

Title: Update on the Audit of Section 106 and progress on the implementation of the Community Infrastructure Levy (CIL)

Wards Affected: All Wards

To: Audit Committee                      On: 23 November 2016

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## 1. Key points and Summary

1.1 At its meeting on 27 July 2016 Members considered the 2015/2016 Annual Audit Report which provided an opinion on the overall adequacy and effectiveness of the Council's internal control environment. Internal Audit's review of the process surrounding Section 106 Agreement contributions resulted in an initial opinion of fundamental weaknesses as there were a number of instances where controls and procedures did not adequately mitigate the risks identified.

Recommendations were made to ensure organisational objectives were not put at risk. The Audit Committee requested an update be provided to a future meeting.

1.2 Community Infrastructure Levy (CIL) is a tax levied on development of more than 100 sq m of floorspace, or new-build dwellings. It will partially –but not completely- replace s106 Obligations.

CIL is regulated by the Community Infrastructure Levy Regulations 2010 (as amended). The regulations require CIL to strike an appropriate balance between the need to fund infrastructure and the effects of CIL on viability. CIL may **not** be used as a policy making tool to influence the location of development.

## 2. Introduction

### Section 106

2.1 The Executive Summary from the original March 2015 Section 106 audit report stated:

“Planning applications are subject to review and authorisation by the Development Management Committee.

Section 106 payments are detailed in agreements drawn up by the Legal Team in liaison with the planning department; however the basis for the agreements is not consistently reviewed or evidenced within Planning resulting in risks of

allegations against planning officers and legal challenge. The agreed payments as defined within the s106 agreements, are due once trigger points have been reached. Weaknesses have been identified in the lack of information flowing between departments to ultimately advise Finance to instigate billing, leading to a risk of income not being billed as required. This could result in contributions not being collected and a reduction in potential income to the Authority. In one instance identified during the audit a payment of £105k remained uncollected.

Contributions received are recorded in the Financial Management Systems under the relevant schemes however issues have been identified and reported relating to the expenditure of these contributions at Service Area level. There is currently no effective end to end process monitoring method in place to ensure spending of the contributions is in line with the s106 agreements. This leaves the Authority open to legal challenge and potentially financial loss were the contractor(s) to request repayment under the terms of the agreement.

It is evident from the findings that an over-arching monitoring process needs to be implemented to provide a more efficient and effective means for managing Section 106 payments as an end to end process. It is understood that there may be some scope to utilise an element of Section 106 / CIL monies to fund such an implementation”.

- 2.2 Following that first audit report, officers undertook work to improve controls and procedures and reduce risks. In September 2016 the Follow Up Report was published, and at that time the revised audit opinion was raised to improvements required. Whilst the direction of travel is right, there is further work to be done particularly in the areas of collection and spend.
- 2.3 The audit had identified two main risks and these were combined in both reports to produce an overall level of assurance. The table below summarises the assurance opinions for each of these two areas:

Risk Covered		Level of Assurance	Updated Level of Assurance
1	Contributions are incorrectly calculated	Fundamental Weaknesses	Good Standard
2	Related amounts are not collected, or not spent in line with the s106 agreement	Improvements Required	Improvements Required

- 2.4 A summary of updates on the audit recommendations is contained in the table below:

Risk No.	Priority	Recommendation	Update
1.1.1	Medium	That Hampshire County Council's website is not used to obtain Retail Price Indexing (RPI) figures	Implemented – The central government website is used to obtain RPI figures
1.2.1	Medium	Ensure clients are aware that deferred payments may be subject to RPI	Implemented – Planning application acknowledgements now explain this to all

			applicants/agents
1.3.1	High	Copy of the spreadsheet used to calculate Section 106 payments should be retained in the relevant electronic folder	Implemented – Planning Officers have been issued with & reminded of an instruction to retain calculations
1.3.2	Medium	Responsibility for updating the accuracy of the spreadsheet be assigned to specific individuals	Implemented – Lead officer assigned and quarterly review meetings are held, any necessary changes made accordingly
1.4.1	High	Details of mitigation should be documented and reviewed at sign off by a senior officer	Implemented – Mitigation is covered in the publically available officer report.
2.1.1	High	The various departments should liaise to establish a formal reporting process to ensure that developers are being billed at the appropriate time and trigger points are not being missed	The theory of a central service providing overarching S106 monitoring process has been established; however implementation would require financial investment which is currently being reviewed.
2.1.2	High	Establish whether the sample identified as not being invoiced owes any of the £105,000 tourism payment in lieu of works being carried out within a 24 month period	Implemented - Just over £80,000 worth of improvements were undertaken in time. The remaining £24,465 plus interest was invoiced in July 2016 and subsequently paid.
2.1.3	High	Section 106 payments received should be checked with Debtor Administrator to ensure the amount is correct.	This is envisaged to be one of the roles of the central service.

