

## **Protocol for Planning Obligations Funding Allocations - Community Schemes**

### **1. Introduction**

- 1.1 Under Section 106 of the Town and Country Planning Act 1990 (the Act), as amended, contributions can be sought from developers towards the costs of providing community and social infrastructure where the need has arisen from the new development taking place. This funding is commonly known as a Section 106 contribution or planning obligation. This is separate and in addition to Community Infrastructure Levy (CIL).
- 1.2 The decision to require a developer to make a Section 106 contribution is made by a Planning Committee or by an officer with delegated powers before planning consent is granted. This protocol is not about how decisions are made to require a developer to enter into an agreement. Instead it concerns how Dorset Council may allocate funding collected under s106 to town and parish councils and to 'not for profit' organisations.
- 1.3 It is important to note that developer contributions may only be spent on infrastructure where the infrastructure is necessary<sup>1</sup> as a consequence of the development. These are secured through a legal agreement under the provisions of section 106 of the Act. The s106 Agreement will specify the purposes for which the contribution can be used.
- 1.4 The Localism Act 2011 provided greater flexibility for local authorities to pass on responsibility to deliver infrastructure to appropriate bodies (see Section 2). Consequently, some community infrastructure is delivered by, and is the responsibility of, town and parish councils or community organisations.

### **2. Organisations' Eligibility for Project Funding**

- 2.1 The Localism Act 2011 gave eligible Councils in England '*the power to do anything that individuals generally may do as long as they do not break any other laws*' – this is known as the General Power of Competence. This means that Councils, once adopting the power, no longer need to ask whether they have a specific power to act. It is a power of first resort.
- 2.2 An eligible town or parish council is one which has resolved to adopt the GPC<sup>2</sup>, with at least two thirds of its members being declared elected. The Clerk must hold an appropriate qualification<sup>3</sup>.

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<sup>1</sup> (Regulation 122 Community Infrastructure Regulations 2010, as amended)

<sup>2</sup> Parish Councils (General Power of Competence) (Prescribed Conditions) Order 2012

<sup>3</sup> Certificate in Local Council Administration or an equivalent qualification.

2.3 Dorset Council is able to allocate funding collected under s106 to town and parish councils. However, funding can also be allocated to 'Not for Profit' organisations, such as:

- Educational Establishments
- Company Limited by Guarantee with Charitable Status
- Registered Charitable Organisation
- Unincorporated not for profit organisation.

2.4 Where infrastructure funding is to be allocated to external bodies, Dorset Council will require some assurances that they are suitably 'competent' for the purposes of delivering the funding. The following sections of this protocol set out the principles and criteria that will be used by Dorset Council when deciding on the allocation of planning obligations funding. It also sets out certain conditions that need to be met.

### **3. Principles and criteria for allocation of planning obligations to eligible bodies**

#### Principles

3.1 Dorset Council is the Local Planning Authority and is the accountable body for the spending of S106 monies and therefore must ensure that:

- The funding is spent on facilities that can be demonstrated to be required because of the new development taking place.
- Projects supported are necessary, viable, will deliver the required social and community benefits, and will be well managed.
- The process is transparent and fair to all.

3.2 Before any funding can be released by the Council for a given project, key criteria must be met to offer the Council a degree of security that monies will be spent appropriately and in the manner to which they were intended.

#### Criteria for assessing the award of allocations

3.3 When assessing proposed projects or the eligibility for award of monies the following criteria will be used.

3.4 The organisation shall confirm to Dorset Council that it:

- has a general power of competence or equivalent powers through its articles or similar; and/or
- is an appropriately constituted body (or acting on such a body's behalf) which has a bank account and is suitably placed to deliver and maintain the infrastructure.

3.5 Applicants shall provide the Local Planning Authority with evidence of the following:

- a) the need for the project (e.g. identified in a development plan, community consultation or identified in a s106 obligation):

- For existing assets – provide the Local Planning Authority with sufficient assurances that an increase in usage of the asset will arise as a result of awarding the funding (i.e. a greater number of people will use the facility);
- For existing or new assets - a broader usage of the asset as a result of awarding the funding (e.g. use by disabled people, older or younger people who may not have had access previously);
- b) value for money for any work proposed;
- c) that the recipient has tenure of the land identified to benefit from the funding or a lease for a suitable period i.e. proportional to the grant awarded, or written agreement of the landowner;
- d) support in writing from the local town or parish council (for recipients that are not town or parish councils) or reasons as to why this has not been provided;
- e) that planning permission has been granted for any works funded or is not required;
- f) that a complete funding package is in place with the offer of a s106 grant;
- g) That there is financial sustainability for delivering and maintaining the asset in perpetuity;
- h) confirmation that, where appropriate, the facilities provided will be open to the general public with no membership restrictions in relation to the Equality Act 2010, and will have wide public and community benefit; and
- i) a contract agreement signed prior to release of funding between the applicant and the Council detailing the terms under which the money is granted.

