

# Scrutiny Committee report



Listening Learning Leading

Report of Head of Planning

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To: SCRUTINY COMMITTEE

DATE: 7 June 2012

## AGENDA ITEM NO 6

## Section 106 Audit - Follow-Up Report 2011.

### Recommendations

(a) to seek comments from committee on the progress of the s106 audit action plan, the advice to town and parish councils regarding involvement in s106 agreements and the update on Community Infrastructure Levy and s106 Supplementary Planning Document

(b) to require a further report to committee on the progress of the s106 action plan, Community Infrastructure Levy and the s106 Supplementary Planning Document in June 2013

### Purpose of Report

1. The main purpose of this report is to update committee on progress made on the s106 audit action plan (action plan) drawn up by officers after the follow-up audit report on section106 (s106) agreements dated 7 September 2011.
2. This report also advises how town and parish councils can get involved in s106 agreements and provides an update on progress of the community infrastructure levy (CIL) and new s106 supplementary planning document (SPD).

## Strategic Objectives

3. This report contributes to the council's strategic objectives in the corporate plan 2012-16; particularly the effective management of resources.

## Background

### Action plan

4. In accordance with the 2009/2010 internal audit plan agreed by the Audit and Corporate Governance Committee a review of the internal controls for the effective and efficient operation of planning s106 agreements was undertaken in 2010.
5. In August 2010, Cabinet received a briefing paper on the s106 Audit report 2010 summarising the key findings of the audit; the level of risk in our processes; and actions to address these risks. The paper advised that overall the audit found some weakness in our control systems which put us at risk and made a number of recommendations to address these.
6. A follow-up audit was completed in September 2011 and contained observations on whether the recommendations agreed by Cabinet in 2010 had been implemented within the revised timescales provided. A copy of the follow-up audit is attached at [appendix 1](#).
7. Officers produced an s106 audit action plan in response to the follow-up audit. An updated copy is attached at [appendix 2](#).

### Town and parish council involvement in s106 agreements

8. The committee has sought advice on how town and parish councils can be involved in s106 agreements.

### CIL and s106 SPD

9. The opportunity has been taken to brief committee on the progress of CIL and s106 SPD.
10. Generally s106 agreements currently help fund local and strategic infrastructure. The new CIL will fundamentally alter the existing s106 regimen. It will no longer be possible to use s106 agreements as a means of collecting and pooling financial contributions for the provision of strategic infrastructure in the way they are used at present. The new CIL is intended to ensure all new development makes a contribution to strategic infrastructure in an area as a whole (pooling funds), where as future s106 agreements, which still have a part to play post-CIL, are intended to only mitigate the site specific impact of individual planning applications on infrastructure to make them acceptable in planning terms.
11. These changes give rise to the need for a new s106 SPD to replace our Interim Planning Guidance (IPG). The IPG is unadopted, serves only as a starting point for negotiations with developers, and does not take account of the changes to s106 agreements post-CIL.

## Audit Action Plan

12. The s106 audit action plan includes action needed at both South and Vale of White Horse District Council (Vale). This report however, only addresses actions needed at South and the common actions required at both councils.
13. Actions in the action plan are numbered, cross-referenced to the follow-up audit recommendations, and colour coded according to their level of risk and current status. The action plan includes agreed and proposed dates for implementation of outstanding actions.
14. With reference to the action plan, at [appendix 2](#):
- thirteen of the seventeen actions listed relate to either South or are common to both councils;
  - of the thirteen actions five have been completed (actions 8, 10, 11, 14, 17), one (action 16, the updating of South's interim planning guidance (IPG) is not being pursued for the reasons set out in paragraph 29 below.
  - six of the remaining seven actions (actions 1, 2, 4, 7, 9, 12), are either partly completed and/or work in progress and will be addressed and completed either through quarterly s106 reviews, or a revised s106 process as described below
  - the last remaining action, (action 6, charging a monitoring fee for s106 agreements), is also a work in progress and will be completed during the preparation of an SPD. Again, see paragraph 29.
  - all outstanding actions are on track to be completed by either September or November this year. These dates follow the recently implemented new harmonised Ocella system (computer software) and phase 2 implementation which includes an s106/CIL module. It is expected that this should be live from September 2012.
15. Two of the actions are high risk (actions 1 and 2), five of the actions are medium risk (actions 4, 6, 7, 9, 12) and all the low risk actions have been completed.

