

Internal Audit Follow-Up Report

S106/Commuted Sums 2009/2010

VALE WHITE HORSE DISTRICT COUNCIL

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MANAGEMENT SUMMARY

1. INTRODUCTION

- 1.1 This report details the findings from internal audit's follow-up review of s106/Commuted Sums. The original fieldwork was undertaken in 2009/2010 and the final report was issued in August 2010. Follow-up work has been undertaken in accordance with the 2011/2012 audit plan agreed with the Audit and Governance Committee of Vale of White Horse District Council, to ensure that the agreed recommendations have been implemented within the timescales provided.

2. INITIAL AUDIT FINDINGS

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

3. FOLLOW UP MAIN FINDINGS

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

4. ACKNOWLEDGEMENTS

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

FOLLOW-UP OBSERVATIONS

POLICIES AND CHARGES

1. Calculation Model

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Details of calculation methods are available as stated.</p> <p><u>Findings</u> Supplementary Planning Document Open Space, Sport and Recreation Future Provision refers to a calculation model spreadsheet. This was not available on the council's website at the time of review.</p> <p><u>Risk</u> If documents detailing the calculation of developers' contributions are not publicly available as stated then the council may not be seen to be consistent in its approach.</p>	<p>The calculation model referred to within the Supplementary Planning Document is made available on the council's website as stated.</p>	<p>Technical Support Manager</p>
Management Response		Implementation Date
<p>Recommendation is Agreed</p> <p>Management Response: Head of Planning</p>		<p>September 2010</p>
Follow-Up Observations		
<p>The Shared Community Infrastructure Officer (SCIO) was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented. The project includes planning guidance documentation.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

2. Procedures, Roles and Responsibilities

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Up to date procedures should be in place with clearly identified roles and responsibilities.</p> <p><u>Findings</u> A s106 financial contributions procedure note from 2003 was provided which did not appear to reflect the actual process for recording and monitoring of s106 agreements.</p> <p><u>Risk</u> If staff are not aware of, or not using up to date policies and procedures they may not be carrying out their duties effectively and appropriately.</p>	<p>Up to date procedures should cover all stages of the s106 process of securing, monitoring, receiving and spending of monies. Roles and responsibilities should be clearly defined.</p>	<p>S106 Officer, Planning</p>

Management Response	Implementation Date
<p>Recommendation is Agreed</p> <p>The procedure note for financial contributions will be reviewed and updated by the S106 Officer in liaison with relevant services (Finance/Legal/Land Charges) The S106 Officer role as set out in planning service structure (agreed July 2010) to manage all stages of the process in liaison with other services.</p> <p>Management Response: Head of Planning</p>	March 2011
Follow-Up Observations	
<p>As stated in recommendation 1 above, a project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented. Plans are in place to implement standard operating procedures as part of the project to implement the monitoring system.</p>	<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

CALCULATING AND SECURING SUMS

3. Heads of Terms

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Heads of terms summarising agreement details are completed for all s106 agreements.</p> <p><u>Findings</u> A summary of s106 agreement details such as purpose, value and trigger was not readily available. A heads of terms sheet could be drawn up for all agreements.</p> <p><u>Risk</u> If the heads of term details are not summarised then delays may occur, should queries arise, in identifying key elements of the agreement.</p>	<p>Heads of terms summarising details of the key elements such as agreed amounts and trigger points, are completed for each s106 agreement as early as is practicable.</p>	<p>Head of Planning</p>
Management Response		Implementation Date
<p>Recommendation is Agreed</p> <p>New system to be introduced and used by planners by end of September.</p> <p>Management Response: Head of Planning</p>		September 2010
Follow-Up Observations		
<p>The Team Leader (Applications) confirmed that the summary sheet which includes the heads of terms is not used. From discussion with the Head of Planning, this is expected to be introduced as part of the project plan for an effective system to record and monitor s106 agreements including standard operating procedures.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

MONITORING AND COLLECTING CONTRIBUTIONS

4. Reconcile to Legal Agreements

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> A regular reconciliation of legal</p>	<p>A register of s106 agreements requiring contributions should be</p>	<p>S106 Officer, Planning</p>

<p>agreements is undertaken to ensure all agreements are appropriately recorded and monitored.</p> <p><u>Findings</u> There is no documented reconciliation between the s106 agreements registered within legal and the agreements recorded within Planning. Whilst not all agreements require financial contributions, there should be a reconciliation to ensure all appropriate agreements are recorded and monitored within planning and the general ledger. As there was no legal listing available of s106 agreements requiring a financial contribution testing could not be undertaken to check agreements were appropriately recorded.</p> <p><u>Risk</u> If there is no reconciliation of agreements then delays may occur in detecting any agreements not recorded and being progressed.</p>	<p>established within the legal team as agreements are introduced.</p> <p>This should be used as the master record to facilitate a regular reconciliation of planning register, general ledger records of agreements and the monitoring spreadsheet to ensure that all contributions are appropriately recorded, invoiced and monitored.</p>	
Management Response		Implementation Date
<p>Recommendation is Agreed in Principle Master should be held in one place on one electronic system –probably in Uniform – S106 module will have cost implications (£5-7,000) As an interim the register of S106 agreements requiring financial contributions sits in a common drive and available to Legal, Finance and Planning. It is added to when an agreement has been produced by Legal and should be reconciled on a regular basis with the actual funds held in the Holding Account. The new S106 Officer will undertake this role in liaison with finance.</p> <p>Management Response: Head of Planning</p>		June 2011
Follow-Up Observations		
<p>As stated in recommendation 1 above, a project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented. A resource has been allocated to scan planning documents and to register s106 agreement details in order to produce a master record to facilitate reconciliations.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

