

HERTFORDSHIRE COUNTY COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE

TUESDAY 23 MARCH 2004 AT 10.00 AM

Agenda Item No.

3

MANAGING SECTION 106 AGREEMENTS

Report of the Director of Environment

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1. Purpose of report

- 1.1 At its meeting in October 2003, the Committee requested that at its meeting on 23 March, the Committee receive a report on work undertaken to implement the recommendations of the Internal Audit report Managing Section 106 Agreements.
- 1.2 This report sets out the work undertaken so far to implement the recommendations of the Internal Audit report.

2. Summary

- 2.1 Since the Internal Audit report was received, an officer group has been addressing the weaknesses identified within the Environment Department's system for seeking, securing, using and monitoring S106 monies. A copy of the Internal Audit report was presented to the Audit Committee and the recommendations relating to government proposals for S106 were considered by the Resources Scrutiny Committee's Topic Group on Planning Obligations.
- 2.2 At the time of writing (February 2004) the following recommendations had been put into action.

Task	Time Period	Status
Revise Planning process	Oct 03 - Nov 03	Complete
Review existing procedures and Working Practices	Oct 03 - Dec 03	Complete
Produce TPO document	Nov 03 - Dec 03	Complete
Test AMOS database	Oct 03 - Nov 03	Complete
Update AMOS database/software	Dec 03 – Mar 04	In progress
Develops bidding system	Jan 04 - Mar 04	In progress
Review preliminary costs	Nov 03 - Jan 04	April 2004
Develop financial monitoring system	Oct 03 - Dec 03	When AMOS Fully populated
Develop trigger mechanism	Jan 04 - Mar 04	April 2004

3. Conclusion

That the Environment Scrutiny Committee decides whether it wishes to receive further separate reports on progress or as part of the general progress report of the Scrutiny Support Officer.

4. Background

4.1 At its meeting in October 2003 members of the Committee requested that at its meeting on 23 March, the Committee received a report on work undertaken to implement the recommendations of the Internal Audit report Managing Section 106 Agreements.

4.2 Internal Audit was generally satisfied with the controls and procedures in place to ensure that S106 Agreements are implemented effectively and efficiently. There were some areas of concern that clouded issues surrounding the implementation and enforcement of S106 Agreements and caused a false perception of its operation to be generated. The work that has been undertaken to tighten up in these areas will hopefully serve to eliminate these misconceptions.

4.3 Improvement recommendations

The Internal Audit Report made recommendations for improvements. These were in the areas of:

- Departmental S106 procedures to bring together all aspects of S106 negotiations, agreements and arrangements;
- Using a central database to maintain S106 agreements (AMOS);
- Prioritising on an annual basis applications for available funding
- Recording of preliminary costs of S106 agreements;
- Spending of authorised and released funding;
- Collection of S106 contributions from the Developer.

4.4 Appendix 1 sets out the recommendations from the report, the actions agreed by the Environment Scrutiny Committee and progress to date.

5. Departmental S106 Procedures

5.1 Officers commissioned work to analyse the current s106 business processes and to produce a new systematic business process. This new process is now being implemented. A workshop has been held with all managers involved in overseeing the S106 process to confirm the new operating arrangements. The workshop included officers from Environment finance and the County Secretary's department. Work is currently underway to produce a guidance manual.

Central database

5.2 Work has been undertaken to evaluate the merits of the existing s106 agreements database (AMOS). The Information Management Unit and the Transport Policy and Planning Unit completed an assessment of AMOS's fitness for purpose and subsequently adjustments have been made to its information recording structure. S106 agreements are now being recorded in the AMOS, both on an historic and current basis. AMOS will be used to track progress with S106 negotiations and

agreements, to provide a central source of information and to produce triggers for officer action. Following an evaluation by Environment Finance, it was not considered to be a priority to link AMOS to the new financial system (SHARP) although Environment Finance will reconsider this following the corporate implementation of SHARP.

6. Financial procedures

Within AMOS there are now trigger points for entering information, passing agreements on to their next stage and ensuring that monies are collected and accounted for. Further on detailed financial records are maintained by Environment Finance and within the Hertfordshire Highways Information System, including the detail of monies allocated and spent.

7. Prioritising applications for funds

- 7.1 The new process is now linked closely to the integrated works programme.
- 7.2 It is likely that following the recent government consultation concerning planning obligations, that there will be changes to the way in which planning obligations are negotiated and levied. Proposals include a tariff scheme and set out a reduced role for highway authorities. A response to the consultation was made by the County Council.

8. Access Services Implications

This report identifies ways in which better access to information on S106 agreements can be made available to HCC Members and officers.