### Quarterly reviews

16. Actions, 1, 9 and 12, that is:
- the review of the brought forward balance;
  - the formal reporting of income, expenditure, and future amounts; and
  - reconciliation between Ocella, land charges, and general ledger;

have either been partly completed or are work in progress and will be set out and addressed at quarterly s106 review meetings by management team and the cabinet member for planning from September and an annual report to cabinet, March/April. During September the Ocella phase 2 s106/CIL module should be live and enable informal reporting and reconciliation rather than manual methods.

### Revised s106 process

17. The way in which s106 agreements are processed at present has been redesigned. The redesigned s106 process flowchart is attached as appendix 3. It is coded to show where actions are currently either a) being done well; b) being done but not as well or consistently; or c) where necessary action is not being done. Improvements to b) and c) are being worked on.
18. A further three actions in the action plan, (actions 2, 4, 7), that is:
- developing a protocol to ensure s106 monies are expended within the terms of agreements;
  - ensuring that all stages of the s106 process, including spending of monies, the definition of responsibilities, and a system of delegation;
  - prompting developers to notify the council when they reach s106 trigger points;
- will be addressed by dealing with the deficiencies highlighted (b) and c) in the process flowchart.
19. Implementation of the improvements required on the revised s106 process will be completed by November this year. This work is associated with the emerging CIL and the new s106 working practice (as mentioned in 10 & 11).

## **Town and parish council's involvement in s106s**

20. Town and parish councils are consulted on planning policy documents such as the Core Strategy and individual planning applications and have the opportunity to draw attention to the need for new infrastructure that they consider necessary to support new development in their areas. Often local infrastructure needs are currently set out in parish or community plans. This local knowledge helps to supplement the information held by the council to update the infrastructure delivery plan (IDP), which is part of the Core Strategy and to influence planning policy documents. This knowledge can be taken into account to justify infrastructure requirements in negotiations with developers when developing s106 agreements.
21. The recently introduced neighbourhood planning measures which so far have been taken up by the Thame and Woodcote town and parish councils extend the opportunities to engage even more directly in identifying and helping to secure necessary infrastructure. Town and parish councils need to set out their expectations in their plans that are justified and costed, which will assist the district council in negotiations with developers on their applications.
22. The important role for town and parish councils is to provide information about local infrastructure needs that is justified and costed. However, expectations need to be managed, as identified local infrastructure can only be taken into account and secured through s106 agreements where they accord with nationally set legal tests including; necessary to make the development acceptable, directly related to the development, and reasonable in scale and kind. However, a 'meaningful contribution' of CIL can be passed to town and parish councils to spend as they see fit. It is considered that those councils that develop and get adopted Neighbourhood Plans with new development would expect a contribution from CIL.

