

THE USE OF DEVELOPER CONTRIBUTIONS

1.0 PURPOSE OF REPORT

- 1.1 This report sets out the outcome of the Task and Finish Working Group that was established by the Community Overview and Scrutiny Panel to examine the use of developer contributions. The report also seeks approval of the guidance to be implemented in 2012, and reflected in the 2013/14 budget. This is the result of the Council holding a significant amount of developers' contributions that were collected from granted planning permissions.

2.0 BACKGROUND

- 2.1 New Forest District Council, through its planning development control powers, collects contributions to mitigate the impacts of new developments on existing communities in the areas where it is responsible for town planning.
- 2.2 This is currently achieved by asking developers to enter into Section 106 legal agreements where they will provide contributions to improve certain types of infrastructure e.g:
- Provision of new or upgraded open space,
 - Provision or improvement of transportation infrastructure
 - Provision of affordable housing (in lieu of an onsite provision)
 - Drainage/Flood defence
 - Car Parking
- 2.3 The contributions are collected when specific trigger dates are reached (e.g. on commencement of development or occupation of first dwelling). This money is then 'pooled' into the various pots for spending under their fixed purpose. As the agreement is a legally binding document the money cannot be used for another use outside of that for which it was collected. Some contributions will also have fixed timescales for spending after which the money may have to be refunded to the developer.
- 2.4 As at 31/3/11 the Council held £6.035m in developers' contributions, by the 31/3/12 this is likely to rise to nearly £7m. This money is split in to the various infrastructure 'pots' as explained above, and linked to where the mitigation requirements of the development is needed. Of this amount, over £3.5m has no time considerations and has not been cleared for expenditure through a Portfolio Holder. The balance of nearly £2.5m has time considerations with nearly £100k of this having less than a year until it reaches it's repayment date. In addition to this, the Council is holding some Open Space Maintenance Contributions totalling nearly £350k.
- 2.5 Due to the large amounts of unspent money involved, it was agreed that a new way to manage the use of developer contributions was required in order to ensure that the money is spent efficiently for the purpose that it was collected. It is also important that this process is established promptly in order to ensure that no monies go past the repayment date and become liable to be returned to the developers.

- 2.6 This process will change from 2013 when the Community Infrastructure Levy (CIL) is to be adopted by the Council, as it will severely limit the Council's ability to use S106 money. However, S106 money will continue to be paid for a number of years as section 106 agreements will be entered in to until the date of CIL adoption. The Task and Finish working group was established to develop a process by which developer contributions can be spent efficiently, effectively and fairly. This process only relates to developer contributions and a process for prioritising CIL projects will be required separately at a later date.

3.0 TASK AND FINISH GROUP

- 3.1 The Task and Finish Group established by the Panel comprised the following members:-

- Cllr Alan O'Sullivan (Chairman)
- Cllr Diane Andrews
- Cllr James Binns
- Cllr Penny Jackman
- Cllr Penny Lovelace
- Cllr John Ward

- 3.2 As the control and responsibility for developer contributions ultimately sites with planning, the Portfolio Holder for Planning and Transportation Cllr Paul Vickers was invited to attend meetings. Cllr Di Brooks was also in attendance.

- 3.3 A meeting was held on the 6 March 2012 to agree the final guidance and final stages for approval. The final meeting of the group will be held in late April to take onboard any comments received through the consultation process discussed in section 5.

4.0 THE PROCESS

- 4.1 The proposed process for the use of developer contributions is set out in Appendix 1 to this report. It is envisaged that this process for the allocation of developer contributions should ensure that the money collected and available is spent more efficiently and with strong local democratic input.

- 4.2 If the revised processes outlined is agreed the new system would be implemented in 2012, and reflected in the 2013/14 budget.

- 4.3 It is likely that this process will be required for at least 4-5 years in order to spend existing developer contributions before the existing system is replaced by CIL which will have its own processes and procedures. Although the new CIL collection system will start in 2013, money due from "old" Section 106 agreements may continue to become available for some years after this as the triggers from the old agreements are met.

5.0 CONSULTATION

- 5.1 It is important that those who will be affected by the proposed guidance had a chance to comment on the process. In order to obtain comments and to submit this guidance for approval the following process has taken place:

- Early April Consultation with all Town and Parish Councils on guidance
- 11 April Planning Development Control Committee for final comments
- Late April Final Meeting of Task and Finish Group to review all comments;

- 5.2 The decision of the 11 April Planning Development Control Committee was to support the proposals and recommend that cabinet approve the guidance.
- 5.3 At the time of writing this report, a few responses have been received from the Town and Parish Councils, including one from Ringwood Town Council who request that the consultation period should be extended by at least 3 weeks. A brief summary of the responses already received from the Town and Parish Councils will be presented to Members orally at the meeting.
- 5.4 Following Cabinet approval, if required, a presentation can be given to Councillors in June following Cabinet or before July Council.

