negotiations that exist outside of the database, due to the volumes of evidence involved. There were also cases where negotiations that took place several years ago were made by officers who are no longer in post and existing officers have only a partial understanding of the process to reach decisions. It is accepted that it would be impractical for all communications and records of negotiations to be stored in a database, but through discussion with the Principal Development Infrastructure Officer, it was agreed that improvements could be made to the extent to which case notes are used to record pertinent information.

Further testing identified a number of inconsistencies in the way that information is recorded and this has been reflected in the subsequent findings. Whilst only basic details of agreed contributions are recorded in the database, there is a risk that if a database is not used as a single repository for details of all negotiations, progress notes and key communications between the

Authority, legal advisors and developers, there is an incomplete record of how decisions have been agreed and this may compromise the Council's ability to pursue outstanding contributions.

1.4a I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions to ensure that there is an audit trail for the contribution agreed. This should include:

- Record of key decisions throughout the negotiation process
- Use of case notes to record key milestones and activity

This can also be used to help select the suitability of any future replacement system for recording contributions.

1.4b I recommend that the Strategic Manager – Corporate Property should ensure that key information is entered into a monitoring system for agreed education contributions. This should include:

- Evidence of key decisions throughout the negotiation process
- Supporting notes to evidence how formula amounts have been calculated
- Recording key milestones and activity

1.5 [Recording of Key Dates and Triggers for Payments](#)

Where payments and provisions are phased over a period of time, the legal agreement should make clear at what stages in the development process these payments need to be delivered. The LA and developer will often agree that certain obligations should be paid or provided after a percentage or number of residential units have been constructed. These stages are commonly referred to as 'triggers' and developer are asked to estimate a due date for each trigger.

Education contributions are currently recorded in a spreadsheet, which includes the contribution amounts due but not the estimated due dates.

Highways contributions are recorded in Atrium and the system enables the recording of key dates, including the agreed triggers for payments. However sample testing identified that the estimated due dates are not commonly entered. In the sample of ten development schemes tested, only two had payment due dates entered into the database. At the time when agreement details are entered into Atrium, it is difficult at this stage to anticipate when the developer will reach the trigger points for payments because the development will not have commenced. In addition, Atrium does have the functionality for email prompts to be sent to principal officers to alert them that a trigger date has been reached, but they are not currently used.

Officers explained that the developer will often give a best guess for stage completion so that key dates can be input, but this may not be consistently recorded. The developer will be asked to provide estimated dates and the responses will usually vary in terms in specificity.

However if estimated due dates are not entered into the database and the functionality for email prompts is not utilised, then there is no mechanism to remind officers that original agreed dates have been exceeded. In cases where developers have not reached the estimated trigger dates, this could be used as a prompt for officers to make contact and establish a revised date, which would be a more proactive approach. Without this process and by relying only on the honesty of the developer, there is a risk that payments will not be made in a timely manner.

1.5a I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions. This should include:

- Original estimated payment triggers and due dates
- Revised estimated payment trigger dates (and a comments field to explain the delay)
- Actual invoice date

Furthermore it is recommended that reports can be produced from the system for ongoing monitoring purposes.

1.5b I recommend that the Strategic Manager – Corporate Property should ensure that should ensure that key information is entered into a monitoring system for agreed education contributions. This should include:

- Original estimated payment triggers and due dates
- Revised estimated payment trigger dates (and a comments field to explain the delay)

1.6 [Compliance with agreed payment triggers](#)

Sample testing identified that it is not fully possible to retrospectively confirm the extent to which developers have complied with the agreed trigger points. For example, where a payment trigger is set at occupation of X number of dwellings, both the Traffic and Transport Development and Estates Officers are unable to be fully proactive in terms of maintaining a current awareness of how many dwellings have been occupied at any given time, due to the constraints of time and resource within the teams. Historically when teams had greater levels of resource and capacity, routine inspections of developments would be conducted to visually confirm how many dwellings had been occupied. Now that resource has been scaled back, this activity is no longer possible. Therefore Officers are reliant on both the honesty of the developer and intelligence from other teams, including those within the District Councils who can advise on occupation numbers from Council Tax and Electoral Register data.

This fact adds further weight to the requirement for robust monitoring procedures, as per the recommended improvements in 1.5a and b above. Given that resources are stretched, improved monitoring of trigger dates would allow resources to be focused where most needed.