## **CIL and s106 SPD**

23. Work is progressing on the preparation of our CIL charging schedule. We have commissioned a CIL viability study and are waiting for the final report. We are also updating our IDP upon which our CIL infrastructure list, a list of the infrastructure needed to support the development planned in our area will be based.
24. It is likely that our charging schedule will have various rates for different areas and different types of development because of our varied character and differences in the economic viability of different types of development across our district (what is viable in Henley may not be viable in Didcot).
25. Once we have the viability study, we need to identify and take account of alternative funding streams which can help fund CIL infrastructure. This could for example include; New Homes Bonus, Growing Places Fund, Community Investment Fund. Then we can assess whether we have a funding gap.
26. A preliminary draft charging schedule (PDCS) will then be drawn up which strikes an appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the imposition of the levy upon the economic viability of development across the area. This will be consulted upon later this year, and having taken representations into account a draft charging schedule (DCS) will be published for further consultation in 2013; which will be heard in due course at a public examination in 2013/2014. Providing the examiner finds that the DCS is an appropriate basis for the collection of the levy and he recommends that the council could adopt the DCS, in accordance with the relevant regulations.
27. Although there has been some slippage in the CIL charging schedule programme due to delays to the core strategy timetable, we are confident that we that we will have a CIL in place before the April 2014 deadline.
28. In addition to the CIL charging schedule we are developing and must implement systems for the collection and enforcement of CIL, and for spending CIL receipts. The new Ocella module (phase 2) will assist with the delivery of an appropriate administration system. Work has yet to start on the spending strategy of receipts. This work will be cross council and be co-ordinated with our administration of grants (Corporate Support) It is expected that some of our strategic infrastructure will be co-ordinated countywide through the existing Spatial Planning and Infrastructure Partnership (SPIP).
29. Work on the s106 SPD will commence later this year and address the final action in the s106 audit action plan (action 6), when the PDCS has been published by which time the shape of our CIL will be clearer and it will be possible to identify the non-CIL infrastructure which the s106 SPD will address. A draft s106 SPD will be published for comment at the same time as the DCS with the intention this can be adopted at the same time as the CIL charging schedule, before April 2014. This explains why action 16 of the s106 audit action plan, the updating of the IPG, is not being pursued. The SPD will replace the IPG so any update to the IPG which is carried-out now would be short-lived. Time spent on updating the IPG would not be a good use of time and resources, which are better applied to South's CIL and the SPD.
30. Ocella is updating our existing s106 recording and monitoring module as part of its work on our CIL module. This will provide improved monitoring systems, the outputs of which will be used for our quarterly review reports.

## Financial Implications

31. The work identified in the s106 audit action plan will be delivered within the existing service budgets

## Legal Implications

32. There are no legal implications arising from this report.

## Risks

33. Changing priorities, timetables, and diminishing resources for partners/contractors can impact on and delay the action plan and CIL.

## Conclusion

34. Progress has continued on the s106 audit action plan since September 2011. Five of thirteen actions have been completed. The implementation of the rest is either brought forward or firmed-up where previously open-ended and all outstanding actions are now on track to be completed by either September or November this year.

35. The opportunity for town and parish councils to influence s106 agreements will increase with the advent of neighbourhood planning. We will encourage engagement in policy developments and key planning applications as well as setting out what is required to justify and cost local infrastructure for their areas.

36. Work on South's CIL and s106 SPD is on track and should be accomplished before the April 2014 deadline.

## Background Papers

- s106 Audit report 2010
- Cabinet briefing paper August 2010
- s106 Audit follow up report 2011 (attached appendix 1)
- s106 Audit action plan (attached appendix 2)
- s106 Process flowchart (attached appendix 3)



**Ridgeway Shared  
Service  
Partnership**



# **Internal Audit Follow-Up Report**

## **S106/Commuted Sums 2009/2010**

**SOUTH OXFORDSHIRE DISTRICT COUNCIL**

**Draft issued: 23 February 2010**

**Final Issued: 20 August 2010**

**Follow Up: 7 September 2011**

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## **MANAGEMENT SUMMARY**

### **1. INTRODUCTION**

- 1.1 This report details the findings from internal audit's follow-up review of s106/Commuted Sums. The original fieldwork was undertaken in 2009/2010 and the final report was issued in August 2010. Follow-up work has been undertaken in accordance with the 2010/2011 audit plan agreed with the Audit and Corporate Governance Committee of South Oxfordshire District Council (SODC), to ensure that the agreed recommendations have been implemented within the timescales provided.

### **2. INITIAL AUDIT FINDINGS**

- 2.1 The final report made thirteen recommendations and twelve were agreed. A limited assurance opinion was issued.

### **3. FOLLOW UP MAIN FINDINGS**

- 3.1 The review found that four recommendations had been implemented. One partly implemented recommendation has a revised date agreed and the seven recommendations not implemented are covered by the project plan for the new community infrastructure levy (CIL) and s106 arrangements as explained below.
- 3.2 A Shared Community Infrastructure Officer (SCIO) was appointed in February 2011 with responsibilities including the monitoring of section 106 agreements (s106). A project plan has been developed to cover the new CIL and s106 arrangements. This includes a project to establish a suitable system to record and monitor s106 & CIL arrangements. As Ocella has been established as the preferred property system for both SODC and Vale of White Horse District Council (VWHDC), they have been approached regarding their s106 module which is being updated to provide the functionality required. A timescale for implementing a common database is dependant upon the delivery of these IT elements.

