

Shared Service Joint Committee

Wednesday 27th April 2022

Report Title	Section 106 Team Change Request (hosted)
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Executive Member	David Brackenbury, Executive Member for Growth and Regeneration

Key Decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in by Scrutiny?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there public sector equality duty implications?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	

List of Appendices

None

1. Purpose of Report

- 1.1. To approve the recommendation to reprofile the North Northants hosted Place and Economy service, Economic Growth and Regeneration – Section 106 (S106) disaggregation. This is to enable sufficient time to disaggregate the service in a safe and legal manner due to limited capacity in the current offer and risk to resilience.

2. Executive Summary

- 2.1. A joint change request is proposed by West Northamptonshire Council and North Northamptonshire Council to seek approval to support the recommendations to reprofile the Section 106 (S106) disaggregation until 1st April 2023.

- 2.2. It is for members to note that reprofiling the timeline will ensure disaggregation remains within the same financial year (22/23), however provides sufficient time for relevant service areas to profile integrated activity and enable a smooth and robust transition.
- 2.3. The team structure consists of officers managing S106 for Education, Fire and Rescue, Libraries and Digital Infrastructure, with additional monitoring responsibilities for highways and public transport S106. The additional time will be spent on aggregation and structure review both North and West, creating a more resilient offer and ensuring the required obligations are discharged by both authorities in readiness for formal disaggregation.

3. Recommendations

- 3.1. That the Joint Committee Shared Services:
 - a) Approve the reprofiling of the timeline to disaggregate the Section 106 function to be concluded by 1st April 2023
- 3.2. Reason for Recommendations –
 - A wider review of how S106 is managed, can be considered as a whole rather than it being managed in silos.
 - Consideration can be given to how working arrangements with the Fire and Rescue and Northamptonshire Highways can work going forward
 - Consideration can be given to how the evidence base could be most effectively used and;
 - Consideration could be given to the most effective system to use to manage S106 going forward
- 3.3. Alternative Options Considered – Disaggregate in line with Blueprint
 - Capacity would be a critical issue. Resource would need to be duplicated in order to effectively manage operation post disaggregation.
 - Resource would need a good understanding of issues with schools and education in each area.
 - The service works closely with the same Developers across NNC and WNC and many developments may have cross border impacts. It is therefore advantageous to work on a broader scale cross border scale.

4. Report Background

- 4.1 A Section 106 is a legal agreement between an applicant seeking planning permission and the local planning authority, which is used to mitigate the impact of development on the local community and infrastructure.
- 4.2 The service, which is a former Northamptonshire County Council function has been hosted by North Northamptonshire Council since 1st April 2021
- 4.3 The service currently consists of 2 FTE managing S106 for Education, Fire and Rescue, Libraries and Broadband, with additional monitoring responsibilities for

highways and public transport s106. There is a clear split in the two roles with the Senior Project Manager – Developer Contributions taking a more strategic role leading on negotiations with developers, and the Principal Project Officer delivering a financial, performance, administrative and support functions.

4.4 There is no separate budget for the service, however there is an income target which is a legacy of NCC. There may be costs for bespoke pieces of research which may need to be undertaken, production of reports or design work, fees for licenses and legal fees –the majority of these are usually recovered from external sources however where this is not possible then the wider service has a budget for direct legal advice.

4.5 There are currently over 300 active s106 agreements for education and libraries and approximately the same for highways, however each agreement will have multiple obligations and triggers that require monitoring. S106 agreements also contain obligations towards matters such as affordable housing, open space, and SUDS etc. These would previously have been managed by district & borough authorities. There are also c.200 ‘pending’ applications which may require s106 applications if approved.

4.6 An outline of the service functions currently undertaken are:

- Maintain up to date policy framework and robust evidence base
- Monitoring and responding to major planning applications (10 or more dwellings)
- Monitoring and responding to S106 enquiries
- Assessing impact on local infrastructure
- Negotiating legal agreements and any requests for variations
- Monitoring development triggers and collecting money owed
- Ensuring money received is spent locally and in line with S106 agreement itself.
- Producing annual monitoring reports and infrastructure funding statements
- Provide input into development of policy and strategy for infrastructure delivery at national and local level
- Responding to frequent requests for information (including FOI).

5. Issues and Choices

5.1. Resource

In addition to the 2 FTE, there were a number of posts within the District and Boroughs that came across into the Unitaries which have S106 as part of their role i.e. posts in planning, development management etc. There is not a single job description and each member of staff gets involved at different stages of the process depending on service requirements. The process of S106 was also managed differently by each District and Borough. WNC and NNC will therefore need to consider their own approaches for aggregation. There is already a working group set up for WNC to raise issues and discuss

arrangements in the transition period and a review of the North's processes is underway.

5.2. Statutory Requirements and Timelines

There are statutory requirements around time limits to respond to planning applications in line with planning regulations. There are legal obligations attached to each S106 which places obligations on the Council to monitor spending of s106 and delivery of related infrastructure. Each Council also has a statutory responsibility to publish an Infrastructure Funding Statement annually, which reports on S106 funding secured, collected and spent by the authority.

