

Local Members' Interest
N/a

Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel – 9 August 2007

Section 106 Agreements

Report of the Section 106 Agreements Member Working Group

Recommendation:

1. That the Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel note the content of the Member Working Group's Final Report into Section 106 Agreements and endorse its submission to Cabinet at their meeting to be held on 5 September 2007.

Part A

What is the Scrutiny and Performance Panel being asked to do any why?

2. The Economic Prosperity and Sustainable Communities Scrutiny and Performance Panel are asked to note the work undertaken by the Section 106 Agreements Member Working Group, their recommendations and the content of the Working Group's Final Report and endorse its submission to the meeting of Cabinet to be held on 5 September 2007.

Part B

Background

3. Please refer to the background information to this review outlined in the attached Final Report at paragraph 3.

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List of Appendices/Background Papers

Final Report of the Section 106 Agreements Member Working Group –
Section 106 Agreements (attached)



**Economic Prosperity and Sustainable Communities
Scrutiny and Performance Panel**

Scrutiny Member Working Group

**Section 106 Agreements
Final Report**

August 2007

1.0 Recommendations

1.1 Following this Scrutiny review, Members of the Section 106 Agreements Member Working Group recommend:-

- a) That Local Planning Authority's in Staffordshire be encouraged to develop and implement validation criteria to provide a basis for considering whether Planning Applications should be registered, ideally including the need to ensure that Planning Applications are submitted with draft Section 106 Agreements where applicable;
- b) That the County Council encourage Local Planning Authority's to adopt the concept of 'Front loading' planning applications (which includes pre-application discussion and agreement before a Planning Application is submitted) and the completion of a Standard Section 106 Agreement (to avoid protracted negotiations and additional legal costs and delays);
- c) That the County Council consider the introduction of a Section 106 Agreements monitoring and administration charge and investigate the number of Section 106 Agreements processed by the County Council each year to determine the income that such a charge would generate;
- d) That consideration be given to the development of Planning Gain Policies in partnership with the District Councils as Local Planning Authorities to secure Section 106 Agreement funding for areas of service delivery not currently accessing Section 106 monies;
- e) That the Children and Lifelong Learning Directorate review and update the existing Education Planning Obligations Policy, to take into account the Education and Inspections Act 2006 and latest Admissions Code of Practice;
- f) That the Children and Lifelong Learning Directorate request that each District/Borough Council include education requirements within supplementary planning documents on planning obligations;
- g) That a corporate Section 106 Agreements database be developed and implemented. Consideration should be given to:
 - I. Exploring the merits of various packages/formats that will best fit the County Council's purpose;
 - II. All directorates being given read access to the database;

- III. Designated officers from Children and Lifelong Learning and Development Services Directorates having 'write' access to the database to enable it to be updated directly by the designated officers(s) acting on behalf of their respective directorate;
 - IV. The corporate Section 106 Agreements database being managed and maintained by a dedicated Section 106 Agreements Officer;
 - V. The Section 106 Agreements database being centrally located within the Legal Services Unit;
 - VI. The possibility of the County Councils Section 106 Agreements database being able to communicate with other monitoring systems at District/Borough Councils;
- h) That the County Council resolves existing problems associated with the management of Section 106 Agreements by:
- I. Considering the appointment of a dedicated Section 106 Agreements Monitoring Officer, whether as a new post, or from existing County Council resources, which would be based in the Legal Services Unit to manage and maintain a corporate Section 106 Agreements database and act as the single communication interface with the Local Planning Authorities in Staffordshire;
 - i) That the County Council encourages Local Planning Authorities to consider the potential impact of developments upon smaller communities and that they consult with Parish Councils in the planning and Section 106 Agreements process;
 - j) That a seminar be arranged for County, District/Borough Councils and Parish Councils to discuss:
 - I. The findings of this review and to consider how these recommendations could potentially impact upon District and Parish colleagues and applicants with a view to moving toward a Staffordshire approach to Section 106 Agreements; and
 - II. How the County (and indeed any other statutory/non statutory consultees) can work with the Local Planning Authorities of Staffordshire in introducing effective 'front-loading' procedures.

2.0 Purpose of Report

- 2.1 To inform Members of the Economic Prosperity and Sustainable

Communities Scrutiny and Performance Panel of the outcome of the review undertaken by the Section 106 Agreements Member Working Group which was appointed by the former Development Services Scrutiny and Performance Panel.

3.0 Background Information

3.1 Issues of concern surrounding Section 106 Agreements, the processes undertaken by the County Council, and the County's relationship with the District Councils as Local Planning Authorities, were raised by the Chair of the Development Services Scrutiny and Performance Panel at a triangulation meeting between the Chair, Director and Cabinet Member (Development Services).

3.2 Reinforcing Members concerns, it was acknowledged by the Directorate that there was a need corporately to accurately record, monitor and use developer contributions and to co-ordinate the County Council's actions in partnership with District Planning Authorities and other external bodies.

3.3 At the meeting of the Development Services Scrutiny and Performance Panel, held on 10 August 2006, a Member Working Group was formed to consider these concerns and investigate the processes and procedures surrounding Section 106 Agreements.

4.0 Purpose of the Review

4.1 To examine the Authority's roles and responsibilities in relation to Section 106 Agreements and to determine how the relationship between the County Council and District Councils in Staffordshire could be enhanced.

5.0 Terms of Reference for the Review

5.1 The Terms of Reference for this Scrutiny review are outlined below:-

- a) To gain an understanding of Section 106 Agreements and the processes and procedures surrounding the requirements for planning gain;
- b) To gain an understanding of the roles and responsibilities of the County Council in relation to Section 106 Agreements;
- c) To gain an understanding of the processes and procedures by which requests for contributions made via Section 106 Agreements are determined and monitored;

- d) To clarify the potential benefit to County Council services and the uses of funding received;
- e) To gain an understanding of the aims and achievements of the Staffordshire Development Control Officers Group;
- f) To gain an understanding of the roles and responsibilities of the District Councils in Staffordshire in relation to Section 106 Agreements;
- g) To determine how the County Council and District Councils can work effectively in partnership on Section 106 Agreements and related matters;
- h) To determine how planning processes and procedures may become more transparent;
- i) To establish more effective ways of monitoring planning obligations;
- j) To determine how Local Planning Authorities can be assisted to improve their performance to meet Government's 8-13 week timescales for determination of applications; and
- k) To establish how internal communications to speed up Staffordshire County Council's Section 106 Agreement responses can be more effective.

6.0 Membership of the Section 106 Agreements Member Working Group

6.1 This review was undertaken by the following Members of the then Development Services Scrutiny and Performance Panel:-

Mr. P. Beresford (Chair)
 Mr T. Corbett
 Mr E. Drinkwater
 Mr. M. Lawrence

7.0 Methods of Investigation

7.1 Members of the Section 106 Agreements Member Working Group met formally from 24 October 2006 to 23 July 2007 to discuss and receive evidence relating to this review.

7.2 A brief summary of the methods of investigation are outlined below:-

- a) Detailed Officer reports supplemented by verbal evidence;
- b) Examination of the good practice that exists in other Local Authorities; and
- c) Feedback from, and attendance at, the Staffordshire Development Control Officers Group meetings

8.0 Findings

- 8.1 Members of the Section 106 Agreements Member Working Group received the following evidence throughout this review which informed the recommendations outlined at Paragraph 1.0.

9.0 Section 106 Agreements

- 9.1 Section 106 Agreements specify planning obligations relating to a person's land, which bind the land and whoever owns it, providing a means of ensuring that developers contribute towards infrastructure and the services provided by Local Authorities which are considered necessary to facilitate and mitigate the impact of the proposed development.
- 9.2 Section 106 Agreements are secured by a formal deed, whether in the form of a Unilateral Undertaking or Agreement, under Section 106 of the Town and Country Planning Act 1990 which operates as a land charge and is signed and sealed by the District Council (and the County Council, where appropriate, e.g. where highway and/or education clauses are involved) and the applicant.
- 9.3 Section 106 Agreements are legally enforceable by the Local Planning Authority and can be modified or discharged under certain circumstances, by agreement with the District and County Council or other signatories to the agreement as appropriate, and outline what the landowner agrees to do, agrees not to do and the circumstances and timescales within which such clauses will be met.
- 9.4 Requests for contributions via Section 106 Agreements must meet the following criteria on planning obligations which are set out in the Office of the Deputy Prime Minister Secretary of State Circular 05/2005 Guidance on planning obligations:-
- Necessary;
 - Relevant to Planning;

- Directly related to the proposed development;
- Fairly and reasonably related in scale and kind to the proposed development; and
- Reasonable in all other respects

9.5 Planning obligations may be used to:

- Restrict the development or use of the land in a specified way;
- Require specified operations or activities to be carried out on the land;
- Require the land to be used in any specified way; and
- Require a sum or sums to be paid to the authority on a specified date or dates periodically

9.6 Planning guidance suggests that obligations can also be requested by the relevant service area to deliver:

- Affordable housing;
- Contributions towards providing additional educational infrastructure and facilities;
- Ensuring agricultural dwellings are not sold separately from the land they serve;
- Ensuring residential annexes do not become separate independent dwellings;
- Requiring infrastructure (roads, drains) to be provided;
- Requiring land to be dedicated and equipped as open space or playgrounds;
- Requiring sums to be paid for the provision of off site infrastructure or the long term maintenance of open spaces; and
- Travel Plans involving modal split or shift targets, the monitoring of targets, bus subsidies and penalties

9.7 However, property law restricts land charges to events on the land and

payments of money, and there have to be circumstances that enable a legally valid contract to exist. Thus many Section 106 Agreement clauses operate primarily by common consent.

10.0 Current Processes and Procedures at Staffordshire County Council

10.1 Members of the Section 106 Agreements Member Working Group felt that in order to understand the processes and procedures surrounding planning applications and Section 106 Agreements that each stage of the process needed to be considered separately. Members felt that the involvement of each relevant Directorate should be considered in turn to gather a picture of what the Authority currently does and to understand where there may be any areas of duplication and possible opportunities for streamlining of these processes and procedures.

10.2 For the purpose of this Final Report the evidence gathered by Members has been reproduced according to each stage of the process and accounts for the involvement of each Directorate, including the Legal Services Unit which sat in the former Resources Directorate.

10.3 The Member Working Group's recommendations are outlined at paragraph 1.0 and are reinforced with current and recommended process maps attached as Appendices 1 and 2. The current and recommended process maps enable comparison highlighting areas of duplication and illustrating opportunities for savings and streamlining of the planning and Section 106 Agreement process.

11.0 Pre Application Guidance

11.1 Members were informed that Section 106 Agreements are to be determined and engrossed within an 8-13 week timescale by the Local Planning Authority to ensure the process is carried out effectively and efficiently. This period allows for consultation with Staffordshire County Council and for negotiation with the developer with regard to the contributions requested. The County Council has a 21 day period from receipt of a planning application from the Local Planning Authority in which to respond with any requests for planning obligations.

11.2 Local Planning Authorities and the County Council strongly advise applicants to seek Planning Officer advice during the pre-application discussion stage, as failure to do so can result in an application not being validated, the refusal of planning permission, and failure to meet the required 8-13 week deadline, which impacts upon the Local Planning Authorities performance targets for the processing of planning applications.

