SCRUTINY
17TH AUGUST 2020

SECTION 106 AGREEMENTS AND FINANCIAL CONTRIBUTIONS – PROPOSED GOVERNANCE

UPDATE NOTE FROM HEAD OF PLANNING, ECONOMY AND REGENERATION

CABINET MEMBER: COUNCILLOR BARNELL

Context
Scrutiny Committee has requested the opportunity to consider S106 governance arrangement in advance of Cabinet. Any comments from Scrutiny Committee can be incorporated into the report to Cabinet which has yet to be finalised.

Consideration by Planning Policy Advisory Group
PPAG previously considered draft governance arrangements for s106 agreements and requested the meeting of a working group so that this could be considered further before reporting back to a further meeting of PPAG.

The working group consists of Councillors Barnell, Chesterton and Woollatt. The group met on 8th June 2020 and was attended by Cllrs Woollatt and Barnell with apologies from Cllr Chesterton.

The views of the working group in relation to the draft governance arrangements at **Appendix 1** were as follows:

1. The **S106 Board** should also include the relevant Ward Member(s). At present it is too officer led (Appendix 1 item 2b)
2. **Public open space – project nominations**. There should be more regular contact with Ward Members and Parish / Town Councils over the proposed project list (Appendix 1 item 4)
3. **Reporting: public open space.** Ward Members and Parish/ Town Councils should be advised regularly on the amount of public open space money available to spend and when it needs to be spent by. The working group suggested quarterly reporting in Tiverton, Cullompton and Crediton, with 6 monthly reporting elsewhere.
4. **Nominations for all S106 projects.** The working group also sought to replicate the public open space project nomination procedure (Appendix 1 item 4) for other S106 contributions.
   However there is a marked difference here between legacy contributions sought for public open space where the project was not specified in the original s106 agreement as compared with other contributions that are now being negotiated at planning application stage. The current negotiations must be in accordance with local plan policies and take into account responses by statutory consultees. Whilst views of Ward Members, Parish and Town Councils may be taken into account, the starting point and main consideration for the determination of planning applications must legally be the policies in the development plan. To adopt the same procedure as at item 4 would move away from that approach and be likely to also introduce delay that would impact upon determination timescales.

5. **Project selection for spend: other contributions.** Consultation should also take place with Ward Member(s) as well as the relevant departments (Appendix 1 item 6)
6. **Variation or renegotiation of S106 agreements**. The working group wished for procedures to be consistently followed. These procedures derive from the scheme of delegation, procedures agreed by Planning Committee in 2016 and the agreement by Council of Motion 553 (Councillor Evans). The need to fully align these and ensure it was followed was highlighted. Further text has been added to clarify consistency with Motion 553 and the scheme of delegation and procedures will require updating accordingly (Appendix 1 item 8)

In addition to more detailed comments on the proposed governance arrangements, the members of the working group considered that:

1. Greater accountability and transparency is required over S106 agreements, the collection and spend of financial contributions.
2. Greater Member oversight and awareness is needed given the critical role of developer contributions in implementing the local plan as a whole, specific policies and strategic development allocations. Greater oversight is also required due to the significance to the Corporate Plan.
3. There was an overarching wish for greater Member involvement at an earlier stage in the planning process.
4. There is currently insufficient engagement over local priorities.
5. A process is needed to address the impact of traffic upon local communities.
6. The need was identified for a process to address these comments. It was suggested that the role of the Development Delivery Advisory Group (DDAG) could be widened to take this on.

(Cabinet considered the establishment of DDAG at the meeting in November 2018 after which it was agreed by Standards and Council
https://democracy.middevon.gov.uk/documents/s12982/Cabinet%20report%20Nov%202018%20DDAG.pdf
The 7 Members of the group which is yet to be convened were previously identified as Cllrs Barnell, Chesterton, Deed, Evans, Hill, Pugsley and Squires).

The draft governance arrangements have been updated following the meeting of the working group, with additions/ deletions as sought by the working group or as a consequence of their comments are indicated in red and underline.

Planning Policy Advisory Group 27th July 2020
PPAG met on 27th July 2020 to consider proposed S106 governance arrangements, informed by the views of their working group as set out above.

