

INTRODUCTION OF S106 MONITORING CHARGES

1. RECOMMENDATIONS

- 1.1 That the Cabinet agree to the introduction of S106 monitoring charges as set out in this report.

2. INTRODUCTION

- 2.1 The purpose of this paper is to set out a Charging Schedule for monitoring of the S106 Agreements for all sites where an obligation exists.

- 2.2 This Paper will provide:

- An outline of the legislative and policy background to Section 106 Agreements;
- Why charging for the monitor of the Legal Agreement is considered necessary;
- A description of the monitoring activities that the proposed charge relates to; and
- Proposed monitoring charging mechanism.

- 2.3 The paper only relates to the introduction of monitoring charge.

3. BACKGROUND

- 3.1 Planning obligations are legal obligations entered into to mitigate the impacts of a proposed development. Planning obligations are normally secured through a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) and are a mechanism through which development proposals can be made acceptable in planning terms.

- 3.2 The Local Government Act 2003 (Section 93) provides the legislative basis for local authorities to charge for discretionary services such as the administration/monitoring of Section 106 Agreements. An amendment to the CIL Regulations in September 2019 clarified that monitoring contributions could be sought through a S106 agreement, and it is in this context it is considered appropriate to recover the cost of administration and monitoring Section 106 obligations.

- 3.3 The proper administration of Section 106 monitoring regime is resource intensive, and it is considered appropriate to ensure that monitoring is cost neutral to the Council.

4. LEGISLATION, GUIDANCE AND POLICY CONTEXT

- 4.1 Regulation 122 of the CIL Regulations (as amended), which details the limitation on the use of planning obligations, applies to all planning applications made to a local planning authority that are determined by the local planning authority, and to appeal and call-in determinations. A planning obligation may only constitute a reason for granting planning permission if it complies with the three tests stated in Regulation 122(2), namely, that it is:

- 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

4.2 A planning obligation which does not meet these three tests would not constitute a reason for granting planning permission.

4.3 In 2019, the Government acknowledged the administrative burden monitoring S106 agreements can have on local planning authorities and on 1 September 2019 amended CIL Regulations came into force with Regulation 10 stating under the sub-heading 'Fees for monitoring planning obligations' that such monitoring fees can be sought where:

- the sum to be paid fairly and reasonably relates in scale and kind to the development; and
- the sum to be paid to the authority does not exceed the authority's estimate of its cost of monitoring the development over the lifetime of the planning obligations which relate to that development.

4.4 In July 2020 the Council adopted the Local Plan 2016-2036 Part One: Planning Strategy. The Local Plan proposes over 10,000 new dwellings over the Plan period. A number of strategic housing sites are identified ranging from 100 to 1400 dwellings. The plan recognises the importance of appropriate infrastructure to support new development via policy STR7 and STR8. Policy IMPL3 specifically references the need for monitoring.

5. WHY A MONITORING CHARGE IS NECESSARY

5.1 The implementation of an administrative charge will allow the Council to clarify its approach and provide a more efficient service for all matters relating to the monitoring of S106 planning agreements. This should be of benefit to all parties involved in the process. By having a robust monitoring framework in place it will help to ensure that good quality development is delivered in accordance with the requirements of the Local Plan.

5.2 It is acknowledged that developments need to be viable to be delivered and any monitoring fee will add to the overall cost of the development by a small amount.

5.3 There are two distinct forms of monitoring within Section 106 legal agreements:

- Monitoring of commencement/phasing triggers to ensure financial contributions are collected; and
- Physical monitoring of compliance with the terms of the agreement, e.g. monitoring delivery and ongoing management of infrastructure, biodiversity net gain and affordable housing.

5.4 Any proposed monitoring charge will cover a number of different aspects of monitoring legal agreements including, but not limited to:

- Affordable Housing delivery
- Biodiversity Net Gain
- Open Space implementation including play provision
- Habitat Mitigation (Alternative Natural Recreational Greenspace)
- Financial contributions for mitigation monitoring
- Air Quality monitoring

- Nitrate and phosphate monitoring
- Transportation improvements
- Education contributions/new school

5.5 Obligations relating to transportation, travel plans and education are a County Council matter and Hampshire County Council (HCC) have set monitoring charges.

6. SECTION 106 MONITORING MATTERS

6.1 The following is a list of aspects in Section 106 agreements that require some form of monitoring.

Recreational Habitat Mitigation

6.2 Developers are required to contribute towards the recreational impacts of their development on both the New Forest and Solent SPAs. This can take the form of both a financial contribution towards monitoring, access management and offsite projects and/or the physical provision of onsite mitigation land (alternative natural recreational greenspaces).

6.3 Where a physical provision is made onsite, ongoing monitoring is required to ensure that it remains at the agreed standard in perpetuity following practical completion. Monitoring is required regardless of who is managing the land.

6.4 For developments under 49 dwellings, the offsite contribution will be collected on, or prior to commencement. Therefore, monitoring of build out will be required to ensure that this contribution is paid.