### **4. ACKNOWLEDGEMENTS**

- 4.1 Internal audit would like to take this opportunity to thank all staff involved for their assistance with the follow-up audit.

## FOLLOW-UP OBSERVATIONS

### POLICIES AND CHARGES

#### 1. Payment Protocol

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Where payment protocols exist, they cover the whole range of payments.</p> <p><u>Findings</u> The Interim Planning Guidance – Services and Facilities for New Development includes a payment protocol for minimal contributions (up to £3,000) and small contributions (generally £3,000 to £20,000) but not for payments over £20,000.</p> <p><u>Risk</u> If a protocol is not stated for all payment ranges then an inconsistent approach may result.</p>	<p>The Interim Planning Guidance – Services and Facilities for New Development should be updated to include a payment protocol for payments over £20,000.</p>	N/A
Management Response		Implementation Date
<p>Recommendation is <b>Not Agreed</b> The protocol indicates that for payments over £20,000 then it is a bespoke legal agreement. Experience shows that where sums exceed this amount there are other matters that require to be secured through a bespoke agreement.</p> <p>Management Response: Head of Planning</p>		N/A

#### 2. Procedures, Roles and Responsibilities

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Up to date procedures should be in place with clearly identified roles and responsibilities.</p> <p><u>Findings</u> A TRA procedure guide covers the process up to completion of s106 agreements but does not cover beyond this stage such as the monitoring of arrangements or expenditure and monitoring of funds.</p> <p><u>Risk</u> If staff are not aware of, or not using up to date policies and procedures they may not be carrying out their duties effectively and appropriately.</p>	<p>Procedures should cover all stages of the s106 process of securing, monitoring, receiving and spending of monies. Roles and responsibilities should be clearly stated.</p>	S106 Officer, Planning
Management Response		Implementation Date
<p>Recommendation is <b>Agreed</b> Role of new S106 Officer, Planning. Agreed structure July 2010, recruitment expected Autumn/Winter 2010.</p>		May 2011

Management Response: Head of Planning	
<b>Follow-Up Observations</b>	
The Shared Community Infrastructure Officer (SCIO) was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented. The project includes planning guidance documentation.	<b>Not Implemented.</b>  <b>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</b>

## CALCULATING AND SECURING SUMS

### 3. Heads of Terms

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Heads of terms summarising agreement details are completed for all s106 agreements.</p> <p><u>Findings</u> Planning officers complete a heads of terms sheet which includes a summary of s106 agreement details such as purpose, value and trigger. These are not established for all agreements.</p> <p><u>Risk</u> If the heads of term details are not summarised then delays may occur, should queries arise, in identifying key elements of the agreement.</p>	Heads of terms summarising details are completed for each s106 agreement as early as is practicable.	Head of Planning
<b>Management Response</b>		<b>Implementation Date</b>
Recommendation is <b>Agreed</b> System already in place – staff reminder to be actioned.		September 2010
Management Response: Head of Planning		
<b>Follow-Up Observations</b>		
Heads of terms are used for SODC developments although it was not established during the follow up if this is used for all agreements.		<b>Implemented</b>

### 4. Interest

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Details are recorded of any interest due on index linked payments.</p> <p><u>Findings</u> The Office Manager confirmed that accountancy is consulted to establish if any interest is due when index linked payments are received. However this is not documented or recorded so it is not clear if interest is due and not been invoiced or wasn't due on the payment.</p>	Where s106 agreement contributions are index linked, documentary evidence is obtained confirming if any interest is due following payment of the initial amount.	Office Manager/ Finance

<u>Risk</u> If records are not maintained to indicate whether interest is due it will not be clear if interest has been overlooked and not collected.		
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> All new agreements state the indexation. The developer calculates the indexation on the sum due by the trigger date. Planning Officer Manager and Finance will check sum received. If indexation not received developer invoiced by planning. Ocella to be updated with action. All actions recorded as an event within Ocella.</p> <p>Management Response: Head of Planning</p>		September 2010
<b>Follow-Up Observations</b>		
<p>From discussion with the Office Manager, where indexation to the retail price index is required, the business support team take advice from the finance team. A recent example of indexation was discussed which involved the use of Building Cost Information Service indexes to which the council does not currently subscribe. Advice in this case was sought from Oxford County Council. Following this example the business support team would like legal s106 documentation to state how the calculation of indexation will be undertaken for non retail price indexes.</p>		<b>Implemented</b>