1.7 [Expiry dates for spend of contributions](#)

Where the LA has made a commitment to providing a facility in part or in full from a developer's financial contribution, it should make clear in the S106 agreement when this work will be carried out and if it is not carried out to the specified timescale, how the unspent funds will be returned to the developer and with what interest added, if appropriate.

Atrium can also be used to record the expiry date by which income from S106 contributions must be spent, as per the legal agreement. The timeframe is commonly between five and ten years between receipts of the final payment and if this is not met, the payment should be returned to the developer.

However, within the scope of this audit, it was not possible for us to verify the extent to which expiry dates are complied with for highways contributions. This is because a) expiry dates are not consistently recorded in the database and b) where dates are recorded, it was not possible to produce any reporting from the system that would identify where they have been exceeded.

For education contributions, the monitoring spreadsheet includes a 'date of receipt' and 'spend deadline' column, but the deadline was observed to be quantified as both a period (e.g. 10 years) and a date and in some cases simply stated 'not specified'. The actual payment receipt date is recorded, but the spreadsheet does not provide any prompt to officers when spend deadlines are approaching.

There is an inconsistent approach for the data input into the system for both highways and education contributions in terms of the deadlines for contributions to be spent, resulting in the risk that this element of monitoring is not robust.

1.7a I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions. This should include:

- **Contribution spend expiry dates**

It is also recommended that a report of expiry dates can be produced from the system for ongoing monitoring purposes.

1.7b I recommend that the Strategic Manager – Corporate Property should ensure that should ensure that key information is entered into a monitoring system for agreed education contributions. This should include:

- **Contribution spend expiry dates**

1.8 [Designated Responsible Officer](#)

For Education contributions, there is only one officer - the Estates and Planning Advisor, who has overall responsibility for monitoring.

However for highways contributions, all schemes will have a designated officer or officers who have allocated responsibilities throughout the stages of negotiation and monitoring. The Principal Development Infrastructure Officer explained that this may not always be reflected on the Atrium system and whilst there is an 'officer' field, we observed that it is not consistently completed, so there is a risk that ownership is not clear in this part of the system.

1.8a I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions. This should include:

- **Designated Responsible Officers**

1.9 [Indexation](#)

When obligations are being phased over a significant period of time, to ensure that their value continues to match the cost of provision, LA's will commonly use inflationary indices, such as the Royal Institution of Chartered Surveyors (RICS) Building Cost Information Service (BCIS) indexation figures.

We observed that indexation clauses were evident in the legal agreements for all schemes in the sample.

However, it was found that after indexation has been calculated for highways contributions, the calculation basis and the revised payment amounts are not consistently entered into Atrium and officers will tend to rely on developer challenge if they are incorrectly applied. This means there is an inadequate audit trail that records the final payment amounts due and it was not possible to confirm that the calculation had been correctly applied.

For Education contributions, the monitoring spreadsheet used to track agreed contributions and payments due is updated with indexation amounts that have been calculated and applied when invoices are generated, but there are no supporting notes to indicate the basis for the calculation.

Therefore it was not possible to verify that indexation had been correctly applied to contributions in the audit sample, because the basis for the calculation is not documented for highways and education contributions.

1.9a I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:

- **Original contribution agreed**
- **Revised contribution**
- **Evidence of indexation calculations to maintain an audit trail of the increased contribution.**

1.9b I recommend that the Strategic Manager – Corporate Property should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:

- **Evidence of indexation calculations to maintain an audit trail of the increased contribution.**

1.10 [Raising of Invoices for Payments Due](#)

In the sample testing of ten agreements, invoices were found to have been raised for all Education contributions due for the sample of ten schemes tested and paid in a timely manner. The following findings therefore relate to highways contributions only.

The Principal Development Infrastructure Officer advised that invoices are not routinely raised for payments due for highways contributions, because of the limited administrative resource within the team. Traffic and Transport Development Officers themselves do not have SAP access and it is felt to be too burdensome to request support officers to raise an invoice for every payment due. Therefore, payment requests are usually made by email or verbally to developers.

Our testing identified that for highways contributions, a total of nine invoices had been raised in comparison to a total of twenty-two payments made. The SCC Code of Practice for Income Management contains the following requirements and states that:

If the contribution is payable when the project has been completed, the invoice should be raised immediately following completion...

Where supply takes place over a prolonged period, stage payments are the preferred method; in order to maximise the Council's cash flow...

All invoices should be raised within 1 week of the provision of service and not later than 30 days after supply.

The current practice in the Traffic and Transport Development is not compliant with these required standards.

