

## Select Committee Task and Finish Group - Scoping Document

The process for establishing a task and finish group is:

1. The Select Committee identifies a potential topic for a task and finish group
2. The Select Committee Chairman and Democratic Services Officer complete the scoping template
3. The Lead Manager for Scrutiny and the Select Committee Chairmen's Group agree the completed scoping template
4. The Select Committee agrees membership of the task and finish group.

**Review Topic:** Section 106 Agreements & Community Infrastructure Levy

**Select Committee:** Environment & Economy

### Relevant background

#### Section 106 Agreements

Section 106 Agreements specify planning obligations which bind land providing a means of ensuring that developers contribute towards infrastructure and the services provided by Local Authorities, considered necessary to facilitate and mitigate the impact of the proposed development.

Section 106 obligations are secured by a formal deed, whether in the form of a Unilateral Undertaking or Agreement, under Section 106 of the Town and Country Planning Act 1990, and outline what the landowner agrees to do, what it is agreed to provide and the circumstances and timescales within which such obligations will be met.

An Agreement is executed by the Owners of the land, the Developer, the Planning Authority and any other party seeking to secure a contribution, or works in lieu of monies (at the Planning Authority's discretion).

An Undertaking is executed by the Owners of the land and/or the Developer and obliges the Owner and/or Developer to provide the obligations following the granting of planning permission and commencement of development.

Such Agreements are legally enforceable by the Local Planning Authority and can be modified or discharged under certain circumstances, by agreement with the Planning Authority or other signatories to the agreement, as appropriate.

Requests for contributions via such Agreements had to previously meet the following criteria which are set out Circular 05/2005 (Guidance on planning obligations) namely they must be:-

- necessary;
- relevant to Planning;
- directly related to the proposed development;
- fairly and reasonably related in scale and kind to the proposed development;
- and
- reasonable in all other respects

Planning obligations may be used to:

- restrict the development or use of the land in a specified way;
- require specified operations or activities to be carried out on the land;
- require the land to be used in any specified way; and
- require a sum or sums to be paid to the authority on a specified date or dates periodically

Planning guidance also suggests that obligations can be requested by the relevant service areas to deliver:

- affordable housing;
- contributions towards providing additional educational infrastructure and facilities;
- ensuring agricultural dwellings are not sold separately from the land they serve;
- ensuring residential annexes do not become separate independent dwellings;
- requiring infrastructure (roads, drains) to be provided;
- requiring land to be dedicated and equipped as open space or playgrounds;
- requiring sums to be paid for the provision of off site infrastructure or the long term maintenance of open spaces; and
- travel plans involving modal split or shift targets, the monitoring of targets, bus subsidies and penalties

However as a result of the introduction of the Community Infrastructure Levy there are now three further tests that must all be applied when considering the requirements for such obligations, namely they must be:-

- necessary to make the development acceptable in planning terms
- directly related to the development, and
- fairly and reasonably related in scale and kind to the development.

### Community Infrastructure Levy (CIL)

The Community Infrastructure Levy Regulations 2010 came into force on 6 April 2010.

The Community Infrastructure Levy is a new levy that planning authorities can choose to charge on new developments in their area. The money can be used to support development by funding infrastructure that the council, local community and neighbourhoods want.

On the 18th November 2010 Greg Clark, Decentralisation Minister, confirmed a Community Infrastructure Levy, introduced by the previous Government in April 2010, would be continued because it provides a fairer system to fund new infrastructure.

Regulations to amend the Community Infrastructure Levy regulations 2010 were laid in parliament the week commencing 7 February 2011. Subject to parliamentary process, they are expected to come into force on 6 April 2011.

The Government has confirmed that the early introduction of the Levy will assist local communities in securing much needed infrastructure through the development process with all development contributing rather than as at present only a small proportion of development funding the required infrastructure to support the new development.

**Why this is a scrutiny item**

Issues of concern surrounding Section 106 Agreements, the processes undertaken by the County Council, and the County's relationship with the District and Borough Councils as Local Planning Authorities, were raised by the Vice-Chairman of the Environment & Economy Select Committee at its last meeting on 19 January 2011.

Previously, at a meeting on 29 November 2011, the Members were informed of the current position on how much money had been collected and was still outstanding and that this information had previously not been available as a complete record.

At the meeting Members were informed that a lot of work had been undertaken with the district and boroughs to establish how much money was still outstanding and it was hoped to develop a database system as soon as possible to ensure that such information was monitored and made public in the future.

It was acknowledged that progress was being made in this area, but Members had reservations over the pace of the work as it was reported that the Council only had a very small resource looking in to this.

Reinforcing Members concerns, it was acknowledged by Officers that there was a need corporately to accurately record, monitor and use developer contributions and to co-ordinate the County Council's actions in partnership with the District and Borough Planning Authorities and other external bodies.

Additionally, it was felt that the introduction of the Community Infrastructure Levy (CIL) in April 2014 meant it was imperative that the Council began to look at ways of developing the necessary spending plans to implement CIL efficiently and effectively.

**What questions are the task group aiming to answer?**

1. Where are we, how have we got here and what have we learnt on the way as regards s106 monies.
2. How can the County Council improve its procedures with District and Borough partners around the collection and allocation of Section 106 monies, and better inform Members of the process and outcomes, and
3. What does the County Council need to do to develop effective plans for the Community Infrastructure Levy in conjunction with its District and Borough partners?

**Aim**

The County Council to ensure that clearly defined and agreed procedures are in place with all District and Borough partners in Surrey in relation to seeking and securing developer contributions through both Section 106, now and the Community Infrastructure Levy, in the future.