Members of the PPAG were keen to see the proposed governance enacted and wished the proposals to move forward to Scrutiny Committee and Cabinet for consideration and approval.

It is proposed that the proposed S106 governance arrangements (as revised) are considered the meeting of Cabinet on 3rd September 2020. Group Leaders have recently been asked to confirm members of DDAG so that the first meeting can be convened.

Attached to this update is:
Appendix 1 Draft governance arrangements.
Appendix 2 Guidance on S106 agreements produced for PPAG working group to provide important context for the consideration of this item in terms of:

- **Legal requirements**
- **Government guidance**
- **Previously agreed motions and procedures**

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Circulation of the Report:	Scrutiny Committee
List of Background Papers:	Planning Committee 6th July 2016 Cabinet 25th October 2018 Council 24th April 2019

APPENDIX 1 - SECTION 106 GOVERNANCE

1. All payments received by Mid Devon District Council (MDDC) for legal agreements signed under Section 106 of the Town and Country Planning Act 1990 (as amended) which are referred to as Section 106 agreements (S106) must be given the relevant planning application reference upon receipt.

2. **Arrangements for the spending of financial contributions for S106 agreements where financial contributions are not project specific** (generally pre 2015 and by infrastructure type).

   a. Spend <£10,000 delegated to Head of Planning, Economy and Regeneration in consultation with Estates and Operations (if relevant to operational area).

      Views will be sought from Parish or Town Council and Ward Members within the catchment area in advance (28 days allowed).

   b. Spend >£10,000 shall be referred to a S106 Board comprising of the following:

      1. Cabinet Member of Planning and Regeneration (Chair)
      2. Cabinet Member for Community Well being
      3. Senior officer from Planning (Head of Planning or Group Manager for Development)
      4. Senior officer from Operations
      5. Senior officer from Estates
      6. Admin support – Planning Obligations Officer.
      7. Relevant Ward Member(s)

      Views will be sought from Parish or Town Council and Ward Members within the catchment area in advance of Board Meeting (28 days allowed).

4. **Project Selection for spend: PUBLIC OPEN SPACE**

   For S106 financial contributions post 2015, these are required to be project specific. Accordingly prior to the signing of a S106 agreement at the planning application stage the project upon which the financial contribution should be spent needs to be specified.

   Project nominations will be sought from:

   a. Internal to MDDC – Relevant departments and Ward Members within the catchment area.

   b. External to MDDC – Parish or Town Council within the catchment area, sports and community groups (with 28 days allowed and sports /community group consultation depending on relevance to S106 contribution).

   c. Assessment of the eligibility of a project (assessed against statutory requirements, guidance and its relation to the planning application from which

contribution sought) – Delegated to Head of Planning, Economy and Regeneration via case officers.

d. In the case where project prioritisation is required between two or more eligible projects – Referred to S106 Board.

NOTE – Whilst the Provision and Funding of Open Space Through Development Supplementary Planning Document (SPD) identifies the use of a catchment area approach for the collection and spend of financial contributions towards public open space, in order to ensure that the tests of the CIL Regulations are met, there may be instances where a project or facility in an adjacent catchment area is more likely to be used/accessed due to it being closer/more accessible to the development in question. In such cases the Parish or Town Council and Ward Members of both catchment areas will be consulted during the setting up of new projects.

5. **Project selection for spend: AIR QUALITY**

a. For S106 contributions post 2015 towards air quality, these are project specific therefore project nominations will be sought from:

b. Internal to MDDC – Relevant departments and Ward Members (both Ward within which the development is located and Ward of the relevant Air Quality Management Area if different).

NOTE 1 – Air quality projects are generally those which will assist in the management of air quality within an Air Quality Management Area (AQMA) (Cullompton or Crediton). Contributions may be sought from outside the AQMA where it is identified that new development would have a negative impact upon the AQMA. Actions to address air quality are included within the Air Quality Action Plan. Air quality projects to receive s106 funding will normally be based upon the actions identified within the Mid Devon District Council Air Quality Action Plan.

NOTE 2 – Suggestions for air quality projects from the community to be considered for inclusion in the Air Quality Action Plan (when next reviewed) may be made via the Ward Member.