Where invoices are not raised, there is no record of the amount due on the financial management system, no mechanism to identify overdue payments and therefore no trigger for commencing recovery procedures. This was discussed with the Principal Development Infrastructure Officer who explained that for highways, invoicing all payments would not be desirable approach in all cases because of the administration involved.

Timeliness of Invoiced Payments

Due to the limited information recorded in the Atrium system for invoices raised and the fact that case notes are not used to record when payments are requested, there was insufficient information to establish when contributions were requested and the timeliness of payment by the developer. Furthermore, where invoices are not raised, there is reduced evidence of any activity to pursue and recover debts.

Invoice & Payment Descriptions in SAP

When highways contribution payments are received in SAP, they are commonly allocated to a variety of different income codes, due to the fact that they are ring-fenced funds. Our testing identified that the descriptions entered for such payments do not follow a consistent format, so it was not possible for us to independently verify from SAP that all instalments had been paid. Instead, testing of payments was conducted based on a report from Atrium and then verified back to SAP with the additional assistance of officers in Corporate Finance. It is accepted that if payments have not been logged in Atrium then they will not have been identified, but it was not possible to identify a preferable means of testing.

The absence of a consistent approach to the coding of invoices and the descriptions entered, mean that it is difficult to trace payments for highways contributions via SAP.

- 1.10a I recommend that the Strategic Manager Traffic & Transport Development should ensure that invoices are raised and minimum standards are agreed for the raising of invoices for developers to pay highways contributions. This should include an agreed format for invoice description details, to ensure that payments can be identified through SAP. The invoice number should be recorded in the monitoring system for audit trail purposes.**

1.11 Reporting to Senior Management & Members

The Planning Liaison & Estate Roads Manager and Estates and Planning Advisor advised that currently there is no routine reporting of S106 agreements to senior management and during the course of the audit it was discussed whether a status report of all live s106 agreements could be produced at least quarterly for senior management consideration.

For the service to provide management reporting, a preferred and more valuable approach would be to report on schemes where payments have commenced, as this would exclude schemes where building has not started. The report could include risk ranking to ensure that issues with compliance can be prioritised and addressed accordingly.

Current discussions for a replacement system should include consideration of the required suite

of reports that will provide a summary of all schemes to both operational and strategic levels of management for Economic and Community Infrastructure.

1.11a I recommend that the Strategic Manager - Traffic & Transport Development and the Strategic Manager – Corporate Property ensures that periodic reports of development schemes with commenced S106 contributions are provided to Senior Management, to include a risk ranking where issues are identified.

The Agreed Action Plan provides a formal record of points arising from this audit and, where appropriate, the action management has agreed to take and the timescale in which the action will be completed. All findings have been given a priority rating between 1 and 5, where 1 is low and 5 is high.

It is these findings that have formed the opinion of the service's control environment that has been reported in the Management Summary.

Section 106 Agreements

Confidential

Agreed Action Plan

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
<p>Objective: To secure from developers, as part of the planning process, contributions towards the creation and improvement of the infrastructure necessary to support and sustain the local community.</p>					
<p>Audit Objective: Processes are in place to ensure that developers deliver their planning obligations as included in Section 106 agreements.</p>					
<p>Risk: The contributions due under a Section 106 Agreement are not received, or the actions required from the developer do not materialise.</p>					
<p>1.1a There is no formal policy that documents the agreed approach to agreeing and obtaining S106 contributions from developers.</p>	<p>I recommend that the Economic & Community Infrastructure Operations Director should ensure that a formal policy for S106 is documented and approved by Members, to ensure that the agreed approach is consistent with the broad objectives of other strategic plans. The policy should also include guidance on how and when agreements will be applied and the basis for calculation of developer contributions, including the education contribution formula.</p> <p style="text-align: right;"><small>SWAP Ref: 31193</small></p>	<p>4</p>	<p>Transport & Traffic Development Group (TTDG): There is no formal Policy (to address highway issues) because legislation and development plan documents adopted by Local Planning Authorities and SCC as Highway Authority set a framework within which we must consider planning applications and any s106 obligations. SCC has adopted DfT Guidance on Transport Assessments as local Policy and there is adopted Travel Plan Guidance.</p> <p>Corporate Property: Contributions sought for education are based upon a long</p>	<p>Corporate Property: Estates and Planning Advisor</p>	<p>Corporate Property: End of May 2016</p>