## MONITORING AND COLLECTING CONTRIBUTIONS

### 5. Ocella details

(Medium Risk)

<b>Rationale</b>	<b>Recommendation</b>	<b>Responsibility</b>
<p><u>Best Practice</u> Section 106 details in Ocella are comprehensive, complete and kept up to date.</p> <p><u>Findings</u> A section 106 listing is available on the intranet that is intended to extract data from the Ocella system but at present takes data from SOLAPS. The list states the total due under each agreement but the monies received have not been recorded. Where a s106 agreement states the amount due for legal fees in drawing up the agreement, this amount is recorded within Ocella whether or not the agreement involves any financial contribution. Legal fees are not recorded in Ocella when the amount is not specified. This is inconsistent.</p> <p><u>Risk</u> If records are not complete then the information presented may be misleading.</p>	<p>a) The intranet s106 listing should reflect details within Ocella as opposed to SOLAPS.</p> <p>b) Details of monies paid should be recorded within Ocella and available on the intranet listing. The details should be kept up to date.</p> <p>c) Legal fees for s106 agreements should be recorded within Ocella and the general ledger to ensure consistency and provide details of all payments relating to the agreement.</p>	Office Manager
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> SOLAPS draws data from Ocella. The intranet draws data from Ocella.</p> <p>a) Details recorded on new S106 on Ocella, which is reflected in intranet listing</p>		September 2010

b) Already actioned	
Management Response: Head of Planning	
<b>Follow-Up Observations</b>	
<p>a) &amp; b) Whilst the intranets s106 listing draws information from the Ocella system, at the time of the follow up few amounts paid were seen to have been incorporated within the listing. The office manager confirmed that values paid have been recorded within Ocella which are not yet populated within the intranet listing. The office manager will talk to the IT applications manager to resolve where data is taken from.</p> <p>c) Agreements which were for legal fees were seen to be included within the intranet listing.</p> <p>It is noted that a project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements.</p>	<p>a) &amp; b) <b>Partly implemented – revised date 31 December 2011</b></p> <p>c) <b>Implemented</b></p>

**6. Historic Records**

**(Medium Risk)**

<b>Rationale</b>	<b>Recommendation</b>	<b>Responsibility</b>
<p><u>Best Practice</u> Detail of historic transactions is retained and readily available in order to answer any queries on income and expenditure from agreements which may arise.</p> <p><u>Findings</u> A spreadsheet is maintained within Finance identifying outstanding balances and ties in with general ledger transactions. Six brought forward balances remaining from agreements back to 1994 were under investigation by planning officers as the conditions of the agreement were not available at the time of the review. Hence it could not be established if these funds should have been returned to the developer.</p> <p><u>Risk</u> If insufficient detail is retained for historic transactions then it would be difficult to demonstrate that monies have been spent appropriately should queries arise.</p>	<p>Historic s106 agreements should be readily available in order to answer any queries which may arise on those agreements.</p> <p>If recommendation 10 is not implemented with historic data incorporated, then an alternative way of recording historical data in a single place must be introduced.</p>	Office Manager
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> All agreements are being scanned and expect to be completed buy September.</p> <p>Management Response: Head of Planning</p>		September 2010
<b>Follow-Up Observations</b>		
<p>The office manager has confirmed that previous s106 agreements have now been scanned by legal and agreements back to 1975 were seen in the intranet listing of s106 agreements. It is further noted that a project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements.</p>		<b>Implemented</b>