- 11.3 Members heard that determining Section 106 Agreements within these timescales had improved as developers and Local Authorities had become more familiar with the processes surrounding planning obligations. However, it became clear to Members that there was room for improvement in terms of the time taken to negotiate Section 106 Agreements and in reducing the costs to the County Council.
- 11.4 The Working Group heard that pre application guidance is available to assist applicants on individual Local Planning Authority websites and on the County Council's web pages, the Staffordshire Planning Portal, and agreed that pre application guidance should take place at the earliest possible stage in the formulation process. Developers can then be advised by the Planning Officer of the merits of the case and the requirement for a Section 106 Agreement, specifying the nature of the planning obligation and what is required to mitigate the impact of the proposed development.
- 11.5 Members were pleased to hear that, at present, Planning Officers from a number of Local Planning Authorities and the County Council have formed the Staffordshire Development Control Officers Group which acts as a forum for discussion about partnership working in relation to planning and development across Staffordshire.
- 11.6 Members were informed that the Staffordshire Development Control Officers Group sought to implement a Staffordshire approach to planning and Section 106 Agreements by piloting Supplementary Planning Guidance Documents, and in line with the Governments Standard Model, produced a Standard Section 106 Agreement template for use in the pre application stages.
- 11.7 These documents were produced with the aim of stressing the importance, for applicants and their agents, of entering into pre-application discussions with the Local Planning Authority and County Council for the vast majority of development proposals.
- 11.8 These documents outline the procedures for the validation of planning applications by the Council, provide guidance on the scope of material that should be supplied with planning applications, outline the benefits of a 'validation checklist' in helping the Council achieve good standards of performance, and determine targets and timescales:
- Your Guide to Understanding and completing Planning Obligations (Lichfield District Council) guidance is intended to be a template to be used by all Local Planning Authorities in Staffordshire
 - Guidance Notes: Validation of Planning Applications (Lichfield District

Council)

- Planning Applications Guidance Note (Stafford Borough Council)
- Development Control Protocol: Dealing with the Highway Authority on Planning Matters (Staffordshire County Council and Local Planning Authorities)

- 11.9 In seeking to implement standardised guidance the Group piloted these documents with a number of Local Planning Authorities in Staffordshire. However, Local Planning Authorities are at different stages with regard to the extent to which they have adopted these documents, owing to staffing and resource issues and as a result of differences in drafting styles of individual solicitors which has resulted in the Standard Agreement undergoing significant revisions (attached as Appendix 2).
- 11.10 However, it became clear from this guidance that Local Planning Authorities, who are represented on the Staffordshire Development Control Officers Group, supported the planning and Section 106 Agreement process starting earlier and felt that there was a need to be concerned with the whole process and not just when an application is submitted.
- 11.11 Members were informed that the Development Services Directorate have encouraged 'front loading' the planning application process with greater pre application discussion and agreement of draft Section 106 Agreements before an application is registered. The Local Planning Authority make developers aware of the need to contact the Highway Authority (Development Services) as soon as possible, of any potential impacts on the local highway network when approached for advice prior to the submission of a planning application, and offer the Highway Authority an opportunity to be involved in pre-application discussions.
- 11.12 In return, the Development Services Directorate identify and notify the Local Planning Authority of the relevant case officer dealing with the proposal, provide a checklist of what information is required from developers as part of a planning application, in order to comment upon it fully, provide relevant and timely advice at the pre-application stage and, where possible, attend relevant site visits or meetings and keep the Local Planning Authority informed of any contact made directly by developers with the County Council.
- 11.13 The Children and Lifelong Learning Directorate do not usually participate in any pre application discussions with developers or the Local Planning Authorities as they are not a statutory consultee. However, they can respond to queries made to the Directorate from a

Local Planning Authority or from a developer or planner to provide an indicative figure for an education contribution before proceeding with a planning application.

- 11.14 The first point of contact for developers, landowners or consultants acting on their behalf, is Development Advice in the Resources Directorate. Developers, landowners and consultants are referred to Development Advice by the Local Planning Authority for advice on possible requirements for Education contributions during pre application discussions.
- 11.15 The process of acquiring Section 106 contributions towards Education was developed in the Development Advice section (formerly in Development Services Directorate) who, in conjunction with Education and Legal Services, formulated the Education Planning Obligations Policy document, with Committee approval in 2003, and has continued to update this document annually. Prior to this document being produced, contributions were secured entirely through negotiations between developers, consultants acting on behalf of developers, Local Planning Authorities, Development Advice and Education and Legal Services.
- 11.16 The Children and Lifelong Learning Directorate have worked with Lichfield District Council to produce a Supplementary Planning Document on planning obligations which details education contributions under the Local Development Framework (LDF). In addition, the Directorate have worked with Newcastle Borough Council on a similar document and aim to meet with each District to ensure some 'wording' on education contributions is included in a document under the Local Development Framework to encourage Local Planning Authorities to consult them directly with regard to Section 106 Agreements.
- 11.17 Another element of front loading is the use of a Standard Section 106 Agreement which should be utilised in negotiations with Developers, Landowners and Consultants prior to submission of an application, and when permission is granted, before commencement of a development, to ensure that a suitable agreement is reached. Members were informed that it was almost impossible to meet planning application 8-13 week deadlines if a draft Section 106 Agreement was not in place at the application stage.
- 11.18 The Standard Section 106 Agreement template has been developed in accordance with the recently published model Standard Section 106 Agreement, prepared by the Law Society's Planning and Environmental Law Committee, for use by all parties involved in the planning

obligations process. Guidance on the use of this agreement is given in the ODPM Circular 5/2005: Planning Obligations (as set out at paragraph 9.4). In each case the development will differ and therefore the content of the Section 106 Agreement will differ, however, this standard template will outline the main clauses that may be included.

11.19 Members were informed that there was an outstanding requirement for the County and District/Borough Councils to agree Standard Section 106 schedules which could lead to a reduction in legal costs and would therefore offer a financial incentive for developers to start negotiations earlier and prior to the submission of a planning application.

11.20 Members were informed that, at present, Staffordshire Local Planning Authorities were at the following stages of implementation of the guidance and templates produced by Staffordshire Development Control Officers Group:

TABLE SHOWING CURRENT POSITION IN RESPECT OF OUTCOMES FROM STAFFORDSHIRE DEVELOPMENT CONTROL OFFICERS GROUP 2007					
Districts	Agreed Validation	Validation on Web Site	Agreed S106 Guidance to Applicant Text	S106 Guidance on Web site	Standard Agreements covering SCC Services On LPA Web site
Tamworth	Yes	Yes	No	No	No
East Staffs	Yes	Yes	Yes	Yes	Yes
Stafford	Not formally published	No	A Supplementary Planning Document on Planning Obligations is imminent.	Imminent	Yes
Lichfield	Yes	Yes	Yes	Yes	No
Newcastle	No	No	No	No	No
Staffs M	No	No	No	No	No
Peak Park	No	No	No	No	No
South Staffs	No	No	No	No	No
Cannock	Yes	No	A Supplementary Planning Document on Planning Obligations is imminent. This Supplementary Planning Document includes policy on other service areas that may request Section 106 contributions	No	No

12.0 Submitting a Planning Application and Determining a Section 106 Agreement

12.1 Members were informed that in the financial year 2005/06, contributions towards highways infrastructure acquired from Section 106 Agreements and other sources, for example, S278 Agreements (Highways Act 1980) and S111 Agreements (Local Government Act 1972) supporting 'Grampian style' planning conditions, through which planning obligations are secured, were as follows:

- Education - £2,384,323.80
- Highways - £4,904,215.80; and
- Contributions toward Legal costs – £57,764.00

12.2 The Legal Services Unit receives notification and instructions of the need for a Section 106 Agreement from the Local Planning Authority once the planning application has been submitted. The Legal Services Unit then liaises with Development Services and Children and Lifelong Learning Directorates upon receipt of the draft agreement from the Local Planning Authority.

Development Services Directorate

12.3 In order for the relevant Department within Staffordshire County Council to assess whether a contribution is required, information is requested on the type, quantity and location of proposals. In accordance with Article 10(1) of the Town and Country Planning (General Development Procedure) Order 1995, the County Council, as Highway Authority, is one of a number of bodies required to be consulted by Local Planning Authorities, before they grant planning permission, in respect of certain descriptions of development.

12.4 In the context of the above, the Highway Authority (within the Development Services Directorate) will generally only secure planning obligations through Section 106 Agreements in the following cases:

- When capital contributions need to be secured in association with area wide transport strategies which are to be jointly funded by public funds and private developer contributions (Members are aware that in Staffordshire there are currently three major urban centres where joint funding is secured i.e. Lichfield, Stafford and Burton);

- When capital contributions need to be secured to support dedicated or diverted public transport services;
 - When Travel Plans include targets and remedies including monitoring fees; and
 - To secure maintenance management arrangements for private roads and car parks
- 12.5 The Stafford Urban Area Transport Management Strategy (SUATMS), for example, is a transport strategy that can be funded by pooling Section 106 contributions for highways and transport. The strategy aims to address specific congestion, accessibility, road safety and regeneration issues within a 10 year 'live' transport strategy for Stafford (until 2010/11). The strategy is split into three elements:-
- Urban Traffic Control and Public Transport
 - Pedestrians and Cyclists
 - Traffic and Demand Management
- 12.6 Section 106 contributions can be pulled together from a number of developers to deliver this type of scheme. The new estimated delivery cost of SUATMS is £4,828.200 of which the Local Transport Plan will fund 56% and the remaining 44% will come from developer contributions. Developers pay proportionately to their impact and are also responsible for their access works (via S278 Agreement).
- 12.7 When consulted on planning applications which, in the opinion of the Highway Authority, require planning obligations, the Highway Authority will provide a substantive response to the Local Planning Authority making it clear what obligations are required to make development acceptable. A copy of the final and formal response is sent to Legal Services Unit (within the former Resources Directorate) for information purposes.
- 12.8 It was suggested by Members of the Working Group that a copy of this could also be held somewhere easily retrievable by Members so that they are kept informed of the obligations being recommended by the County Council.
- 12.9 For the purposes of satisfying the requirements of The Town and Country Planning - General Development Procedure Order, the County Council is under duty to provide a substantive response within 21 days

of the receipt of the planning application consultation on highway and transport related issues. The response may:

- State that the consultee has no comment to make;
- State that, on the basis of the information available, the consultee is content with the development proposed;
- Refer the consultor to current standing advice by the consultee on the subject of the consultation; or
- Provide advice to the consultor.

Children and Lifelong Learning Directorate

- 12.10 Members learned that once an application had been submitted, a copy was usually sent to Development Advice. This happens through "good will", as unlike Highways, Development Advice is not a statutory consultee.
- 12.11 Development Advice search the Weekly Lists on each District/Borough Council website to establish whether any further planning applications have been submitted which may require an education contribution. In addition, the School Organisation Team use each District/Borough Council website to establish whether or not a specific planning application has been approved, withdrawn, refused, or gone to appeal. This information is then recorded and/or updated within the School Organisation Teams Section 106 Agreements database.
- 12.12 As Children and Lifelong Learning is not a statutory consultee, Members noted that searching the weekly lists was a time consuming task and felt that it would be helpful if the Children and Lifelong Learning Directorate were informed directly of planning approvals. Members agreed that electronic copying would be the preferred option to ensure that all parties concerned received the relevant information and that a central database would be of use for ease of access and to ensure a corporate response to planning applications and requests for contributions via Section 106 Agreements.
- 12.13 Where it would appear that the proposed residential development could create pressure for educational services, the proposal is referred to the School Organisation Team in the Children and Lifelong Learning Directorate, either by the Development Services Directorate or Development Advice (within the former Resources Directorate).
- 12.14 The Schools Organisation Team (within the Children and Lifelong

Learning Directorate) considers pupil yield of the proposed development and the effect this will have on accommodation in local schools. If necessary a formula based education contribution is calculated and a request is sent to Development Advice. Upon receipt of the level of contribution required, Development Advice formally request the amount from the District as Local Planning Authority to be included in a Section 106 Agreement, and/or advise the Developer/Consultant of the amount prior to them submitting a planning application to the District/Borough Council.

12.15 The County Council's Education Obligations Planning Policy is updated annually, with the latest Department for Education and Skills building cost multipliers. The Department for Education and Skills building cost multipliers are used to calculate the required education contribution, which is for capital, based on the cost of providing additional educational infrastructure. The formula for calculating the number of pupils attributable from new housing is 3 children per year group, per 100 houses (based upon the 2001 Census) and is consistent with the formulae used by several other Local Education Authorities. The Policy is due to be reviewed and updated, to take into account the Education and Inspections Act 2006 and the latest Admissions Code of Practice.

12.16 The review of the Policy will also take into consideration all of the factors which may lead to an adjustment of the education contribution. The review will include a project, which identifies the pupil yield from new residential developments by district, specifically flats and consideration will also be given to affordable housing. and due to be revised shortly, with the latest Department for Education and Skills building cost multipliers to calculate the required contribution, taking into account the Staffordshire weighting (0.92). The Formula for calculating the number of pupils attributable from new housing is 3 children per year group per 100 houses and is consistent with the formulae used by several other Local Education Authorities. The contribution is for capital, based on the cost of providing additional educational infrastructure.

Legal Services Unit

12.17 The Legal Services Unit writes to the Local Planning Authority acknowledging receipt of instructions, requesting title information and notifying the County's costs (legal and technical fees) that are to be paid upon signing the Section 106 Agreement (whether it progresses to completion or not) and requesting a Costs Undertaking if necessary (this protects the County Council from abortive expenditure). The Developer is required to pay the Council's Legal fees, which are

charged on a time recorded basis. However, costs can be mitigated with the use of standard documentation within the stipulated timeframe which avoid delays in the registration/application process or refusal of consent.