6. **Project selection for spend: OTHER CONTRIBUTIONS.**

a. Delegated to the Head of Planning, Economy and Regeneration in consultation with relevant departments and Ward Member(s)

NOTE – These are normally identified through adopted planning policies relevant to the development and responses from statutory consultees during the planning application assessment process.

7. **Selection of s106 heads of terms and prioritisation between s106 asks where viability an issue.**

a. Delegated to the Head of Planning, Economy and Regeneration in consultation with the Ward Members and relevant services (e.g. Housing, Environmental Health etc.)

NOTE – These are normally identified through adopted planning policies relevant to the development and responses from statutory consultees during the planning application assessment process.

8. **Requests to vary or renegotiate s106 agreements**

a. Delegated to the Head of Planning, Economy and Regeneration in consultation with the relevant services unless the Ward Member, Chairman and Vice-Chairman of Planning Committee and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) having been consulted, require that the Planning Committee consider the proposed changes having given clear planning reasons.

b. Procedure a. above allows for officers and members to come to agreement over proposed changes without reference to Planning Committee. Should the officers and members fail to agree on the proposed changes or cannot negotiate agreeable alternatives, the members may require that the Planning Committee consider the proposed changes having given clear planning reasons.

NOTE- Existing process in place, agreed by Planning Committee 6th July 2016. The procedure includes consultation with relevant consultees, Ward Members and the Parish or Town Council (14 days allowed).

NOTE- The procedure at a. above includes wider Member consultation than Motion 553 (Cllr Evans) agreed at the meeting of Council on 24th April 2019 and is not inconsistent with it in other respects. Point b. above has been added to clarify the approach and consistency with Motion 553:

'Motion 553:

Any planning application that is approved by Committee giving specific affordable housing provision and or a detailed section 106 agreement as part of the information for members to consider that subsequently receives any application to alter all or part of these agreements must be referred to the relevant ward member/s and the Cabinet Member for Housing for their consideration and input.

Should both the officer dealing and the ward member/s agree to the changes these can be allowed to form the new affordable housing agreement and or section 106 agreements.

Should the ward member/s and officer dealing fail to agree on the proposed changes or cannot negotiate agreeable alternatives then the application to change the affordable housing and or section 106 agreement should be referred back to the committee for their consideration and agreement / disagreement.'

Appendix 2

PPAG Working Group: S106 Governance
Briefing note on S106

This note is intended to inform the discussions at the working group. It covers the fundamentals of S106 agreements: legal requirements, Government guidance, existing procedures and suggestions in response to points raised by the Cabinet Member for Planning and Economic Regeneration.

1. **The legislation**:

Section 106 of the Town and Country Planning Act 1990 is the statutory basis for entering into planning obligations. Those with legal interests in land (owners, leaseholders etc.) can enter into obligations -

(a) restricting the development or use of the land in any specified way;

(b) requiring specified operations or activities to be carried out in, on, under or over the land;

(c) requiring the land to be used in any specified way; or

(d) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically.

The time-honoured mantra followed through the courts over the years is that planning permission is driven by the merits of the development proposal and how it fits with development plan policy – it is not there to be bought through the offer of all kinds of contributions and sundries. This is why, the CIL Regulations 2010 state:

"*a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*
(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development"

Obligations which do not fit the above cannot be taken into account in the grant of planning permission – and a sniff of this being the case, particularly on controversial applications, opens the opportunity for legal challenge with a material chance of succeeding.

So, planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. It is not therefore the case that planning authorities can come with a shopping list – the starting point must always be to consider in what way the development is considered to be unacceptable in planning terms and then to consider what obligations might mitigate that impact applying the legal tests in the CIL Regs.

As a notable planning lawyer and author has explained:

> *"There is clear evidence that the Planning Inspectorate and the Secretary of State are interpreting this requirement strictly, so as to ensure that the statutory tests are met. For the LPA to take account of a proposed section 106 agreement in granting a permission, it needs to be convinced that without the obligation permission should be refused. It is not sufficient to rely on a generic policy or on adopted supplementary*

planning guidance. This is particularly relevant where there is an authority-wide tariff scheme. The LPA must be able to provide evidence of the specific impact of the particular development, the proposals in place to mitigate that impact and the mechanisms for implementation. This has been the position since the CIL regulations came into force in April 2010 and applies irrespective of whether an authority has adopted or intends to adopt CIL.

