

REVIEW OF FEES FOR MONITORING AND MANAGING S106 AGREEMENTS

To: **Economy and Environment Committee**

Meeting Date: **25 November 2014**

From: **Graham Hughes – Executive Director – Economy,
Transport and Environment**

Electoral division(s): **All**

Forward Plan ref: **Not applicable** *Key decision:* **No**

Purpose: **To inform members of progress in establishing fees to cover the cost of managing and monitoring Section 106 agreements and to seek approval of proposed changes to the fees to help ensure that costs of the service can be covered.**

Recommendation:

Committee is asked to:

a) approve the revised County Council's Fees for Monitoring and Managing S106 Agreements as set out below;

- Fees charged at 1% of the value of the County Council contributions which total less than £2M, or at 0.5% of the value of County Council contributions which total more than £2M, subject to a cap of £60K;
- The following obligations will be charged at a sum of £100:
 1. Any non-monetary planning obligation contained in the Section 106 agreement; or
 2. Where the value of the County Council contributions total less than £10,000 (Ten Thousand Pounds);
- charges to be payable on commencement of the development;

b) to delegate to the Executive Director Economy Transport and Environment in consultation with the Chairman and Vice Chairman of the Economy and Environment Committee the authority to:

1. undertake regular reviews to ensure fees adequately cover the costs of S106 managing and monitoring service;
2. in exceptional cases and only where it is deemed appropriate to do so agree an alternative charge by negotiation with the developer.

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1. BACKGROUND

- 1.1 In April 2014, the County Council approved the introduction of charges to recover the administrative cost of managing and monitoring developer's contributions to new facilities such as transport and schools, known as Section 106 (S106) agreement contributions. Cabinet approved the following fees which would be subject to regular review:
- Fees charged at 1% of the value of the agreement below £2m, or at 0.5% for agreements valued above this;
 - All planning obligations to be charged at a minimum of £100 per agreement, whether financial or not;
 - charges to be payable on signing of the agreement;
 - Regular review to ensure fees adequately cover the costs of S106 managing and monitoring service.
- 1.2 Following Cabinet approval to charge fees, the District Councils were informed of the proposed charges and that the County Council would be seeking inclusion of the charges in agreements. However, a number of the District Councils raised some concerns with this; key among those concerns being that such additional fees might lead to challenge by developers regarding the totality of fees and justification for such, particularly as most Districts already charge for monitoring.
- 1.3 The Districts' concerns principally related to the following:
- Absence of discussion over level of fees
 - Limited flexibility – seeking payment on signing of agreements, which might need to be repaid if development doesn't proceed, rather than upon implementation, and absence of scope for negotiation of fees
 - Ambiguity of wording might lead to some confusion regarding the application of fees.
 - Concern over whether fees could be seen as 'double funding' a service that Districts already provide.
 - Concern about potential impact on viability, including on higher value agreements where significantly more monitoring fees would be sought and whether such fees can be justified.
- 1.4 While the County Council outlined to partners its intention to introduce fees, the specific details were not clarified ahead of charges being considered by Cabinet. The view was taken at the time that, as the fees were based on 'cost recovery' and as most authorities already charge such fees, it was a matter for the County Council to set appropriate charges to cover such costs. However, the potential for working more closely with District partners to consider a more unified approach to fees was identified as an area to be explored. In the meantime though, with limited and reducing resources, costs needed to be covered. Therefore, officers sought Cabinet's approval to

covering costs, and the principal that charges could be reviewed early if any issues arose.

- 1.5 A review has now been undertaken with partners and some changes are now proposed to the schedule agreed by Cabinet to address issues raised.

2 KEY ISSUES

- 2.1 District Councils agree with the principle of the County Council charging to cover the costs of the monitoring service, but were keen to ensure that the amounts secured are justified and that these should not impact on overall viability. The County Council is keen to address any concerns to ensure a balanced approach with partners on implementing monitoring fees. The District Councils agreed that given the different approaches taken to monitoring across the County, it will be important to ensure that the County's approach fits with Districts' approaches as far as possible, rather than considering any more significant changes at this time. A review has been undertaken with the District Councils regarding proposed charges to expedite the securing of monitoring fees. The key issues meriting further consideration by the County Council are outlined below:

2.2 Limited flexibility - seeking payment on signing of agreements

Some partners queried the justification of charging fees on signing of agreements and whether charges upon implementation would be more appropriate. While some authorities currently charge a proportion on signing – e.g. Fenland, it was considered that there is merit in instead, requesting payment on commencement of development. This enables greater flexibility and avoids the risk of having to pay back fees if the development is not implemented.

2.3 Limited flexibility - absence of scope for negotiation of fees

The current approach does not provide scope for negotiation of charges, and this could be seen as too rigid and may cause difficulty in trying to negotiate an overall package. Monitoring fees should be proportionate in scale and complexity to the development and be justifiable. Currently, for developments with County contributions totalling over £2m, developers would be charged £100,000 towards monitoring alone. With no scope currently for negotiating the monitoring fee, and significant focus on viability, there may be pressure to negotiate down other contributions instead, which could have wider cost implications for the County Council. Depending on the complexity of the agreement, in a few small cases it could be difficult to justify charging so much to cover monitoring. Nonetheless, evidence to date suggests that agreements are becoming more complex to manage and monitor. However, in most cases, this charge will be in addition to the District monitoring fees for their elements of the agreement, and these charges vary widely. For example Cambridge City charges 5% of the value of the agreement with a cap of

£50,000. East Cambridgeshire charges up to 5% of the value of monetary contributions.