- 12.18 If the amount of developer contribution is not agreed, the Developer will not normally be granted planning permission by the Local Planning Authority. Legal Services Unit then liaises with and supplies the Development Services and Children and Lifelong Learning Directorates with a copy of the Local Planning Authority's first draft Section 106 Agreement for comments. The final draft Section 106 Agreement is negotiated, agreed and amended with the Local Planning Authority and the Developer and their legal advisors. The agreement is then forwarded to the Development Services and Children and Lifelong Learning Directorates to consider post completion stages of the process.

13.0 Planning Obligation Protocols in other County Councils

- 13.1 The Member Working Group considered practice surrounding Section 106 Agreements and the allocation of monies to other services, over and above highways and education.
- 13.2 Whilst the County Council routinely seeks developer contributions via Section 106 Agreements for Highways, Travel Plans and Education facilities, in some cases, on large proposed developments, requests will be made on behalf of other service areas, for example, Social Services, Libraries and Staffordshire Police.
- 13.3 Members expressed concern that there were no approved policies in place for Section 106 Agreement requests from other service areas which, should the Agreement be appealed, weakens justification for requests from other service areas at present.
- 13.4 However, Members were informed that if the total amount of Section 106 Agreement monies had to be shared by too many services, then it would not be an advantage to any of them, and could be allocated too thinly to be of any real value.
- 13.5 Members heard that other County Councils had approaches/policies in place to address this issue. Norfolk County Council has an agreed protocol with all of the District Authorities which has been in place since 1999 and includes a set of standards which are update annually and fee formulae, however, the policy excludes transport. It only covers a limited range of mainly County Council service needs. However, Norfolk is separately working up a Transport Standard Charge which it hopes to

introduce formally later this year.

- 13.6 Herefordshire County Council has created a protocol in the form of Supplementary Planning Guidance which carries more weight at appeal but requires, in addition to a consultation draft text, a statement of initial consultation and a sustainability appraisal to be prepared. Members were informed that some Staffordshire Districts are going down the Supplementary Planning Guidance Route for a planning obligations policy but that this is not open directly to the County Council, other than for Agreements concerning minerals and waste matters.
- 13.7 Members learned that Surrey County Council is located in what is generally a growth area and rather than seeking negotiated obligations has recently approved a County wide policy of setting a tariff calculated on room or floor space for all new developments. This has the advantage of ensuring that all developments contribute, but has yet to be tested for legal soundness. So far only one District in Surrey has accepted what is a very new policy and another district has said that it will not apply the tariff for education because numbers on rolls at the schools in its area are falling.
- 13.8 Members noted that the tariff system only covers some services and others are left to individual assessment, however, Members were informed that Milton Keynes had successfully implemented a tariff system in a string growth area.
- 13.9 Members considered Lancashire's policy which is a different approach to that of Norfolk with a ready reckoner for highway contributions and identification of location specific needs for a very wide range of named facilities with contributions then sought to enable the facilities to be developed. This Policy makes it relatively easy for applicants to assess in advance what range and level of contributions are likely to be required.
- 13.10 The Working Group commented upon the various policy approaches taken by other County Councils, which were determined in accordance with local circumstances and considered the options available with regard to ensuring that other service areas had an opportunity to request Section 106 contributions.
- 13.11 Members noted that no policy at all would make securing contributions difficult to achieve and almost impossible to defend at appeal. However, many authorities stated that their needs are based on a consultation process from District Councils for every application with variable amounts of policy backup and only limited standardisation across the County (This is essentially the current approach in Staffordshire and

carries a high risk that not all needs will be identified within the application timetable and District perceptions of need priorities tend to prevail.

- 13.12 Another approach is a protocol to be agreed with Districts with regard to each application separately. This approach does have some merit but it is desirable for Districts to develop their own Supplementary Planning Guidance to add weight to the process. However, this can lead to local variations in requirements and means that the distribution of monies received may not properly reflect priority needs across all the service delivery agencies involved. This is the Norfolk position and can be applied to all areas. It can be supplemented by pooled contribution or local tariff systems in high growth localities.
- 13.13 A system whereby contributions are collected in the ways described above and then pooled before being directed into expenditure usually operates across a series of defined areas or schemes and has the advantage of preventing late comers avoiding payment towards already committed expenditure from which they will benefit. However, it has the disadvantage that it may be difficult to prove the link between the development and the need. For this reason its use has largely been confined to defined growth areas.
- 13.14 A system where needs are assessed and projects to respond to these needs are identified requires more effort on the part of the local authorities and spills over more completely into capital planning. Unfortunately, it is not clear that there is a balanced relationship between needs which tend to be concentrated in less affluent areas and development proposals which tend to be concentrated in affluent areas.
- 13.15 A tariff system was also proposed is similar to the system above, however, instead of assessing each individual application on its merits a standard charge is applied to all developments which removes the need to assess each application separately and is therefore more efficient and more certain for developers and the authority alike.
- 13.16 Finally Members were informed that the government had consulted over a period of some years on a tariff system, based on new legislation to be introduced, mixed with a negotiated system for the more local site dependent needs. The government would then control the outflow of tariff funds to service providers, thus adding an extra link in the chain. However, Members heard that since it is local needs that already require the most time consuming negotiations the real benefits to be gained by the proposed national system may be overstated.
- 13.17 Members noted from the evidence received with regard to current

practice at other County Councils that a range of service areas were benefiting from Section 106 contributions, namely at Herefordshire, Norfolk and Surrey County Councils. These service areas included Travel and Transport; Affordable Housing; Community Services; Community Centres; Flood Risk and Landscape/biodiversity, amongst others.

13.18 In considering the other service areas that could potentially benefit from Section 106 contributions, Members considered the impact of the development upon the community and the highlighted the importance of the Local Planning Authority consulting not just the County Council, but also Parish Councils.

13.19 Members also learned that the basis of calculations is highly detailed, sometimes complex and varies between each of the authorities and systems and for each function and that there is no ideal solution. Given the range of economic circumstances that occur across the County, and the contrasting objectives between areas of restraint and areas of planned regeneration and growth, there is also a need to consider whether it is appropriate to have a single set of charges across the whole County, or whether the level of charges should be varied to reflect wider planning objectives.

13.20 It was highlighted to Members that if a geographically varied level of obligations is to be introduced, it would be essential to have co-ordination with neighbouring authorities, particularly Stoke-on-Trent, to ensure objectives would be achieved rather than market distortions being introduced. Consideration would also need to be given to the workability of a system of targeted obligations, which would necessarily be more complex and would need to be very clearly defined in all aspects to be workable in practice. It also follows that the greater the complexity of any change, the longer it will take to successfully introduce.

14.0 Allocation and Monitoring of Section 106 Agreement Contributions

14.1 All payments due under Section 106 Agreements must be paid to the Local Planning Authority or direct to the County Council where the payment relates to a service provided by the County, in order that the needs and impacts arising from new developments are addressed as soon as possible.

14.2 Financial contributions are aimed to be paid on the commencement of development. In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase.

14.3 Members heard that Legal officers, within the Legal Services Unit, are responsible for pursuing contributions from Section 106 Agreements

and transferring these funds to the Development Services and Children and Lifelong Learning Directorate accounts, notifying officers to confirm receipt of the contribution.

- 14.4 Members were also informed that an audit trail was in place at present to track the spending of Section 106 Agreement revenue within each directorate (Development Services/Children and Lifelong Learning and Legal Services Unit) to ensure that the process is transparent and obligations spent within the defined period.

Legal Services Unit

- 14.5 Once the Agreement is completed, the Legal Services Unit of the inputs the details of the obligations into a database based on 'Access' software (Development Agreements Database). Legal Services Unit have 'read' and 'write' access to the database and are therefore responsible for it being kept up to date.

- 14.6 Legal Services Unit manage the database and provide copies of each completed Section 106 Agreement to the Children and Lifelong Learning and the Development Services Directorates for their future reference together with updated 'position statements' to make them aware of contributions due, trigger points for payments and when payment is/was received and for what purpose it should be used. It also advises on payback clauses and any other issues of relevance.

- 14.7 Members were informed that many of the monitoring processes of the Legal Services Unit reproduced those undertaken by the Development Services and Children and Lifelong Learning Directorates and that difficulties with the current system were similar in nature to those experienced by these Directorates.

Development Services Directorate

- 14.8 The Joint Finance Unit of the Development Services Directorate keep a separate database to track progress of contributions received and expenditure. The Joint Finance Unit have 'read' and 'write' access to this database and are therefore responsible for it being kept up to date.

- 14.9 The database enables income and expenditure, on capital projects funded by developer contributions, to be managed and enables other officers within the Development Services Directorate to request annual financial income/expenditure breakdowns.

- 14.10 The Development Services Directorate keeps the Legal Services Unit informed of the expenditure position on each application, confirming when full expenditure has been met on the purpose stated in the Section 106 Agreement.

- 14.11 Members learned that at the onset of early discussions on the Section 106 Agreement a rechargeable job code is agreed with the Joint Finance Unit of the Development Services Directorate. This enables

officers to book any time spent against the code, on their monthly time sheets, to enable the full cost of time spent on the Section 106 Agreement to be charged to developers.

14.12 The following difficulties exist with the current monitoring systems used by the Development Services Directorate:

- The Access software only allows 'write' access, on one file, to one person at any one time. This constrains data input entry to the database and can be frustrating particularly with a system that may require data entry by a number of persons;
- The current system of having separate databases results in duplication of effort by officers of different directorates. It should be pointed out that, at present, it would be possible to link some tables from the existing databases, although technical support would need to identify compatibility issues;
- There are occasional discrepancies between the databases;
- Development Services Directorate reporting arrangements to Legal Services Unit to ensure that Position Statements are kept up to date are unclear and ineffective;
- The endless supply of Position Statements by Legal Services Unit are difficult to manage and could be avoided if there is a coherent process and single database in place; and
- Legal officers are responsible for pursuing contributions from Section 106 Agreements and transferring to Development Services Directorate/Children and Lifelong Learning accounts, allocating and notifying officers to confirm receipt of money

Children and Lifelong Learning Directorate

14.13 The Children and Lifelong Learning Directorate does not have sufficient resources to construct school buildings and related infrastructure to keep pace with the rate of new housing development. With assistance from the Legal Services Unit, the Development Services Directorate and Development Advice (in the former Resources Directorate), contributions towards providing additional educational infrastructure have been, and continue to be, sought from developers through Planning Obligations.

14.14 These financial contributions are held in an interest bearing account by the client department accruing interest at specified rates. How contributions are to be spent is clearly identified in the individual Section

106 Agreement.

- 14.15 Similarly, money received by the Legal Services Unit is notified to the Children and Lifelong Learning Directorate (School Organisation Team, Forward Planning, and Joint Finance Unit). Forward Planning is notified detailing the schools funds requested for a possible project. Money is then allocated to a particular project at the school. If there is any interest, index, or part education contribution remaining, the Forward Planning Unit suggest possible other projects the money could be allocated to. The suggested project requires agreement from the School Organisation Team and/or Legal Services before the money is allocated to ensure the money is spent correctly.
- 14.16 Arrangements are in place to provide cost effective options for monitoring Section 106 Agreements internally. The existing Legal Services Unit database can be viewed by all Directorates and is useful as Legal Services Unit have primary responsibility for enforcement if breach occurs and 'claw back' (pay back clauses are included in all Section 106 Agreements for each contribution refunded if not fully spent by end of period) of contributions.
- 14.17 The Legal Services Unit monitors obligations in the Development Agreements Database but relies upon the Children and Lifelong Learning and Development Services Directorates and the Local Planning Authority to confirm when a "trigger" is met, so they can request the contributions in from developers. When all obligations are met, i.e. confirmation of full expenditure of a contribution, Legal Services Unit notifies the Local Planning Authority, which enables the local land charge to be released.
- 14.18 An officer of Legal Services Unit manages the Legal Services Unit Section 106 Agreements database and provides updated position statements to the relevant directorates about contributions received, when it was received and for what purpose it was/is to be used. It also advises on payback clauses and any other issues of relevance. Information is also requested periodically from Children and Lifelong Learning by Legal Services Unit as to how education contributions have been spent. Forward Planning then advise Legal Services Unit of the contribution breakdown and whether the contribution is fully expended.
- 14.19 The County Council ensures that education contributions will be spent at local schools within the vicinity of the development. Pupils residing at recently developed housing may attend various schools and, in some cases, travel some distance from the development. However, as the funding is requested principally to meet sufficiency needs at the

catchment school(s), we prioritise Section 106 Agreement spending as follows:

- Sufficiency scheme at the catchment school/s
- Suitability scheme at the catchment school/s
- Sufficiency scheme at school/s in adjacent catchments closest to the development, and of the same phase as originally requested, i.e., primary, middle or secondary
- Suitability scheme at school/s in adjacent catchments closest to the development, and of the same phase as originally requested, i.e., primary, middle or secondary.

