

Audit of Section 106 Agreements

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Audit Report Distribution

Client Lead:	CIL, S106 & Monitoring Officer Investment & Policy Manager
Chief Officer:	Corporate Director of Economic Development Chief Executive
Audit Committee:	The Audit Committee, which is due to be held on 12 th January 2018 will receive summary findings and recommendations from this audit.

1.0 Background

- 1.1. This report summarises the findings from the audit of Section 106 Agreements. This was an internal audit review included in the 2017/18 risk-based audit plan agreed by the Audit Committee on 16th March 2017.
- 1.2 Section 106 agreements relate to the Town and Country Planning Act. They are legal agreements linked to planning permissions. Agreements can either require applicants to deliver their own obligations, or to provide local authorities with a payment to cover the cost of delivering their own obligations.
- 1.3 The purpose of these obligations is to make the planning application acceptable in line with the authority's policies. They usually relate to the added burdens placed on the local infrastructure brought about by the proposed application.
- 1.3 The Community Infrastructure Levy (CIL) is an alternative form of agreement, with similar overall outcomes, introduced by the Government in 2010. To date the City Council has not adopted CIL, predominately due to the extent of uncertainty on how legislation is to be amended by the Government in light of a recent CIL review published early in 2017.

2.0 Audit Approach

Audit Objectives and Methodology

- 2.1 Compliance with the mandatory Public Sector Internal Audit Standards requires that internal audit activity evaluates the exposures to risks relating to the organisation's governance, operations and information systems.
- 2.2 A risk based audit approach has been applied which aligns to the five key audit control objectives (see section 4). Detailed findings and recommendations are reported within section 5 of this report.

Audit Scope and Limitations.

- 2.3 The Audit Scope was agreed with management prior to the commencement of this audit review. The Client Leads for this review are the CIL, S106 and Monitoring Officer and the Investment and Policy Manager. The agreed scope was to provide independent assurance over management's arrangements for ensuring effective governance, risk management and internal controls of the following scope areas:
 - Loss of secured income (repaid to applicants) due to:
 - i) Insufficient Governance systems, including establishing appropriate policies, procedures, defined roles & responsibilities and suitable reporting arrangements.
 - ii) Insufficient monitoring of accurate, complete and timely information to a suitable level within the organisation / failure to take action to address concerns from reported information (including obligations with third parties)

iii) Unnecessary delays in delivering obligations.

- Ensuring delivery of agreed obligations that meet the business objectives and planning requirements of the Council :
- The extent to which the Council does not maximise opportunities to achieve business objectives by failing to identify and negotiate appropriate, good value planning obligations.
- The extent to which efficient use is made of Council resources and value for money is achieved when delivering Council/third party obligations.
- Whether effective planning is in place for longer term commitments resulting from long term obligations (e.g. maintenance of playparks once s.106 obligations are fulfilled by applicant).
- Whether reputational damage as a result of failing to administer obligations presents a genuine risk.

2.4 There were no instances whereby the audit work undertaken was impaired by the availability of information.

3.0 Assurance Opinion

3.1 Each audit review is given an assurance opinion and these are intended to assist Members and Officers in their assessment of the overall level of control and potential impact of any identified system weaknesses. There are 4 levels of assurance opinion which may be applied. The definition for each level is explained in **Appendix B**.

3.2 From the areas examined and tested as part of this audit review, we consider the current controls operating within Section 106 Agreements provide **Reasonable assurance**.

4.0 Summary of Recommendations, Audit Findings and Report Distribution

4.1 There are two levels of audit recommendation; the definition for each level is explained in **Appendix C**.

4.2 There are 5 audit recommendations arising from this audit review and these can be summarised as follows:

Control Objective	High	Medium
1. Management - achievement of the organisation's strategic objectives achieved (see section 5.1)	-	5
2. Regulatory - compliance with laws, regulations, policies, procedures and contracts (see section 5.2)	-	-
3. Value – effectiveness and efficiency of operations and programmes (see section 5.5)	-	-
Total Number of Recommendations	-	5

4.3 Management response to the recommendations, including agreed actions, responsible manager and date of implementation are summarised in Appendix A.

4.4 **Findings Summary (good practice / areas for improvement):**

There is an established process in place for the monitoring of S106, which generally works well. The Council has a suitable policy in place and agreements are developed to ensure the Council maintains adherence. There is a suitable consultation process in place to identify S106 agreements and they are agreed, approved and appropriately prepared.

