

Chichester District Council

Section 106 and CIL Protocol

This protocol does not apply to the South Downs National Park. From 1 April 2011 the South Downs National Park Authority (SDNPA) became the planning authority for the designated area which falls within Chichester District. The role of the SDNPA as a planning authority and how it interacts with the council is described in the SDNPA Section 106 Protocol. This document applies to both historic S106 agreements that have been previously agreed and are currently being monitored and new S106 agreements that have come into effect since the Council implemented the Community Infrastructure Levy (CIL) on 1 February 2016.

The SDNPA introduced its own CIL on 1 April 2017. The Chichester CIL and spending plan is for the area covered by the Chichester Local Plan, which does not cover the part of the district that is within the South Downs National Park.

Aim

The aim of this protocol is to ensure a consistent and co-ordinated approach to the negotiation of Section 106 (S106) agreements and implementation of both S106 and CIL (which is non-negotiable) to ensure the effective use of financial contributions and to demonstrate transparency and accountability by robust monitoring.

This protocol is based on the following principles (please note that the first bullet point below does not apply to the CIL as it is a non-negotiable tariff):

- Negotiating S106 agreements that meet requirements for infrastructure
- Ensuring all parties are fully informed and consulted throughout the implementation and monitoring process
- There are clear procedures for allocating sums and receiving formal approval
- There are clear procedures and responsibilities for discharging agreements
- There is regular monitoring and reporting on progress
- There is clear and publicly accessible information on outcomes
- The council's members are kept updated with progress and developments in their wards.

Community Infrastructure Levy (CIL)

The Community Infrastructure Levy (CIL) regulations allow local planning authorities to raise funds from developers to help provide infrastructure to support the cumulative growth of the area such as new school places, medical centres, local road, pedestrian and cycle improvements; as well as libraries, parks and leisure centres based on a set 'charging schedule'. The funds raised will be used by Chichester District Council, in conjunction with service and key infrastructure commissioners to deliver infrastructure improvements across the Local Plan area.

Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) restricts the use of planning obligations for infrastructure that will be funded by CIL. Infrastructure types or projects listed in the Regulation 123 list will not be secured through planning obligations.

Negotiating S106 agreements

1. Under section 106 of the Town and Country Planning Act 1990, any person interested in land in the area of a local planning authority may, by agreement or unilaterally, enter into an obligation (commonly known as a S106 planning obligation):
 - (a) restricting the development or use of land in any specified way
 - (b) requiring specified operations or activities to be carried out on the land
 - (c) requiring the land to be used in any specific way
 - (d) requiring a sum or sums to be paid to the local planning authority for an agreed purpose.
2. Planning permissions can therefore be subject to planning conditions and planning obligations enabling proposals to be permitted which might otherwise be refused. The Chichester Community Infrastructure Levy (CIL) Charging Schedule took effect on 1 February 2016. This has replaced many S106 Obligations. However, agreements entered into prior to this date, as well as any subsequent agreements will continue to be monitored in accordance with this Protocol. Paragraphs 33-35 below provide more information on CIL.
3. Since planning obligations may involve developers making financial and/or non-financial contributions to the council, it is essential that such arrangements are operated in a way which is seen to be fair, open and reasonable in order to retain public confidence in the fundamental principle that planning permission cannot be bought or sold.
4. Government policy, as set out in the National Planning Policy Framework (NPPF), requires planning obligations to meet five tests. They 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
5. A vital test of planning obligations is therefore that they must be necessary to make a proposal acceptable in land-use planning terms. They should not be sought where a connection does not exist between the development and the obligation or is too remote.
6. If a planning obligation is considered essential to render a proposed development acceptable in planning terms and an applicant is unwilling to enter into that obligation then the planning application is likely to be recommended for refusal.
7. Planning obligations should not duplicate planning conditions. If a planning authority has a choice between overcoming a potential reason for refusing

planning permission by entering into a planning obligation with an applicant or imposing conditions, then conditions are preferred.

