

Manchester City Council Report for Resolution

Report To: Resources and Governance Overview and Scrutiny Committee

Date 16 July 2009

Subject: S106 Governance Arrangements

Report of: Head of Planning

Summary

A previous report to this Scrutiny Committee set out how a more rigorous project management approach had been taken to S106 financial contributions. The latest phase of work is around risk management and introducing measures to safeguard all those involved in the negotiation of S106 agreements that can involve large sums of money. It therefore redefines governance arrangements for the negotiation of S106 contributions and, as a consequence, it sets out a more structured approach to Member engagement which puts Members at the heart of the process. To assist in this a number of documents have been prepared, including to provide guidance for negotiation and the role of the Gateway process. These arrangements need to be considered in the context of parameters set by Central Government for S106.

Recommendations

1. That Members note the revised governance arrangements subject to any comments they may have.
 2. That an annual monitoring report on S106 activity is presented to the Committee.
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Wards Affected:

All

Contact Officers:

Peter Babb:	Head of Planning
Telephone:	0161 234 4501
Email:	p.babb@manchester.gov.uk
Julie Roscoe:	Planning Manager
Telephone:	0161 234
Email:	j.roscoe@manchester.gov.uk

David Brettell: Group Manager Planning Projects
Telephone: 0161 234
Email: d.brettell@manchester.gov.uk

1.0 Introduction

1.1 The purpose of this report is to propose a more rigorous framework for the governance of S106 contributions, establishing a more formalised approach that will be robust and transparent in its engagement with Members and the established Gateway process.

2.0 Background

2.1 It was reported to the Resources & Governance Overview and Scrutiny Committee at its meeting in December 2007 that the administration and monitoring of planning agreements had recently been reviewed and refocused through a more robust project management approach. It was acknowledged that more structured governance and financial controls needed to be put in place.

2.2 Over the last 12 months a steering group comprising representatives of Planning, Regeneration, Chief Executive's Finance, City Treasurers and Capital Programme Division, has reviewed and considered the necessary changes, concentrating on guidance for negotiating S106 and the relationship with Gateway.

2.3 In considering the Planning & Building Control Business Plan, the Resources & Governance Overview and Scrutiny Committee at its meeting in January 2009, requested that a further report be submitted to up-date on revisions to the S.106 process, involving changes to arrangements for administering and managing S106 agreements, including how money raised is spent.

3.0 Purpose of Section 106

3.1 Planning agreements, under Section 106 of the Town and Country Planning Act 1990, are generally used to mitigate harm that may be caused by a development and are negotiated as part of the planning application process. The Act allows for Local Planning Authorities and developers to negotiate a range of obligations under such an agreement, which either can be linked to financial contributions, be restrictive in nature or require specific works or actions to take place.

3.2 The basis for assessing and entering into such an agreement is set out in legislation and in summary an agreement must be:

- Necessary
- Relevant to planning
- Directly related to the proposed development

- Fairly and reasonably related in scale and kind to the proposed development
- Reasonable in all other respects

3.3 Planning agreements are therefore generally entered into to reduce the harm caused by a development to an acceptable level. Acceptable development should not be refused because an applicant is unwilling or unable to offer benefits. Similarly, unacceptable development should not be approved because of unnecessary or unrelated benefits being offered. There is however a degree of flexibility provided the applicant agrees the content of the agreement.

Non-financial obligations

3.4 Contributions can either be financial, where monies are paid directly to fund specific works or a project, either in full or in part; or the details of the S106 Agreement may be non-financial. The latter can require the developer to carry out particular works or provide certain facilities on site, or require the provision of an element of affordable housing within a residential development.

Community Infrastructure Levy (CIL)

3.5 At the current time, it is expected that further consultation on the introduction of Community Infrastructure Levy (CIL) will take place over the summer, with Regulations published in October. The intention is that S106 will be scaled back to provide for affordable housing and site based impact mitigation only. CIL would provide for the wider infrastructure requirements, although still directly linked to the infrastructure needed for the particular site.

3.6 It is understood that CIL might be optional, but it could not be brought into operation until there is an adopted Local Development Framework Core Strategy in place, with a supporting infrastructure plan, and would exclude obligations to provide wider 'community benefits'. At this stage it is not possible to pre-empt what processes might be needed to reflect this situation.

3.6 A policy will be required within the LDF Core Strategy to formalise the City Council's approach to S106 and/or CIL.

4.0 Proposed Governance arrangements

4.1 There are several strands to this but the main features are:

- Member Engagement
- Guidance for Negotiation
- Gateway Protocol
- Roles & Responsibilities Guidance Notes for Staff

Member Engagement

- 4.2 At the current time the negotiation of S106 financial contributions is not a structured and transparent process and this is a concern of Members. Therefore, consideration has been given to revised arrangements.
- 4.3 For developments that involve residential proposals, the Site Appraisal Group (SAG) process is the most expedient mechanism to follow as this is intended to involve recommendations on affordable housing **and other S106 matters**. Members may recall that the Executive Member for Environment wrote to all Members in November 2008 outlining this process. (For information, the economic downturn and its affect on residential schemes means that this process has not yet been activated).
- 4.4 The Site Appraisal Group (SAG) has been set up comprising of officers from Planning, Housing – Regeneration Teams, Corporate Property and City Treasurers. They will view each scheme on a site-by-site basis at the earliest possible stage. Proposals are assessed against local affordable housing needs, site viability and Strategic Regeneration Frameworks. The recommendations made by SAG will inform discussions between Officers, Members and Developers.