The monitoring of trigger points and the delivery of obligations, on the whole works well. However, due to the complexity of the agreements there are occasions where items are not progressed in a timely manner, often because it is not clear who is responsible, or what actions are required. While these are relatively infrequent, they do expose the Council to the risk of losing income. The process could be improved by introducing a formal action list for all agreements, which is then closely monitored and reported to Senior Management.

There is a need to document the S106 agreement process to ensure consistency is applied and ensure relevant information is communicated at the right time. Consideration should be given to utilising relevant software.

Consideration should also be given to including relevant risks on the Council's operational risk management framework.

Comment from the Corporate Director of Economic Development

I welcome the report and the recommendations. Actions are being implemented in response to the recommendations included links between the refreshed S106 Working Group and the Economic Growth Board.

5.0 Audit Findings & Recommendations

5.1 Management – Achievement of the organisation's strategic objectives

- 5.1.1** The Council has a Monitoring Officer in post responsible for ensuring Section 106 obligations are delivered. Responsibilities in relation to S106 agreements across the Council (including Finance, Legal Services and Development Management) are established and understood.
- 5.1.2** There are currently no written procedures in place documenting the S106 process. A process map has been developed by the Policy & Performance Team in March 2017, which is a useful starting point.
- 5.1.3** The S106 process is relatively complex and requires input from various different Council departments including Development Management, Investment & Policy, Legal Services, Green Spaces and Highways Services. There is only one Monitoring Officer at the authority. There is currently no guidance on the processes to follow if they were to take absence.
- 5.1.4** The process also relies on communication between the various internal departments. Some concerns have been raised in this area. For example, the CIL, S106 & Monitoring Officer provided examples of affordable housing requirements being removed from agreements without being formally notified. Procedure notes should be developed to include when information should be communicated and to who.

Recommendation 1 – Following consultation with all relevant parties, procedure notes detailing the processes taken to monitor and deliver S106 agreements should be prepared. Communication processes should be included.

- 5.1.5** There are currently no risks relating to the monitoring of S106 obligations included as part of the Council's operational risk management framework. There has been recent negative media coverage of the delivery of one S106 agreement and there are potential further challenges for the Council in delivering S106 agreements, including large developments planned in the Carlisle area.

Recommendation 2 – Consideration should be given to including risks relating to S106 agreements as part of the authority's quarterly monitoring of operation risk.

- 5.1.6** The CIL, S106 & Monitoring Officer and the Finance Officer meet with officers responsible for delivering obligations on an annual basis. These meetings are not minuted.

5.1.7 There can be numerous S106 obligations active at one time, each with different requirements and timescales to achieve. A number of issues have been identified by audit testing with regards to timely and efficient delivery of obligations (see section 5.2).

5.1.8 There is a clear requirement to formally monitor these various obligations on a more frequent basis. Discussions held during audit testing indicated the development of an action log would be the most effective way to monitor this.

Recommendation 3 – Meetings to discuss progress of S106 agreements should be held on a more regular basis.

Recommendation 4 – A list of agreed actions arising from the meetings should be devised and maintained. The list should be designed to ensure all outstanding obligations are assigned to an officer, with a timescale for completing the various steps required. Progress against actions should be monitored on a regular basis.

5.1.9 Information relating to S106 agreements, including contributions received and progress against delivering obligations was previously reported to the Corporate Programme Board. However, this was disbanded in January 2017. There has subsequently been no formal reporting to Senior Managers.

5.1.10 There is a need for Senior Management to receive regular assurances of the progress being made against delivering S106 agreements. They should receive regular updates on any areas of concern (taken from the monitoring of the action list) so they can intervene and take action when required.

Recommendation 5 – Delivery of obligations should be reported to Senior Management on a regular basis.

5.1.11 The CIL, S106 & Monitoring Officer prepares an annual report detailing progress made against S106 agreements. This is a public document. This is not currently a statutory requirement but the Government are considering making it so.

4.1 Regulatory – compliance with laws, regulations, policies, procedures and contracts

4.1.1 The CIL, S106 & Monitoring Officer maintains a spreadsheet of all S106 agreements and has developed a process for monitoring the delivery of obligations. A review of the spreadsheet and other relevant documentation found them to be accurate and suitable.

4.1.2 This is wholly the CIL, S106 & Monitoring Officer's own process and is inherently reliant

on their knowledge.