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
			established County rule of thumb to establish the pupil yield from a development, agreed with all 5 District Councils (LPAs), and to which the Central Government cost per pupil place multipliers are applied. It is proposed to include this information within The School Growth Infrastructure plan in order to formally document the policy. This is expected to be published May 2016		
1.2a There is no formal guidance that documents the common practice for obtaining maintenance payments from developers.	I recommend that the Strategic Manager Traffic & Transport Development should ensure that the draft policy in respect of agreeing and obtaining payments for maintenance of highways infrastructure is finalised and approved as soon as possible. This should form part of the overarching policy recommended under 1.1a. <i>SWAP Ref: 31187</i>	3	There is a guidance document being prepared to detail the securing of Commuted Sum payments. Whilst this is currently in draft, it should be complete and ready for adoption by the end of May 2016. It should be noted that this is based on Nationally Recognised Industry Best Practice, where sums are secured for the future maintenance of 'abnormal' assets.	Strategic Manager Traffic & Transport Development	End of May 2016
1.3a There are separate systems	I recommend that the	4	TTDG: Works are underway to	Not applicable	Not applicable

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
<p>managed by separate teams for the recording and monitoring processes for S106 contributions by different sections of the Council, with highways contributions being added to a database and education contributions being recorded in a manual spreadsheet.</p>	<p>Commercial and Business Services Director should review the decision with regard to the corporate standard system for S106 contributions, by way of a joint service evaluation to determine whether all contributions should be recorded and monitored on a single system.</p> <p style="text-align: right;"><i>SWAP Ref: 31191</i></p>		<p>replace the system currently used by the highways and planning teams in TTDG as the existing system is being withdrawn from market.</p> <p>I understand that Property Services are in the process of acquiring a separate system, although there is clearly merit in a shared system.</p> <p>Property: Evidence suggests that all LPA's will be including education on their Reg 123 list which means education contributions should in theory come to SCC via the CIL – the exception being urban extension. Thus s106 contributions for education might be expected to decline steadily over coming years/months. This is not the case for Highways as a statutory consultee. However, CIL is still evolving and it may therefore be sensible to defer a joint service evaluation until the position is clearer.</p> <p>The Strategic IT Manager added</p>		

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
			<p><i>“support for the Atrium Planning application is being discontinued and the Atrium Property application (procured by SWOne and hosted by Atrium) will continue to be supported and developed. The highways team are aware of the position and are actively pursuing a replacement through normal procurement routes; (We have) been involved in the discussions regarding a replacement and this is moving to procurement stage shortly. I am happy that there is a much more collaborative approach to this issue since the audit was undertaken”.</i></p>		
<p>1.4a There are no defined minimum standards for entry of the detail of legal agreement into the systems or adherence to the agreement to facilitate the monitoring of contributions for highways.</p>	<p>I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:</p> <ul style="list-style-type: none"> • Evidence of key decisions throughout the 	<p>4</p>	<p>It is agreed that when the new system is introduced a list of requirements/minimum standards will be provided for every entry. This can be issued along with formal training on the new system.</p> <p>It may not be possible to capture how all decisions were reached, for example when they are specified by the LPA or reached</p>	<p>Principal Development Infrastructure Officer</p>	<p>End of Feb 2017</p>

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
	<p>negotiation process</p> <ul style="list-style-type: none"> • Use of case notes to record key milestones and activity <p>This can also be used to help select the suitability of any future replacement system for recording contributions.</p> <p style="text-align: right;"><i>SWAP Ref: 31186</i></p>		via negotiation.		
<p>1.4b There are no defined minimum standards for entry of the detail of legal agreement into the systems or adherence to the agreement to facilitate the monitoring of contributions for education.</p>	<p>I recommend that the Strategic Manager – Corporate Property should ensure that key information is entered into a monitoring system for agreed education contributions. This should include:</p> <ul style="list-style-type: none"> • Evidence of key decisions throughout the negotiation process • Supporting notes to evidence how formula amounts have been calculated • Recording key milestones and activity <p style="text-align: right;"><i>SWAP Ref: 31405</i></p>	4	<p>Property is migrating to a new database – Atrium. It is anticipated that Atrium will be used to record s106 agreements. Potential land acquisition via s106 agreements can be recorded and all financial contributions can be linked to the relevant school site. This is at the early stages of investigation, but will be pursued as part of the wider implementation. Corporate Property will seek to record relevant data as suggested.</p> <p>Triggers present a greater challenge as, whilst they can certainly be recorded, they are rarely specific dates and will</p>	Estates and Planning Advisor	End of December 2016