9. Financial Implications

There are financial implications in setting up appropriate systems as outlined in this report. These costs are being met within the current budgets. It is anticipated that better control over the collection and expenditure of S106 monies will have a positive financial benefit.

10. Conclusion

That the Environment Scrutiny Committee decides whether it wishes to receive further separate reports on progress or as part of the general progress report of the Scrutiny Support Officer.

Background reports

Response to the Government Consultation *on Planning Obligations*. Jan Kinsman, HCC, January 2004

APPENDIX 1

Ref.	Control Objective / Finding	Recommendation	Priority	Agreed Action and Responsible Officer	Target Date to Complete	Current Status
7.01	<p>Procedures, departmental instructions and appendixes relative to S106 Agreements are found scattered throughout out the Transport Management and Development Manuals. There is no document or supplement in place however to bring all elements of the process together collectively into one place.</p> <p>Planning engineers adhere to the principles of the S106 Agreements but are not altogether familiar with the content or location of the S106 references contained within the manuals.</p> <p>Procedures are difficult to navigate and locate with respect to a systems approach.</p> <p>Defined procedures are difficult to establish because of the diversity of the contributions.</p>	<p>New Government guidelines are pending regulating the use, development and validity of any negotiated S106 contribution, with the suggestion that a formula may be introduced and operated very much like a tariff system.</p> <p>This is an ideal opportunity to bring together all aspects of S106 negotiations, agreements, and arrangements. A flow chart illustrating these processes with lines of communication and feedback should be made available.</p> <p>It is of paramount importance that the procedure becomes a cross cutting departmentally focused document detailing the involvement of all the relative parties. There must also be assurance that all parties involved in the enforcement and implementation of S106, have a clear understanding of what is required. All involved with S106 agreements must be made aware of the new procedures and the role that they play in them. This includes County Secretary's</p>	HIGH	<p>Review existing procedures and update in relation to new working practices. Produce a Transportation Planning Obligations document for the Environment Department.</p> <p>Transportation Planning and Policy Unit - David Humby</p>	12/03 or when Government advice is published	<p>Review complete and new procedures being implemented.</p> <p>ODPM's advice on S106 still to be published. HCC responded to ODPM consultation.</p>
7.02	<p>A principal planning engineer and the Computer Section developed a new database (Amos) to monitor</p>	<p>A review of the benefits gained from re- introducing and maintaining AMOS as a central database to</p>	High	<p>Review existing AMOS database through testing its application and consider</p>		<p>Review of existing AMOS database and alternatives</p>

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	<p>all S106 agreements. Amos was used for a trial period.</p> <p>Knowledge and use of this database ceased upon the departure of the planning engineer leading the project but the capacity remains within the information unit (IMU).</p> <p>This again reinforces the requirement for procedures specific to S106 agreements.</p> <p>Simple databases (Spreadsheets) however are maintained by the Environment Department and give a generic insight and overview.</p> <p>The finance section maintains a monitor of all S106 contributions indicating balance interest accrued and the associated HCC Walker code.</p>	<p>control all movement and progress within S106 agreements should be initiated.</p> <p>A presentation by IMU to all relative parties demonstrating AMOS's capacity and indicating how the efficiency and effectiveness of controlling and spending S106 contributions would be enhanced should be commissioned.</p> <p>Ownership for the maintenance and upkeep of the data base should be formally assigned and referenced in the procedures</p> <p>Regular reviews of the database information should take place to ensure proper decision making processes are applied as well as maximum use of contributions.</p>		<p>alternative options. Update departmental procedures.</p> <p>Consider relationship to SHARP project</p> <p>Transportation Planning and Policy Unit with Information Management Unit – David Humby and Terry Fox</p>	10/03	<p>complete.</p> <p>Link to SHARP agreed desirable, but at this stage not a corporate SHARP priority.</p>
7.03	<p>Any surplus money in the "pot" as a result of non-returned funds and underspends from S106 contributions is calculated annually.</p> <p>The sum is reported to the budget manager who lets other departments know there is a sum of money available to be spent on other relevant projects.</p>	<p>Applications for any available moneys should be structured in a controlled manner, with start and closing dates by which all applications should be submitted.</p> <p>All applications should be prioritised and discussed on their merits to determine which one would be most advantageous to the community and surrounding area in relation to the</p>	High	<p>Develop system for inviting and prioritising bids for available S106 funds. Report on an annual basis.</p> <p>Transportation Planning and Policy Unit – David Humby</p>	03/04	<p>Progress being made through annual work programme and Steering Group meetings.</p>