- 4.1.3** There is software available for monitoring S106 agreements (and CIL), which could be advantageous for the Council – it would ensure a uniform process is followed, could potentially be more efficient and could be picked up by other officers in the event of absence.
- 4.1.4** It is advised an exercise is undertaken to review the availability and cost of monitoring software to determine if it is worthwhile introducing software for S106 monitoring.
- 4.1.5** The Finance Officer maintains a spreadsheet of contributions received from applicants and the progress against utilising the contributions. This is supported by a summary report that highlights any areas of concern. N.B this document was previously reported to the Corporate Programme Board. This document would be a useful starting point in terms of devising a report to Senior Management (see recommendation 5) as it flags areas of concern using a traffic light system (RAG).
- 4.1.6** The Carlisle District Local Plan sets out the Council's policy on planning obligations. S106 agreements arise on the requirement to adhere to this policy.
- 4.1.7** A suitable consultation process is established within Development Management to ensure relevant parties (both internal and external) have an opportunity to provide input into relevant applications. Audit testing found this process to be working effectively.
- 4.1.8** S106 agreements, including variations are subject to a suitable level of scrutiny and approval as they are agreed as part of the planning application approval process. Legal Services prepare agreements in line with the agreed obligations. Audit testing found this process to be working effectively.
- 4.1.9** A process is established to monitor the reaching of trigger points for applicants to either meet their obligations or pay a contribution to the City Council or County Council, so that they can deliver the obligations.
- 4.1.10** Monitoring arrangements are also in place to ensure applicants deliver their obligations.
- 4.1.11** Cumbria County Council is responsible for monitoring delivery of any obligations they enter into with applicants. The City Council would only get involved if an applicant was not meeting obligations and legal and / or enforcement action was necessary.
- 4.1.12** An internal process is established to receive, account for and allocate responsibility for contributions received by applicants. Monitoring is in place to ensure obligations are delivered.

4.1.13 Audit testing of a sample of agreements identified a number of issues:

- There was no assurance that one (minor) obligation had been actioned by the applicant.
- Payment of a contribution by an applicant is currently in dispute. There has been limited progress made to resolve this issue.
- The deadline to spend two contributions (from the same agreement) had to be extended by one year in order for the City Council to deliver its obligations. Payment for the work was subsequently defrayed very close to the extended deadline. This particular scheme received media attention. The extension permitted was wholly reliant on the co-operation of the developer.
- One payment to be spent within 10 years has been held unspent by the authority for 7 years. It is proposed the money is handed directly to a Parish Council, but there has been limited progress (though the responsible officer is confident the money will be utilised in time).
- There were instances of residual payments being utilised at the last minute. It was not clear to all relevant officers that the money had been spent in time.
- It was not clear if a contribution for road closure work had been utilised.

4.1.14 It is recognised from conversations with responsible officers that the delivery of obligations is not straightforward and can take time to deliver. It is difficult to prepare detailed schemes in advance, owing to an uncertainty as to when full funding will come forward.

4.1.15 Responsible officers have indicated additional difficulties due to the reduced workforce. Looking forward, a number of large developments planned in the area could continue to increase the burden on the Council to deliver S106 obligations.

4.1.16 These findings support the recommendations made in section 5.1. There is an identified need to ensure all obligations are closely monitored in an effective manner to ensure they are all achieved within the specified timescales. The recommendations will also help identify any areas where additional resource may be required to achieve obligations.

4.2 Value – effectiveness and efficiency of operations and programmes

- 4.2.1** Obligations delivered by the City Council are subject to the Council's procurement rules. A sample check of schemes found that the process had been properly followed.
- 4.2.2** The Council has experienced financial concerns over the requirement to maintain green spaces (such as play-parks) that had been paid for and maintained by S106 contributions, once the maintenance contributions are fully utilised (usually after 10 years).
- 4.2.3** The Council has addressed this concern. As a rule, responsibility for the maintenance of new green space development stays with the residents (through implementation of a management scheme). Alternatively, contributions are invested in improving and upgrading existing nearby green spaces where appropriate.
- 4.2.4** The Council currently has a residual allocation of maintenance money for a number of existing green space schemes. This money was previously transferred to the Green Spaces team as part of their annual maintenance budget, but this practice was stopped in 2016 by the Finance Office and CIL, S106 & Monitoring Officer, as this practice potentially introduced additional financial burdens once the S106 maintenance money has been fully utilised.
- 4.2.5** Assurances were obtained that the Green Spaces maintenance budget is being appropriately managed, as they are aiming to deliver all routine maintenance without contributions of S106 monies.
- 4.2.6** Section 4.2 highlights an instance where a project has currently not been progressed. This project also has a payment for maintenance, which will have to be utilised over a shorter time-frame as a result of delays in developing the project, which again highlights the need for closer monitoring (Recommendation 4)