**(Medium Risk)**

## 7. Reconciliations

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> A regular reconciliation of legal agreements is undertaken to ensure all agreements are appropriately recorded within Ocella. Financial transactions are reflected within Ocella so should be subject to reconciliation within the General Ledger.</p> <p><u>Findings</u> There is no documented reconciliation between the s106 agreements registered within legal and the agreements recorded within Ocella. Whilst not all agreements require financial contributions, there should be a reconciliation to ensure all appropriate agreements are recorded and monitored within Ocella . Financial transactions are being recorded within Ocella against agreements so will require reconciling with the general ledger. An agreement from 1999 for a commuted sum of £28,000 to be paid upon transfer of open space to the council by a developer was listed within the intranet Ocella details but no matching receipt was identified. It is not clear yet if the amount is due and has not been pursued. Two separate agreements for differing amounts of parish contribution for one development appeared to be registered within the legal listing but only one is recorded in Ocella.</p> <p><u>Risk</u> If there is no reconciliation of agreements then delays may occur in detecting any agreements not recorded and being progressed.</p>	<p>A regular reconciliation of agreements recorded within Ocella is undertaken using land charges s106 register as the master listing to ensure that all contributions are appropriately recorded. Ocella records should also be reconciled with general ledger transactions to maintain up to date and accurate balances.</p>	<p>S106 Officer, Planning</p>
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> Role of new S106 Officer, Planning.</p> <p>Management Response: Head of Planning</p>		<p>January 2011</p>
<b>Follow-Up Observations</b>		
<p>The SCIO appointed in February 2011 has responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes the s106 process once the method of recording agreements is confirmed.</p>		<p><b>Not Implemented.</b></p> <p><b>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</b></p>

8. Trigger Dates

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Key stages at which funds are due are actively monitored to ensure prompt receipt.</p> <p><u>Findings</u> Trigger points within agreements vary and sums tend to be due prior to or upon commencement of the development or at key stages such as occupation of the 50<sup>th</sup> housing unit. The council will not necessarily know when these stages are met and the building control function is not necessarily carried out by the council's building control team. Newer agreements tend to require the developer to inform the council when key stages are reached, but this does not appear to be proactively monitored.</p> <p><u>Risk</u> If funds trigger points are not proactively monitored then the council may not be maximising the benefit of s106 funding.</p>	<p>A proactive system should be considered to prompt developers to notify the Council when key stages relevant to s106 agreements are reached. This could be a template issued to the developer listing key stages and requesting they complete and return details as these are reached.</p>	<p>S106 Officer, Planning</p>
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> Role of new S106 Officer, Planning role/automated where possible. New agreements to include this as a trigger. Management Response: Head of Planning</p>		<p>February 2011</p>
<b>Follow-Up Observations</b>		
<p>A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements. This is dependant upon the selection and implementation of a suitable software system.</p>		<p><b>Not Implemented.</b> <b>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</b></p>

9. Monitoring Officer

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> A single point of contact is available to deal with all s106 queries and actively monitor and progress arrangements.</p> <p><u>Findings</u> There is no single point of contact for s106 agreement information which is distributed across land charges, planning, finance and departments responsible for expenditure. A monitoring officer position was documented as being successfully utilised at other district</p>	<p>The post of s106 monitoring officer is filled to ensure a more robust and effective monitoring and progression of s106 agreements.</p> <p>Consideration could be given to charging developers a monitoring fee for each principal clause of new agreements with a view to assisting in financing the role.</p>	<p>S106 Officer, Planning</p>

<p>councils which also charge developers a monitoring fee per condition of each agreement to help finance the role. E.g. Waveney DC employ an officer 4 days a week and charge £300 per obligation within each agreement.</p> <p><u>Risk</u> If a monitoring officer is not appointed then it would be difficult for officers with other responsibilities to actively monitor and pursue agreements to maximise income and ensure expenditure is timely.</p>		
<b>Management Response</b>		<b>Implementation Date</b>
<p>Recommendation is <b>Agreed</b> S106 Officer identified in planning structure, recruitment Autumn/Winter 2010. New agreements for large sites already include a monitoring fee. Will review fee for other agreements where it is appropriate. Management Response: Head of Planning</p>		December 2010
<b>Follow-Up Observations</b>		
<p>The SCIO was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy.</p>		<b>Implemented</b>