Member involvement will be a staged process as follows:

- Stage 1 - SAG recommends outcomes for a particular scheme, informed by an up-to-date understanding of priorities, especially at the local level through Ward Co-ordination.
- Stage 2 - following the SAG meeting recommended outcomes will be circulated to Executive Members (Environment, Neighbourhood Services, Finance and Human Resources), the Leader (Regeneration) and the relevant Ward Members for comment in line with Council Policies.
- Stage 3 - Members comments are referred to SAG for action consistent with current policies and legislative requirements.
- Stage 4 - the conclusions reached following stages 1-3 will then form the basis of future negotiations with developers. If at any stage in discussions the proposed scheme becomes substantially different, the process restarts at stage 1.

Sometimes, there is a considerable time lag between a scheme achieving planning approval and development on the ground. During this time housing market conditions can change or unexpected difficulties appear on site. Where significant changes are proposed, Members will be re-consulted. This re-consultation may also apply to situations where priorities might have changed for other 106 priorities following initial negotiation and development on-site. In such circumstances there might be the opportunity to re-adjust the spend profile.

- 4.5 Members and officers will need to appreciate that information on sites might contain financially sensitive information. As such, confidentiality will need to be respected. Members will be asked to comment upon the recommended outcomes from a scheme rather than become involved in the detailed aspects of a proposal/application, so avoiding any conflict of interest. Members will continue to have the ability to comment on all planning applications in their Ward as at present.
- 4.6 For other (non-residential) schemes it is proposed that this staged approach is followed but that the Executive Member for Environment considers officers' recommendations in consultation with other Executive Members as appropriate to the proposal in question, and local Members will be consulted as part of the process.
- 4.7 In either case, the process will be specifically augmented at Stage 1 through interaction with Ward Co-ordination. Also, there will need to be some consideration as to which local Ward Members are involved, as some schemes will be more strategic than others with the need to mitigate harm, but also have the propensity to generate benefits, over a wider area.
- 4.8 Whilst this staged process should cover most eventualities, it is possible that issues might arise during consideration by Committees that consider planning applications (Planning & Highways and Wythenshawe Area Committee) where a S106 agreement might be required that had not been previously been considered or where a S106 agreement that had been negotiated is required to be amended or augmented. The Gateway process will need to accept that such changes might occur during the determination of a planning application, although details would be reported to the Gateway Board.

Guidance for Negotiating Contributions

- 4.9 To assist these revised governance arrangements, consideration has been given establishing guidance for negotiating contributions. At the current time, much is based, at the start of the negotiation process, on what are felt to be reasonable requirements generated from what can best mitigate harm that would be caused by the development, but also what might provide benefit through the integration of development into the wider area.
- 4.10 To help improve on this approach, guidance has been prepared to help identify the type of contributions that might be sought at 'Strategic', 'Regeneration Area' (including via SRFs and Local Plans) and 'Local level' (including via Ward Plans and Neighbourhood Funding Strategy requests), although there will inevitably be some degree of overlap. Appendix 1 provides examples of what might be appropriate, but this is not intended to provide definitive guidance, rather what could be considered to be appropriate. Much will depend on ensuring that development proposals are considered on a case-by-case basis, with some degree of flexibility to take into account individual circumstances,

including where developers provide significant funding for environmental improvements and infrastructure as an integral part of schemes. It will be important to understand what the priorities are at the start of the negotiation process and that local understanding of these priorities will be achieved through interaction with Ward Co-ordination.

- 4.11 The provision of more explicit guidance should assist all those involved in negotiation of S106 by identifying the types of schemes that might be suitable for financial contributions; and this is supported by the Gateway process which would validate, or otherwise, the 'strategic fit' of S106 schemes, taking into account more area-based and local needs.

Gateway Protocol

- 4.12 The established Gateway process is fundamental to the delivery of S106 funded capital schemes. The expectation is that all individual projects or schemes that comprise a range of smaller projects over a certain threshold (circ £10K), would be considered through Gateway. Whilst at the current time schemes funded in whole or part by S106 are presented to Gateway, this is essentially retrospective, as the specific schemes have already been identified as part of the S106 negotiation.
- 4.13 As the principal role of Gateway 1 is to consider the strategic fit of a scheme, it is intended to report potential schemes to be funded via S106 at the negotiating stage, prior to planning applications being submitted. This will follow the staged approach to Member engagement in accordance with the 'Guidance for S106 Negotiation' and set out the type of potential schemes and possible levels of financial contribution.
- 4.14 The Protocol, reproduced as Appendix 2, sets out as succinctly as possible the process that needs to be followed to minimise risk for all involved, within an approach that is transparent and identifies roles and responsibilities.

Roles & Responsibilities Guidance Notes for Staff

- 4.15 Within the process of negotiating and then bringing schemes forward through Gateway, many officers in different Service areas are involved. The purpose of the guidance notes is to help ensure that all have a clear understanding of the process and their responsibilities. Officers working within Ward Co-ordination are an essential part of this process and will often be the key contact point for Members.

