

Chichester District Council

THE CABINET

6 March 2018

Revisions to the Section 106 and CIL Protocol

1. Contacts

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2. Recommendation

- 2.1 That the Cabinet approves the revisions to the Section 106 and CIL Protocol as set out in the appendix to the agenda report.**

3. Background

- 3.1 At present the interest earned from S106 contributions is ring-fenced within the Council's reserves, but despite the wording of the current S106 and CIL Protocol it is not apportioned to each S106 agreement. As a result, it is not evident how much interest is available for each S106 project and hence the interest is not being spent and is accruing. At present the interest earned on unspent S106 contributions is £181,000.
- 3.2 In the event that a contribution is unspent by the spending deadline specified in the S106 agreement, the Council is usually required to return the original contribution together with any interest it has earned.
- 3.3 The accrual of interest is not an issue for CIL as it is a different regime and interest remains with the CIL funds collected.

4. Outcomes to be achieved

- 4.1 The main outcome is to ensure that the interest earned on S106 receipts does not remain unspent, and is used to provide infrastructure in support of the adopted Local Plan.
- 4.2 The achievement of this outcome will be reported through the bi-annual report to the Corporate Governance and Audit Committee and through the Council's Infrastructure Business Plan.

5. Proposal

- 5.1 Officers have considered how the interest arising from unspent S106 could be spent to better effect. The suggested approach will involve a revision to

paragraph 22 of the S106 and CIL Protocol. Other minor amendments to the text of the Protocol are also proposed to reflect the current situation now that the CIL has been implemented. Paragraph 22 is currently worded as follows:

Any S106 monies, and CIL receipts that have been received and have not been spent are invested in interest bearing accounts with the rest of the Council's investment portfolio in accordance with the Treasury Management Strategy until funds are required. The interest will be added to the balance each year as currently the case for S106. The money will be ring fenced for the project on which it is to be spent with respect to S106 and for infrastructure in general with respect to CIL.

- 5.2 It is proposed that the S106 and CIL protocol paragraph 22 is reworded to read:

Any S106 monies, and CIL receipts that have been received and have not been spent are invested in interest bearing accounts with the rest of the Council's investment portfolio in accordance with the Treasury Management Strategy. Unless specifically required by the S106 agreement, any interest earned from all unspent S106 monies will be held in a separate Infrastructure Reserve rather than being apportioned to individual S106 agreements. Funds held in this reserve will be ring fenced to fund infrastructure projects. The interest earned on CIL receipts will be held in a separate CIL reserve to fund infrastructure projects.

Requests to spend the funds held in the Infrastructure Reserves will be in accordance with the requirements of the Council's Financial Standing Orders.

- 5.3 The proposal will ensure that the interest earned from unspent S106 receipts is spent on delivering much needed infrastructure, rather than being left to accrue. The proposed changes to the protocol are set out in appendix 1 and shown as track changes.

6. Alternatives that have been considered

- 6.1 The alternative is to keep the protocol as it is with regard to the spending arrangements of the interest accrued through the unspent S106 and CIL monies, as set out in italics in paragraph 5.1 of this report above.

7. Resource and legal implications

- 7.1 There is no legal requirement to accrue interest on S106 balances unless it is specified in the S106 agreement. Unless there is a specific clause in the S106 agreement, the interest earned can rightly be treated as Council income, and therefore allocated to any spending priority the Council chooses.

8. Consultation

- a) None

9. Community impact and corporate risks

9.1 The proposed revisions to the Protocol provide a pragmatic process for managing and spending S106 and CIL receipts and interest in order to support the delivery of infrastructure within local communities. However, there are two main risks with the proposed change in approach:

- If funds have to be returned to the developer because they have not been spent, this is often with interest so funds will need to be available from the separate interest account to cover this possibility.
- In some cases the S106 agreement specifies that any interest earned should be retained for spending on the S106 project. In these instances, sufficient funds in the interest reserve will need to be retained to cover such agreements.

9.2 To mitigate these risks, the Planning Obligations Monitoring and Implementation Officer is reviewing each completed S106 agreement to identify those where there are obligations in relation to the use or return of interest. This will ensure that sufficient interest is retained within the reserves to cover these risks.

10. Other Implications

	Yes	No
Crime & Disorder:		✓
Climate Change:		✓
Human Rights and Equality Impact:		✓
Safeguarding and Early Help:		✓
Other		✓

11. Appendices

11.1 Proposed revised Section 106 and CIL Protocol.

12. Background Papers

12.1 None