- 2.4 The vast majority of the S106 agreements that the County Council is expecting to monitor, will relate to developments with a value of the County Council elements of the agreements of over £2m. This is especially given the anticipated legislative changes from April 2015, where there will be restrictions on use of S106 agreements and on the ability to pool these towards wider infrastructure needs. S106 will generally be limited to providing for the on-site infrastructure requirements of developments, and towards mitigating the impacts of the planned development.
- 2.5 In addition the introduction of Community Infrastructure Levy (CIL) will require most new developments to pay a fee to the local authority towards the wider infrastructure needs of the area. CIL is already in place in Huntingdonshire and East Cambridgeshire and is expected to be implemented in Cambridge and South Cambridgeshire shortly. This will significantly reduce the amount of money which the County Council will collect via Section 106 contributions, especially on smaller developments, with CIL instead becoming the mechanism for levying fees for wider infrastructure needs. The proposed 1% charge on agreements below the value of £2M is not expected to disproportionately affect 'smaller' developments as it is anticipated that the vast majority of monitoring fees collected will be generated from agreements valued above £2M. Appendix 1 provides an illustration of the fees that would have been collected on agreements already in place.
- 2.6 On the basis of the issues outlined above, the potential for negotiation and for a cap is recommended. This is likely to limit the amount of money secured for each agreement, and reduce the overall amount secured such that income will only cover the current basic service level, rather than a more proactive service with enhanced resource. However, on balance it is considered that this approach should not impact on viability, and will enable greater flexibility and align better with partners approach. It is proposed to delegate the authority to negotiate the fees where viability is an issue to the Executive Director in consultation with the Chairman and Vice Chairman. Fees will also be kept under review to ensure that the Council's costs are being recovered.
- 2.7 Concern about 'double funding' a service which the Districts already provide

Section 106 agreements often involve complex arrangements and triggers which need to be monitored, managed and administered over long timescales. In most agreements, there are both District and County obligations. In relation to the County Council obligations, the trigger for payment is only the start of the work undertaken in relation to monitoring. This work involves continually liaising with a number of internal departments and developers. It also involves Member processes for approving spending of pooled monies, e.g. Area Corridor Transport Funds, over a number of years with phased payments. The monies raised by monitoring charges will only relate to monitoring the County Council obligations contained within the Agreement and be spent on costs relating to the administration and

monitoring of County obligations, hence this will not preclude the Districts from seeking their monitoring costs for their obligations. On this basis, no 'double funding' will occur, and over time a more unified approach to monitoring could be explored to ensure efficiency and economy of activity.

2.8 Concern regarding potential impact on viability

S106 agreements on strategic sites (e.g. Northstowe, Alconbury) are becoming increasingly complex to monitor and include multiple triggers and it will be important to ensure that the cost of staff time for similar sites is covered. Often a number of things need to occur in order for a payment to be triggered. However, it is acknowledged that the totality of fees for monitoring needs to be considered and any fees need to be fully justifiable and related in scale and kind. The proposed introduction of a cap and flexibility to negotiate such charges in exceptional circumstances should help ensure there is not a negative impact on viability.

3. **PROPOSED CHANGES**

3.1 In view of the above, the following changes to the Cabinet approved monitoring fee structure are proposed (*italics for new wording*);

- Fees charged at 1% of the value of the *County Council contributions which total less than a sum of £2M*, or at 0.5% of the value of *County Council contributions which total more than £2M*, subject to a cap of £60K ~~for agreements valued above this~~;
- The following obligations will be charged at a sum of £100:
 1. *Any non-monetary planning obligation contained in the Section 106 agreement; or*
 2. *Where the value of the County Council contributions total less than £10,000 (Ten Thousand Pounds);*
- charges to be payable on ~~signing~~ *commencement* of the ~~agreement~~ *development*;
- *to delegate to the Executive Director Economy Transport and Environment in consultation with the Chair of the Economy and Environment Committee the authority to:*
 1. Undertake regular reviews to ensure fees adequately cover the costs of S106 managing and monitoring service;
 2. *In exceptional cases and only where it is deemed appropriate to do so agree an alternative charge by negotiation with the developer.*

4. ALIGNMENT WITH CORPORATE PRIORITIES

4.1 Developing the local economy for the benefit of all

S106 contributions help to develop the local economy for the benefit of all by funding infrastructure, and ensuring that the impacts of growth can be mitigated by investing such contributions in improvements or towards new infrastructure. The monitoring of S106 contributions is key to this process.

4.2 Helping people live healthy and independent lives

S106 contributions help fund infrastructure. The monitoring of S106 contributions is key to this process. Much of this infrastructure will help people live healthy and independent lives, e.g. by improving cycling and pedestrian facilities and improving access by healthy active means of travel.