City Centre

- 4.16 For S106 purposes the City Centre has for the most part been regarded as an entity within which contributions can be pooled for environmental and infrastructure works (unless there are any site specific issues that might need to be dealt with). The City Centre Strategic Plan establishes the context for considering the use of the

City Centre S106 'pooled contributions'. Within the document under 'Placemaking' it states: "Key priorities are the redevelopment of Stevenson Square and St Peter's Square, Victoria, and the Chapel Street area; other priorities will be identified and actioned." In the report to February Executive on the Town Hall Complex Strategy, reference is made to Section 106 being used to offset the costs of improving St Peter's Square. The costs for this project are anticipated to be high and will need to be supported by existing Section 106 contributions and any further ones that become available within the timescales involved.

5.0 Viability

- 5.1 The City Council requires a considerable amount of added value from developments including high standards for: design quality, access, safety & security and environmental sustainability. With residential schemes this is in addition to provision of affordable housing. These all represent additional costs on development over and above dealing with any site constraints, including remediation of contaminated land. With specific regard to affordable housing, and the Providing for Housing Choice Supplementary Planning Document & Planning Guidance, the importance of taking into consideration 'viability' has been reinforced by a recent decision in the High Court that has seen a policy within Blyth Valley's Core Strategy overturned because it failed to take into account the financial implications of setting and implementing affordable housing targets.
- 5.2 To address the issue of viability, a piece of work has been commissioned which will examine the financial viability of the thresholds and targets contained within Providing for Housing Choice document. This will provide the guidance needed to enable officers to come to an informed view over the reasonable extent of S106 deliverables with regard to proposals for housing development. Other schemes may need to be assessed by other means.

6.0 Conclusions

- 6.1 S106 contributions can do much to mitigate harm that new developments might otherwise bring and provide benefit through integration with the surrounding area. The roles of Executive and Local Members are crucial to steering negotiations. As part of this more structured approach it is essential that there are robust procedures in place to minimise risk and provide a framework to ensure that contributions are negotiated on an inclusive basis. Whilst current Government proposals are intended to change the current national policy framework, this will take some time to implement, but the LDF Core Strategy will need to respond to these changes within a formal policy approach.

APPENDIX 1

GUIDANCE FOR S106 NEGOTIATION

1.0 Introduction

- 1.1 The purpose of this note is to set out guidance for the negotiation of S106 agreements. This is intended to provide a basis for considering the potential for S106 agreements to address strategic, regeneration area and local priorities, against the prevailing legal and regulatory provisions.

2.0 Legal and Regulatory Issues

- 2.1 The delivery of benefits through S106 is often constrained by limitations imposed by the legislation itself. The basis for assessing the acceptability of agreements and the process of securing obligations was reiterated in a revised Circular 05/05 issued in July 2005, subsequent to the Town & Country Planning Act 1990.
- 2.2 'Necessity tests' are the starting point for any negotiation and in summary an agreement ought to be:
- relevant to planning
 - necessary to make the proposed development acceptable in planning terms
 - directly related to the proposed development
 - fairly and reasonably related in scale and kind to the proposed development
 - reasonable in all other respects
- 2.3 Planning agreements are therefore generally entered into to reduce the harm caused by a development to an acceptable level. The terms of agreement are negotiated along the lines of securing objectives that need to be met, including any financial contributions necessary. Acceptable development should not be refused because an applicant is unwilling or unable to offer benefits. Similarly, unacceptable development should not be approved because of unnecessary or unrelated benefits being offered. There is however a degree of flexibility, provided the applicant agrees the content of the agreement.

Maintenance payments

- 2.4 Where contributions are secured through planning obligations towards the provision of facilities that are predominantly for the benefit of the users of the associated development, it may be appropriate for the developer to make provision for subsequent maintenance ie physical up-keep. Such provision may be required in perpetuity. As a general rule, however, where an asset is intended for wider public use, the costs of subsequent maintenance and other recurrent expenditure associated with the developer's contributions should normally be borne by the body or authority in which the asset is to be vested.

Pooled contributions

- 2.5 In some circumstances an individual development does not by itself create additional demand for the provision of community facilities. In such cases the cumulative impact of the development will be considered and contributions from a number of developers can be sought to be paid into a fund to support the provision of additional facilities or improvements to existing facilities. Developers may be expected to pay for the future provision of facilities, the need for which may not be directly caused by their development alone.

Future Policy

- 2.6 Within the new development plan for the City, the Local Development Framework (LDF), there will need to be a policy for planning agreements as part of its 'core strategy'. This will provide the opportunity to establish a formal framework for negotiating S106 Agreements (that might influence how the authority might approach the proposed Community Infrastructure Levy, which is still under consideration by Government). In the meantime, consideration can be given to evolving the current approach to S106 Agreements and establishing more explicit guidance for negotiation.

