

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF PLANNING	PLANNING COMMITTEE	18 JANUARY 2023	6
SECTION 106 AGREEMENTS - PROPOSED REVISIONS TO WORKING PRACTICE AND TRANSFER OF FUNDS TO LANCASHIRE COUNTY COUNCIL			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

On 10 November 2022, the Audit and Standards Committee considered a [progress report](#) prepared by the Council's internal auditors, MIAA, that included a review of the Council's Section 106 Agreement processes. The report provided 8 recommendations and was able to provide Moderate Assurance.

These recommendations will be addressed in line with the target dates set out in the Audit report, but this report seeks authority to action a recommendation relating to Fylde Council's established practice for the collection of Section 106 contributions associated with the delivery of infrastructure that is the responsibility of Lancashire County Council and to transfer the funds currently held by Fylde Council to Lancashire County Council, subject to entering into an agreement to indemnify this Council against any claims from a developer that the funds have been spent for purposes outside those for which they were originally secured.

RECOMMENDATIONS

1. That, in future, all Section 106 contributions related to the delivery of community infrastructure that is solely the responsibility of Lancashire County Council will be secured through a covenant in the Section 106 agreement between the developer and the county planning authority.
2. That, subject to Lancashire County Council entering into a satisfactory agreement to indemnify Fylde Council against any claim relating to the spending of Section 106 funds for purposes other than those for which they have been secured or the spending of those funds beyond a repayment date set out in a Section 106 agreement, that Council be recommended to approve a revenue budget increase of £310,455.80, fully funded from Section 106 monies held by the Council, and to authorise the contributions towards the provision of additional primary and secondary school places currently held by Fylde Council in the sum of £310,455.80 be transferred to Lancashire County Council.

SUMMARY OF PREVIOUS DECISIONS

None relating to this specific subject.

CORPORATE PRIORITIES

Economy – To create a vibrant and healthy economy	
Environment – To deliver services customers expect	✓

Efficiency – By spending money in the most efficient way	✓
Tourism – To create a great place to live and visit	✓

REPORT

Background

- On 10 November 2022, the Audit and Standards Committee considered a [progress report](#) prepared by the council's internal auditors, MIAA, that included a review of the council's Section 106 Agreements. The S106 audit, which sought: *"To evaluate the controls in place to manage key risks which would affect the effective operation of the organisation's system for the management of Section 106 (s106) agreements, and obligations which are entered into are enforced and met"*, provided 8 recommendations and was able to provide a "Moderate Assurance" rating.
- Overall, the review identified that there was an adequate system of internal control with some areas requiring improvements. These will be addressed as a series of service improvements to be implemented over the coming months in accordance with the implementation dates set out in the report.
- The audit report expresses concern that the roles of the borough and county councils are not clear in the current arrangements where Section 106 payments are made by a developer to Fylde Council in order to contribute to the improvement of infrastructure that is the responsibility of the county council to deliver. Such infrastructure includes highway and public transport improvements and the delivery of additional primary and secondary education places.

Proposed change in working practice going forward

- Whilst the audit report suggests that a service level agreement should be drawn up between the two councils, your officers consider that it would be more appropriate for a developer to covenant directly with the county council (where this is possible) in order to ensure that these contributions are paid to and spent by the county council. This would allow the county council to take full accountability for the collection and spending of such contributions and would avoid the administrative burdens currently placed on Fylde Council in collecting the funds, administering them and preparing draw down reports to authorise transfer of funds to the county council. It is understood that the majority of (if not all) district councils across Lancashire require developers to covenant directly with the county council.

Proposed transfer of education funds for existing agreements

- Fylde Council currently holds developer contributions intended to increase the number of school places that have been collected over recent years, details of which are provided in table 1 below.

Table 1 – Funds to provide additional school places currently held by Fylde Council.

Application Number	Application Site	Amount	Date to be spent	Restrictions/ Area to be spent
12/0717	Cropper Road	£160,000.00	06/07/2023	To be used towards funding of additional primary school place to serve the needs of the development.
12/0717	Cropper Road	£218,206.74	25/06/2024	To be used towards funding of additional primary school place to serve the needs of the development.
19/0140	Moss Farm, Cropper Road	£32,101.06	05/07/2029	Intended to be used to provide additional primary school places at Weeton St Michaels CE primary school (Or subsequent name or designation by which it is known).
14/0161	Land Ballam Road (Ballam Oaks)	£60,148.00	08/01/2031	To provide additional pupil places at Lytham CE Primary School
	TOTAL	£470,455.80		

6. Excluding the £160,000 set out in line one of the above table, which has been identified to contribute towards a particular project and so is the subject of a separate report for consideration on this agenda, Fylde Council holds £310,455.80 to be used to increase the number of primary school places across the borough. It is recommended that, subject to the matters outlined below, these funds be transferred to Lancashire County Council en bloc.
7. In relation to each of the agreements in the table above, Fylde Council is under a direct obligation to return contributions to the developer if they have not been used for the purposes set out in the agreement on the expiry of the period set out in the agreement (typically ten years from the date of the agreement). Transferring the contributions to the county council would not discharge that obligation. This means that if the county council did not spend contributions transferred to them in the time allowed in an individual agreement, Fylde Council would be at risk of having to repay the amount of the contributions to the developer, even though it no longer holds the funds. So it's crucial that the county council indemnifies Fylde Council against the value of any repayment. Lancashire County Council supports the transfer of the funds to themselves and have indicated that they agree, in principle, to entering into an agreement to return the funds to Fylde Council if they are not spent by the deadline set out in the relevant agreement.
8. Of course, the county council would need to ensure that the funds are spent in line with the purposes for which they are secured as set in the individual agreements. This process could be monitored by the scrutiny committee that is proposed to be set up in the coming municipal year to allow Fylde Council to consider the activities of organisations external to the council.
9. Accordingly, the committee is recommended to adopt the new working practice that would see developers covenant directly with Lancashire County Council where they are the public body solely responsible for delivering the community infrastructure to be funded by Section 106 contributions and to recommend that Council approves a revenue budget increase of £310,455.80, fully funded from Section 106 monies held by the council, and that the £310,455.80 currently held by this council towards the increase in school places be transferred to Lancashire County Council, subject to a satisfactory indemnity agreement being in place

IMPLICATIONS	
Finance	<p>This report recommends that:</p> <ol style="list-style-type: none"> 1. the Council adopt the new working practice that would see developers covenant directly with Lancashire County Council where they are the public body solely responsible for delivering the community infrastructure to be funded by Sn 106 contributions; and 2. full Council approves a revenue budget increase of £310,455.80, fully funded from Sn 106 monies held by the council, and that this sum be transferred to Lancashire County Council towards the increase in school places.
Legal	All legal matters are addressed in the body of the report.
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	None
Health & Safety and Risk Management	None

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Planning permissions 12/0717, 19/0140 & 14/0161	Various	Please use the search facility at: Planning – Fylde Council