(A sufficiency scheme would typically add school places; a suitability scheme would typically improve existing accommodation for the additional pupils.)

14.20 Members were assured that opportunistic funding was not sought through Section 106 Agreements. On receipt of an education contribution, colleagues in the Legal Services Unit inform various units within Children and Lifelong Learning (School Organisation Team, Forward Planning and Joint Finance Unit by e-mail. On receipt of the e-mail the School Organisation Team advise Forward Planning of the obligations of the education contribution; and list the catchment/local schools that the funding is to be spent at. The contribution is then allocated to a specific project and given a project code. If there is any interest, index-linking, or part education contribution remaining, the Forward Planning Unit suggest possible other projects that the funding could be allocated to. The suggested projects require agreement from the School Organisation Team and/or Legal Services before the contribution is allocated to ensure that that it is spent in accordance with the Section 106 Agreement.

14.21 The School Organisation Team keep a separate database to that held in the Legal Services Unit, based on Access software, to track progress of planning applications received. The School Organisation Team has 'read' and 'write' access to the database and is therefore responsible for it being kept up to date.

14.22 On receipt of an education contribution, the School Organisation Team database is updated as to the current status; "Part payment received"/"Full payment received". The database shows the history of a site and lists the number of planning applications received and their current status. It also demonstrates the specific conditions related to

the individual Section 106 Agreement for each site. The database is used to assist with planning of school places.

14.23 The Forward Planning Unit keep a separate database based on Access software to track progress of education contributions received. The Forward Planning Unit have 'read' and 'write' access to the database and are therefore responsible for it being kept up to date. The database enables income and expenditure on capital projects funded by developer contributions to be managed and enables other officers within the Children and Lifelong Learning Directorate to request financial income/expenditure breakdowns for individual schools and to relay information to the Legal Services Unit.

14.24 The difficulties with the current Children and Lifelong Learning monitoring systems are similar in nature to those experienced by Development Services Directorate:

- The current system of having separate databases results in duplication of effort by officers of different directorates.
- The current system of having separate databases also results in having duplication of paper files.
- The School Organisation Team database records information from receipt of planning application whereas the databases of Forward Planning and the Legal Services Unit only record information following completion of a Section 106 Agreement. Monitoring is only required once a planning application has been given planning permission and a Section 106 Agreement is completed. The pre-application discussions of Highways and information recorded with relation to planning applications by Education are not relevant to monitoring expenditure of Planning Obligations.
- The School Organisation Team database and Forward Planning database are stand alone and no other officers have read access to them.
- Forward Planning Unit's reporting arrangements to Legal Services Unit to ensure that their database is kept up to date and the education contributions have been spent correctly are unclear and ineffective.

14.25 Members' attention was drawn to the example of the information provided in the Children and Lifelong Learning Directorate by an Access relational database to support this observation. The database is able to show how much money is available for any

current Section 106 Agreement, where the money could be spent and if and when Pay Back would be required. This relational database made information easy to track, update and maintain, providing simple and effective reporting with flexibility for future requirements.

14.26 However, the Data Officer commented that whilst this system was useful and served its purpose at present, it was by no means sophisticated and could be developed with a number of software packages and cross directorate input.

15.0 Corporate Section 106 Agreements Database

15.1 Whilst Members noted that monitoring was essential following the grossing up of Section 106 Agreements, the duplication of monitoring activity and varying degrees of efficiency across the Directorates was an issue of concern. Members commented upon the need for a mechanism that would allow Section 106 Agreement information and records to be accessed quickly and efficiently.

15.2 The Working Group agreed that ideally one corporate database to monitor Section 106 Agreements should be in operation. Members agreed that the development of a corporate database fulfilling the needs of all directorates was the way forward. Members and Officers felt that this database would ideally be centrally managed by the Legal Services Unit to:

- Provide a common method of recording projects for identification purposes;
- Enable refinement of only one database as processes and requirements change over time;
- Efficiently and effectively manage income and expenditure;
- Ensure the delivery of a more transparent and more easily understood policy and process;
- Ensure more effective information management; and
- Improve service performance.

15.3 The Principal Solicitor, Development Services Team, Legal Services Unit, informed Members that a bid for a corporate Section 106 Agreements database had previously been submitted in 2005.

- 15.4 The database, it was proposed, would provide a more efficient, effective and less demanding electronic system to record/monitor developer contributions obtained via Town and Country Planning Act 1990 across all affected County Council Directorates and services.
- 15.5 Aspects of the database could be linked to Staffordshire County Council website and made available electronically to the public, satisfying the requirements of the Freedom of Information Act 2000 and E-planning. There were also a number of existing main e-Planning strands being managed within Development Services Directorate that could be enhanced by this project (examples include: Planning Portal; Planning Casework Service; Planning and Regulatory Services On-Line (PARSOL); Development Plans Representations and Administration System (DPRAS).
- 15.6 The proposal also highlighted the importance of:
- Clear internal reporting arrangements to ensure that the database is kept up to date; and
 - A protocol setting out officer responsibilities in respect of the designation of officers with responsibility to input data into the database, with responsibility for monitoring the trigger points, expenditure of developer contributions to meet triggers set out in Section 106 Agreements, and internal reporting arrangements.
- 15.7 Members heard that the corporate database would include details of each developer contribution, to assist in governance throughout the County Council, in accordance with improvements suggested by the ODPM and that capability exists in Staffordshire to:
- Develop excellent systems internally;
 - Share these with partners; and
 - Meet e-government objectives by investing in a similar initiative, tailored to the County Council's specific needs.
- 15.8 However, a number of constraints against developing and implementing a corporate Section 106 Agreements database were outlined in the project mandate produced by the Principal Solicitor (Development Services) which concerned:
- Timeframe and the urgency to reflect the need to replace the current system by a more efficient and effective system;

- Data Protection regarding the security of personal data and sensitive issues;
- Freedom of Information Act 2000 and implications of commercially sensitive information (discloseable as a Section 106 Agreement); and
- Resources as there was, at the time the proposal was submitted, no defined budgetary provision for this proposal and this would need to be identified from those Directorates where services benefit, or alternatively, form a component of the legal and technical costs recovered via Section 106 developer contributions.

15.9 Members were informed that the bid had been unsuccessful as quantifying the financial benefits of the system were problematic and agreed that whilst a corporate Section 106 Agreements database was desirable, there was a need to identify resources, in order to make a projection on savings and provide the case for a database, to enable greater efficiency in the service and monitoring of Section 106 Agreement contributions.

15.10 Members sought best practice examples from other Local Authorities with regard to the development and implementation of a corporate Section 106 Agreements database, and more importantly, what opportunities there were for funding this database.

16.0 Colchester Borough Council- Monitoring Section 106 Agreements

16.1 Members of the Working Group received a report detailing the work undertaken by Colchester Borough Council which had made significant improvements in the way Section 106 obligations were managed.

16.2 Members learned that prior to the recruitment of a Planning Agreements Compliance Officer in October 2003, Colchester Borough Council was not adequately monitoring Section 106 Agreements resulting in the loss of planning gain and creating an adverse impact in that key pieces of infrastructure were not available to incoming new residents and existing communities.

16.3 The following key issues and problems existed for Colchester Borough Council prior to the development of a Section 106 Agreements Database:

- Financial loss to the Council;
- Lack of a monitoring system for Section 106 Agreements or historical reference to older Section 106 Agreements;
- Limited enforcement of Section 106 Agreement contributions;
- Lack of funds to take a monitoring system for Section 106 Agreements forward;
- Lack of appreciation within the Council of the benefits a Section 106 Agreements monitoring officer and database could achieve; and
- Inability of existing proprietary planning software to monitor Section 106 Agreements.

16.4 Colchester's approach to creating a Section 106 Agreements Database consisted of the following:-

- A universal index for applications registered according to their land registration number (due to all Local Authorities having a land charge system which is administered by legal services);
- Utilising access as a cheap cost effective tool to create an access database to log and monitor all Section 106 Agreements;
- Including all interested stakeholders in adapting and expanding the Section 106 Agreements database to enable it to be useful to all service areas, particularly those that could potentially benefit from Section 106 and planning information;
- Enabling every Department to have access to the database;
- A 'point and click' system to make it more user friendly and minimising the need for additional training; and
- Adding an inexpensive method by which to locate the geographical area to which further Section 106 Agreements was added by linking the data to a multi map (which is free).

16.5 The creation of a Section 106 Agreements Database by Colchester Borough Council resulted in the following outcomes:-

- A comprehensive Council wide one stop shop for Section 106

Agreement and planning information;

- A database with a built in research library saving officer time and associated costs;
- A database that enabled effective performance management and assisted the Authority to meet Best Value Performance Indicators;
- System in which to log all correspondence between the Council and Local Planning Authorities under the relevant Section 106 Agreement;
- Mail merge facility that allows the Planning Agreements Officer to forward letters to all parties very quickly;
- Automatic ring fencing of Section 106 Agreement contributions (finance services are unable to release Section 106 Agreement money until it receives a release form signed by the Head of Finance Services, the Head of Planning and the Legal Services Manager, ensuring an auditable account of where money is spent);
- Quarterly Major Developers Forum being held in which the progress with the Section 106 Agreements database is discussed with developers and updates provided;
- Quarterly Section 106 Agreement monitoring reports to the Authority's planning committee;
- Colchester Borough Council demonstrating to Developers how the Section 106 Agreement contribution has been spent; and
- The production of reports to specify the type and quantity of gains achieved.

17.0 Monitoring Section 106 Agreements – East Staffordshire District Council

- 17.1 Members attended a meeting of the Staffordshire Development Control Officers Group, of which East Staffordshire District Council is a member, and received a presentation from the dedicated Section 106 Officer at East Staffordshire of their Section 106 Agreements Monitoring database.
- 17.2 The Section 106 Agreements database had a number of features

which enabled access to information regarding an application from the point a developer registers interest, at the pre application stage, to the completion of a Section 106 Agreement and the allocation of associated funding. The database was managed by the dedicated Section 106 Agreements Officer, however, did allow officers to have read and write access. The system provided an alert to the officer to highlight timescales and conditions to ensure that all funds were received and spent in accordance with the Section 106 Agreement.

17.3 It was acknowledged that the system has developed since its initial implementation and is not faultless. The dedicated Section 106 Officer did acknowledge that any interface with other District Authorities, or indeed the County Council, would be premised upon the compatibility of the systems of the Authorities in question.

18.0 Process Mapping – Current Planning and Section 106 Agreement Process

18.1 Members felt that it was important to illustrate the current and their recommended processes and procedures surrounding Section 106 Agreements. The process maps at Appendix 1 represent the current process, and of each Directorates involvement at the various stages of the process, and the recommended process illustrating Members recommendations to determine the ideal process that should be in place when processing a Section 106 Agreement.

18.2 The maps detail the need for a dedicated Section 106 Agreements Monitoring Officer to support the planning and Section 106 Agreements process and for a corporate Section 106 Agreements database that is centrally located in the Legal Services Unit and updated and maintained by the dedicated Section 106 Agreements monitoring Officer.

19.0 Dedicated Section 106 Agreements Officer

19.1 Members were invited to attend a meeting of the Staffordshire Development Control Officers Group to meet with Aida McManus, the Section 106 Officer at East Staffordshire District Council to receive a presentation of the Section 106 Agreements database that this Officer operates and to discuss the officer's role and responsibilities in the planning and Section 106 Agreements process.