3.0 Priorities

- 3.1 Given the importance of securing obligations from development, it is essential to clarify when, where and how the Council will seek them. The decision-making process on planning applications will involve negotiating planning obligations whilst considering the proposed development.
- 3.2 In order to secure the best use of land, the Council needs to ensure, through the use of conditions or planning obligations attached to planning permissions, that new development provides for the infrastructure, facilities, amenities and other planning benefits which are necessary to support and serve it, and to offset any consequential planning loss to the local area which may result from the development. Local mitigation will involve site-based analysis for each development scheme and its impact on the immediate locality.
- 3.3 Priorities for S106s involve three elements: a strategic level, regeneration area priorities, and local, site-based mitigation. Whilst all projects funded by S106 Agreements must address issues raised by the development proposals, an opportunity exists to assist with broader strategic objectives.

4.0 Strategic Priorities

- 4.1 Planning, through the determination of planning applications, is inextricably linked with delivering change and, in the context of the Local Area Agreement and Community Strategy, the starting point for establishing strategic priorities is the overarching focus on growing the economy and

enabling residents to participate. Within this, 'establishing neighbourhoods of choice' has a clear emphasis on:

- Quality Sustainable Physical Environment
- Safer Communities
- Quality and choice of housing
- Developing locally focussed services
- Encouraging and supporting cultural activities to promote local ownership of neighbourhoods
- Developing a sense of place
- Everyone making Manchester feel safer, cleaner and greener

4.2 Taking these and other LAA priorities, suggests that consideration should be given to the following strategic priorities for negotiating S106 agreements (although such priorities will themselves need to be prioritised on a site by site basis):

- Affordable housing
- Education
- Health facilities
- Provision of open space
- Public realm improvements
- Safety and security improvements
- Training and employment initiatives
- Traffic, transport and accessibility
- Climate change mitigation / adaptation

Affordable Housing

4.3 New development with a high proportion of good quality, private housing to increase owner occupation, which meets needs of the whole community, is a clear priority set out within the Community Strategy. To secure the provision of a range of new housing suitable for existing and future residents, affordable housing should be delivered through planning obligations and ensure the affordability of housing, as set out in 'Housing Choice – Supplementary Planning Document and Planning Guidance'. It is generally expected that affordable housing will be provided on the application site so it can contribute to delivering mixed and sustainable communities, however, there are circumstances when off-site provision or commuted sums may be considered.

Education

4.5 New residential developments are likely to result in additional families moving into an area and consequently lead to increased demands on local schools. With larger or more significant development schemes it may be appropriate to provide facilities in kind and on site and this would be negotiated on an individual basis and form part of the pre-application discussions. However, in other cases, planning obligations may be required to ensure contributions for the provision of appropriate facilities.

Contributions may be pooled where a single development alone does not increase demand, but there is a possible cumulative impact of a number of developments. Contributions towards Sure Start and adult education facilities may also be considered as these can increase opportunities to access higher education and new jobs, and minimise the impact of a development.

Health

- 4.6 Provision of accessible health facilities is a key supporting infrastructure requirement of new and existing communities. Where there are increases in local population as a result of new residential development, existing health care provision may not be sufficient to meet demand. Contributions may be sought towards new services, enlarged premises or additional facilities. GP practices, community clinics/health centres, healthy lifestyle centres.

Open Space and Recreation

- 4.7 New residential and business development may result in the loss of existing open space and recreation facilities, or can add to the demand placed on them. Contributions may be required to address the issue of open space deficiency, in accordance with the on-going audit of open space and the emerging open space strategy, through provision of open space or recreation facilities; improvements to increase accessibility; works to improve quality; or compensation for loss to development or failure of development to meet on-site amenity requirements. Where the amount of open space is sufficient, contributions may still be required towards measures to ensure accessibility or enhance quality, including consideration of issues such as community safety, disabled access, and ecology.

Public Realm

- 4.8 The condition of the public realm has a direct bearing on how a place is perceived. Therefore there is a need to promote the highest quality of public realm. New developments are likely to place increased pressure on the use of and demand for public space, therefore it is reasonable to require planning obligations to address this to ensure more attractive, accessible, safer and sustainable spaces. This could include landscape works, including provision and maintenance of public space; street furniture and lighting; crime prevention and safety measures such as CCTV; public transport infrastructure; accessibility works; signage; and associated highway works.

Safety and Security

- 4.9 Measures to improve safety and security can include CCTV, lighting, or landscaping to improve visibility. The Citizen and Inclusion Overview and Scrutiny Committee has previously indicated that CCTV should be considered at the planning I stages of all development and that when

funding is available, CCTV cameras are positioned according to the City's priority areas for tackling crime and anti-social behaviour. These issues could be covered by the design of new development or by conditions, however, they may also be needed outside the boundaries of the site and be necessary to make the scheme acceptable in planning terms.

Training and employment

- 4.10 Contributions may be sought to ensure the development of appropriate skills and access to new jobs created by the development in order to minimise its impact. Planning obligations may involve the requirement for an employment strategy to address local employment issues; a financial contribution to training courses to serve underskilled, unemployed or workless people in the area; local employment brokerage and job fairs; or initiatives providing or contributing to apprenticeships, training, employment and recruitment-related services and projects.