Appendix A – Management Action Plan

Summary of Recommendations and agreed actions					
Recommendations	Priority	Risk Exposure	Agreed Action	Responsible Manager	Implementation Date
Recommendation 1: Following consultation with all relevant parties, procedure notes detailing the processes taken to monitor and deliver S106 agreements should be prepared. Communication processes should be included	Priority M	Risk Exposure Lost income, or negative publicity due to inconsistent practice. Service continuity impacted by staff absence.	To establish a procedure and communication protocol for the monitoring and delivery of S106 agreements, building on the work drafted by the Policy and Performance.	Investment & Policy Manager	01 April 2018
Recommendation 2: Consideration should be given to including risks relating to S106 agreements as part of the authority's quarterly monitoring of operation risk	Priority M	Risk Exposure Lost income, or negative publicity due to failure to identify and mitigate risks.	Comprise a risk register for S106 agreements which can be fed into the service areas quarterly monitoring of risks to enable appropriate action to be taken. Process to form part of the procedure and communication protocol	Investment & Policy Manager	01 April 2018
Recommendation 3: Meetings to discuss progress of S106 agreements should be held on a more regular basis.	Priority M	Risk Exposure Lost income, or negative publicity due to failure to deliver obligations as specified, including opportunities for intervention.	Pre-programme S106 discussion meetings at predetermined intervals to be established as a sub group of the Economic Growth Board	Investment & Policy Manager	01 April 2018

Summary of Recommendations and agreed actions					
Recommendations	Priority	Risk Exposure	Agreed Action	Responsible Manager	Implementation Date
Recommendation 4: A list of agreed actions arising from the meetings should be devised and maintained. The list should be designed to ensure all outstanding obligations are assigned to an officer, with a timescale for completing the various steps required. Progress against actions should be monitored on a regular basis	Priority M	Risk Exposure Lost income, or negative publicity due to failure to identify and ensure delivery of necessary actions on a timely basis.	Minutes and actions to be recorded at the S106 meetings and circulated.	Investment & Policy Manager	01 April 2018
Recommendation 5: Delivery of obligations should be reported to Senior Management on a regular basis	Priority M	Risk Exposure Lost income, or negative publicity due to failure to identify areas that require Senior Management intervention.	As it is envisaged that Action 3 will be a subgroup of the Economic Growth Board minutes and actions will be reported to that board which is chaired by the Corporate Director of Economic Development.	Investment & Policy Manager	01 April 2018

Appendix B

Audit Assurance Opinions

There are four levels of assurance used; these are defined as follows:

	Definition:	Rating Reason
Substantial	<p>There is a sound system of internal control designed to achieve the system objectives and this minimises risk.</p> <p><i>Note: as audit work is restricted by the areas identified in the Audit Scope and is primarily sample based, full coverage of the system and complete assurance cannot be given to an audit area.</i></p>	<p>The controls tested are being consistently applied and no weaknesses were identified.</p> <p>Improvements, if any, are of an advisory nature in context of the systems and operating controls & management of risks.</p>
Reasonable	<p>There is a reasonable system of internal control in place which should ensure that system objectives are generally achieved, but some issues have been raised which may result in a degree of risk exposure beyond that which is considered acceptable.</p>	<p>Generally good systems of internal control are found to be in place but there are some areas where controls are not effectively applied and/or not sufficiently developed.</p> <p>Recommendations are no greater than medium priority.</p>
Partial	<p>The system of internal control designed to achieve the system objectives is not sufficient. Some areas are satisfactory but there are an unacceptable number of weaknesses which have been identified and the level of non-compliance and / or weaknesses in the system of internal control puts the system objectives at risk.</p>	<p>There is an unsatisfactory level of internal control in place as controls are not being operated effectively and consistently; this is likely to be evidenced by a significant level of error being identified.</p> <p>Recommendations may include high priority matters for address.</p>
Limited / None	<p>Fundamental weaknesses have been identified in the system of internal control resulting in the control environment being unacceptably weak and this exposes the system objectives to an unacceptable level of risk.</p>	<p>Significant non-compliance with basic controls which leaves the system open to error and/or abuse.</p> <p>Control is generally weak/does not exist. Recommendations will include high priority matters for address. Some medium priority matters may also be present.</p>

Appendix C

Grading of Audit Recommendations

Audit recommendations are graded in terms of their priority and risk exposure if the issue identified was to remain unaddressed. There are two levels of audit recommendations used; high and medium, the definitions of which are explained below.

	Definition:
High	Significant risk exposure identified arising from a fundamental weakness in the system of internal control
Medium	Some risk exposure identified from a weakness in the system of internal control

The implementation of agreed actions to Audit recommendations will be followed up at a later date (usually 6 months after the issue of the report).