8. Planning obligations may relate to any matter, provided they satisfy the government's five tests, as described above. In some cases the developer signing the obligation agrees directly to provide certain facilities or to refrain from certain activities.
9. The Community Infrastructure Levy (CIL) Regulation 123 list; and the Planning Obligations and Affordable Housing SPD provide guidance about what will continue to be sought from S106 obligations.
10. It is important that the negotiation of planning obligations does not unnecessarily delay the planning process, thereby holding up development. It is therefore essential that all parties proceed as quickly as possible towards the resolution of obligations in parallel to planning applications (including through pre-application discussions where appropriate) and in a spirit of early warning and co-operation, with deadlines and working practices agreed in advance as far as possible.
11. The Council will advise applicants as early as possible if a planning obligation is required in connection with their development proposal as well as the reasons for this. In addition, applicants for planning permission will be informed as soon as possible if it is likely that there is a potential reason for refusal, which could be overcome through a planning obligation.
12. Where it is clearly an expectation in a development plan policy, identified in pre-application discussion, by reference to this protocol, or through a proposed Planning Performance Agreement, applicants for relevant proposals will be expected to provide heads of terms of the S106 agreement as part of the planning application. For example in respect of most major open market housing developments developers will be aware that there will be an expectation that a percentage of the housing should be affordable and that this will be provided, controlled and managed through a S106 planning obligation.
13. In all cases, the scale of a necessary obligation or financial payment will be directly related to the level of mitigation required to reduce the impact of the development to an acceptable degree. The agreement will normally entail payment of a contribution subject to appropriate trigger points.
14. The need for and calculation of financial contributions will be applied consistently in accordance with the Council's adopted Planning Obligations and Affordable Housing Supplementary Planning Document (SPD). Where any variance is sought by an applicant, this would normally only be justifiable in cases where there are substantial exceptional costs involved in the development, such as remediation of heavily contaminated sites. In such cases the developer will be asked to provide independently verifiable financial evidence that the required financial contributions will make the scheme unviable if he is looking to challenge the proposed level of contribution particularly where that level is set out in policy.
15. Where an application has been approved subject to a planning obligation being signed, the planning permission will be issued once all parties have signed the agreement.

16. The Director of Planning and Environment has powers to make reasonable formal amendments or variations to completed S106 obligations where circumstances have changed in the intervening period and/or where required by a subsequent decision of the Council in respect of a new planning application for the site.
17. The South Downs National Park Authority (SDNPA) is the planning authority for the designated area which falls within Chichester District. The role of the National Park as a Planning Authority and how it interacts with the council is described in the SDNPA S106 Protocol.

Implementation and monitoring

18. Once planning obligations and CIL spending priorities (as set out in the Infrastructure Business Plan (IBP)) have been agreed it is important that they are implemented, monitored and, where necessary, enforced in an efficient and transparent way. This is to ensure that financial contributions are spent on their intended purpose or that non-financial obligations have been met, and that the associated development contributes to the sustainability of the area. This requires joint working across different parts of the council, and with key infrastructure commissioners as financial contributions may need to be spent by separate departments, infrastructure commissioners, or may need to be implemented or enforced by particular officers or teams.
19. Two dedicated posts are responsible for the monitoring and implementation of Section 106 obligations and CIL. The Planning Obligations Monitoring & Implementation Officer (POM&IO) monitors S106 agreements to ensure that the enforcement and monitoring of planning obligations is carried out efficiently and effectively for the benefit of communities affected by the development. The role of the Planning Officer (CIL and Infrastructure) is to check that the correct amount of CIL has been collected; to ensure that the correct monies are passed to the City, Town and Parish Councils and to monitor that the CIL is allocated to the infrastructure projects, and delivered in accordance with the IBP CIL Spending Plan.
20. The POM&IO maintains a central database for all S106 agreements across the council. This database is linked to the planning department's Idox system in order to retrieve and access supporting planning documents. The Council uses the Exacom IT system to assist with the monitoring of both CIL and S106 obligations.
21. Beneficiary departments, and key infrastructure commissioners are expected to submit regular updates on the current situation with regard to spend against each S106 agreement/CIL spending project. These updates are used to inform the regular reports to the council's Corporate Governance & Audit Committee and to Members. Updates on non-financial obligations are also included in these reports.
22. 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 interest will be ring fenced for use with the associated S106 contribution and for infrastructure in general with respect to CIL. Should any interest accrued remain after the S106 contribution has been expended, it will be retained in a separate Infrastructure Reserve and used each

year to supplement the new Homes Bonus Parish grants scheme. The interest earned on CIL receipts will be held in a separate CIL reserve to fund infrastructure projects.