Transport / Accessibility

- 4.11 Measures to improve highways, public transport and access to facilities will also be a priority. These could include highways improvements, in kind or via financial contribution, such as resurfacing, footway improvements, lighting, junction improvements, traffic lights, pedestrian crossings and signage. (These may also be delivered through S278 of Highways Act). Contributions could also be sought for improvements to public transport and infrastructure, such as the provision of cycleways and pedestrian walkways; provision of new facilities such as bus shelters and stops; passenger information systems; improvements to transport interchanges and measures to ensure accessibility. In larger, strategic sites it may be appropriate for financial contributions to be pooled to secure the relevant item of infrastructure.

Climate Change Mitigation

- 4.12 To help adapt to climate change, a number of initiatives will probably be taken to low and zero carbon development. This will rely on a combination of decentralised energy and combined heat and power generation. To maximise effectiveness an infrastructure of district heating networks will be required where 'anchor developments' will need to be supplemented with 'network connections' from smaller schemes. This can be supplemented with requirements for adaptation works.

5.0 Regeneration Area Priorities

- 5.1 Following discussion with Regeneration Teams the following more detailed priorities have been suggested and these reflect priorities, including from SRFs and Local Plans.

North Manchester

5.2 Current priorities include St Michael's Flags and the Rochdale Road corridor. However, in relation to future schemes, the North Manchester Regeneration Team has identified the following key areas and priorities:

- Public realm improvements in Harpurhey, Cheetham and Collyhurst, specifically the Irk Valley
- Public realm improvements around schools and community facilities and on major road corridors
- Improved educational facilities in Harpurhey, Cheetham and Collyhurst.

East Manchester

5.3 Current priorities are:

- Public realm improvements to major routes and junctions – Oldham Road, Hulme Hall Lane Alan Turing Way, Ashton New Road, Ashton Old Road, Great Ancoats Street, Pottery Lane and Hyde Road
- Canal infrastructure, improved pedestrian links, and environmental improvements - Ashton Canal, Rochdale Canal, Stockport Canal 'Greenway'
- Tree planting across the area
- Medlock River Valley improvements and management
- Employment and training opportunities

City Centre

5.4 For S106 purposes, the City Centre can be considered as an entity and, for the most part, negotiations seek to provide 'pooled contributions' from residential schemes for infrastructure and environmental improvements (but not maintenance works). The City Centre Strategic Plan provides a robust basis for considering how the majority of S106 monies in the City Centre should be deployed, with improvements to St Peter's Square, Stevenson Square and Victoria being specifically identified as key priorities within the section on 'Placemaking'.

South Manchester

(Covering Central, South Manchester and Wythenshawe areas)

5.5 Current priorities are as follows:

- Funding controlled parking schemes in wards where new development has had a disproportionate impact. eg Ardwick (Grove Village), Hulme (High St area), Rusholme (District Centre) and *Chorlton*.
- Improved car parks - eg Wythenshawe Town Centre, Chorlton District Centre
- Funding improvements to open space and parks eg Ardwick (Coverdale neighbourhood, Gartside Gardens), Longsight (amenity space and play areas), Northenden (Riverside Park)

- Public realm - City South Partnership (Upper Brook Street, Cambridge Street, Brunswick Street, Grosvenor St, Booth Street, Cavendish Street, Denmark Rd, Stretford Rd). Wythenshawe Town Centre - implementation of a public realm strategy, West Wythenshawe Local Plan area and district centres e.g. Northenden, Levenshulme, Chorlton
- Public Realm on major arterial routes eg A6, A57, A34, Princess Road, Altrincham Rd
- Sustainable Transport Links - improved pedestrian and cycle routes in particular east-west linkages and creation of 'green avenues' eg Dickinson Road, Barlow Road, Palatine Road, plus a contribution to extending green routes eg extension of Black Path in Wythenshawe into West Wythenshawe to link up both the Hospital and Airport with the Town Centre
- Employment, skills and training initiatives eg recent S106 contribution from Didsbury Point development for employment & training initiatives in nearby disadvantaged communities. Potential for further contributions from business park developments
- Public Facilities eg contribution to the new primary school at Maine Road, but could also include a contribution to new health facilities, libraries etc
- Community Facilities - contribution to community facilities where increased housing will place additional demand on existing facilities that are poor or for facilities /services that don't exist e.g. community facilities at Merseybank, Royal Oak Community Centre, WISSC etc. For smaller schemes there could be a revenue contribution to support the work of local sporting /youth organisations

6.0 Local Priorities

- 6.1 Local priorities in terms of direct mitigation of harm are likely to be a combination of specific issues that need to be addressed on a site by site basis, regeneration priorities that apply to the specific site location and informed by Ward Plans and requests via the Neighbourhood Funding Strategy. The Ward Co-ordination process will be essential for providing up-to-date advice on local priorities.

APPENDIX 2

Protocol for Delivering Council Projects Funded through Section 106 Planning Agreements via Gateway

1.0 Introduction

- 1.1 The Manchester City Council Gateway Review process is a scrutiny, appraisal and approval procedure of all capital projects and programmes. There are eight Gateways covering the complete project lifecycle from mandate to financial completion.
- 1.2 To date, the Gateway process has received details of individual projects that are funded in part, or in total, by s106 agreements.
- 1.3 S106 will link into Gateway process in two ways. Firstly, at pre-planning application stage on significant, strategic development proposals, potential S106 projects identified through the 'Guidance for S106 Negotiation' will be reported to Gateway for strategic fit. Secondly, all capital projects to be funded in part or in whole by S106 (over £10,000) will also need to be taken through Gateway by Project Managers.
- 1.4 This protocol sets out procedure and roles and responsibilities involved in project delivery, and seeks to establish an early reporting system to allow the Gateway 1 Board to contribute to discussions concerning the scope and content of S106s.