5.3. Dependent Services

There are close working relationships with legal to get agreements in place, although currently there is no clear guidance as to future arrangements. There are also dependencies with finance and ERP – arrangements are currently being worked up to enable invoicing for contributions due in the West and how funding can be appropriately transferred and audited.

5.4. Partner Agencies

There is currently a Memorandum of Understanding with Northamptonshire Fire and Rescue Service to manage and monitor existing s106 obligations on their behalf.

5.5. IT/Systems

As part of the task and finish group WNC are investigating how the service could be managed through add-ons to current planning systems, and NNC are considering IT / Systems requirements as part of its review of processes.

5.6. Customer Impact

- Developers and agents.
- Individual schools and libraries
- Individual parish councils
- Community groups seeking information on what contributions have being sought/secured/received.
- Solicitors acting on behalf of individual residents in respect of land / property charges, requesting confirmation of discharge of obligations and any ongoing liabilities for owner / occupiers

5.7. Choices

The S106 service could be integrated into the process approaches being looked at by WNC and NNC in line with the blueprint. See 3.3 for details.

6. Next Steps

- 6.1. Subject to the Shared Service Joint Committee approval the project team will work to reprofile the timeline and revise tasks accordingly to meet the revised disaggregation timetable.

7. Implications (including financial implications)

7.1. Resources and Financial

- 7.1.1. Additional resources will be required from the enabler services to support the disaggregation process. There are a number of large service areas disaggregating by September 2022, therefore additional capacity may be needed to deliver S106 disaggregation if the change request is not endorsed/approved.

The related forecast full year staff costs for 2021/22 for the S106 Development Management team will be split (50% of which should be funded from NNC budget, and 50% from the corresponding budget in WNC). It is anticipated this will be a similar figure for 2022/23.

7.2. Legal and Governance

- 7.2.1. The service is currently operating in accordance with the Inter Authority Agreement that exists between North Northamptonshire Council and West Northamptonshire Council. If the recommendation proposed within the report is agreed, then the Councils will approve any further amendments under the Inter Authority Agreement to ensure that adequate contract management and governance is in place between the authorities. A Schedule 2 & 3 service plan has been developed to set out performance and financial measurements for monitoring and review via the Joint Committee (Shared Services).

- 7.2.2. As outlined within the report, additional work is required in relation to contractual matters and work will be undertaken to ensure that the disaggregation of the services will not compromise legal compliance. If members were minded not to delay disaggregation, then there is a significant risk that legal requirements would not be met.

7.3. Relevant Policies and Plans

- 7.3.1. The Councils infrastructure requirements are set out in the adopted Local Plans and Infrastructure Delivery Plans for the respective WNC and NNC areas, which identify the infrastructure requirements necessary to mitigate the impact of growth on local facilities, capacity and services.

- 7.3.2. The approach to S106 obligations for the former County Council's Education, Libraries, and Digital Infrastructure services is set out in the adopted "Planning Obligations Framework and Guidance – Creating Sustainable Communities Jan 2015 (as amended)". This sets out the circumstances in which S106 obligations will be secured for those services and the supporting

evidence base which underpins the requirements, to aid transparency and decision making.

7.3.3. S106 obligations and agreements must be in accordance with the statutory tests set out in the National Planning Policy Framework and with government advice established in Planning Practice Guidance.

7.3.4. The adopted policy framework ensures that the Council is able to:

7.3.4.1. Evidence the need for S106 contributions to mitigate the impact of development, supporting delivery of new and expanded schools, library services and facilities, as well as digital infrastructure

7.3.4.2. Minimise the risk to the Council of challenge through appeal

7.3.4.3. Meet the Council's statutory requirements to provide sufficient school places

7.4. Risk

7.4.1. S106 income is essential to the delivery of additional school and library infrastructure and capacity as delivered through both councils' capital programmes. This often involves complex and lengthy negotiations with developers, landowners and various other parties and the need for robust supporting evidence base and analysis of viability and development impact. It also requires understanding of the councils priorities across multiple service areas and statutory requirements as well as planning policy, regulations and legislative frameworks

7.4.2. Many of the negotiations on new s106 agreements have been ongoing over a period of several months (and in some cases years). These are very complex negotiations which require consistency in approach and close working across stakeholders and services. Disaggregation would impact on live negotiations and would also affect the ongoing monitoring and enforcement of live agreements from existing sites. A phased approach to the negotiations could be taken in anticipation of the disaggregation.

7.4.3. There is a risk if the recommendations are not approved on service resilience; there would potentially be no resource in the West; upskilling of other members of the service in the west will mitigate the potential loss of resource but this will take time to put in place.

7.5. Consultation

7.5.1. This report does not meet the parameters required for public consultation.

7.6. Consideration by Scrutiny

7.6.1. None arising from this report.

7.7. Equality Implications

7.7.1. No negative impacts or implications arising from this report.

7.8. Climate Impact

7.8.1. No negative impacts arising from this report.

7.9. Community Impact

7.9.1. No negative impacts arising from this report.

7.10. Crime and Disorder Impact

7.10.1. No negative impacts arising from this report.

8. Background Papers

8.1. Not Applicable.