#### **4. Conditions**

- 4.1 Any organisation in receipt of a 106 award or transaction will be required to adhere to the following conditions (and enter into a deed or equivalent agreement):

##### Purpose and use of Funding

- a) The Recipient shall use the Funding only for the delivery of the Project and in accordance with the agreed project description and any specific requirements of relevant development plan policies, planning permissions/conditions, and the terms of relevant s106 agreement(s)
- b) The Recipient shall not make any alteration or amendment to the Project without the prior written agreement of the Local Planning Authority.
- c) The Recipient agrees that it shall not apply for duplicate funding in respect of any part of the Project that the Council's funding in full under this Agreement.

## Release of s106 Funding

4.2 The Local Planning Authority shall release the Funding to the Recipient at a mutually agreeable time. The trigger for any release shall normally be the point at which sufficient assurances can be provided by the recipient about the implementation of the project, such as evidence of an award of tender for construction with timeframes for commencement and completion.

4.3 The amount of the Funding shall not be increased in the event of any overspend by the Recipient in its delivery of the Project.

4.4 The Local Planning Authority reserves the right to consider each bid on its merits.

## Repayment of Funding

4.5 Without prejudice to the other rights and remedies, the Local Planning Authority may withhold or suspend payment of the Funding (if applicable) and/or require repayment of all or part of the Funding / forfeiture of the asset if:

- the Funding is used for purposes other than for the delivery of the Project under the terms agreed with the LPA;
- the delivery of the Project does not start within the timeframes agreed with the Local Planning Authority;
- the delivery of the Project stalls and the Recipient is unable to provide the Local Planning Authority with any assurances that resumption and completion can be achieved in a satisfactory timescale to comply with relevant development plan policies, planning permissions/conditions or the terms of any relevant s106 agreement(s);
- the Recipient is, in the reasonable opinion of the Local Planning Authority, delivering the Project in a negligent manner;
- the Recipient obtains duplicate funding from a third party for the Project;
- the Recipient provides the Council with any materially misleading or inaccurate information;
- the Recipient commits or has committed a Prohibited Act;
- any employee or volunteer of the Recipient has:
  - acted dishonestly or negligently at any time, whether directly or indirectly, to the detriment of the Project; or
  - taken any actions which, in the reasonable opinion of the Funder, bring, or are likely to bring, the Council's name or reputation into disrepute.
- Upon delivery/completion of the Project, the Recipient shall return to the Local Planning Authority any unspent s106 funds within 6 months of the project's completion (unless agreed otherwise in writing with the LPA);  
Any unspent funds that are returned to the LPA shall be subject to interest on the unspent balance in accordance with the terms of the transfer of funds.

## **5. Decision Making and Reporting Arrangements**

5.1 Under Dorset Council's scheme of delegation to officers the Council has delegated to the Executive Director of Place authority:

*"To allocate and distribute funding (including authorising payment) secured in connection with any permission (including any related planning obligation or CIL payment) consent or other approval granted under Town and Country Planning Legislation subject to the decision being in accordance with any strategy and/or policy adopted by the Council."*

5.2 The Executive Director has nominated<sup>4</sup> the Service Manager for Spatial Planning to make such allocation and distribution decisions on his behalf.

5.3 Officers will consult with the relevant Area or Strategic Planning Committee Chairman and the local ward members before making allocation and distribution decisions under this protocol. Decision notices will be published on the transparency pages on the Council's website.

5.4 Where officers intend allocating or distributing Section 106 contributions in excess of £500,000 they must consult the Section 151 Officer and ensure due diligence checks are undertaken before any payment is made.

5.5 The allocation and distribution of Section 106 monies shall be reported annually to each of the Area and Strategic Planning Committees.

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<sup>4</sup> Any future changes to nominated officers will apply where relevant