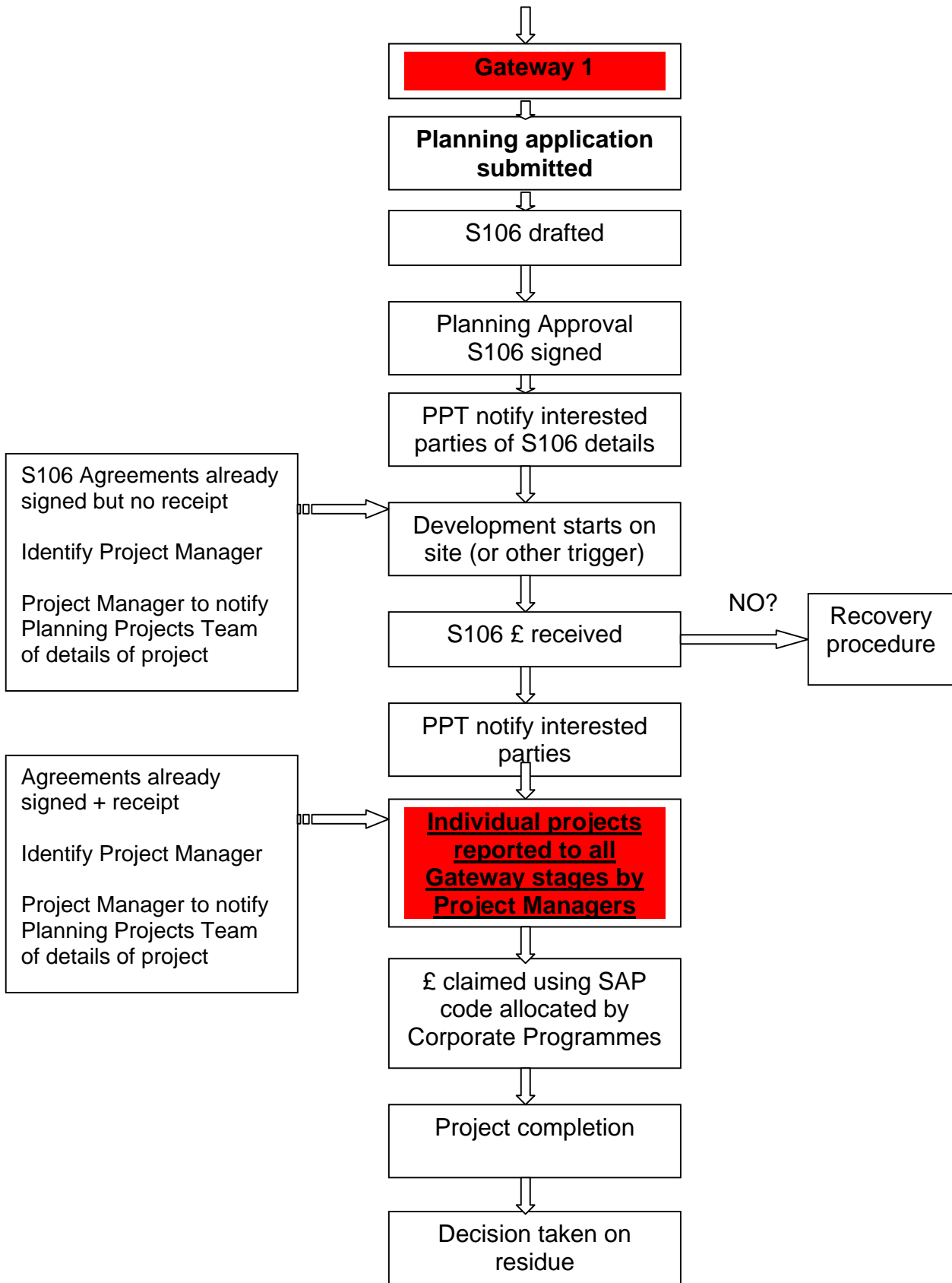
2.0 Section 106 Monitoring and Management

- 2.1 Planning Projects Team has set up a monitoring spreadsheet with details of all S106 agreements, and this is a working tool for recording the information about the specifics of all agreements, receipt of monies, earmarking to projects, project managers and spending. This spreadsheet is the basis of all S106 management activity. It is intended that this document will be viewable by members of staff who need to access this information, but will be accessible to input information only by Planning Projects Team.

3.0 Overview of Process

- 3.1 The following diagram provides an overview of S106 and Gateway process.

