

**PROPOSED FEES FOR MONITORING AND MANAGING PLANNING OBLIGATIONS**

*To:* **Cabinet**

*Date:* **15<sup>th</sup> April 2014**

*From:* **Executive Director: Economy, Transport and Environment**

*Electoral division(s):* **All**

*Forward Plan ref:* **2014/030** *Key decision:* **Yes**

*Purpose:* **To seek approval to introduce a fee to recover costs of managing and monitoring S106 planning obligation income in line with the commitment in the 2013/14 Business Plan to recover the costs of managing S106 income.**

*Recommendation:* **It is recommended that Cabinet approve the introduction of a fee to recover costs incurred in the monitoring and management of planning obligations as outlined in this report, including:**

- a) Fees charged at 1% of the value of the agreement below £2m, or at 0.5% for agreements valued above this**
- b) All planning obligations to be charged at a minimum of £100 per agreement, whether financial or not**
- c) Charges to be payable on signing of the agreement**
- d) Regular review to ensure fees adequately cover the costs of the S106 managing and monitoring service.**

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## **1. BACKGROUND AND PURPOSE**

- 1.1 This paper seeks Cabinet approval for the introduction of a monitoring fee for planning obligations in line with the commitment in the 2013/14 Business Plan to recover costs of managing S106 income through the S106 process.

## **2. BACKGROUND**

- 2.1 Planning obligations (known as S106 agreements after the relevant clause in the Act) are legal agreements made between local authorities and developers which are attached to a planning permission to make the proposed development acceptable in planning terms.
- 2.2 Since the introduction of the Community Infrastructure Levy (CIL) in 2010, local authorities have also been able to collect monies toward the delivery of infrastructure through a levy. The introduction of CIL means S106 will increasingly be restricted to site specific infrastructure and to mitigating the impacts of the development. While the number of S106 agreements entered into by the County Council may reduce with CIL, it is anticipated that most Authorities will continue to collect S106 for essential site infrastructure and major development sites.
- 2.3 The County Council therefore has an ongoing role to both monitor and manage S106 obligations. This includes both the collection of contributions and ensuring compliance with obligations that may not require a financial contribution, such as travel plan implementation, or off-site highway works implemented by the developer.
- 2.4 Where the County Council requires the developer to pay an obligation for the delivery of infrastructure to support development, the authority incurs a cost. Currently the County Council collects fee income for some of the services, particularly in relation to large sites, but most development sites do not pay the true cost of monitoring and managing the S106 agreement.
- 2.5 Since 2013/14, the cost of monitoring has been covered by using interest accrued from S106. The 2013/14 Business Plan included a commitment for future years to recover the cost of managing S106 income through the S106 agreement process. This report now seeks to introduce a system of charges on the basis of cost recovery to ensure the costs of the service are recovered.
- 2.6 The current service is a baseline service and often depends on updates or intelligence from others as to when payment triggers have been reached, as the minimal resources do not permit active regular monitoring. The County Council is seeking to rectify this situation, in line with the Business Plan commitment to seek to recover the monitoring costs through the S106 monitoring process and ensure that a more efficient and proactive service can be provided in future.
- 2.7 Most District Councils have been charging for the management, monitoring and compliance of S106 obligations. The charges vary but can be broadly categorised in three ways: an applied percentage on the value of the S106 package, a charge dependent on the size of the development and a charge per schedule or clause of the obligation.

### **3. PROPOSED CHARGES**

- 3.1 The Local Government Act 2003 provides a general power to charge for the provision of any discretionary service. The level at which fees are set is based on recovery of costs.
- 3.2 Given that the basis of charges is on cost recovery, and taking into account anticipated costs, and average income generated in the past from S106 agreements, the County Council is proposing to introduce a charge as follows related to the County Council elements of the S106 agreement with:
- Charges of 1% of value of agreement below £2m,
  - Charges of 0.5% for agreements above this in value
  - There will be a minimum cost of £100 which is chargeable on all agreements whether financial or not
  - Charges will be payable on signing of the agreement.
- 3.3 A percentage fee ensures that the charge is fairly and reasonably related to the scale of development and to the County's elements, so that developers are not being charged twice for monitoring requirements (where they also sign an agreement with the District). By collecting the fee at the point before the S106 is signed, we can guarantee that funding is in place to ensure that the Council has the resource to monitor the agreement.
- 3.4 Typically over the past five years the County has secured some £8.8m per annum on average from S106 agreements for County matters, and allowing for a reduction of say 20% on basis of introduction of CIL, we would expect to receive in the region of £55 - £70,000 per annum to cover the costs of officer time involved in the co-ordinating and management of S106. It may also be possible (depending on income over time) to cover costs of more regular site monitoring to provide a more proactive and efficient service. However, the impact of CIL on S106 income is not yet clear, and charges have been set at a minimal level to secure cost recovery. It will be important to ensure that charges are kept under regular review to ensure that the costs of providing an efficient and proactive service can be fully covered.
- 3.5 When deciding on the proposed charges, consideration has been given to ensure a balanced and proportionate approach with a focus on cost recovery. There has also been consideration of the need to have regard to the CIL Regulation 122 tests and set an amount which is fairly and reasonably related in scale to the development. Most Districts already charge a monitoring fee, and in setting the fee consideration has been given to the burden of the totality of these fees. In time it would be sensible to consider a global monitoring fee with agreement between authorities on the amount charged and how this is apportioned to cover costs. However, the County Council needs to be able to cover its costs in the interim to ensure that service levels can be maintained, and will keep charges under review.

## **4. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING**

### **4.1 Developing the local economy for the benefit of all**

S106 obligations help to mitigate the impacts of development, support the delivery of essential infrastructure and support the local economy.

### **4.2 Helping people live healthy and independent lives**

Collecting contributions to support improved infrastructure provision, and particularly better cycling, pedestrian and passenger transport infrastructure helps people live healthier and independent lives.

### **4.3 Supporting and protecting vulnerable people**

Investing in infrastructure helps support improved accessibility for all.

### **4.4 Ways of working**

The collection of a monitoring fee will enable the recovery of the costs of monitoring and management of planning obligations. This will enable a consistent and efficient service to be provided into the future. Discussions will be held with partner authorities regarding fees and the totality of these to ensure these are proportionate and fees will be kept under review.

## **5. SIGNIFICANT IMPLICATIONS**

### **5.1 Resource and Performance Implications**

Charging a fee to recover costs of the service will help to ensure that the costs are covered by those using the service.

### **5.2 Statutory, Risk and Legal Implications**

The risk of non-implementation of a fee is that the authority cannot afford to cover costs of this service, and then triggers may be missed and funding may not be collected. This would impact on ability to deliver the necessary infrastructure. By providing an efficient and proactive service, this will ensure that as far as possible funding is collected and spent within time limits.

There is a risk that developers could challenge the introduction of a monitoring fee, and fees charged need to ensure compliance with regulations and be proportionate and based on cost recovery. This is the approach that has been taken in setting the fees and these will be kept under review.

### **5.3 Equality and Diversity Implications**

There are no significant implications for this strategy.

### **5.4 Engagement and Consultation Implications**

Fees will be discussed and monitored alongside our partner authorities.

## 5.5 Public Health Implications

There are no significant implications for this strategy.

Source Documents	Location
2013/14 Business Plan	<a href="http://www.cambridgeshire.gov.uk/council/business-planning/">http://www.cambridgeshire.gov.uk/council/business-planning/</a>