Risk No.	Priority	Recommendation	Update
2.2.1	High	A formal monitoring process should be put in place to ensure monies are spent in line with the agreement	This is envisaged to be one of the roles of the central service.
2.2.2	High	It should be established with Legal if the authority is in breach of its agreements were money is not spent as agreed or not spent within a given timeframe.	Legal advice confirmed such a situation may constitute a breach and ensuring this does not occur is envisaged to be one of the roles of the central service.

### Community Infrastructure Levy (CIL)

- 2.4 Torbay is proposing a relatively “narrow” CIL with CIL being sought on smaller and non-strategic residential developments, where viable to do so. A varying rate of between zero and £140 per sq m is sought on residential sites. The Council is seeking to use s106 Obligations to negotiate the provision of infrastructure from larger developments in “Future Growth Areas”. The reason for this approach is that it is more effective to use s106, rather than CIL, to deliver infrastructure needed for major schemes.
- 2.5 It is proposed to seek CIL on out of town centre retail and food/drink uses at £120 per sq m; all other uses including employment, tourism and town centre retail would not pay CIL.
- 2.6 There is considerable flexibility about how CIL may be spent. It is currently proposed to use CIL towards the South Devon Highway and mitigating the effect of development on grassland in the Berry Head Special Areas of Conservation.
- 2.7 Torbay’s CIL Draft Charging Schedule was the subject of an Examination Hearing on 9<sup>th</sup> November 2016. The Examiner’s Report is expected in early December. The Examiner may recommend that CIL can be adopted, rejected or adopted with Modifications. Following receipt of the Examiner’s report (and advertisement of Modifications as necessary), CIL must be adopted by full Council.
- 2.8 It is difficult to predict how much CIL could raise. However it is estimated that the current approach could raise around £400K per year when up and running. A wide use of CIL for strategic sites could raise about £1.2m per year: but there would be a loss of S106 funding and direct on site provision of infrastructure and affordable housing.
- 2.9 The Council recently consulted on a draft **Planning Contributions and Affordable Housing SPD**. This is being reported to Council in December 2016. When adopted, it will replace the former SPD which was adopted in 2007 and updated in 2011.

### 3. Conclusions

- 3.1 Whilst the revised audit opinion of the Section 106 process has been raised to

improvements required. There remains further work in the areas of collection and spend.

- 3.2 There is an ongoing risk that the Council is not monitoring trigger points as efficiently as it could. This in turn means that invoices can either be raised late, or fail to be raised and income opportunities could be missed.
- 3.3 It was envisaged that the setting up of a centralised team and IT system to monitor Section 106 agreements could significantly reduce the risks to the Council and ensure contributions due were paid and spent correctly. This requires investment both in terms of resources and budget and further work needs to be done by officers to establish the way forward in this regard.
- 3.4 The introduction of Community Infrastructure Levy will require even closer monitoring than Section 106, adding further weight to the argument of a centralised team and dedicated monitoring IT system. CIL also brings with it an opportunity to fund this, as a 5% administrative charge to cover the costs of setting up and monitoring CIL can be levied.
- 3.5 Work to fully implement the recommendations of the Section 106 Audit and in preparation for the forthcoming CIL charging regime will need to continue to further reduce risks to the Council. Options for improving monitoring will actively be considered over the coming months and will likely be a key consideration in transforming the way the Council works.

**Kevin Mowat**  
**Executive Head of Business Services**

## **Appendices**

None

## **Background Papers:**

The following documents/files were used to compile this report:

Internal Audit Follow Up Report Section 106 Agreements	September 2016
Internal Audit Report Section 106 Agreements	March 2015
Draft Planning Contributions and Affordable Housing SPD	September 2016