23. Requests to spend the funds held in the Infrastructure Reserves will be in accordance with the requirements of the Council's Financial Standing Orders.
24. Following the finalisation of a planning obligation there are a range of different activities that need to be undertaken by the S106 Planning Obligations Monitoring & Implementation Officer to different timescales, sometimes extending over a number of years. These tasks include:
 - ensuring receipt of financial contributions by developers at appropriate trigger points
 - ensuring receipt of non-financial contributions by developers at appropriate trigger points
 - initiating action for non-receipt of payments by developers or non-financial contributions by developers
 - processing receipts of payments and notifying services that are progressing the agreed projects and spend
 - ensuring that all further trigger dates are followed up and action monitored
 - preparing exception and annual reports and Ward Member reports detailing the progress of S106 spend at required intervals
25. A corporate S106 Monitoring and Liaison Group meets on a regular basis and discusses current developments and progress to agree the content of the regular reports to Corporate Governance and Audit Committee and Ward Members. This group is made up of officers from the services responsible for ensuring the implementation of the terms of the agreement, delivering the projects and ensuring the monies are spent appropriately.
26. Following a CIL liable planning application, the Planning Officer (CIL & Infrastructure) will undertake a number of actions including:
 - measuring the floor plans to ensure that the correct amount of CIL liability has been calculated;
 - ensuring that any exceptions or reliefs have been correctly calculated
 - checking that the CIL receipts have been collected in accordance with the CIL Payment by Instalments Policy
 - initiating action for non-receipt or incorrect CIL payments
 - processing receipts of CIL payments
 - taking CIL enforcement action
27. Each year the IBP and CIL spending plan is rolled forward, and the draft five year programme reported to the Chichester Growth Board, then considered by the Development Plan and Infrastructure Panel (DPIP), before being reported to the Cabinet and Council for approval.

How long does the council have to spend the financial contributions?

28. For S106, the Council will include a standard term of 10 years within its planning obligations agreements for the expenditure of financial contributions. After the expiry of this period the developer may request the payback of unspent monies if

these have not been committed within the 10 year time period. Where the target date for expenditure is not written into an agreement the Council will use a notional 5 year target for monitoring purposes, based on the ability of Developers to seek to vary an agreement after 5 years.

For CIL, there is no timescale for the spending of CIL receipts, and the money does not have to be paid back to developers. The CIL should be spent on items of infrastructure identified in the IBP CIL spending plan once sufficient CIL monies have been collected.

CIL administrative costs

29. Up to 5% of CIL receipts will be used within Planning Services to fund the costs associated with monitoring, managing and collection of CIL required by the CIL regulations.

Duty to pass CIL funds to City, Town and Parish Councils

30. The District Council as CIL Charging Authority is required to pass 15% of CIL funds collected from developments within each parish, directly to the relevant City, Town or Parish Councils (capped at £100 per existing Council tax dwelling in any one year). This rises to 25% (uncapped) in areas which have an adopted Neighbourhood Plan. The funds collected in each parish will be passed to the City, Town and Parish Council twice a year, on 28 April, and 28 October.
31. The City, Town and Parish Councils are required to spend their CIL within five years of its receipt, or the District Council can request that the funds be returned, and these can be spent on any infrastructure projects within the Local Plan area.
32. The CIL Regulations state that this proportion of funds must be used '*to support the development of the local area by funding:*
(a) *the provision, improvement, replacement, operation or maintenance of infrastructure; or*
(b) *anything else that is concerned with addressing the demands that development places on an area.*'
33. This is a wider definition of how the funds may be used compared to how the District Council can use CIL funds (being restricted to funding infrastructure to support the development of the area).
34. The District Council may consider contributing funds to projects with the City, Town or Parish Councils where there are shared priorities.
35. In areas where there is not a parish council (Apuldram), the District Council will spend any CIL monies collected in this area in liaison with the Ward Member and Parish Meeting.

Summary of Process and Timetable for CIL Strategic Fund allocation

36. The annual process is commenced with an update of the Infrastructure Business Plan (IBP) and a review of the projections of the amount of CIL likely to be available for infrastructure projects.

37. Whilst the key infrastructure is identified in the Infrastructure Delivery Plan (IDP), the various Service and Infrastructure Delivery Commissioners are invited in April each year to put forward bids and programmes for the use of available CIL funds, the City, Town and Parish Councils are invited to comment on these, and to also share their CIL spending plans to ensure that projects are not duplicated, and to present a complete picture.
38. The Infrastructure Joint Officers Group meets in late April to prioritise the infrastructure projects. A draft IBP is circulated to the joint officers group to consider in May/June.
39. The draft IBP is considered by the Strategic Leadership Team, the Growth Board, and DPIP and Cabinet and Council in September, for approval that the IBP be subject to 6 weeks consultation in October/November with neighbouring Local Authorities, key infrastructure commissioners, and the City, Town and Parish Councils.
40. The draft IBP is, if necessary then modified, and a revised IBP reported to the Growth Board for consideration in December, before being considered by DPIP in January, and for approval by Cabinet in February, and Council in March each year.