19.2 Members heard that the Section 106 Officer's role involves:

- Developing improved procedural arrangements for Section 106 legal Agreements in accordance with best practice and recommendations of a Scrutiny review undertaken by East Staffordshire District Council Scrutiny Panel in June 2004;
- To actively progress the completion of legal agreements in order to meet best value performance indicators set by the Office of the Deputy Prime Minister;
- To support other staff as required in the negotiation and drafting of Section 106 legal Agreements;
- To monitor completed legal agreements to ensure compliance with the terms of the agreements and the manner in which the contribution has been spent;
- To prepare committee reports in accordance with deadlines set by the Planning Control Manager (in particular, to submit quarterly reports to the Planning Applications Committee);
- To attend and present reports to Planning Applications Committee and the Council as and when required;
- To reply to written and verbal requests made by Councillors and other bodies and members of the public and provide a professional service for the public;
- To liaise closely with the solicitor to the Council in all matters related to Section 106 legal Agreements;
- To effectively liaise with the Senior Enforcement Officer on enforcement cases;
- To carry out all functions as required by the Town and Country Planning Act 1990 and associated legislation to provide a professional and efficient Planning Control Service;
- To maintain an up to date knowledge of the law, principle and policies associated with planning control and legal agreements in particular

19.3 Members questioned the requirements of a dedicated Section 106 Agreements Officer post at Staffordshire County Council. Officers from the Children and Lifelong Learning, Development Services and Resources Directorates indicated that a dedicated Officer should

have the role/responsibilities as outlined at paragraph 19.2.

19.4 In addition, the following requirements of the post were outlined by officers:

- Directly inform Children and Lifelong Learning of any planning applications that may require a Section 106 Agreement;
- Coordinate responses/requests of Directorates and liaise with Local Planning Authority and developer with regard to negotiating and agreeing a Section 106 Agreement;
- Have an understanding of various computer systems to create one database for tracking Section 106 Agreements;
- Devise policies for all County Council functions (use best practice from other authorities) and seek Member approval;
- Have an understanding of Local Government procedures (districts and county);
- Ability to negotiate with developers, officers and Members;
- Sourcing applications for proposed developments with appropriate consultations - follow up planning approvals/reserved matters;
- Prepare Section 106 Agreements;
- Have an awareness and understanding of the Development Plan;
- Monitor education Section 106 Agreement contributions and ensure the correct timing of its receipt;
- Co-ordinate and ensure that all Directorates have access to a copy of the Section 106 Agreement and relevant clauses on one database as, at present, each Directorate has a database and a copy of the Agreement;
- Monitor expenditure as currently for the majority of cases there is a 5 year period to spend Section 106 contributions and once the 5 year period has elapsed Section 106 monies have to be returned to the developers with any interest accrued

19.5 Members gave consideration to how a dedicated Section 106

Agreements Officer and a corporate Section 106 Agreements database would be funded.

- 19.6 Members were informed that Dudley Metropolitan Borough Council had carried out an exercise to establish how other authorities funded such a post and concluded that either £1,000 or 10% of the planning application fee, whichever was the greater should be payable by the applicant on completion and signing of the Section 106 Agreement. These charges will be reviewed before the end of 2007 and increased as necessary in 2008 to ensure that the income is sufficient to fund the Planning Obligations post. The flat charge rate of £1,000 will also increase annually in line with the rate of inflation.
- 19.7 Members agreed that a Planning Obligations (Section 106) officer seemed to be the way forward, although they accepted that developers may argue against such a fee. It was agreed that an indication of how much revenue would be generated would be useful, before considering if a Planning Obligations (Section 106) officer is justified. All spending must be in accordance with the obligations set out in the individual Section 106 Agreement.

20.0 Acknowledgements

- 20.1 Members of the Section 106 Agreements Member Working Group would like to acknowledge the contribution of participants throughout this review and extend their thanks to:-

Staffordshire County Council:

David Brammer - (formerly Principal Solicitor- Development Services)

Steve Clarke - Group Manager (Highways DC and Land Charges)

Tracey Haycock – Principal School Organisation Officer

Ian Baldwin – Development Advice Manager

Nick Dawson – Transport Planning Manager

Andrew Marsden – Head of Service (School Improvement Division)

Chris Turner – Planning Officer (Development Advice)

Tony Lovett – Strategic Land Use Policy Manager

Sue Halcrow – Member and Democratic Services Support Officer

Peter Butler – Efficiency and Performance Officer

External representatives:

Aida McManus, Planning Officer (East Staffordshire Borough Council)

Officers of the Staffordshire Development Control Officers Group

21.0 Risk Implications

- 21.1 The improper/poor monitoring of Section 106 Agreements may result in Section 106 monies not being spent within the agreed time period and being liable for 'claw back' by the Developer.
- 21.2 The planning and Section 106 Agreement process not being streamlined and failing to improve communications across Directorates, and with other Local Planning Authorities, may result in other service areas (that are not statutory consultees) not being given the opportunity to request contributions via Section 106 Agreements.
- 21.3 In addition, should sufficient policies not be in place, the County Council may lose monies that could have been sought through Section 106 Agreements.

22.0 Equalities and Legal Implications

- 22.1 Encouraging front loading of the Section 106 Agreement process will ensure negotiations with the Developer, once a planning application is submitted, and are more efficient.
- 22.2 By making all service areas aware of proposed developments, as non statutory consultees, will enable requests for contributions via Section 106 Agreements for service provision to be made, where justified, which will impact upon the quality of the provision of services for Staffordshire residents.

23.0 Resources and Value for Money Implications

- 23.1 A streamlined and coordinated process will ensure that there is no duplication of activity across the Directorates by numerous officers, therefore, maximising the opportunities for the County to request Section 106 Agreement contributions and ensuring that all monies are monitored and spent within the defined time period, in accordance with the Section 106 Agreement.

Councillor Peter Beresford
Chair of the Section 106 Agreements Member Working Group
Economic Prosperity and Sustainable Communities Scrutiny and
Performance Panel

August 2007

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Background Papers

The following background papers were used in the preparation of this report:-

- I. Minutes of the meeting of the Development Services Scrutiny and Performance Panel held on 10 August 2006
- II. Notes of the meeting of the Section 106 Agreements Member Working Group held on 24 October 2006
- III. Notes of the meeting of the Section 106 Agreements Member Working Group held on 29 September 2006
- IV. Notes of the meeting of the Section 106 Agreements Member Working Group held on 22 November 2006
- V. Notes of the meeting of the Section 106 Agreements Member Working Group held on 12 January 2007
- VI. Notes of the meeting of the Section 106 Agreements Member Working Group held on 16 February 2007

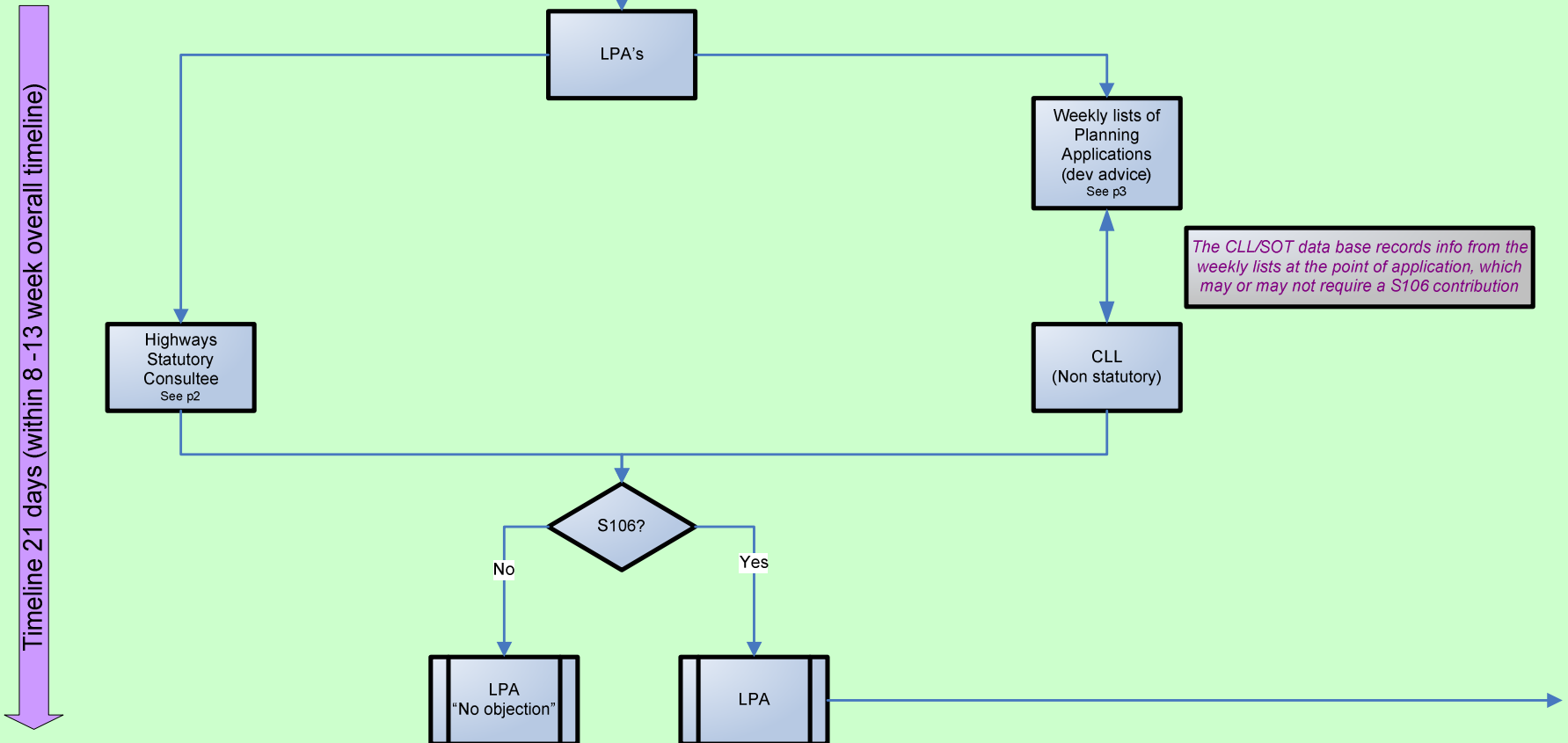
VII. Notes of the meeting of the Section 106 Agreements Member Working Group held on 30 April 2007

VIII. Notes of the meeting of the Section 106 Agreements Member Working Group held on 4 June 2007

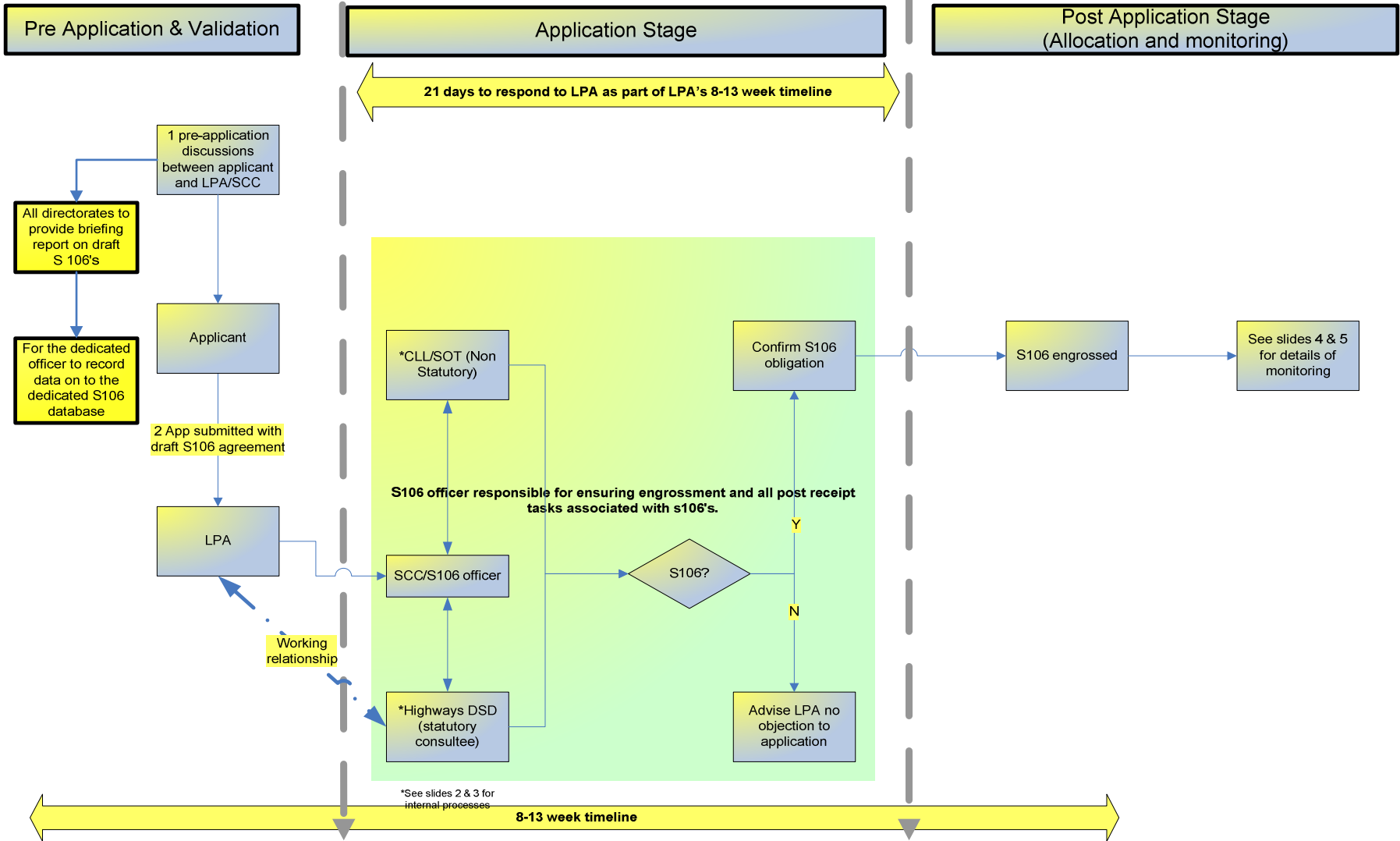
IX. Notes of the meeting of the Section 106 Agreements Member Working Group held on 23 July 2007