5. Scanned Agreements

(Low Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> To ensure openness and transparency, scanned copies of s106 agreements are included with planning documentation available to the public.</p> <p><u>Findings</u> s106 agreements are scanned and available on the internet via the PublicAccess planning search</p>	<p>All s106 agreements should be scanned and available via Public Access. A system should be established to ensure that each is scanned as soon as possible.</p>	<p>S106 Officer, Planning</p>

<p>facility. An agreement for the Timbmet Site, Cumnor was not available and a further check of ten agreements showed two others not available.</p> <p><u>Risk</u> If not all s106 agreements are made available then the Council will not be seen to be open, transparent and consistent in its approach to the availability of documentation.</p>		
Management Response		Implementation Date
<p>Recommendation is Agreed Need to check the outstanding number of agreements to be scanned, but system in place to ensure new S106 agreements are held and made available electronically. To be reviewed by S106 officer and resources sought for back scanning.</p> <p>Management Response: Head of Planning</p>		<p>System in place for new agreements - September 2010.</p> <p>Review outstanding agreements to be scanned. Seek resources to undertake work – March 2011</p>
Follow-Up Observations		
<p>The Head of Planning confirmed that temporary workers are being employed to scan planning documents and register section 106 agreements. This is expected to take approximately 2 ½ months.</p>		<p>Not Implemented.</p> <p>Revised implementation date: 31 December 2011.</p>

6. Monitoring Officer**(Medium Risk)**

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> A single point of contact is available to deal with all s106 queries and actively monitor and progress arrangements.</p> <p><u>Findings</u> There is no single point of contact for s106 agreement information which is distributed across legal, planning, finance and departments responsible for expenditure. A monitoring officer position was documented as being successfully utilised at other district councils which also charge developers a monitoring fee per condition of each agreement to help finance the role. E.g. Waveney DC employ an officer 4 days a week and charge £300 per obligation within each agreement.</p> <p><u>Risk</u> If a monitoring officer is not appointed then it would be difficult for officers with other responsibilities to actively monitor and pursue agreements to maximise income and ensure expenditure is timely.</p>	<p>A post of s106 monitoring officer is considered to ensure a more robust and effective monitoring and progression of s106 agreements.</p> <p>Consideration could be given to charging developers a monitoring fee for each principal clause of new agreements with a view to assisting in financing the role.</p>	<p>S106 Officer, Planning</p>

Management Response	Implementation Date
<p>Recommendation is Agreed The S106 Officer identified in planning structure as agreed July 2010. Recruitment expected Autumn/Winter 2010. Review of charging for fee for monitoring to be undertaken.</p> <p>Management Response: Head of Planning</p>	<p>S106 Officer – December 2010</p> <p>Charging for monitoring in place – March 2011</p>
Follow-Up Observations	
<p>The SCIO was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy.</p>	Implemented

7. Invoicing Developers

(High Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Amounts due from developers in respect of s106 contributions are invoiced using the council's accounts receivable function.</p> <p><u>Findings</u> Amounts due from developers are not collected using the accounts receivable function but are requested by legal officers instead. Testing of reconciliations highlighted expenditure of £37,500 for arts against which the receipt of the contribution was being investigated.</p> <p><u>Risk</u> If developer contributions are not monitored and collected then works may be completed without the contribution being received from the developer.</p>	<p>Amounts due from developers in respect of s106 contributions are invoiced using the council's accounts receivable function in order that they are recorded and subject to recovery action in cases of non payment.</p>	<p>S106 Officer, Planning</p>
Management Response		Implementation Date
<p>Recommendation is Agreed Any amount due, to be set up on financial system and invoice actioned when appropriate. Monitored by S106 officer.</p> <p>Management Response: Head of Planning</p>		<p>Set up on financial system – September 2010</p> <p>Monitoring – December 2010</p>
Follow-Up Observations		
<p>From discussion with the office manager it is accepted that invoicing should be undertaken within Agresso even if an invoice isn't issued. This allows payments to be allocated against the ledger codings established within the invoice. The process will be reviewed as part of the plan to implement the new POPS system and suitable procedures introduced. It was also noted that there are plans for this to be included within support which is proposed to be provided to the SCIO by the business support team.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

8. Trigger Dates

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> Key stages at which funds are due are actively monitored to ensure prompt receipt.</p>	<p>A proactive system should be considered to prompt developers to notify the Council when key stages relevant to s106 agreements are reached. This</p>	<p>S106 Officer, Planning</p>

