

**Section 106 Legal Agreements – Monitoring Report**

<b>Final Decision-Maker</b>	Strategic Planning and Infrastructure Committee
<b>Lead Head of Service</b>	William Cornall
<b>Lead Officer and Report Author</b>	Rob Jarman
<b>Classification</b>	Public
<b>Wards affected</b>	All

**Executive Summary**

This is a monitoring report on s106 legal agreements and the appendix is organised into infrastructure themes (e.g open space) and geographic areas (ward and parish)

**Purpose of Report**

Noting

**This report makes the following recommendations to this Committee:**

1. That the report be noted.

**Timetable**

<b>Meeting</b>	<b>Date</b>
Strategic Planning and Infrastructure Committee	9 July 2019

## Section 106 Legal Agreements, Monitoring Report

### 1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Impact on Corporate Priorities</b>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> <li>• Embracing Growth and Enabling Infrastructure</li> <li>• Safe, Clean and Green</li> <li>• Homes and Communities</li> <li>• A Thriving Place</li> </ul> <p>We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they will support the Council's overall achievement of its aims as set out in section 3.</p>	Rob Jarman
<b>Cross Cutting Objectives</b>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> <li>• Heritage is Respected</li> <li>• Health Inequalities are Addressed and Reduced</li> <li>• Deprivation and Social Mobility is Improved</li> <li>• Biodiversity and Environmental Sustainability is respected</li> </ul> <p>The report recommendation(s) supports the achievement(s) of the four cross cutting objectives by the collection of monies and the physical provision of infrastructure via s106 legal agreements to support these objectives</p>	Rob Jarman
<b>Risk Management</b>	<p>Given the sums of (in effect) public money involved it is important to regularly inform councillors of how the infrastructure involved in s106 legal agreements is being delivered</p>	Rob Jarman
<b>Financial</b>	<p>The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.</p>	Senior Finance Manager (Client)
<b>Staffing</b>	<p>We will deliver the recommendations with our current staffing.</p>	Rob Jarman
<b>Legal</b>	<p>The reporting of information to committee is legal and proper</p>	Benedict King

<b>Privacy and Data Protection</b>	No impact identified.	Policy and Information Team
<b>Equalities</b>	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	Equalities and Corporate Policy Officer
<b>Public Health</b>	We recognise that the recommendations will not negatively impact on population health or that of individuals.	Public Health Officer Paul Clarke
<b>Crime and Disorder</b>	Not applicable	Rob Jarman
<b>Procurement</b>	Not applicable	Rob Jarman

## 2. INTRODUCTION AND BACKGROUND

2.1 When Planning Committee resolves to grant conditional planning permission for residential developments of 10 homes and above, these are normally the subject of a s106 legal agreement whereby monies for and the physical provision of infrastructure to make an otherwise unacceptable planning application acceptable because of the impact developments can have on physical and social infrastructure. Planning obligations must only be sought where they meet all of the following tests (Regulation 122(2) of the Community Infrastructure Levy Regulations 2010): -

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

2.2 Planning obligations are normally secured via s106 legal agreements and is this report's locus. Since the introduction of the Community Infrastructure Levy on 1 October 2018, s106 agreements tend now to cover on site infrastructure, in particular, affordable housing and open space. Normally the applicant / developer covenants to either directly provide or make a financial contribution toward the provision of infrastructure at certain 'trigger' points (for example, once 50% of a development has been occupied). Therefore, most s106 agreements are bilateral between the applicant / developer and Maidstone Borough Council as local planning authority. However, much of the monies are for infrastructure providers such as Kent County Council so the developer, at the appropriate point, would pay monies over to Maidstone Borough Council for, as an example, improving primary school capacity in a particular area and this Council effectively acts as a collecting authority in that once the monies are paid there is a check with KCC Education that they are still intended for the purpose set out in the s106 and (subject to evidence) is transferred to KCC Education and then they have to spend it on the prescribed works.

2.3 The appendix outlines s106 monies by both infrastructure theme (for example, primary school education) and also by ward. This clearly shows

that for certain infrastructure such as education, highways and transportation, health care, the amounts are very significant. Secondly, those wards that have experienced the most development (where no significant viability problems exist) experience the highest amounts of s106 monies (for example, Downswood and Otham). However, not all of the spend information is up to date. For example, we have established a good relationship with the NHS and they are regularly spending s106 money on improving the capacity of primary healthcare facilities, but the greatest monitoring lag is with respect to spend. This said, the main concern is the lack of progress in terms of using s106 monies to improve junction capacity on the main roads into Maidstone such as the A274 and on improving the frequency and efficiency of bus transport. With regard to primary school education, in particular, there is a need to ensure that KCC Education's Commissioning Plan and our Infrastructure Delivery Plan are aligned so that monies collected through s106 agreements are committed and spent on the relevant projects. However, I thought it was important to provide an update to councillors given the sums of money involved and, secondly, due to no previous updates for over 12 months. Members can, of course, contact me if they require detailed information.

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### **3. AVAILABLE OPTIONS**

- 3.1 The options are to either regularly provide monitoring information on a regular basis or not to.
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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 There have been numerous audits of s106 monitoring and all have recommended regular updates for councillors given the sums of money involved and the importance of delivering infrastructure in relation to new residential developments. Whilst resource intensive this is the preferred option compared to the 'do nothing' option whereby, in effect, public monies are put at risk from a lack of public monitoring and the related scrutiny.
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### **5. RISK**

- 5.1 One of the primary purposes of this report is to reduce risk by reporting the latest information reasonably available.

Option 1 (report purely for information): This report is presented for information only and has no risk management implications.

### **6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK**

- 6.1 Not applicable
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## **7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION**

7.1 Monitoring reports will be produced on a bi-annual basis.

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## **8. REPORT APPENDICES**

- Appendix 1: s106 financial contributions by infrastructure type and ward
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