6.0 FINANCIAL IMPACT

- 6.1 As highlighted in Paragraphs 2.4 and 2.5 it is important that a process for spending developer contributions is adopted to ensure that the money is spent efficiently for the purpose for which it was collected and to ensure that no monies go past the repayment date.
- 6.2 Once the mechanism for collecting pooled developer contributions diminishes upon the adoption of a Community Infrastructure Levy Charging Schedule it is important that a clear programme for spending developer contributions is in place. Without such a programme it is possible that the Council could end of with a number of very small individual developer contribution 'pots' with very little scope for spending.

7.0 RISK ASSESSMENT CONSIDERATIONS

Risks

The scope to achieve funding through the Section 106 planning gain process will be very limited after April 2014 (or when CIL is introduced). The Council therefore needs a clear process for spending it's current developer contribution monies before CIL is implemented.

Options

The alternative is that the Council continues with it's current method of spending developer contributions. The outcome of such an approach could result in developer contributions going past the repayment date and the monies being unable to be used for the purpose for which they were collected. In addition, the Council may find itself further compromised when addressing future infrastructure requirements beyond 2014, as by then the scope of the Section 106 process is reduced.

Future savings/efficiencies

With a clear programme of spending developer contributions in place it will allow the Council to efficiently and effectively address the infrastructure required as a result of new development using existing monies without having to identify further funding.

8.0 CRIME AND DISORDER / EQUALITY AND DIVERSITY/ENVIRONMENTAL IMPLICATIONS

There are no Crime & Disorder or Equality & Diversity/Environmental implications arising directly from this report.

9.0 COMMENTS OF PLANNING AND TRANSPORTATION PORTFOLIO HOLDER

9.1 With the advent of CIL, it has become imperative that we put in place a management system to progress and control the use of monies collected under the existing S106 Agreements. As this will become a diminishing resource, and given that its potential use is often specific and limited, it is important that we ensure that money is spent in an effective way and on a meaningful timescale. I am therefore very pleased to support this proposal.

9.2 I have received a request to extend the period of consultation with Towns and Parishes. I am therefore minded to delay a final decision until the end of May to allow the local councils to take a full part in the process. I therefore request the Cabinet to authorise me to make a final decision at the beginning of June, based on the Cabinet's decision at this meeting but also taking account of any additional points raised in further representations.

10.0 RECOMMENDATION

10.1 That the period for the submission of representations for local councils be extended to the end of May; and

10.2 That the Cabinet approve the guidance, in principle, with the Portfolio Holder authorised to make such amendments as he deems appropriate to take account of any further representations received, for implementation and inclusion within the 2013/14 budget.

For Further Information Contact:

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Background Papers

Attached.

THE USE OF DEVELOPER CONTRIBUTIONS – A GUIDANCE NOTE

INTRODUCTION

New Forest District Council, through its planning development control powers, collects contributions to mitigate the impacts of new developments on existing communities in the areas where it is responsible for town planning.

This is currently achieved by asking developers to enter into Section 106 agreements where they will provide contributions to improve certain types of infrastructure e.g. the provision of new or upgraded open space, the provision or improvement of transportation infrastructure and the provision of affordable housing where this is on site or a financial contribution in lieu of providing it on site. Contributions have also been collected in some communities for car parking improvements, community facilities, flood improvement schemes and the restoration of Listed Buildings when their developments are taking place.

This process will change from 2013 when the new requirements for the payment of a Community Infrastructure Levy (CIL) will come into force. However, S106 money will continue to be paid for a number of years. This proposed process only relates to developer contributions. Once CIL has been adopted, it will require its own processes to be put in place. The spending of CIL money will, however, not be limited to the same spending constraints as developer contributions.

WHAT SORT OF SCHEMES CAN THE MONEY BE USED FOR?