Governance arrangements

41. The relevant Service Director, in consultation with the relevant service Cabinet Member will agree spend of S106 and CIL monies under £50,000. In the case of locally specific monies such as community facilities the nominated Ward Member will also be consulted.
42. The Cabinet, will agree spend of S106 and CIL monies of £50,000 and £100,000, following consultation with the ward member in the case of locally specific monies such as community facilities. Amounts over £100,000 will need to be approved at full Council.
43. All project lead bodies are required to submit quarterly progress reports to the CIL Officer, in start of January, April, July and October. This enables compliance with the Regulations by monitoring of expenditure and delivery of anticipated outcomes in delivering the infrastructure spending priorities as set out in the Infrastructure Business Plan (IBP) CIL Spending Plan. This information will underpin the Authority's Monitoring Report that informs others about expenditure as required.
44. CIL funds can be used as part of the costs of project procurement including professional fees, usually 10-15% of the value of any project. Funds for these works should be specified as part of project submissions.
45. In commissioning works the infrastructure providers shall be expected to apply their own financial regulations to ensure value for money and provide such evidence as may be required by the Head of Planning Services.
46. Before release of identified CIL funds to external public bodies (infrastructure commissioners) the District Council would normally require a Legal Development Agreement/Service Level Agreement once sufficient CIL money has been collected to cover the total costs of the projects to be funded in any financial year.

To ensure that the money is spent on the agreed project and to the indicated timetable agreed with the District Council as Collecting Authority. CIL funds will be released in arrears either on completion of projects or in staged payments as agreed by the Director of Planning and Environment.

47. The Council's Corporate Governance & Audit Committee will monitor the effectiveness of this protocol and that any risks are being managed in ensuring that monies are spent in accordance with the legal agreement (in the case of S106), and Legal Development Agreement/Service Level Agreement (in the case of CIL) and within the required timescales.
48. The S106 Annual Report (incorporating reference to CIL projects as appropriate) will be prepared in June each year detailing new agreements, income and spend for the previous financial year. The report gives a full update of S106 income received and monies spent over the last year, including an update against non-financial obligations. This will also include an exception report showing those S106 monies due to expire within two years and those past their spending deadline. In addition the reports include an update on the spends and money remaining relating to WSCC and SDNP agreements.
49. The committee will also receive an exception report detailing all S106 contributions due to be spent within a two-year deadline in November/December each year.
50. Ward members will be provided with information electronically detailing new S106 agreements, income and receipts, actual and anticipated spend dates, use of monies and non-financial obligations. Reports will be provided to all members on a six monthly basis (in March and September each year) and detailed by ward, with the non-locality specific amounts e.g. affordable housing provided on a district wide basis.
51. Details of receipts and spending of S106 and CIL monies will be reported in the Council's annual Authority's Monitoring Report (AMR), which is published in December each year.

Contacts

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Planning Obligations Monitoring & Implementation Officer – Simon Davies (01243 534781)

Planning Officer (CIL and Infrastructure) Shona Turner (01243-534796)

Appendix 1 – Service Procedure Guide

Background documents

1 - User Guide to Planning Obligations

2 - S106 Procedural Protocol

3 - South Downs National Park S106 Protocol

4 – Planning Obligations and Affordable Housing Supplementary Planning Document

5 – CIL Charging Schedule

6 – CIL Regulation 123 list

7 – Infrastructure Business Plan

S106 Service Procedure Guide

At the pre-application discussion stage or on receipt of an application for a new residential or commercial development, the following Service Coordinators should be consulted to establish the requirements for each of the District and County services.