- Pre-application discussions with Executive & Ward Member to identify priorities for S106 contributions
- Identify responsible officer/project manager for specific projects
- Clarify amounts required for project(s) (S106 +other?)
- Clarify if it needs to go to Gateway 1



4.0 Gateway 1 - Pre-application

- 4.1 Whilst section S106 obligations are required to mitigate harm which may be caused by developments, it is relevant to ensure that projects derived from such obligations relate to corporate strategies. In order that strategic fit can be considered, it is proposed that details of projects to be funded by S106s attached to 'significant' development proposals should be reported to Gateway 1, prior to the submission of a planning application. This will provide the Gateway Board with an opportunity to comment on the scope and relevance of intended projects.
- 4.2 As the principal role of Gateway 1 is to consider the strategic fit of a scheme, it is intended to report potential schemes to be funded via S106 at the negotiating stage, prior to planning applications being submitted.
- 4.3 For developments that involve residential proposals, the Site Appraisal Group (SAG) process is the most expedient mechanism to follow as this is intended to involve recommendations on affordable housing and other S106 matters. Members may recall that the Executive Member for Environment wrote to all Members in November 2008 outlining this process.
- 4.4 The Site Appraisal Group (SAG) has been set up comprising of officers from Planning, Housing – Regeneration Teams, Corporate Property and City Treasurers. They will view each scheme on a site-by-site basis at the earliest possible stage. Proposals are assessed against local affordable housing needs, site viability and Strategic Regeneration Frameworks. The recommendations made by SAG will inform discussions between Officers, Members and Developers.

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- Stage 1 - SAG recommends outcomes for a particular scheme, informed by an up-to-date understanding of priorities, especially at the local level through Ward Co-ordination.
- Stage 2 - following the SAG meeting recommended outcomes will be circulated to Executive Members (Environment, Neighbourhood Services, Finance and Human Resources), the Leader (Regeneration) and the relevant Ward Members for comment in line with Council Policies.
- Stage 3 - Members comments are referred to SAG for action consistent with current policies and legislative requirements.
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- 4.5 For other (non-residential) schemes it is proposed that this staged approach is followed but that the Executive Member for Environment considers officers' recommendations in consultation with other Executive Members as appropriate to the proposal in question, and local Members will be consulted as part of the process.
- 4.6 In either case, the process will be augmented at Stage 1 through contact with advice from Ward Co-ordination officers. Also, there will need to be some consideration as to which local Members are involved, as some schemes will be more strategic than others with the need to mitigate harm, but also have the propensity to generate benefits, over a wider area.
- 4.7 Whilst this staged process should cover most eventualities, it is possible that issues might arise during consideration by Committees that consider planning applications (Planning & Highways and Wythenshawe Area Committee) where a S106 agreement might be required that had not been previously been considered or where a S106 agreement that had been negotiated is required to be amended or augmented. The Gateway process will need to accept that such changes might occur during the determination of a planning application, although details would be reported to the Gateway Board.
- 4.8 The report to Gateway should:
 - seek to identify specific projects for S106 contributions following Member engagement;
 - provide a justification for each project;
 - explain its relationship to corporate strategies and objectives;
 - identify a responsible officer / project manager; and,
 - clarify the amounts required for projects.

(Consultation will be needed with the Corporate Programmes Team to ensure that responsible officers and project managers have the appropriate training).

- 4.8 Upon considering the report, the Gateway Board can endorse the recommendations of the report, require further information, or not accept the report and request that the project proposals be reconsidered. The Board will be aware that, whilst it has a major role to play in identifying how S106 funds are spent, such finance must be directed to projects related to any harm that may be caused by the development, in accordance with circular 05/05.

5.0 Post-Gateway 1 - Pre-application

- 5.1 The recommendations of the Gateway Board will support development control officers in discussions with developers. The recommendations will ensure consistency of approach on proposals throughout the City, together with adherence to corporate strategies.
- 5.2 When the planning application is submitted, it is expected that the Heads of Terms of the S106 will also be received. (If a draft S106 has not been submitted with the application, it can be prepared during the time taken to process the application). Draft details of the S106 will be forwarded to the City Solicitor who will deal directly with the developers' legal representatives in drafting the formal document. If the proposed development is considered acceptable, a decision can be taken that the LPA is 'Minded to Approve' the planning application, subject to the signing of the S106. Once the S106 is signed, planning permission is formally granted.
- 5.3 Most commonly, the details of the S106 require the payment of the monies upon commencement of development, but occasionally this is upon signing of the obligation, or a later date, such as the occupation of residential units. Responsible officers, project managers and other relevant stakeholders will then be notified by Planning of the details of the S106. This can be done via a 'fact sheet' pro forma.

6.0 Commencement of Development

- 6.1 Upon commencement of development, or any other agreed 'trigger' (e.g. first occupation of residential units) S106 monies are received. As a rule it should be written into the S106 that the Council must be notified of the start date of the development. However, in addition there are a number of ways by which Planning Projects Team can monitor whether a development has commenced: the Planning Strategy Team will periodically notify using their 'Land System'; Development Control case officers will provide information from their regular site visits and routine case work; and, Building Control officers can also provide information in this respect.
- 6.2 Planning Projects Team will record the commencement date on the S106 monitoring Spreadsheet and check that payment has been processed. In the event of non-payment, the Team will initiate recovery of the monies. PPT will monitor planning permissions that have

expired and will transfer them on to the 'Expired Planning Permissions / S106's' worksheet within the S106 Monitoring Spreadsheet. These amounts will no longer feature in any future forward spending plans, but will be kept as an historic record.