6.5 No monitoring fee is collected where Unilateral Undertakings are used to secure a financial contribution for offsite provision as the contributions are secured upfront.

Affordable Housing

6.6 Policy HOU2 of the Local Plan sets out the required affordable housing provision for sites of 11 or more dwellings. Monitoring takes place to ensure that the agreed mix is provided at agreed triggers and that a suitable registered provider is on board to manage the affordable housing.

6.7 Discounted market units may be proposed on the site with specific eligibility of the occupants with restrictions on selling the property. First Homes require on-going monitoring by the Council.

Biodiversity Net Gain

6.8 The Council took the decision in July 2020 to require developments of a certain scale to deliver biodiversity net gain which must be maintained for at least 30 years (in perpetuity) after completion of a development. The Environment Act 2021 has now introduced a mandatory requirement for developments to provide a 10% biodiversity net gain.

6.9 This future maintenance will include management plans and operational considerations for ongoing management, this will need to be monitored by the Council together with appropriate recording of monitoring.

6.10 The Management and Monitoring regime will be secured via a s106 agreement and will have to be registered on a publicly available biodiversity gain site register.

Therefore, monitoring is required by the local planning authority to ensure that biodiversity net gain is achieved in perpetuity.

On site open space

- 6.11 In accordance with saved policy CS7 then sites over 0.5ha should provide open space on site. Much like the recreational mitigation space provided this will need to be inspected before practical completion and on an annual basis for the period agreed in the Section 106.
- 6.12 Open space and landscaping features must be laid out and maintained in accordance with the details approved by the local planning authority.

Air Quality

- 6.13 As stated in the Local Plan, modelling of traffic emissions from cumulative traffic growth over the Plan period has identified potential for significant adverse effects of parts of the New Forest SPA and SAC from nitrogen deposition and ammonia, particularly near main road corridors through the New Forest in areas lacking screening woodlands.
- 6.14 Policy ENV1 requires a financial contribution from all residential development for implementing a monitoring strategy.

Nutrient Neutral Development

- 6.15 As set out in the Local Plan ‘Phosphorus concentrations in the River Avon have reached a level where adverse effects upon the integrity of the River Avon SAC cannot be ruled out.’
- 6.16 The Local Plan also sets out a similar issue in regards to nitrogen levels being discharged to the Solent designated sites from wastewater discharges.
- 6.17 If an application proposes an onsite solution, then this will need to be monitored at agreed intervals, it is considered appropriate that the developer is charged a monitoring fee. If an offsite solution is agreed, e.g. by the purchase of nitrate credits from a third party then no monitoring is required.

7. SPECIFIC MONITORING REQUIREMENTS

- 7.1 The following table lists the specific monitoring requirements that are required on average in relation to each of the specified obligations.

Monitoring of build rates to ensure financial contributions paid

- 7.2 This will include the cost of checking both commencements and raising invoices between Planning and Finance.

| Monitoring Area | Monitoring activity | Quantity of monitoring | Total time for monitoring contribution | Monitoring fee |
|--|--|---|---|-----------------------|
| Recreational mitigation contributions | Monitoring commencement to collect payment | Minimum of 6 month check, including checking with | (10 x 2 hours) 20 hours support officer | £750 |

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|---------------------------|---|--|--|------|
| | | planning officers and building control. (5 years) | (Planning and Finance) | |
| Affordable Housing | <p>Monitoring completion rates to ensure quantum of affordable housing delivered within each phase</p> <p>Annual check with housing providers on stock or through notification by provider</p> <p><i>Shared Ownership</i> shared ownership schemes require the ability to staircase to full ownership. Monitoring required to ensure the receipts from initial sales reinvested in new affordable housing stock</p> <p><i>First Homes</i> Need to ensure that correct marketing requirements/times are in place for initial homes and checking of subsequent sales to ensure compliance</p> | <p>Minimum of 6 month check, including checking with planning officers and building control. (5 years)</p> <p>First Homes to be assessed on a case by case basis</p> | Total time 0.5 days per annum support officer (Planning and Finance) | £750 |
| Air Quality | Monitoring commencement to collect payment | Minimum of 6-month check, including checking with planning officers and building control. | Same as recreational mitigation check (Planning and Finance) | nil |