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
			continue to require 'manual' review.		
<p>1.5a There are no defined minimum standards for entry of the detail of legal agreement into the systems used for monitoring of contributions, in respect of estimated payment dates for highways contributions.</p>	<p>I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions. This should include:</p> <ul style="list-style-type: none"> • Original estimated payment triggers and due dates • Revised estimated payment trigger dates (and a comments field to explain the delay) • Actual invoice date <p>Furthermore it is recommended that reports can be produced from the system for ongoing monitoring purposes.</p> <p style="text-align: right;"><small>SWAP Ref: 31258</small></p>	4	As 1.4a this can be included, but will be a 'best guess' only for start date and the invoice date may be an informal request for payment prior to formal invoice being raised, or payment received date if payment is received prior to request (which can happen in line with the terms of the agreement).	Principal Development Infrastructure Officer	End of Feb 2017
<p>1.5b There are no defined minimum standards for entry of the detail of legal agreement</p>	<p>I recommend that the Strategic Manager – Corporate Property should ensure that should</p>	4	As referred to in 1.4b, payment triggers cannot always be successfully converted to dates,	Estates and Planning Advisor	End of December 2016

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
<p>into the systems used for monitoring of contributions, in respect of estimated payment dates for education contributions.</p>	<p>ensure that key information is entered into a monitoring system for agreed education contributions. This should include:</p> <ul style="list-style-type: none"> • Original estimated payment triggers and due dates • Revised estimated payment trigger dates (and a comments field to explain the delay). <p style="text-align: right;"><i>SWAP Ref: 31406</i></p>		<p>although periodic review dates could be set and it is anticipated that Atrium will be used to record the trigger points for s106 contributions. Corporate property is investigating the reporting potential of Atrium and where possible will utilise such functions to ensure payments are collected in as timely a manner as resources allow.</p>		
<p>1.7a There are no defined minimum standards for entry of the detail of legal agreement into the systems used for monitoring of contributions, in respect of highways contribution spend expiry dates.</p>	<p>I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed highways contributions. This should include:</p> <ul style="list-style-type: none"> • Contribution spend expiry dates <p>It is also recommended that a report of expiry dates can be produced from the system for ongoing monitoring purposes.</p>	<p>3</p>	<p>It is agreed that when the new system is introduced a list of requirements/minimum standards will be provided for every entry. This can be issued along with formal training on the new system.</p> <p>It may not be possible to capture how all decisions were reached, for example when they are specified by the LPA or reached via negotiation.</p>	<p>Principal Development Infrastructure Officer</p>	<p>End of Feb 2017</p>

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
	<i>SWAP Ref: 31259</i>				
1.7b There are no defined minimum standards for entry of the detail of legal agreement into the systems used for monitoring of contributions, in respect of education contribution spend expiry dates.	<p>I recommend that the Strategic Manager – Corporate Property should ensure that should ensure that key information is entered into a monitoring system for agreed education contributions. This should include:</p> <ul style="list-style-type: none"> • Contribution spend expiry dates <p style="text-align: right;"><i>SWAP Ref: 31407</i></p>	3	This is currently recorded via Excel. It is anticipated that Atrium will record this data as it is on the current excel method.	Estates and Planning Advisor	End of December 2016
1.8a There are no defined minimum standards for entry of key information relating to S106 agreements, into the systems used for monitoring of contributions.	<p>I recommend that the Strategic Manager Traffic & Transport Development should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:</p> <ul style="list-style-type: none"> • Designated Responsible Officers <p style="text-align: right;"><i>SWAP Ref: 31195</i></p>	3	<p>It is agreed that when the new system is introduced a list of requirements/minimum standards will be provided for every entry. This can be issued along with formal training on the new system.</p> <p>It may not be possible to capture how all decisions were reached, for example when they are specified by the LPA or reached via negotiation.</p>	Principal Development Infrastructure Officer	End of Feb 2017
1.9a There are no defined minimum standards for entry of	I recommend that the Strategic Manager Traffic & Transport Development should ensure that	3	Noted – but can only be recorded at the time of each	Principal Development	End of Feb 2017