Submitting a Planning Application (current)

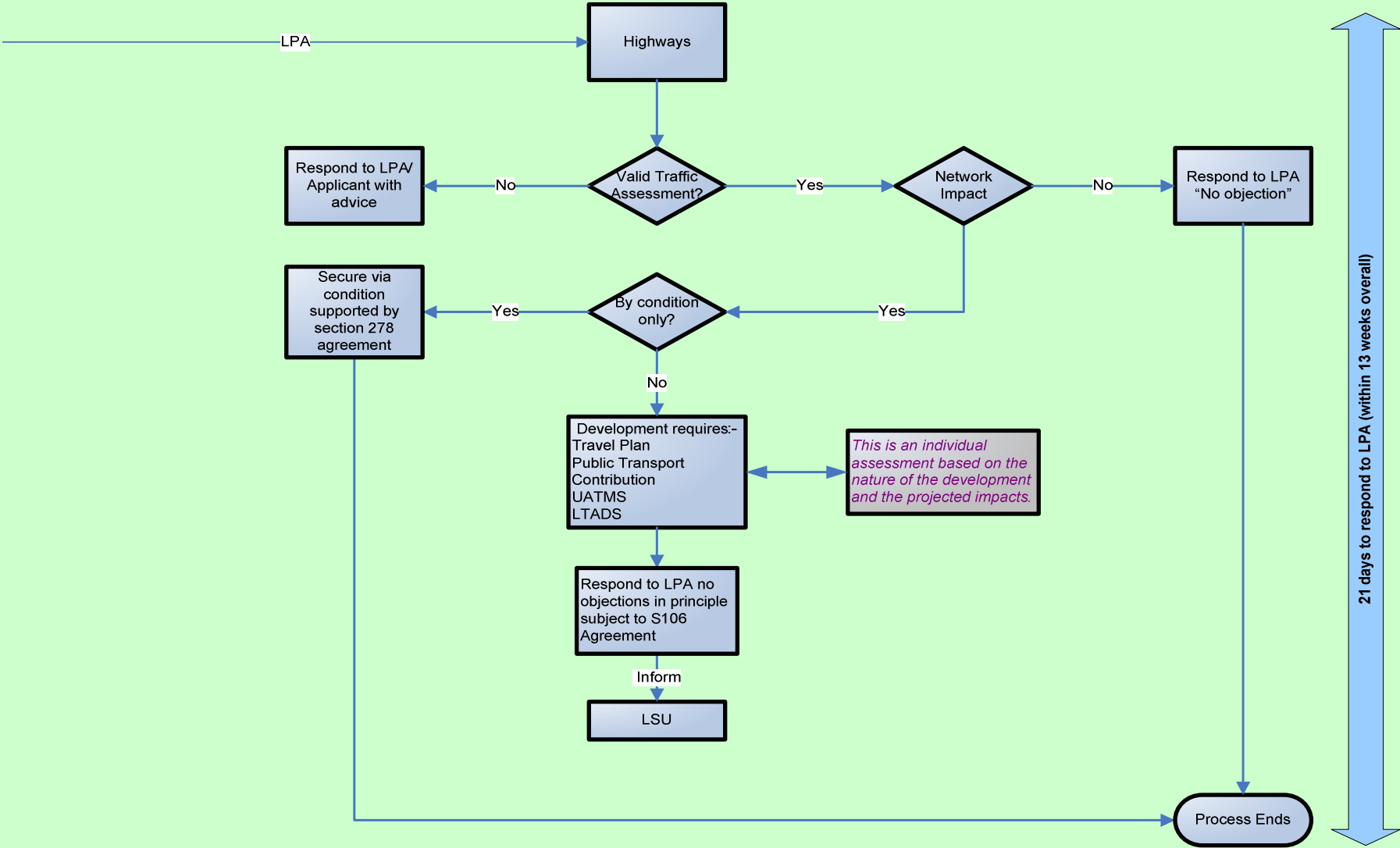
Explanatory notes:-
 LPA = Local Planning Authority
 LSU = Legal Services Unit
 DAD = Development Agreements Database
 C&LL = Children & Lifelong Learning
 SOT = School Organisation Team
 FPU = Forward Planning
 DfES = Department for Education & Skills
 DSD = Development Services Directorate
 JFU = Joint Finance Unit
 UATMS = Urban Area Transport Management Strategy
 LTADS = Lichfield Transport Area Development Strategy
 DA = Development Advice



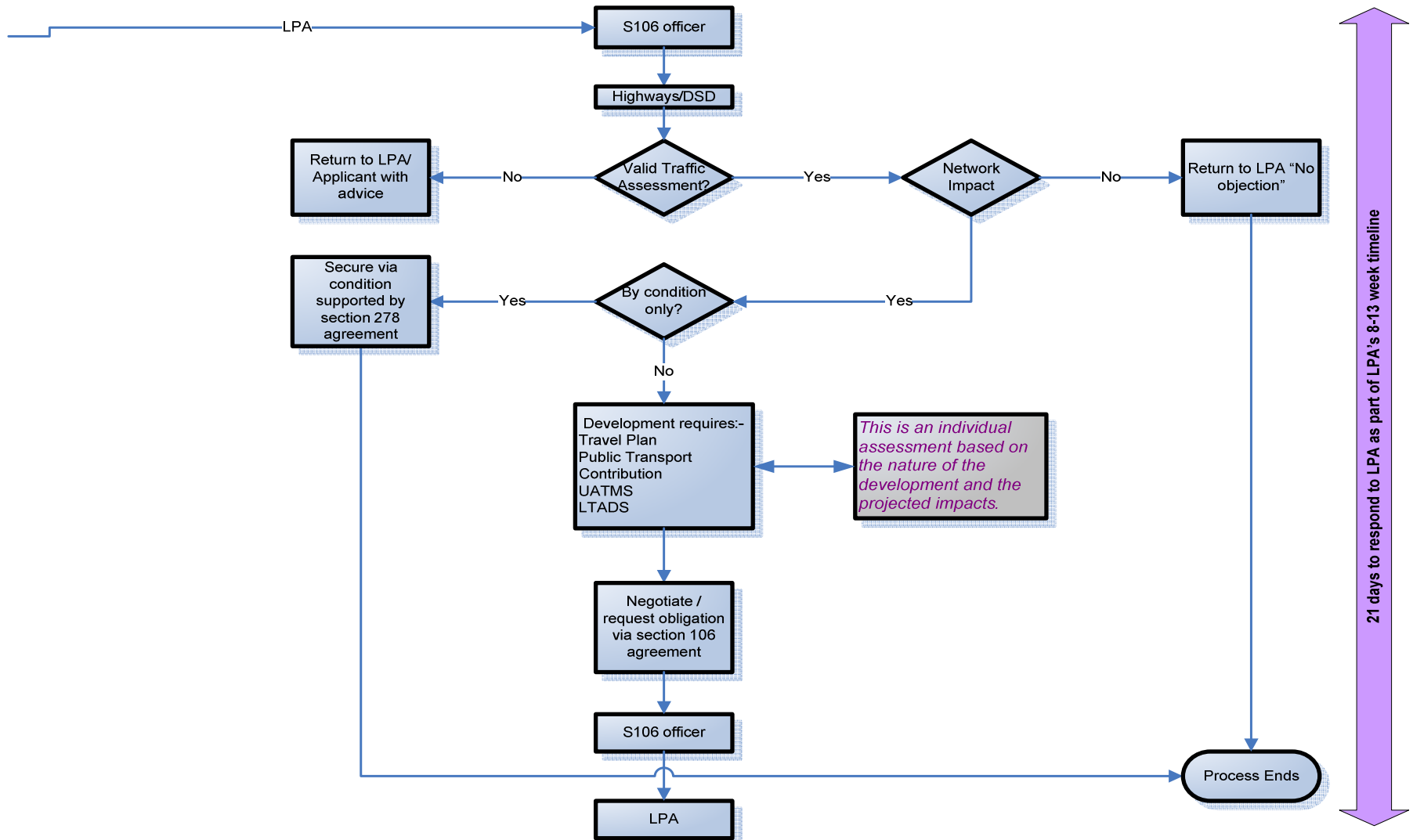
Recommended Process (Overview)



Determining a Section 106 Contribution – Highways (DSD) (Current)

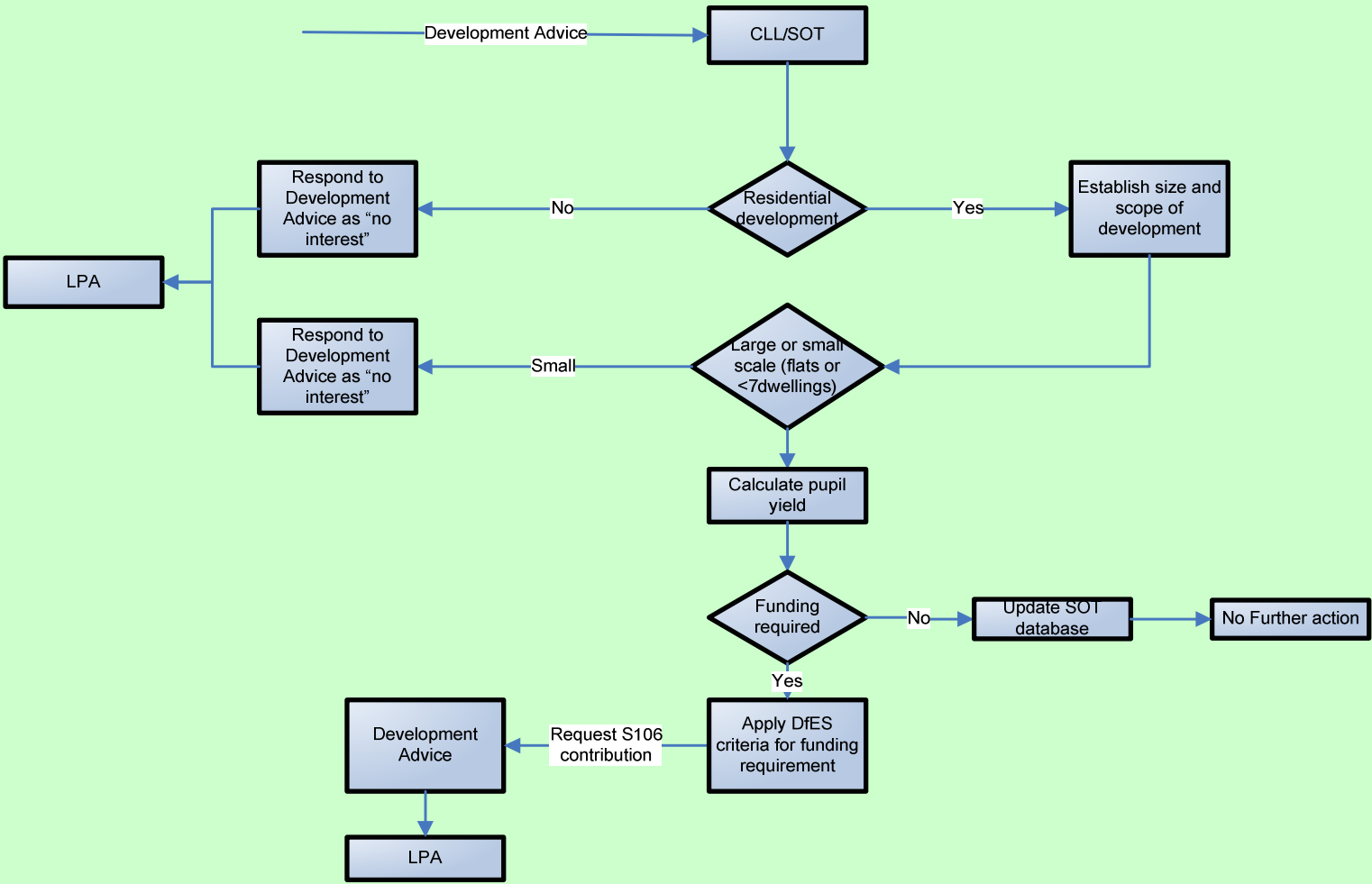


Determining a Section 106 Contribution – Highways (DSD) (recommended)