7.3 The number of visits listed below are based on the onsite requirement for a 50 dwelling development.

Physical Monitoring requirements

| Monitoring Area | Monitoring activity | Quantity of monitoring | Total time for monitoring contribution | Monitoring fee |
|-----------------|---------------------|------------------------|--|----------------|
|-----------------|---------------------|------------------------|--|----------------|

| | | | | |
|---|--|--|--|---------|
| Recreational Habitat Mitigation including on site alternative natural recreational green space (50 units plus) | Site inspections to practical completion during construction and post completion monitored to ensure that it is provided to an appropriate standard. This to be done in perpetuity which is 80 years. | 6 visits from commencement to practical completion (1/2 day per visit) Annual visits years 1 to 5. Thereafter 1 visit every 5 years for 80 years Total time, 1 day per visit plus 0.25 day support per visit | 23 officer days plus 6 general officer support days | £10,700 |
| Biodiversity Net Gain | Review report submitted by developer/land manager. This will be done in perpetuity which is 30 years | Site visits as part of review of submitted report years 2/5/10/20/30 Review of monitoring reports at years, 2, 5, 10, 20 and 30 plus admin support | 10 officer days plus 2.5 general officer support days | £4,625 |
| Public Open Space (formal, informal, play area and landscaping) | Site inspections to practical completion during construction and post completion monitored to ensure provision to an appropriate standard and ongoing management/maintenance. | 6 visits from commencement to practical completion (1/2 day per visit) Annual visits years 1 to 5. Further visits every 5 years. | 13 days plus 3.5 days general officer support | £6,075 |
| Nutrient Neutral Development | Site inspections/ review of developers monitoring report at regular intervals to ensure that required measures have been implemented and achieving the required levels of nitrate neutrality. In perpetuity is 80 years. | Annual visits years 1 to 5. Further visits every 5 years for 80 years. Total time, 1 day review and visit plus 0.25 days admin support per review | 20 days officer time plus 5 days general officer support | £9,250 |

7.4 The period of perpetuity varies for different monitoring, this is a matter outside of the control of the Council.

8. PROPOSED MONITORING CHARGES

8.1 The following charges are proposed on the basis of the following assumptions.

- Specialist (e.g. Ecologist) £400 per day
- Planning Officer £400 per day
- General officer support £250 per day
- The average site visit times in section 7 are based on a development site of 50 dwellings.

8.2 The monitoring contribution relating to build out rate monitoring will remain fixed regardless of the scale of development. Other monitoring fees may increase based on the characteristics of the site. This is set out in the table below, the costs identified are one off payments that will be collected on the commencement of development.

| Monitoring Area | Proposed charge based on 50 units | Proposed charges for developments over 50 units |
|--|--|---|
| Recreational Habitat Mitigation commencement | £750 one off fixed charge payment | £750 |
| Recreational Habitat Mitigation physical inspections | £10,780 | Minimum £10,780 additional rate charged if physical inspection likely to take additional time |
| Affordable Housing | £750 | £750 |
| Biodiversity Net Gain | £4,625 | Minimum £4,625. Additional rate charged if physical inspection likely to take additional time |
| Public Open Space (formal, informal, play area and landscaping) | £6,075 | Minimum £6,075. Additional rate charged if physical inspection likely to take additional time |
| Nutrient Neutral | £9,250 | £9,250 |

8.3 If any of the above elements are not provided on site as part of the development, then that particular monitoring charge will not be required to be paid.

8.4 The monitoring charge would be subject to annual indexation uplift using the Retail Prices Index (RPI). The figures included in this report are before any form of indexation based on the current year as the base year.

8.5 The monitoring of build out charges relating to recreational habitat mitigation commencement and affordable housing will be payable regardless on scheme size.

9. FINANCIAL IMPLICATIONS

9.1 The introduction of a monitoring fee will enable the Council to recover the staffing costs resulting from monitoring commencements and physical monitoring on site. As this is a new fee income, and is linked to development rates, it is not a figure which

should be budgeted against as a guaranteed income stream. It is likely that there will need to be additional resources to carry out physical monitoring in the future as the monitoring activities increase with the build out of the strategic sites.

- 9.2 It is essential that robust monitoring is in place, with the income secured for monitoring used to fund this activity.

10. CRIME & DISORDER AND, EQUALITY & DIVERSITY IMPLICATIONS

- 10.1 All applicants will be charged according to the monitoring fees proposed.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 By ensuring a robust monitoring system in place it will help ensure that good quality open space and biodiversity net gain projects are provided when needed as part of a development.

12. DATA PROTECTION IMPLICATIONS

- 12.1 None

13. PORTFOLIO HOLDER COMMENTS

- 13.1 Given the scale of development that will be delivered across the District through the Adopted Local Plan, to ensure that developments are maintained in the way the planning permission set out, future monitoring of completed developments plays a key role. It is appropriate to introduce a charging schedule so that developers pay for the resource needed to undertake this work rather than our residents. This charging schedule sets the right balance around covering the additional cost of this work against the additional cost to the development. This is another positive step by the Council to ensure that we deliver sustainable development and contribute to addressing the climate and nature emergency.

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Background Papers:

Local Plan 2016-2036 Part 1: Planning
Strategy:
<https://newforest.gov.uk/article/1510/Local-Plan-2016-2036-part-1-Planning-strategy>

Infrastructure Delivery Plan 2018:
https://newforest.gov.uk/media/1316/Infrastructure-Delivery-Plan/pdf/SD05_Infrastructure_Delivery_Plan_Submission_Version_June_2018.pdf?m=637438200889500000