The collection and spending of developers' contributions is governed by The CIL Regulations 2010 which set out statutory tests for developers contributions. These set out when it is reasonable to seek a contribution and how it should be used. Generally they can only be sought to mitigate the impact on infrastructure of new development and must be spent in the locality in which the proposed development is located. The main types of contributions are:

Public Open Space Contributions which are collected to specifically meet local needs. Children play areas are the most frequently cited examples, however the following table sets out examples of the type of development that the contributions could be spent on and those on which it would be inappropriate to do so:

Appropriate Use (examples)	Inappropriate Use (examples)
Purchase of land for new open space	Maintenance of existing open spaces
Laying out, building or upgrading of outdoor sports facilities	Simple replacement of existing worn out equipment
Provision or refurbishment of children's play areas	Community halls
Upgrading of children's play areas	Indoor sports equipment
Youth facilities e.g. skateboard parks	Anything else not related to public open space

Transportation Contributions are normally used to assist residents of the new developments to gain access to the services they require without needing to use private cars. This might include footpath or cycleway links to schools and shopping facilities. The use of these contributions will normally be carried out by the Highway Authority (Hampshire County Council) or by this Council as agents for the Highway Authority.

Affordable housing contributions are only collected where it has been agreed that provision on site is not the most appropriate solution. Where they are collected, they can be used directly by the Council or given in the form of grants to other agencies to help in the provision of new affordable housing. This may involve either acquiring land for new affordable housing development or purchasing existing properties to add to the affordable stock. Affordable housing needs exist across the District and the contributions do not need to be spent in a local area to mitigate the effects of a development. For this reason their spending will not be subject to these new procedures and they will be spent in the most appropriate way.

Often developers' contributions will be time limited requiring that the money provided is spent within a fixed period and if it has not been it should be returned to the relevant developer.

THE SPENDING OF DEVELOPERS CONTRIBUTIONS

The spending of developers contributions is determined by Council policy and the statutory tests for their use and the terms of the Section 106 agreement under which the money was collected and the need for it to relate to the communities affected by the development. It is important that contributions are spent efficiently and effectively so that they mitigate the impact of the new development as soon as possible.

To assist with this objective procedures have been drawn up to guide the decision making processes and these are described in this note.

Deciding how existing contributions should be spent will often require partnership working between various agencies that are involved in infrastructure provision.

The process must be led by the District Council because they are legally responsible having collected the funds from developers for specific purposes set out within agreements. The Planning Services Team will be responsible for ensuring the process as agreed is adhered to.

Providing for local input within the democratic process will ensure that those who represent the communities for which the funds are available will have an important part to play in determining the priorities for spending where choices need to be made.

With this in mind it is suggested that there is a revision to the current process for managing developers' contributions to public open space and transportation contributions.

This is set out in three stages as follows:

Information Provision

Officers of the District Council will produce and make available to the relevant Portfolio Holders, local District Councillors and Town or Parish Clerks :-

- A **contributions monitoring report** on the funding both collected and unspent, and negotiated but not collected on a town or parish area basis. This will also identify the main categories of infrastructure provision e.g. open space, transportation etc. This statement of funds will be issued by the Council twice yearly, on 1 December and 1 June.
- A **"long list" schedule** of the already identified infrastructure improvements in the town or parish area which are relevant to the categories of funding available

Consultation Process

Officers of the District Council will instigate:

- A process of consultations with all of the public bodies and agencies who will be involved with the relevant provision to ensure that any scheme identified is able to be implemented in a reasonable timescale.
- An annual meeting will be held on an area basis with all of the District Councillors who represent the relevant area along with representatives of the town/parish councils. The purpose of the meeting will be for the District Councillors to compare the list of implementable schemes with the funding currently or shortly to be available in that area. They will then make recommendations about which schemes should be put forward for implementation in the short term. In some cases this may require further work to establish if external funding e.g. the National Lottery might be available to assist with a particular project.

Programme Development

- The recommendations arising from the consultation will be compiled into a list of priorities for each town or parish area. This will then be considered by the District Council for inclusion within the programme for the next financial year. At this stage all resources required, including officer time to deliver the proposed programme will need to be identified and arrangements made for delivery of the commitment with the relevant partners. This stage may also include consultation with local communities. Once compiled, this programme will be put forward for approval by the Cabinet as part of the annual budget setting process.

It is likely that this process will be required for at least 4-5 years in order to spend existing developer contributions before the existing system is replaced by CIL, which will have its own processes and procedures. Although the new CIL collection system will start in 2013, money due from "old" Section 106 agreements may continue to become available for some years after this.

SUMMARY

The process outlined for the allocation of developer contributions should ensure that the funds which are available are spent more efficiently and with strong local democratic input.

If the revised processes outlined is agreed the new system would be implemented in 2012, and reflected in the 2013/14 budget.

Contact

The Council has an officer who as part of his role deals with the handling of the contributions, the process for managing the spending and providing advice:

Please contact: - Dean Brunton, Planning Officer (CIL)
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