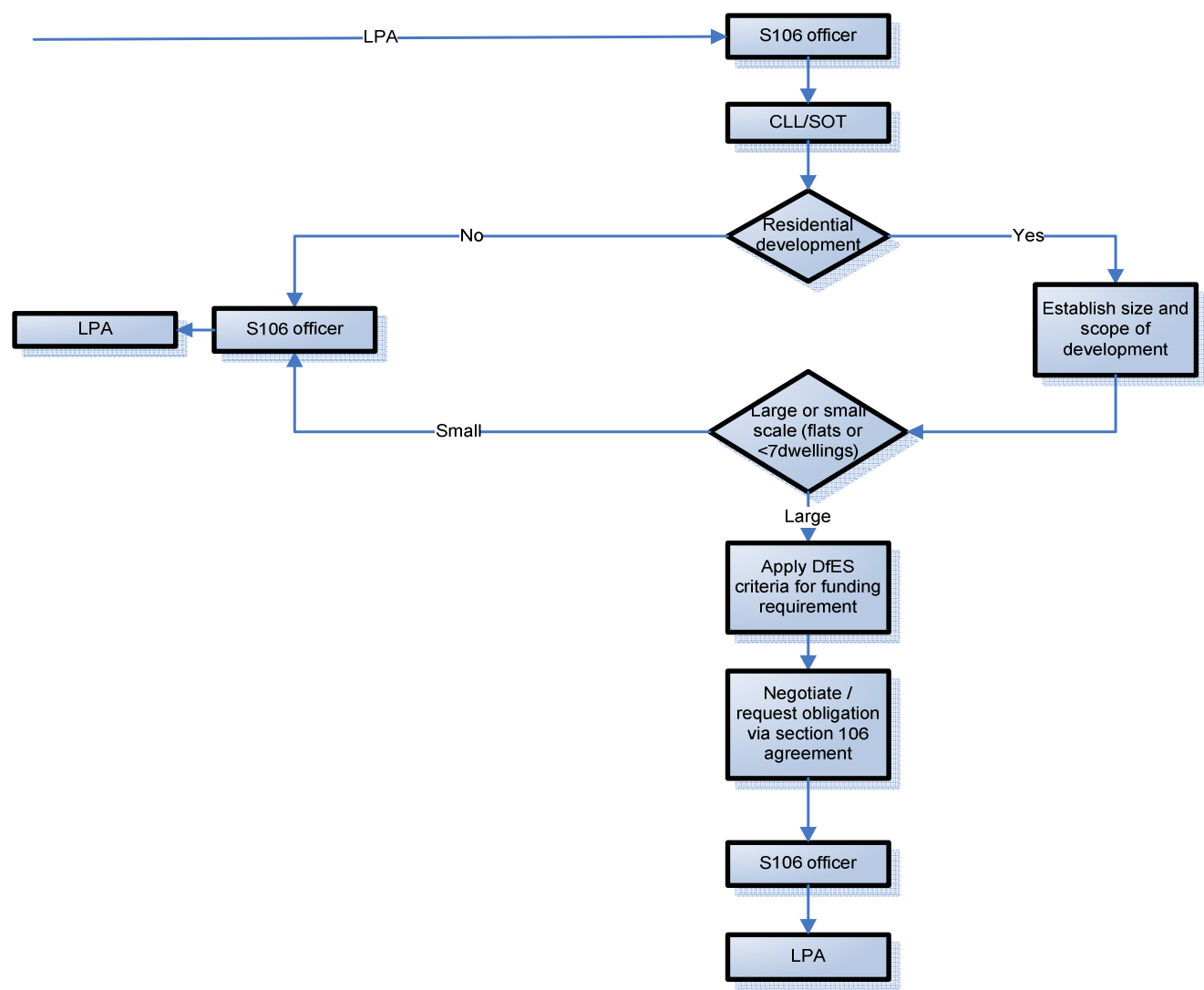
21 days to respond to LPA as part of LPA's 8-13 week timeline

Determining a Section 106 Contribution – School Organisation Team (CLL) (Current)



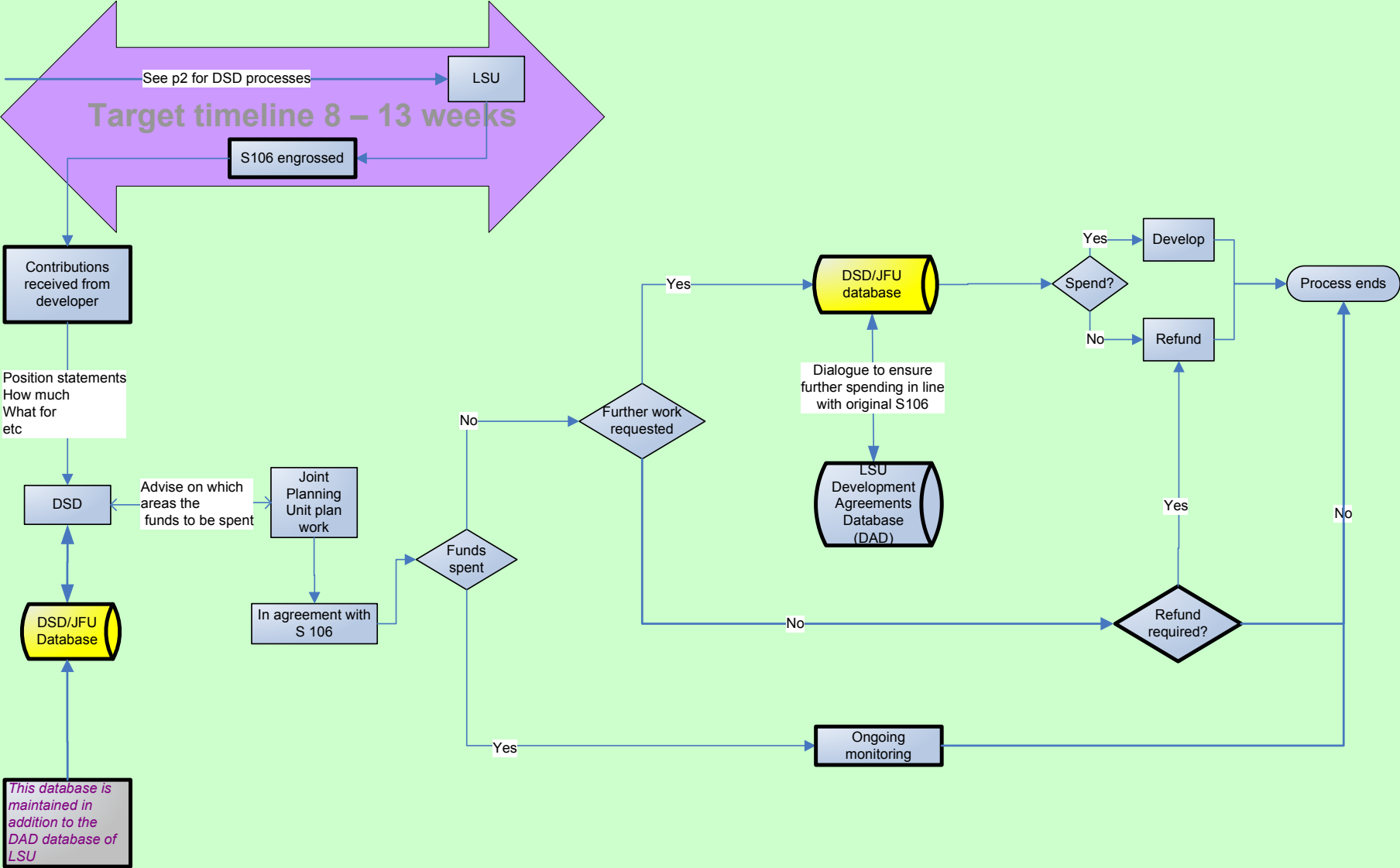
14 days to respond to LPA (within 13 weeks overall)

Determining a Section 106 Contribution – School Organisation Team (CLL) (Recommended)