In order to illustrate this point, if an authority has a section 106-based tariff system in place to require payments for school places from residential development, then to receive monies under the tariff for a specific planning application, it should be able to demonstrate that there is a deficit of school places within the local catchment area which make the application unacceptable in planning terms and that the Education Authority has measures in place to remedy that deficit, to be funded in whole or in part from section 106 contributions.

If this is not the case and the reality is that contributions are being sought as a fund to support school places generally across the LPA area, there is the risk that a decision to grant permission could be taken unlawfully, as the contribution should not have been taken into account.

*There are ministerial appeal decisions that clearly illustrate this approach. For example, **Mersea Homes CBRE, Land at Westerfield Rd**, where the Secretary of State gave no weight to a number of financial contributions, for education, playing fields and a country park on the grounds that they did not meet the statutory tests. The site was considered already to make a good contribution to open space, the country park was not directly related to the development and there was sufficient capacity within existing schools. The contributions were not fair and reasonable. And, to take another example, **Doepark Ltd, American Wharf Southampton**, where the Secretary of State gave no weight to financial contributions for public open space, play space, sports pitches and transport infrastructure on the basis that there was insufficient information to decide whether they met the tests of being necessary to make the development acceptable in planning terms, directly related to the development and reasonable in scale and kind.*

So, in the absence of any evidence of a specific identified need to provide for community, education and/or health facilities in association with a particular development proposal, and any evidence that replacement, additional or enhanced facilities are genuinely required within that particular area, it would appear that a planning obligation to secure such financial contributions would be unlawful when tested against the criteria laid down in Regulation 122(2) of the CIL Regulations, if it cannot be demonstrated that this is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development."

The key here is the legal basis for negotiating S106 agreements to mitigate the impact of the development in question and evidence to demonstrate that the legal tests are met. Given that planning applications must be 'determined in accordance with the development plan unless material considerations indicate otherwise', the policy led approach also applies to the negotiation of S106 agreements.

2. Planning Policy Guidance issued by the Government:

As the national Planning Policy Guidance explains, planning obligations should have their origins in policy and policy should be based on evidence. This is essential for

transparency and planning for development – including by developers. They should not be ambushed by requirements they could not reasonably have anticipated.

"*Policies for planning obligations should be set out in plans and examined in public. Policy requirements should be clear so that they can be accurately accounted for in the price paid for land*."

"*Such policies should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability. This evidence of need can be standardised or formulaic (for example regional cost multipliers for providing school places*."

This is not to say that evidence is purely driven by hard data, statistics and the local planning authority – and there is a clear role for local communities to assist.

"*Planning obligations assist in mitigating the impact of development which benefits local communities and supports the provision of local infrastructure. Local communities should be involved in the setting of policies for contributions expected from development*."

However, it is clear that proportionality and realism are key if plan-led delivery is not to be compromised.

"Plans should be informed by evidence of infrastructure and affordable housing need, and a proportionate assessment of viability that takes into account all relevant policies, and local and national standards including the cost implications of the Community Infrastructure Levy (CIL) and planning obligations. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and the total cumulative cost of all relevant policies will not undermine deliverability of the plan."

We do need to look at how we have and how we can involve the community in early discussions in the plan-making cycle.

"*Discussions about planning obligations should take place as early as possible in the planning process. Plans should set out policies for the contributions expected from development to enable fair and open testing of the policies at examination. Local communities, landowners, developers, local (and national where appropriate) infrastructure and affordable housing providers and operators should be involved in the setting of policies for the contributions expected from development. Pre-application discussions can prevent delays in finalising those planning applications which are granted subject to the completion of planning obligation agreements*."

In terms of transparency, the new requirement for an infrastructure funding statement may help. As the planning practice guidance explains:

How should developer contributions be reported?

For the financial year 2019/2020 onwards, any local authority that has received developer contributions (section 106 planning obligations or Community Infrastructure Levy) must publish online an infrastructure funding statement by 31 December 2020 and by the 31 December each year thereafter. Infrastructure funding statements must cover the previous financial year from 1 April to 31 March (note this is different to the tax year which runs from 6 April to 5 April).