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
<p>key information relating to S106 agreements, into the systems used for monitoring of contributions, in respect of indexation calculations for highways contributions.</p>	<p>guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:</p> <ul style="list-style-type: none"> • Original contribution agreed • Revised contribution • Evidence of indexation calculations to maintain an audit trail of the increased contribution. <p style="text-align: right;"><i>SWAP Ref: 31185</i></p>		<p>request. Will look at how this can be captured.</p>	<p>Infrastructure Officer</p>	
<p>1.9b There are no defined minimum standards for entry of key information relating to S106 agreements, into the systems used for monitoring of contributions, in respect of indexation calculations for education contributions.</p>	<p>I recommend that the Strategic Manager – Corporate Property should ensure that guidance is developed to formalise a set of minimum standards that dictate the key information that must be entered into a database of agreed developer contributions. This should include:</p> <ul style="list-style-type: none"> • Evidence of indexation calculations to maintain an audit trail of the increased contribution. <p style="text-align: right;"><i>SWAP Ref: 31404</i></p>	<p>3</p>	<p>This is currently recorded on the relevant file which can then be cross referenced with the Excel spread-sheet record. Atrium may well be able to record this information as part of the implementation.</p>	<p>Estates and Planning Advisor</p>	<p>End of December 2016</p>

Finding	Recommendation	Priority Rating	Management Response	Responsible Officer	Implementation Date
<p>1.10 There are no defined minimum standards for entry of key information relating to S106 agreements, into the systems used for monitoring of contributions, in respect of invoicing for highways contributions.</p>	<p>I recommend that the Strategic Manager Traffic & Transport Development should ensure that invoices are raised and minimum standards are agreed for the raising of invoices for developers to pay highways contributions. This should include an agreed format for invoice description details, to ensure that payments can be identified through SAP. The invoice number should be recorded in the monitoring system for audit trail purposes.</p> <p style="text-align: right;"><i>SWAP Ref: 31194</i></p>	<p>4</p>	<p>Noted – a ‘process flow’ will be produced to document how these are requested at present. This may change when the new system is introduced, but can be a ‘live’ document.</p> <p>(i.e. informal request, prior to producing formal invoice – in line with the terms of the s106)</p>	<p>Principal Development Infrastructure Officer</p>	<p>End of Feb 2017</p>
<p>1.11a There is no periodic reporting to Senior Management and Members in relation to local schemes and developer contributions.</p>	<p>I recommend that the Strategic Manager - Traffic & Transport Development and the Strategic Manager – Corporate Property ensures that periodic reports of development schemes with commenced S106 contributions are provided to Senior Management, to include a risk ranking where issues are identified.</p> <p style="text-align: right;"><i>SWAP Ref: 31196</i></p>	<p>4</p>	<p>TTDG: Agreed in principle. The Strategic Manager - Traffic & Transport Development will consider how best to do this, but suggest quarterly reporting.</p> <p>Corporate Property: suggests that this is addressed by providing periodic reports to the Asset Strategy Group and that in future proposed CIL bids to the District Councils should also be included.</p>	<p>Strategic Manager - Traffic & Transport Development</p> <p>Estates and Planning Advisor</p>	<p>End of June 2016</p>

Audit Framework Definitions

Control Assurance Definitions

Substantial	▲☆☆☆☆	I am able to offer substantial assurance as the areas reviewed were found to be adequately controlled. Internal controls are in place and operating effectively and risks against the achievement of objectives are well managed.
Reasonable	▲☆☆☆	I am able to offer reasonable assurance as most of the areas reviewed were found to be adequately controlled. Generally risks are well managed but some systems require the introduction or improvement of internal controls to ensure the achievement of objectives.
Partial	▲☆☆	I am able to offer Partial assurance in relation to the areas reviewed and the controls found to be in place. Some key risks are not well managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives.
None	▲☆☆	I am not able to offer any assurance. The areas reviewed were found to be inadequately controlled. Risks are not well managed and systems require the introduction or improvement of internal controls to ensure the achievement of objectives.

Categorisation Of Recommendations

When making recommendations to Management it is important that they know how important the recommendation is to their service. There should be a clear distinction between how we evaluate the risks identified for the service but scored at a corporate level and the priority assigned to the recommendation. No timeframes have been applied to each Priority as implementation will depend on several factors, however, the definitions imply the importance.

Priority 5: Findings that are fundamental to the integrity of the unit's business processes and require the immediate attention of management.

Priority 4: Important findings that need to be resolved by management.

Priority 3: The accuracy of records is at risk and requires attention.

Priority 2: Minor control issues have been identified which nevertheless need to be addressed.

Priority 1: Administrative errors identified that should be corrected. Simple, no-cost measures would serve to enhance an existing control.

Definitions of Corporate Risk

Risk	Reporting Implications
Low	Issues of a minor nature or best practice where some improvement can be made.
Medium	Issues which should be addressed by management in their areas of responsibility.
High	Issues that we consider need to be brought to the attention of senior management.
Very High	Issues that we consider need to be brought to the attention of both senior management and the Audit Committee.