Responsibilities

District Council Services

S106 obligations	Responsible Officer	Responsible Director
Affordable/Social Housing	Linda Grange	Louise Rudziak
Community Buildings/ Facilities	Dave Hyland	Louise Rudziak
Leisure Facilities	Sarah Peyman	Jane Hotchkiss
Play Facilities	Sarah Peyman	Jane Hotchkiss
Public open space	Sarah Peyman	Jane Hotchkiss
Public Art	Dave Hyland	Andrew Frost
Park and Ride	Tania Murphy	Jane Hotchkiss
CCTV	Tania Murphy	Jane Hotchkiss
Measures to safeguard the environment	Alison Stevens	Andrew Frost
Coastal path and access for coast protection and sea defence works	Alison Stevens	Andrew Frost

The Director for Planning and Environment will be the responsible Director for all S106 agreements. However when S106 monies are received then the Directors of those services or beneficiary departments will become responsible for ensuring spend occurs within the appropriate timescales. Any matter which is not satisfactorily resolved by the Responsible Officer will be escalated to the Responsible Director for action where necessary.

County Council Services

Highways and transport	Elaine Munns - Team Manager: Strategic Planning Division, Residents and Environmental Services
Education, Library Services, Fire & Rescue and Civic Amenity Services	Elaine Munns - Team Manager: Strategic Planning Division, Residents and Environmental Services

Service Procedure Guide

Procedure	Responsibilities
New S106 Agreement completed	Legal to send agreement to planning case officer to issue the planning permission. S106 officer will send it to beneficiary departments, notifying of relevant provisions, allocations and spending requirements. S106 Officer to notify District Councillors, Parish Councils and South Downs National Park (SDNP) if appropriate. S106 Officer to enter details from agreement onto S106 database with trigger dates.
Monitoring trigger dates to secure receipts	S106 Officer to follow diary trigger dates and monitor progress on reaching trigger points when payment due. Enter and update information on S106 database. Once trigger achieved, write to developer with invoice for contribution due, having confirmed figures with Finance.
Chase contribution if overdue	If payment not received, S106 Officer to remind developer of obligation. If payment still not received, pass matter to Planning Enforcement to initiate enforcement action for non-compliance/ breach.
Receipt of monies	S106 Officer to monitor receipt of payments through the BACS system or to pay cheque in and update the S106 database with receipt. S106 Officer to notify beneficiary departments and District Councillors. S106 Officer to ensure contribution made to SDNP in relation to national park application.
Responsibility for expenditure	Beneficiary departments to identify appropriate projects on consultation with parishes/community groups if not previously agreed; to follow agreed scheme of delegation for agreement of spend; to notify relevant Parish Council and/or community group once contribution received; to notify SDNP of intended works; and to notify S106 Officer of progress and ultimate completion of the works.
Control of service infrastructure reserves	Service accountants to advise service provider of balance on each 'earmarked' reserve.

Service Procedure Guide for CIL

<p>Stage 1</p>	<p>When submitting a planning application for new residential or retail development the CIL Additional Information Requirement Form should also be included. This will enable the council to determine whether the proposal is liable to pay CIL and calculate the CIL liability. When planning permission is granted the decision notice will indicate if the development is liable to pay CIL.</p> <p>Submit Form 1 - Assumption of Liability Notice if the person or organisation that will pay the CIL liability is known at the point the planning application is to be submitted.</p>
<p>Stage 2</p>	<p>A Liability Notice will be issued by the council as soon as is practicable after planning permission is granted</p>
<p>Stage 3</p>	<p>Before the commencement of the CIL liable development, the following forms need to be submitted to the council:</p> <ul style="list-style-type: none"> • The person or organisation who intends to pay the CIL liability will need to submit Form 1 – Assumption of Liability Notice (if not already done when the original application was submitted as advised in Stage 1) • If the development is eligible for relief or exemption from CIL, the applicant will need to complete Form 2 – Claiming Exemption or Relief and potentially form 7/8/9 • Following submission of Form 1, the applicant is then required to submit Form 6 – Commencement Notice. Form 6 will notify the council when the chargeable development is to be commenced to allow the collection of the CIL payment. Form 6 must be submitted before the chargeable development commences and in addition to any notice regarding Building Regulations.
<p>Stage 4</p>	<p>Following receipt of a valid Form 6 Commencement Notice, the council will then issue a Demand Notice to the person who has assumed liability to pay CIL. The Demand Notice will set out the precise details of the amount of CIL payable and payment options (including where CIL can be paid in instalments in accordance with the council's Instalment Policy).</p>
	<p>It is also the responsibility of the applicant to notify the council if there is a change in the party liable to pay CIL which can be done through submitting Form</p>

	3 – Withdrawal of Assumption of Liability or Form 4 – Transfer of Liability as applicable
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