<p><u>Findings</u> Trigger points within agreements vary and sums tend to be due prior to or upon commencement of the development or at key stages such as occupation of the 50th housing unit. The council will not necessarily know when these stages are met and the building control function is not necessarily carried out by the council's building control team. Newer agreements tend to require the developer to inform the council when key stages are reached, but this does not appear to be proactively monitored.</p> <p><u>Risk</u> If funds trigger points are not proactively monitored then the council may not be maximising the benefit of s106 funding.</p>	<p>could be a template issued to the developer listing key stages and requesting they complete and return details as these are reached.</p>	
Management Response		Implementation Date
<p>Recommendation is Agreed The S106 Officer will undertake this role but where possible automated systems will secure this proactive approach. Actions recorded on central database. Agreements already require payments by trigger dates. S106 Officer to monitor income and expenditure.</p> <p>Management Response: Head of Planning</p>		December 2010
Follow-Up Observations		
<p>A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements. This is dependant upon the implementation of the s106/CIL monitoring system.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

9. Common Database

(Medium Risk)

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

If a common database is not maintained then data will be held in several systems resulting in delays in handling queries and making the task of monitoring agreements more onerous.		
Management Response		Implementation Date
<p>Recommendation is Agreed Uniform can undertake this function but module will required to be purchased (£5-7,000). Interim measure is central spread sheet managed by S106 Officer. Register needs to be provided publicly linked to scanned agreements.</p> <p>Management Response: Head of Planning</p>		March 2011
Follow-Up Observations		
<p>The Shared Community Infrastructure Officer (SCIO) was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 agreements once the software system is implemented.</p>		<p>Not Implemented.</p> <p>Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.</p>

EXPENDITURE

10. Expenditure Protocol

(High Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> When s106 monies are paid to third parties such as parish councils, appropriate documentation is retained supporting the expenditure and evidence sought that expenditure was appropriate and within agreed timescales.</p> <p><u>Findings</u> Whilst some evidence was seen within the sample of records checked, there is no documented requirement to ensure that relevant supporting evidence is obtained prior to obtaining, and following expenditure of, developers' contributions.</p> <p><u>Risk</u> If monies cannot be proven to have been expended in accordance with legal requirements then the council may be required to return contributions it has already spent.</p>	<p>A protocol is developed covering the requirements to demonstrate that s106 monies are expended in accordance with the terms of the agreement particularly where third parties are involved.</p> <p>This should include what steps are needed to identify appropriate expenditure, what documentation is required prior to making funding available and evidence in support of actual expenditure.</p>	S106 Officer, Planning
Management Response		Implementation Date
<p>Recommendation is Agreed S106 Officer agreed as part of service structure, recruitment Autumn/Winter 2010. The s.106 Officer should ensure that any expenditure is in accordance with the agreement. Protocol to be developed.</p> <p>Management Response: Head of Planning</p>		January 2011
Follow-Up Observations		

The SCIO appointed in February 2011 has responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 process agreements. The project also includes a review of existing developer planning guidance with a developers contribution guidance note planned to be in draft by the end of 2011 for consultation during 2012.	Not Implemented. Revised implementation date: 2012/2013
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RECORDS AND RECONCILIATIONS

11. Monitoring Spreadsheet

(Medium Risk)

Rationale	Recommendation	Responsibility
<p><u>Best Practice</u> All s106 transactions recording expenditure and income are recorded and reported.</p> <p><u>Findings</u> A monitoring spreadsheet reflected income received from developers and the balance remaining. However a debit balance of £37,500 reflecting expenditure on arts at a development was not recorded. The corresponding contribution for this expenditure was under investigation and was to be requested if not already received.</p> <p><u>Risk</u> If all transactions and outstanding balances are not recorded then the true picture of funds available and received may be misinterpreted.</p>	All transactions recorded against s106 agreements which have a balance outstanding are reflected within the monitoring spreadsheet regardless of whether the balance is a debit or credit.	S106 Officer, Planning
Management Response		Implementation Date
Recommendation is Agreed To be monitored by the S106 Officer. Management Response: Head of Planning		February 2011
Follow-Up Observations		
The SCIO was appointed in February 2011 with responsibilities for managing and monitoring section 106 agreements and the community infrastructure levy. A project plan is in place which includes establishing and operating an up to date and effective system to record and monitor s106 process agreements.		Not Implemented. Revised implementation date: Dependant upon delivery of s106/CIL monitoring system.

REPORTING

12. Reporting

(Medium Risk)

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

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

APPENDIX 1 – STAFF INTERVIEWED AND REPORT DISTRIBUTION

1. STAFF INTERVIEWED

- 1.1
- Brian Crooks, Shared Community Infrastructure Officer
 - Rachel Facey, Project and Support Officer
 - Karen Claridge, Office Manager
 - Martin Deans, Team Leader (Applications)
 - Adrian Duffield, Head of Planning

2. REPORT DISTRIBUTION

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

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

STATEMENT OF RESPONSIBILITY

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

INTERNAL AUDIT SEPTEMBER 2011

Contact Persons:

Sandy Bayley

Auditor

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

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

AGREEMENT OF AUDITEE

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

Signed:	
Job Title:	
Date:	

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