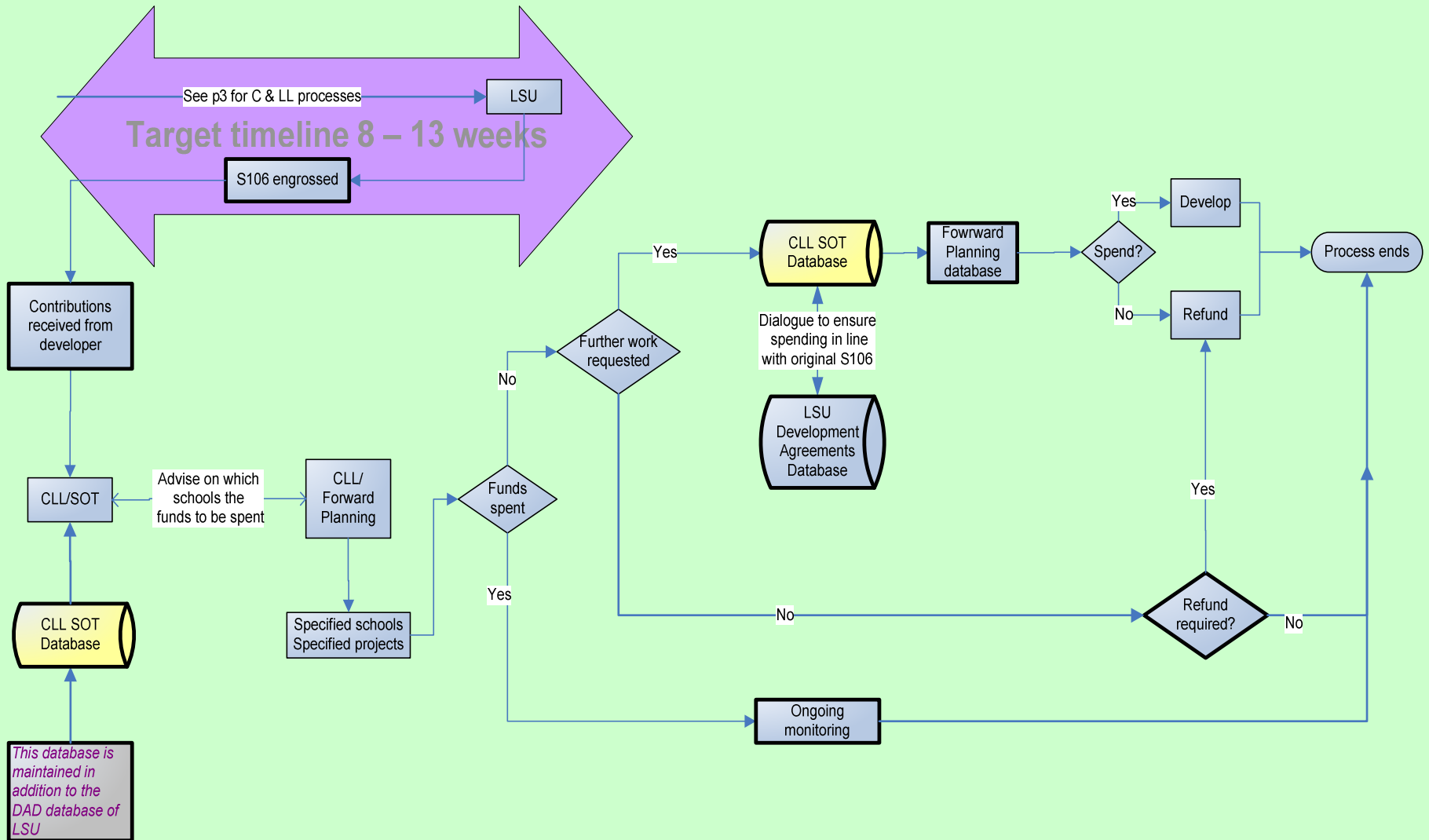


21 days to respond to LPA as part of LPA's 8-13 week timeline

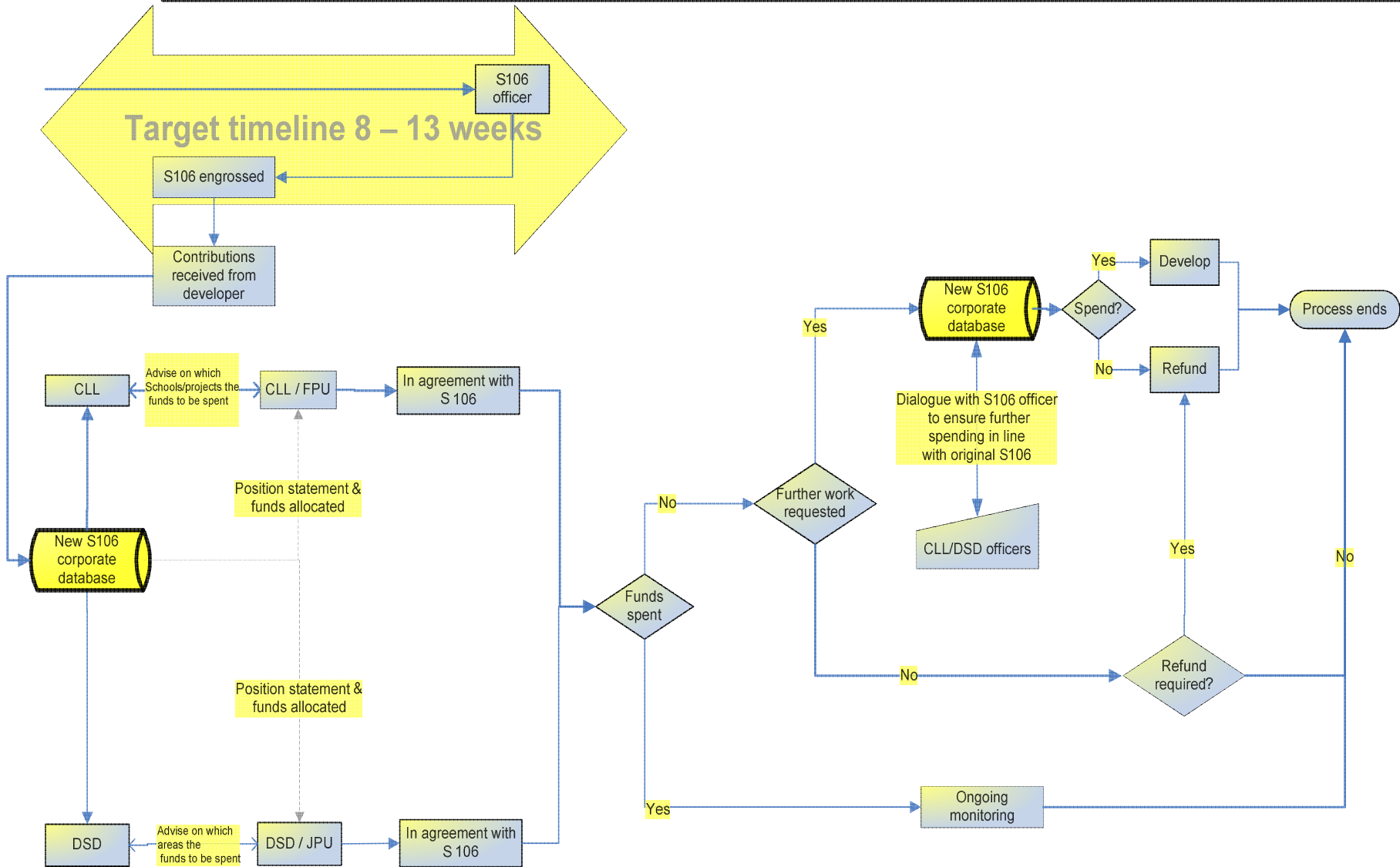
Allocation and Monitoring of Section 106 Contributions – Highways (DSD) (Current)



Allocation and Monitoring of Section 106 Contributions - School Organisation Team (C&LL) (Current)



Allocation and Monitoring of Section 106 Contributions – Recommended



Appendix 2- Standard Section 106 Agreement Template

DATE: 20

[NAME OF OWNER]

AND

[] COUNCIL

AND

[STAFFORDSHIRE COUNTY COUNCIL]

UNILATERAL UNDERTAKING

**SECTION 106
TOWN AND COUNTRY PLANNING ACT 1990**

RELATING TO:

[DESCRIPTION OF LAND]

STAFFORDSHIRE

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Schedule 1	General Obligations	
Schedule 2		

- 2.4 **“Commencement of the Development”** means the earliest date upon which any material operations are begun in accordance with the provisions of Section 56(4) of the Act save for the purposes of this Undertaking none of the following operations shall constitute a material operation:
- 2.4.1 site preparation works;
 - 2.4.2 archaeological investigations;
 - 2.4.3 site investigation works (including environmental investigations);
 - 2.4.4 [works of demolition;]
- and **“Commence the Development”** shall be construed accordingly.
- 2.5 **“the Development”** means the development authorised by the Planning Permission.
- 2.6 [**“Dwellings”** means all houses, maisonettes, flats, bungalows and all other varieties of accommodation which may be built or are intended to be built on the Land to be used as individual units of accommodation for independent occupation by one or more people.]
- 2.7 **“the Head of Planning Services”** means the person the Council shall appoint as the Head of the Department responsible for Planning Services for the time being.
- 2.8 **“the Index”** means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used.
- 2.9 **“Index Linked”** means adjusted in proportion to movements in the Index between the date of this Undertaking and the date the particular payment is made.
- 2.10 **“the Land”** means the Land shown for the purposes of identification only edged red on Plan Number [] known as [].

- 2.11 **“Occupation of the Development”** means beneficial occupation of any part of the Development for any purpose other than the carrying out of the Development and **“Occupy the Development”** shall be construed accordingly.
- 2.12 [**“the Outline Consent”** means the approval of planning permission in outline only under application number OU dated the day of 20].
- 2.13 **“Plan Number”** means the plan annexed to this Undertaking of that number.
- 2.14 **“Planning Permission”** means the planning permission to be granted by the Council pursuant to the Application in substantially the form of the draft annexed to this Undertaking.

3 INTERPRETATION

- 3.1 References to the masculine, feminine and neuter genders shall include the other genders.
- 3.2 References to the singular include the plural and vice versa unless the contrary intention is expressed.
- 3.3 References to natural persons are to include corporations and vice versa.
- 3.4 Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation.
- 3.5 The expressions **“the Owner”**[, **the Chargee**][, **“the County”**] and **“the Council”** shall include their respective successors in title and assigns.
- 3.6 A reference to a Clause, Paragraph or Schedule is (unless the context otherwise requires) a reference to a Clause, Paragraph or Schedule of this Undertaking.
- 3.7 Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of such restriction.

3.8 Where in this Undertaking a party includes more than one person any obligations of that party shall be joint and several.

3.9 Any reference in this Undertaking to any statute, or to any section of a statute, includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force.

4 INFORMATION

4.1 The Owner owns the freehold interest in the Land and is [entitled to be] registered as proprietor of it with Title Absolute at H M Land Registry free from incumbrances other than those matters contained or referred to in the Property and Charges Registers of Title Number [SF] at the date of this Undertaking].

4.2 The Council is the local planning authority for the purposes of the Act for the Land.

4.3 [The County is [the Local Highway Authority for the purposes of the Highways Act 1980 (and considers that the Development will necessitate the highway obligations contained in this Undertaking)][and][the Local Education Authority within the meaning of S12 Education Act 1996 for Staffordshire (and considers that the Development will necessitate a requirement for a contribution towards the provision of educational facilities in the vicinity of the Development)].]

4.4 [The Owner] has by the Application applied to the Council for approval [of matters reserved under the Outline Consent / to carry out development on the Land].

4.5 The Council is satisfied that the Development is such as may be approved by the Council under the Act and planning permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking.

5 STATUTORY AUTHORITY AND LEGAL EFFECT

5.1 This Undertaking shall constitute a planning obligation for the purposes of and made pursuant to Section 106 of the Act.

- 5.2 The obligations of the Owner in this Undertaking are planning obligations for the purposes of Section 106 of the Act and are enforceable by the Council as local planning authority.
- 5.3 [Subject to clause 5.4,] the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under it to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person.
- 5.4 [No person shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking after they shall have parted with all interest in the Land or the part in respect of which such obligation relates or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest.]
- 5.5 No statutory undertaker shall be bound by any obligations, rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligation contained in this Undertaking in respect of any site used only as an electricity substation, gas governor or pumping station.
- 5.6 If the Planning Permission expires (within the meaning of Sections 91, 92 or 93 of the Act) or is revoked or otherwise withdrawn before Commencement of the Development, this Undertaking shall forthwith determine and cease to have effect.
- 5.7 Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking.
- 5.8 Nothing in this Undertaking shall be construed as restricting the exercise by the Council [or the County] of any powers exercisable by [it/them] under the Act or under any other

Act or any statutory instrument, order or byelaw in the exercise of their functions as a local authority.

6 CONDITION PRECEDENT

The planning obligations contained in this Undertaking shall not be enforceable by the Council until the grant of the Planning Permission by the Council.

7 OBLIGATIONS

The Owner further covenants, agrees and declares in respect of the Land as set out in the Schedules.

8 COSTS

The Owner agrees to pay to the Council [and the County] on the signing of this Undertaking [the Council's / their] reasonable costs and disbursements of and incidental to the approval of this Undertaking.

9 THE CHARGE

The Chargee for itself and its successors in title consents to the Owner entering into this Undertaking and covenants with the Council (and the County) that in the event that the Chargee takes possession of the Land or any part of it and/or exercising its power of sale under the provisions of the Charge then the Chargee and its successors in title will observe and perform and be bound by the terms and conditions of this Undertaking so far as the same remain to be observed and performed.

10 INVALIDITY

It is agreed and declared that if any clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible.

11 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing contained in this Undertaking shall give, or be construed as giving, any rights, privileges, powers or enforceability other than to the Council[, the County] and to the specific person executing this Undertaking as the Owner and its successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking.

12 OTHER MATTERS

12.1 The Owner shall indemnify the Council[and the County] for any expenses or liability arising to [it/them]in respect of breach by the Owner of any obligations contained in this Undertaking.

12.2 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval to be served under or in connection with this Undertaking and any such notice or approval shall be in writing and shall specifically refer to the name, date and parties to this Undertaking and shall cite the number and clause of this Undertaking to which it relates.

12.3 Payment of any money under this Undertaking shall be made by the Owner sending the full amount payable in the form of a Banker's Draft or Solicitors' client account cheque within the time specified in this Undertaking together with a letter specifically referring the name, date and parties to this Undertaking and citing the number and clause of this Undertaking to which the relevant sum relates and identifying which portion of the amount relates to any sum calculated to take account of Index Linking.

12.4 This Undertaking shall be registered as a Local Land Charge.

IN WITNESS of which the Parties have executed this Undertaking as a deed and have delivered it upon dating the day and year first before written.

SCHEDULE 1
General Obligations

The Owner covenants with the Council [and the County] with the intent that these are planning obligations for the purposes of Section 106 of the Act:

1. To permit the Head of Planning Services and any person or persons authorised by him access to the Land or any part of it at all reasonable times, on reasonable notice and in compliance with the Owner's reasonable requirements, and to permit him or them to inspect the Development and all materials intended for use in it.
2. To give the Council [and the County] notice in writing no later than 7 days prior to the anticipated Commencement of the Development.
3. To give the Council [and the County] notice in writing of the Commencement of the Development within 7 days of Commencement of the Development.
4. To give the Council [and the County] notice in writing no later than 7 days prior to the anticipated Occupation of the Development.
5. To give the Council [and the County] notice in writing of the Occupation of the Development within 7 days of Occupation of the Development.

[Insert other Schedules as required]

THE COMMON SEAL of)
THE OWNER was affixed to this)
deed in the presence of:)

Director

Director / Secretary

EXECUTED as a deed by **THE**)
OWNER acting by)
)

Director

Director / Secretary

SIGNED AND DELIVERED as a)
deed by **THE OWNER** in the)
presence of:)

Witness:signature

name
address

occupation

EXECUTED as a deed by)

for and on behalf [)
BANK PLC)
in the presence of:)