**10. Common Database**

**(Medium Risk)**

<b>Rationale</b>	<b>Recommendation</b>	<b>Responsibility</b>
<p><u>Best Practice</u> A common database is used to record and monitor s106 agreements.</p> <p><u>Findings</u> S106 details are fragmented across various systems such as Ocella and the general ledger with no one common record of all details. This makes dealing with queries time consuming and difficult. Whilst the general ledger may hold a balance apparently available to spend, if this is allocated to a capital project the balance would be updated annually. A general ledger system is not designed for the purpose of reflecting the true picture of future funds due and committed expenditure. There is no current mechanism to proactively report on key trigger dates which are approaching.</p> <p><u>Risk</u> If a common database is not maintained then data will be held in several systems resulting in delays in handling queries and making the</p>	<p>Consideration should be given to utilising a common database for recording s106 agreements such as that developed by Colchester Borough Council and used successfully by other councils. This is highlighted as good practice by the Audit Commission and by the Advisory Team for Large Applications (ATLAS). This would also facilitate generation of reports and reminders of deadlines and trigger points resulting in a more proactive monitoring of agreements.</p>	S106 Officer, Planning



task of monitoring agreements more onerous.		
<b>Management Response</b>		<b>Implementation Date</b>
Recommendation is <b>Agreed</b> Ocella already provides this function, system live but data still being collected for old agreements and limited financial information.		March 2010
Management Response: Head of Planning		
<b>Follow-Up Observations</b>		
The Shared Community Infrastructure Officer (SCIO) was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented.		<b>Not Implemented.</b>  <b>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</b>

## EXPENDITURE

### 11. Commuted Sums

(High Risk)

<b>Rationale</b>	<b>Recommendation</b>	<b>Responsibility</b>
<p><u>Best Practice</u> Commutated sums are reviewed to ensure they are appropriately recorded.</p> <p><u>Findings</u> Commutated sums are paid under s106 agreements to provide the required service or facility as opposed to the developer providing it directly. A brought forward credit balance of £123,069.89 is held in account B8121 from payments of commuted sums. A spreadsheet supporting these balances indicates that the oldest receipt was during 2001/2002 and most recent expenditure 2002/03.</p> <p><u>Risk</u> If commuted sums are not managed appropriately then the council may not be meeting its requirements under the legal agreement or may be using its own resources to provide the service or facility.</p>	The agreements for items which comprise the brought forward balance of £123,069.89 held in account B8121 should be reviewed to ensure that amounts are being held in accordance with the agreed terms.	Office Manager
<b>Management Response</b>		<b>Implementation Date</b>
Recommendation is <b>Agreed</b> Management Response: Head of Planning		31 August 2010
<b>Follow-Up Observations</b>		
From discussion with the planning office manager, legal services had been approached and no further evidence had been obtained regarding the brought forward balances. The brought forward balances are believed not to be s106 payments and plans are in hand for the funds to be moved to a central pot as discussed with the chief accountant. This is subject to written confirmation from legal services that no agreements are in force for these sums.		<b>Not Implemented – revised date 31 December 2011 (subject to written confirmation from legal services)</b>

12. Expenditure Protocol

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> When s106 monies are paid to third parties such as parish councils, appropriate documentation is retained supporting the expenditure and evidence sought that expenditure was appropriate and within agreed timescales.</p> <p><u>Findings</u> A recent expenditure of £36,800 towards a multiple use games area in Chinnor came about following a chance discussion between planning and grants officers. Whilst appropriate documentation was available supporting the use of the monies on this occasion there is no procedure covering what checks are needed prior to expenditure of funds and what documentation is required in evidence of expenditure from third parties.</p> <p><u>Risk</u> If monies cannot be proven to have been expended in accordance with legal requirements then the council may be required to return contributions it has already spent.</p>	<p>A protocol is developed covering the requirements to demonstrate that s106 monies are expended in accordance with the terms of the agreement particularly where third parties are involved. This should include what steps are needed to identify appropriate expenditure, what documentation is required prior to making funding available and evidence in support of actual expenditure.</p>	<p>S106 Officer, Planning</p>
Management Response		Implementation Date
<p>Recommendation is <b>Agreed</b> Monitoring system in place – available on intranet S106 Officer identified in planning structure to develop protocol  Management Response: Head of Planning</p>		<p>Monitoring – 31 August 2010 Protocol – January 2011</p>
Follow-Up Observations		
<p>The SCIO appointed in February 2011 has responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 process agreements. The project also includes a review of existing developer planning guidance with a developers contribution guidance note planned to be in draft by the end of 2011 for consultation during 2012.</p>		<p><b>Not Implemented.</b>  <b>Revised implementation date: 2012/2013</b></p>