**Objectives**

To ensure that the County Council is able to effectively monitor, manage and spend the monies it has secured both through the Section 106 Agreement process and through the Community Infrastructure Levy in the future.

**Scope (within / out of)****Within Scope:**

- Implementation of all necessary processes and procedures to monitor, manage and spend all developer contributions secured in addition to auditing the work and processes.
- Creation of a database and a countywide accepted system for recording all data and monitoring the monies due to the County Council from its District and Borough partners and from Developers
- Development of the necessary processes, procedures and spending plans to support the County Council services and their requirements under the Community Infrastructure Levy to ensure adoption of such spending plans by its District and Borough partners

**Out of Scope:**

- Monies that are able to be claimed back or that have already been spent

**Outcomes for Surrey / Benefits**

The availability of a clear and transparent public database for monitoring s106 monies from planning permission through to spend will give confidence to Members and Stakeholders that such monies are being used correctly for identified schemes that mitigate the effects of new development on the local area and its residents.

The Environment & Infrastructure Directorate has identified that the Levy is a strategic risk to the Council, but that if it were successfully managed would significantly help the Directorate achieve its target of increasing income post 2014.

**Proposed work plan**

It is suggested that the work of the Task & Finish Group should be divided into different elements.

The first element would be to consider why s106 monies have not yet been spent and why spending plans have not as yet been developed for the majority of the monies. To inform the work of the Task Group both Members and Officers will be asked to attend to give evidence in relation to those services that currently receive the benefit of such monies,

the second element will be to monitor the work relating to the creation of a Section 106 Agreement web based database that it is hoped all District and Borough partners will be able to utilise, and

the third element of the review would look at the work being undertaken in relation to the preparation of spending plans, being developed with District and Borough partners, to ensure a smooth introduction of the Community Infrastructure Levy prior to April 2014.

<b>Timescale</b>	<b>Task</b>	<b>Responsible</b>
1 March 2011	<ul style="list-style-type: none"> <li>• First meeting to agree the scope and terms of reference of the review.</li> <li>• Receive presentations from Paul Druce (Principal Infrastructure &amp; Agreement Officer) and Judith Jenkins (Senior Programme and Commissioning Officer) on current position as regards s106 and the Levy.</li> <li>• Determine whether further information is required and what specific areas the review wishes to focus on and the relevant timeframe.</li> </ul>	Sam Meyer
3 March 2011	<ul style="list-style-type: none"> <li>• Informal meeting between Steve Renshaw (Group Spokesperson), Sam Meyer (Policy &amp; Research Officer), Matthew Evans (Head of Planning, Waverley Borough Council) and Graeme Clark (Head of Finance, Waverley Borough Council) on partner relations.</li> </ul>	Sam Meyer
23 March 2011	<ul style="list-style-type: none"> <li>• Review any work undertaken since initial meeting</li> <li>• Call witnesses to explain the present position as regards s106 monies currently held and not spent and the lack of spending plans for such monies.</li> </ul>	Sam Meyer
13 April 2011	<ul style="list-style-type: none"> <li>• Review any work undertaken since initial meeting</li> <li>• Receive evidence from further witnesses (TBC)</li> <li>• Consider how the County Council can work more closely with District and Borough authorities.</li> <li>• Determine whether further meetings and work is required before reporting to the Scrutiny Committee</li> </ul>	Sam Meyer
TBC	<ul style="list-style-type: none"> <li>• Arrange further meetings</li> </ul>	Sam Meyer

**Possible Witnesses**

County Council representatives

- Lynne Hack, Cabinet Member for Environment
- Trevor Pugh, Strategic Director Environment and Infrastructure
- Ian Reeve, Assistant Director Strategy, Transport and Planning
- Jenny Isaac, Assistant Director Operations, Highways and Countryside
- Liz Hanrahan, Senior School Commissioning Officer, Children Schools and Families
- Alison Braithwaite, Head of Transformation, Strategic Directorate for Change and Efficiency
- Peter Milton, Head of Cultural Services Customers and Communities
- Dominic Forbes, Planning & Development Group Manager
- Paul Millin, Travel & Transport Manager
- Jan Haunton, Strategy Manager
- Lyndon Mendes, Transport Policy Team Manager
- Damian Testa, Strategy and Economy Team Manager
- Paul Druce, Principal Infrastructure & Agreement Officer
- Judith Jenkins, Senior Programme and Commissioning Officer (Team Leader for CIL preparation project)
- Sue Janota, Spatial Planning Team Manager

District and Borough representatives

- Matthew Evans, Head of Planning, Waverley Borough Council
- Graeme Clark, Head of Finance, Waverley Borough Council

**Relevant Documents**

- Town & Country Planning Act 1990
- The Planning Act 2008
- The Community Infrastructure Levy : An overview, Department for Communities and Local Government, November 2010

**Potential barriers to success**

- The lack of protocols and guidance in the working relationships both internally and with the District and Borough Councils.
- Lack of resources to develop the necessary spending plans to support the Levy.
- Changes to scrutiny arrangements arising from the review spanning municipal years.

**Equalities implications**

- There are no direct equality implications from this review, however, the plans developed within the Community Infrastructure Levy will need to ensure they have completed an Equalities Assessment form.

<b>Task Group Members</b>	Steve Renshaw Bill Chapman Chris Norman John Orrick
<b>Spokesman for the Group</b>	Steve Renshaw
<b>Democratic Services Supporting Officers</b>	Sam Meyer Thomas Pooley