4.3 Supporting and protecting vulnerable people

S106 contributions help fund infrastructure. The monitoring of S106 contributions is key to this process, and investment in infrastructure helps improve access for all.

5. SIGNIFICANT IMPLICATIONS

5.1 Resource Implications

Resources are currently in place for monitoring and managing planning obligations. However this is currently funded by the County Council, via the interest accrued by contributions. This means that this funding can't be used to deliver improvements on the network to mitigate the impacts of growth. Therefore charging a fee to cover the cost of this resource to manage and monitor the obligations will help ensure that S106 monies can be spent on mitigating the impacts of growth and improving accessibility. It should be noted that the anticipated income from charging fees is only expected to cover the costs of 1 officer and a small amount of management time to oversee. Therefore the service to be provided will be similar to current rather than having a more proactive and resourced service. This can be reviewed over time to assess how well this is working.

5.2 Statutory, Risk and Legal Implications

If contributions are not spent within the timescales specified in the S106 agreements, there is a risk that they will have to be returned to the parties from whom they were secured, and improvements will not be carried out.

5.3 Equality and Diversity Implications

No significant implications.

5.4 Engagement and Consultation Implications

The report above sets out how the County Council has engaged with District Councils under paragraphs 2.2 to 2.6. Regular engagement with the District Councils on this issue will continue to ensure alignment and to assess performance and review fees over time.

5.5 Localism and Local Member Involvement

See paragraph 1.4.

5.6 Public Health Implications

See paragraph 4.2.

Source Documents	Location
Report to Cabinet 15 April 2014: <i>Proposed Fees for Monitoring and Managing Planning Obligations</i>	Available here

Appendix 1

Proposed Revised Approach (including £60K cap)

S106 Agreements worth over £2M to the County Council

Scheme	District	2010 (£M)	2011 (£M)	2012 (£M)	2013 (£M)	2014 (£M)
CB1 Station Area	City	4,914,320				
Clay Farm (Great Kneighton)	City/SCDC	25,124,482				
Glebe Farm (Great Kneighton)	City/SCDC	3,322,026				
Bell School	City	3,230,779				
Cambourne 950	SCDC		11,970,323			
Cambridge North West – University Site	City/SCDC				18,735,409	
Darwin Green 1 (NIAB)	City/SCDC				22,123,321	
Northstowe Phase 1	SCDC					22,923,862
Bearcroft Farm	HDC					6,254,912
Total		36,591,967	11,970,323	0	40,858,730	29,178,774
GRAND TOTAL (2010-14)						118,599,794

Total monitoring fees that would have been collected based on approved County fee schedule (to the nearest £):

Scheme	Monitoring Fee - 0.5% / £60K cap (£)	Build out from year of signing (years)	Charge averaged over build out (£)
CB1 Station Area	24,572	15	1,638
Clay Farm (Great Kneighton)	60,000	10	6,000
Glebe Farm (Great Kneighton)	16,610	6	2,768
Bell School	16,154	10	1,615
Cambourne 950	60,000	9	6,000
Cambridge North West – University Site	60,000	11	6,000
Darwin Green 1 (NIAB)	60,000	6-8	7,500 – 10,000
Northstowe Phase 1	60,000	8-10	6,000 – 7,500
Bearcroft Farm	31,275	8	3,909
Total Monitoring Fees	388,611		

Monitoring fees that would have been collected per year based on approved County fee schedule (to the nearest £):

Scheme	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
CB1	1,638	1,638	1,638	1,638	1,638	1,638	1,638	1,638	1,638	1,638
Clay	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000
Glebe	2,768	2,768	2,768	2,768	2,768	2,768	-	-	-	-
Bell	1,615	1,615	1,615	1,615	1,615	1,615	1,615	1,615	1,615	1,615
950	-	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000	6,000
CNW Uni	-	-	-	6,000	6,000	6,000	6,000	6,000	6,000	6,000
DG1*	-	-	-	7,500	7,500	7,500	7,500	7,500	7,500	7,500
N/stowe 1**	-	-	-	-	6,000	6,000	6,000	6,000	6,000	6,000
Bearcroft	-	-	-	-	3,909	3,909	3,909	3,909	3,909	3,909
Total	12,021	18,021	18,021	31,521	41,430	41,430	38,662	38,662	38,662	38,662

* Calculated using 8 year build out assumption

** Calculated using 10 year build out assumption

10-year average monitoring fee $\frac{\text{£317,092 (total years 2010-2019)}}{10} = \text{£31,709 per year}$

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S106 Agreements worth under £2M to the CCC involving transport contributions (excluding Area Transport Plans)

District	2010 – 2014
Cambridge City	160,410
East Cambs	494,177
Fenland	200,000
Hunts	351,500
South Cambs	382,160
Total	1,588,247

Monitoring fees that would have been collected based on approved County fee schedule at 1% (to the nearest £): **£15,883**

5-year average monitoring fee $\frac{\text{£15,883 (total years 2010-2014)}}{5} = \text{£3,177 per year}$

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