Local authorities can publish updated data and infrastructure funding statements more frequently if they wish. More frequent reporting would help to further increase transparency and accountability and improve the quality of data available. Infrastructure funding statements can be a useful tool for wider engagement, for example with infrastructure providers, and can inform Statements of Common Ground. Local authorities can also report this information in authority monitoring reports but the authority monitoring report is not a substitute for the infrastructure funding statement.

It is recommended that authorities report on the delivery and provision of infrastructure, where they are able to do so. This will give communities a better understanding of how developer contributions have been used to deliver infrastructure in their area.

It is recommended that authorities report on estimated future income from developer contributions, where they are able to do so. This will give communities a better understanding of how infrastructure may be funded in the future.

What should an infrastructure funding statement say about future spending priorities?

The infrastructure funding statement should set out future spending priorities on infrastructure and affordable housing in line with up-to-date or emerging plan policies. This should provide clarity and transparency for communities and developers on the infrastructure and affordable housing that is expected to be delivered. Infrastructure funding statements should set out the infrastructure projects or types of infrastructure that the authority intends to fund, either wholly or partly, by the levy or planning obligations. This will not dictate how funds must be spent but will set out the local authority's intentions.

This should be in the form of a written narrative that demonstrates how developer contributions will be used to deliver relevant strategic policies in the plan, including any infrastructure projects or types of infrastructure that will be delivered, when, and where.

How is infrastructure defined for the purpose of reporting developer contributions?

For any information reported on developer contributions, infrastructure should be categorised as follows:

- *Affordable housing*
- *Education*
  - *Primary*
  - *Secondary*
  - *Post-16*
  - *Other*
- *Health*
- *Highways*
- *Transport and travel*
- *Open space and leisure*
- *Community facilities*
- *Digital infrastructure*
- *Green infrastructure*
- *Flood and water management*
- *Economic development*
- *Land*
- *Section 106 monitoring fees*
- *Bonds (held or repaid to developers)*
- *Other*
  - *Neighbourhood CIL*
  - *Mayoral CIL*
  - *Community Infrastructure Levy administration costs*

Authorities can choose to report either monetary contributions or direct provision under these categories. Local authorities may use this tool to populate and produce their infrastructure funding statement.

Existing S106 procedures over Member engagement

1. Scheme of delegation:

Relevant elements within the scheme of delegation are as follows:

In the case of re-negotiations on a planning obligation (S106 Agreements and Undertakings);
1. The Ward Member, Chairman and Vice-Chairman of Planning Committee and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) requires that the Committee consider the proposed changes having given clear planning reasons

*2. **In the case of renegotiations on another planning obligation issue** the Ward Member, Chair and Vice Chair of Planning requires that the Committee consider the proposed changes having given clear planning reasons, otherwise they be delegated to the Head of Planning, Economy and Regeneration.*

2. Procedures for dealing with requests to vary or delete pre-existing s106 agreements

Sitting behind the scheme of delegation is the following process agreed by Planning Committee in 2016:

1. *That requests to vary or remove planning obligations be made in writing together with supporting evidence / justification.*

2. *Once such a request is received relevant consultees, the Chairman of Planning Committee, Ward Members and the Parish / Town Council be advised of the request and its nature and given 14 days within which to respond with comments.*

3. *That the responses from this consultation be taken into account in consideration of the proposals.*

4. *Negotiations with the developer / land owner will be conducted by Local Planning Authority, supported by Legal Services (as required).*

5. *The Case officer shall advise the Chairman and Vice Chairman of Planning Committee, the Ward Members and Cabinet Member for Housing (the latter in the case of amendments to affordable housing only) of the proposed decision. These Members may request that the Committee consider the proposed changes having given clear planning reasons, otherwise they will decided under power delegated to the Head of Planning and Regeneration.*

Motion 553 Cllr Evans

The relevant motion was agreed at the meeting of Council on 24th April 2019

By way of background Cllr Evans made reference to the following (his text)

Background
Members are aware that a number of planning applications need to go to Planning Committee for consideration; these applications have an array of detail and associated information for members to consider along with an officer recommendation and report.
Within this suite of reports there is often a detail on affordable housing and the section 106 agreement outlining jointly agreed contributions that will be applied to the build should the application be successful, these agreements are evidently part

of the detail members are asked to consider and naturally will assist members in making their informed decision .