REPORTING

13. Reporting

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> S106 agreements are regular reported to show income, expenditure and future amounts due.</p>	<p>A formal reporting mechanism should be agreed and implemented to regularly report on agreements to include income, expenditure and future amounts due. This should be circulated to</p>	<p>S106 Officer, Planning</p>

**Appendix 1 Internal Audit follow-up report**

<p><u>Findings</u> Whilst larger developments have some progress reports produced, there is no current requirement to regularly report on s106 agreements.</p> <p><u>Risk</u> If commuted sums are not regularly reported in sufficient detail and in a timely manner, then management of the funding may be ineffective and income may not be maximised.</p>	<p>all interested parties.</p>	
<p><b>Management Response</b></p>		<p><b>Implementation Date</b></p>
<p>Recommendation is <b>Agreed</b> Role of new S106 Officer – to report to MT and cabinet member with year end data provided in annual board report.</p> <p>Management Response: Head of Planning</p>		<p>March 2011</p>
<p><b>Follow-Up Observations</b></p>		
<p>The SCIO appointed in February 2011 has responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 process agreements. From discussion with the office manager formal reporting requirements are to be confirmed once the recording system is selected and there is a proposal that business support will be provided to the SCIO.</p>		<p><b>Not Implemented.</b></p> <p><b>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</b></p>

## **APPENDIX 1 – STAFF INTERVIEWED AND REPORT DISTRIBUTION**

### **1. STAFF INTERVIEWED**

- 1.1
- Brian Crooks, Shared Community Infrastructure Officer
  - Rachel Facey, Project and Support Officer
  - Karen Claridge, Office Manager
  - Adrian Duffield, Head of Planning

### **2. REPORT DISTRIBUTION**

2.1 A copy of this final report has been distributed to the following officers:

- Brian Crooks, Shared Community Infrastructure Officer
- Adrian Duffield, Head of Planning
- Anna Robinson, Strategic Director
- Steve Bishop, Strategic Director (Section 151 Officer)
- Cllr Angie Patterson, Portfolio Holder

**STATEMENT OF RESPONSIBILITY**

We take responsibility for this report, which is prepared on the basis of the limitations set out below.

**INTERNAL AUDIT SEPTEMBER 2011****Contact Persons:**

<b>Sandy Bayley</b>	<b>Auditor</b> <b>Tel: 01491 823845 (SODC) / 01235 540644 (VWHDC)</b>
<b>Adrianna Partridge</b>	<b>Audit Manager</b> <b>Tel: 01491 823544 (SODC) / 01235 547615 (VWHDC)</b>

The matters raised in this report are only those which came to our attention during the course of our audit and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of internal audit work should not be taken as a substitute for management's responsibilities for the application of sound practices. We emphasise that the responsibility for a sound system of internal control rests with management and work performed by internal audit should not be relied upon to identify all strengths and weaknesses that may exist. Nor should internal audit work be relied upon to identify all circumstances of fraud or irregularity should there be any, although our audit procedures have been designed so that any material irregularity has a reasonable probability of discovery. Even sound systems of internal control may not be proof against collusive fraud. Internal audit procedures are designed to focus on areas as identified by management as being of greatest risk and significance. Effective implementation of our recommendations by management is important for the maintenance of a reliable internal control system.

This report has been prepared solely for SODC use. No responsibility to any third party is accepted as the report has not been prepared, and is not intended, for any other purpose.

**AGREEMENT OF AUDITEE**

I have been briefed on the findings of this audit and have had an opportunity to discuss them with the auditor. I have read the rationale provided for the recommendations made, and have provided and take responsibility for my management response and proposed implementation dates.

<b>Signed:</b>	
<b>Job Title:</b>	
<b>Date:</b>	

Please return this signed report to the Auditor, and keep a copy for your records.