7.0 Receipt processing

7.1 The financial contribution is received from the signatory or developer either by cheque which is then processed by Chief Executive's Finance, or paid directly through BACS. The financial contribution is deposited directly into Chief Executive's budget and given a receipt code on the SAP system.

7.2 Once such finance is received, the responsible officer or project manager is informed that projects can be taken through Gateway (subject to confirmation that the approved development has started on site and that the proposed project complies with the particulars of the S106 agreement).

8.0 Gateway 1-8 - Spending and Project Delivery

8.1 A project manager may have already been identified where S106s were agreed some time ago, but will need to be identified early on for projects to be financed by new S106s

8.2 Following receipt of funding, project managers will work up their individual projects and will notify Planning Projects Team of the details. This can then be reserved on the S106 Monitoring Spreadsheet and the respective Finance Teams notified. This is so Finance will know to allow the future transfer of funds from Chief Executive's budget into the respective spending Departments' budgets, to ensure that no other calls from project managers are made against a receipt.

8.3 The Project Manager has responsibility for reporting the capital project (of £10,000 and over) to the appropriate Gateway stages, and to inform PPT and Finance Teams of the outcomes accordingly. The Gateway report will also explain where individual projects contribute part-funding to other larger projects.

8.4 Monies are claimed using the SAP code allocated by Corporate Programmes Team through Gateway.

8.5 The Gateway process continues until project completion, at which point the Project Manager will inform Planning of the final costings. It is expected that the final costings will coincide with the amounts agreed in the S106 agreement. Should a financial residue remain, this can either contribute to other projects identified in the S106, should the terms of the agreement allow and the developer is agreeable. If such a financial reallocation is not achievable, the residue should be returned to the developer.

8.6 Projects Team will, at the end of each financial year, prepare an annual monitoring report, which will provide an overview of S106s agreed over the previous 12 months, identifying the monies received, the projects agreed and delivered, and commenting on the contribution made to pursuing corporate objectives and strategies. This will provide a transparent position statement to account for the use of S106 funding and support the justification of future negotiations for funding.

9.0 Historical S106 Agreements

9.1 It should be noted that a significant number of planning applications have already been approved subject to S106 agreements. In some cases the financial contribution has been made upon signing but development is yet to proceed. In these cases no money should be spent on projects until it is clear that development has started on site. (If there is no development, there is no harm to mitigate and a refund would be required. This would be problematic if project work was already under way.)

9.2 Generally, it is not intended that the details of S106 agreements that support existing planning approvals, should be taken to Gateway 1. This is because the particulars of the projects to be funded by the S106 contributions are already set in the legal documents. There may be exceptions to this where the wording of the agreement is less precise and guidance may need to be sought on the strategic fit of the proposals. However, all individual projects yet to be delivered from existing s106s will still need to be reported to Gateway 1 and beyond on an individual project basis by the Project Manager.

10.0 Refunds

10.1 There may be cases when monies received have to be refunded. Some S106s have been drawn up with a specific reference to paying back monies not spent within a certain timescale, and there are other cases where the funding was received when the S106 was signed and the development has not been implemented and so needs to be repaid. Therefore it is important to reiterate that funding received through S106s should not be spent until it has been confirmed that the development is underway. Furthermore, funding cannot be claimed retrospectively for works already carried out, for example before funding was received.

11.0 Unpaid monies

11.1 Where a developer has commenced work on the planning permission and not paid as agreed, in the first instance Planning will chase payment. In some cases the developer may have to be invoiced and then an invoice number is generated and it is recorded on the SAP system. If the monies remain unpaid then an automated process then proceeds to recover the debt.

- If the debt is not paid after 21 days, a reminder is sent
- After a further 14 days, a final reminder or 'letter before action' is sent advising that legal action is about to be taken.
- After a further 14 days, the matter is referred to the City Solicitor to arrange for a summons and court date.

At any time during this process a solution can be negotiated, for example, methods of payment by instalments can be agreed.

Throughout the development phase and afterwards the implementation of non-financial contributions will be subject to continued monitoring.

12.0 Roles and Responsibilities

- 12.1 A detailed guidance note will be prepared to elaborate on the following roles and responsibilities

Planning Projects Team

- Contribution to pre-application negotiations relating to s106
- Up-dating s106 monitoring spreadsheet
- Sending out fact sheets to notify regeneration teams etc of s106 details on signing, deposit of funding and 'earmarking'
- Reporting of pre-application draft projects proposed for s106 funding to Gateway 1

Development Control Officers

- Pre-application negotiations and drafting s106
- Up-dating Planning Projects Team re start on site

City Solicitors

- Drawing up S106 in conjunction with developers' legal representatives

Planning Strategy Team

- Up-dating Planning Projects Team re start on site

Regeneration Teams, Corporate Property, Ward Coordination, Highways Engineers, Leisure – Responsible Officers and Project Managers

- Contribution to pre-application negotiations relating to s106
- Drawing up projects (in line with guidance) for s106 funding
- Reporting individual projects to all Gateway stages
- Keeping Planning Projects Team up-to-date with project/Gateway status

Finance Teams

- Allocation of receipt codes
- Release funding

Corporate Programmes

- Allocation of SAP spend codes
- Facilitating Gateway process