It has become apparent that after approval has been received, it is not uncommon for developers/ applicants to seek to alter such agreements retrospectively via negotiations with officers, common reasons sited are funding/ budget related.

This motion is sought to be applied to any planning application that has been considered by the planning committee and evidently agreed where a retrospective application to alter the affordable housing or the section 106 agreement is then received.

The agreed motion itself following on from this was as follows:

Any planning application that is approved by Committee giving specific affordable housing provision and or a detailed section 106 agreement as part of the information for members to consider that subsequently receives any application to alter all or part of these agreements must be referred to the relevant ward member/s and the Cabinet Member for Housing for their consideration and input.

Should both the officer dealing and the ward member/s agree to the changes these can be allowed to form the new affordable housing agreement and or section 106 agreements.

Should the ward member/s and officer dealing fail to agree on the proposed changes or cannot negotiate agreeable alternatives then the application to change the affordable housing and or section 106 agreement should be referred back to the committee for their consideration and agreement / disagreement .

The Planning Committee at its meeting on 3 April 2019 considered the Motion and recommended that it be supported.

Protocol

The 2012 Protocol On Councillor Involvement In Discussions On Planning Applications contains the following relevant provisions that relate to pre-application discussions,

1.0 The majority of pre application discussions on more minor proposals will continue to be undertaken by officers. However, this does not preclude the involvement of Councillors in minor proposals where it is held that these may be of particular significance to a local community.

1.1 Officers provide advice based on the development plan and other material considerations. Part of the role of officers is to ensure consistency of advice and officers should be present at any pre application meetings involving councillors. All officers taking part in such discussions should make it clear whether they are the decision maker. Councillors should avoid giving separate advice on the development plan or other material considerations as they may not be aware of all the issues at an early stage. Neither should they be drawn into any

negotiations. It is the role of officers to deal with any necessary negotiations to ensure that the council's position is co-ordinated.

1.2 As a result of the changes introduced by the Localism Act 2011 any Councillor on Planning Committee can now elect to support a view for or against the development in advance of the decision making meeting of that committee; and they will not be judged to have predetermined their position if they broadcast such a view.

1.3 Councillors are encouraged to promote any community aspirations involving sites, land or community benefit from development, or other planning issues at the earliest stage through the Local Development Framework. This is to help embed community aspirations in corporate policy and minimise the risks of pre determination by Councillors on Planning Committee acting in a community championing role.

2.0 Arrangements for Councillor involvement in development discussions:

2.1 The following points set out a framework within which discussions between Councillors and developers are to take place at all stages in the planning process from pre application until a decision is taken:

- *Councillors may involve themselves will discussions with developers, objectors or other interested bodies, however such discussions should involve and be attended by officers.*
- *Where such discussions take place and a formal application has been submitted, it should be balanced by the offer of discussions with the other interested parties. This is to ensure that there is no appearance of bias. (Note: if the meeting was with residents or community representatives, the offer of a meeting should be extended to the applicant or their representative).*
- *All discussions both pre application and during the consideration of an application should take place in a structured form through a pre arranged meeting.*
- *The purpose of the meeting will be clearly established at the beginning together with advice on how it will be conducted.* ***It will be clearly established by the officer to all present that the primary role of the Councillor is to learn about the emerging proposal, listen to the discussion, identify issues that the developer will need to consider and to represent community interests. It will also be explained that whilst it is possible for any Councillor to express a view on the proposal, Councillor should be prepared to listen to all the arguments.***
- *Councillors will have the opportunity to ask questions and seek clarification. They may alert developers as to what they perceive the likely view or concerns of their constituents*

- *The officer present will take notes of the meeting and record all those present, plus any issues identified and actions arising. These notes will be circulated to the developer, Councillors of Planning Committee and on a public file. Where developers wish to discuss proposals with Councillors, there must be an acceptance that in the interests of transparency a record of the meeting will be viewable by the public. If there is a legitimate reason for confidentiality regarding an aspect of the proposal, a note of non-confidential issues raised will be recorded on a public file. (This does not affect the ability of developers to confidentially discuss their proposals at a pre-application stage with officers.)*
- *Care must be taken to ensure that advice is not partial (not seen to be) otherwise the subsequent report or recommendation to committee could appear to be a mere formality.*
- *Councillors should only attend those meetings organised in accordance with this protocol and not arrange private meetings with developers.*
- *Councillors should inform officers about any approaches made to them and seek advice. A note should be kept of any meetings and calls.*
- *It should be noted that this protocol is not intended to prevent or restrict the role of Ward Councillors in their normal contact with constituents.*