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	<p>Applications are processed on a first come first served basis and are accessed against their compatibility with Circular 1/97 and the relationship with the source of the S106 contribution.</p> <p>Decisions and authorisation to release funds if applicable is approved by one authority based on the information provided and is not subject to a forum or prioritisation.</p>	<p>original planning application and subsequent development.</p> <p>Alternatively annual reports should be issued, where if applicable monies could be released to fund and make additional improvements to live works and developments that were not conceived at the time of the initial agreement.</p> <p>Full use should be made of the Amos database to monitor all applications to use S106 Money</p>				
7.04	<p>All legal costs associated with the S106 agreement are paid for and recoverable by the developer.</p> <p>Some preliminary costs however such as traffic surveys although part of normal highway work can be built in to the S106 Agreement. On other occasions it is financed independently by the developer as an extension of their own works. It can also be funded from the S106 surplus pot if it can be justified or from individual departmental budgets.</p> <p>There is no clear definition of where the source of money to finance these operations is derived. There is also the potential danger that after the surveys or studies</p>	<p>Wherever possible the recovery of all preliminary costs in preparing and completing S106 Agreements should be built in to the agreement.</p> <p>Careful judgement should be exercised before commissioning surveys and studies to support and justify various developments.</p> <p>The use of a risk assessment matrix may be appropriate to reduce any potential associated risks before commissioning the relative study or survey to take place. This should be investigated as a possibility.</p> <p>Full use should be made of the</p>	High	<p>Agree all preliminary costs should be built into the agreement. Consider amended process with County Secretary and include in AMOS database as appropriate.</p> <p>Transportation Planning and Policy Unit - David Humby</p>	01/04	<p>Wording in agreements to reflect recommendation. Progress being made - April 2004.</p>

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	have been commissioned and submitted for approval, planning, application is refused.	Amos database to monitor and ensure that where possible all preliminary costs are justified and recoverable from the S106 agreement.				
7.05	<p>Below is a tracked example of a CS99 application in relation to Chester Road.</p> <p>An application for funds totalling £17,00.00 was approved, but the money was never spent by the applicant.</p> <p>CS99 No. CAP10 Account 781/0461/9493 Fin Code H79/-/91**/90549 Authorised August 1999</p> <p>The Project Engineer who initiated the project left.</p> <p>Project completed as part of a larger highway strategy.</p> <p>There were no controls to ensure that the allocated and authorised sum of money was used and spent.</p> <p>Money is committed to the project and reduces the balance and availability of contribution to support other projects.</p>	<p>There should be regular steering group meetings to discuss development of projects and S106 spending.</p> <p>The budget manager should diligently monitor all approved and authorised CS99's to ensure that the development is still valid and the allocated sum of money will be spent and not remain idle.</p> <p>Finance should be alerted if the contribution is not going to be spent so that the money can be reallocated elsewhere.</p> <p>Availability of allocated money for spending should be limited to a defined time period, which will ensure its application. This will reduce the amount of allocated but unspent money that is common to most CS99's.</p> <p>Systems and procedures need to be introduced published and made widely available. E.g. on CONNECT.</p>	High	<p>Develop robust monitoring system with Finance Unit. Include reports in Quarterly Monitoring Reports on use of funds to be monitored by Steering Group.</p> <p>Transportation Planning and Policy Unit with Finance Unit. David Humby and Simon Barge</p>	12/03	New CS99 Request form in use. Reports will be produced when AMOS fully populated.

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7.06	<p>There is no real way of ensuring that a S106 contribution is collected as per the agreement.</p> <p>There is no automated system in place to prompt the payment of the contribution.</p> <p>There can be some years between the agreement of the contribution and the payment of the contribution.</p> <p>Although systems are in place relative to each department / authority there appears to be a lack of continuity. Each department / authority almost becomes divorced from the process once their task has been completed.</p>	<p>Automated trigger mechanisms or warning systems should be introduced and installed.</p> <p>Regular forums should be introduced to review pending contributions and make the relevant personnel aware that payment is due as per the original agreement.</p> <p>Lines of communication between all relative parties should be established and maintained.</p> <p>The re- introduction of the AMOS data base, a concise set of procedures with a departmental bias and a flow chart showing lines of communication and feedback should be introduced. This will address all issues and concerns contained within this report and its associated findings.</p>	High	<p>Develop robust information system and link to Recommendation 7.01.</p> <p>Consider opportunity for inclusion in SHARP project.</p> <p>Transportation Planning and Policy Unit – David Humby</p>	12/03	AMOS operational. Assessed by finance as part of roll out of corporate SHARP programme.