3.0 Public developer presentations to Councillors on Planning Committee on major applications.

3.1 Upon written request, the Council will organise for promoters of large scale major developments to be able to present their schemes at a meeting of Councillors on the Planning Committee. An invitation will also be issued to the wider Council Membership and Cabinet Member for Planning and Regeneration. Such presentations will take place in advance of the proposal's formal consideration by the Council and at a separate meeting of the Planning Committee. It will not form part of a normal Planning Committee agenda, but kept separate and will not be a decision making meeting. The presentations will be in public. Any such special meetings will be advertised and the public will be invited to attend. The Council will not be able to treat any information in relation to these presentation meetings as confidential.

3.2 Public developer presentations to Councillors on Planning Committee will be arranged, publicised and chaired by the Council. The officer will explain the process, the context of the proposals and the role of Councillors. The Developer will then be invited to give a presentation for up to 20 minutes.

3.3 One representative of consultees (if relevant) and the Parish or Town Council will be invited to speak for up to 5 minutes each. A total of 10 minutes speaking time will also be offered to the public or their representatives with up to 3 minutes per person. Public speaking should raise issues or take the form of questions.

Care will need to be taken to explain the role of Councillors: the primary role of the Councillor will be to learn about the emerging proposal and identify issues to be addressed. It will also be explained that it is possible for any Councillor to express a view on the proposal, *Councillors will have the opportunity to ask questions of the developer and seek clarification. They may alert developers as to what they perceive the likely view or concerns of their constituents*

In this manner there are already a range of procedures and mechanisms for Members to engage with the planning process including the negotiation of S106 agreements.

Opportunity was afforded for Members to receive a briefing by the developers of the NW Cullompton applications with opportunity for Q&A. The Town Council also attended. A S106 report was taken to Planning Committee to complement those on the applications themselves.

Notes on suggestions from the Cabinet Member for Planning and Economic Regeneration

'How can we make this happen?

There is a clear case to strengthen the oversight by elected members of developer agreements and also to adopt a system of participation in formulating these agreements. This should include:-

1. *A formal system of participation by elected MDDC members, Town and Parish Councils in determining local priorities and agreements with developers* (Officer comment- The scheme of delegation, protocol and proposed Governance arrangements apply. Opportunity is also afforded at the plan making stage to input into the policies under which developer contributions will be sought and negotiated).
2. *Formal scrutiny by MDDC elected members of contractual agreements with developers.*
   (Officer comment- Scrutiny Committee is not able to involve themselves with individual planning applications. However Scrutiny Committee could consider processes and systems, review outcomes by sampling agreements retrospectively etc)
3. *Oversight by MDDC elected members of links and dependencies relating developer contributions to the plans of local and central government.* (Officer comment- It must be remembered that S106 agreements are subject to legal tests, based upon planning policy and negotiated in order to mitigate the impact of that particular development. They are not intended to serve a wider purpose.)

It is important that we do not create another layer of meetings to carry out this work. It should be quite possible to make more effective use of MDDC's exiting framework of Committees and Policy Groups to achieve these ends. We need to consider in

more detail how this can be done while not imposing significant delays within the Planning process.

Implementing these changes may also require strengthening of certain aspects of the MDDC Development Management service and their systems including the Pre-Planning Service.'

(Officer comment- The determination of applications is time critical. Whilst extensions of time are able to be negotiated, these are with the agreement of the applicant. We need to avoid building in additional delay to S106 negotiation.

The local validation list could be revisited in order to build in the need for greater details on the proposed heads of terms of a development S106 agreement at time of validation of the application. This would give greater transparency and opportunity for public comment at the application consideration stage.

S106 training and awareness raising sessions could be offered to Parish /town Councils and the wider Membership in order to build greater understanding of the parameters within which we operate. We can also review further briefing and training opportunities for the members of Planning Committee).