

## Savings proposal outline case

<b>Proposal title</b> <i>Clear and concise</i>	Section 106 Monitoring Charge Fee Increase	<b>Saving ID</b> <i>(PMO to provide)</i>	842
<b>Date created</b>		<b>Revised date</b>	
<b>Cabinet Member &amp; Portfolio</b>	Cllr Bogle – Economic Development		
<b>Exec Director</b>	Adam Wilkinson	<b>Category</b>	Direct saving
<b>Head of Service</b>	Pete Boustred	<b>Status</b>	Approved
<b>Budget holder (if different)</b>	Stephen Harrison	<b>Finance confidence</b>	Choose an item.
<b>Cost Centre</b>	TBC	<b>Stage</b>	Work in progress

### Description of saving or income proposal

#### Summary

The Council has reviewed the basis for the calculation of the Section 106 (S106) Monitoring Charge in line with the original legal advice in 2004, and the latest Government advice. The review has been undertaken in accordance with the SCC Fees & Charges policy. The proposal is to maintain the principle of the current calculation and quantum of the S106 Monitoring Charge, with four key changes:

1. To cover current S106 Planning Agreement Officer on-costs, the S106 head of Term fee is proposed to increase to £321 per Head of Term.
2. Increase the fee level for the pre-completion S106 work undertaken by the Planning Agreements Officer, which is for most cases under funded when compared with resource expended and if increased to the equivalent of two Head of Terms, this single additional Head of Term fee would generate an additional **£9,630 per annum**.
3. Create an additional charge made for S106 Agreements requiring a viability appraisal review. A fee increase is warranted to fund the work in negotiating the viability position and securing the necessary viability review mechanisms within the S106 Agreement, which currently does take up a significant resource for the Planning Agreements Officer and again is under funded by the S106 Monitoring Charge. It is therefore suggested that an additional Head of Term rate be applied to the Affordable Housing Viability Review process, with a further Head of Term rate added for each further viability review secured within the S106 Agreement. As a high-level estimate based on the current number of S106 Agreements completed which include an Affordable Housing review mechanism, this could generate in the region of **£4,850 additional income per annum**.
4. In addition to the S106 Monitoring Charge a S106 Discharge of Obligation Fee is also charged which is increasing from the 1<sup>st</sup> April 2024 to £145. Based on an average of 28 such requests per annum this will generate a further **£4,060 per annum**.

#### Background

When planning permission is granted for new development, above certain thresholds (net gain of 5 residential units or 200sqm of commercial floorspace) the applicant may be required to enter into a planning obligation (commonly referred to as 'Section 106 Agreement').

Section 106 (S106) is the relevant section of the Town and Country Planning Act 1990 which gives local planning authorities the power to enter into planning obligations.

Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in Planning terms. Mitigation can take many forms including:

- Financial contribution to deliver off-site mitigation;
- Provision of off-site infrastructure to deliver off-site mitigation;
- Management Plans to require actions to be undertaken by the applicant over a specified timescale; and,
- Provision of Affordable Housing, whether that be on-site, off-site or by way of a financial contribution, subject to development viability.

Planning obligations run with the land, are legally binding and enforceable. Whilst the onus is on developers to ensure they meet all the requirements contained within the planning obligations, the Council separately monitors the requirements of each planning obligation.

The Council is also under a duty to annually report information on the planning obligations sought and received from developers for the provision of infrastructure to support development in Southampton, which is set out in the Council’s Infrastructure Funding Statement.

The Council employs Planning Agreements Officers to manage the daily organisation of both the Community Infrastructure Levy (CIL) and the S106 Agreement process, which includes the monitoring of both planning regimes.

**Financial summary (savings/income) £000s**

2023/24 £000	2024/25 £000	2025/26 £000	2026/27 £000	2027/28 £000	2028/29 £000
	4	4	4	4	4

The Council is now reviewing the basis for the calculation of the S106 Monitoring Charge in line with the original legal advice in 2004, and the latest Government advice, as set out below:

*“Authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements.*

*Fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions).*

*Authorities may decide to set fees using other methods. However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive. Authorities must report on monitoring fees in their infrastructure funding statements.”*

Summary of S106 Monitoring Charge Income per year.

Year	Total S106 Monitoring Charge (£)	Pressure based on budget of £52,300 23/24
18/19	26,083	n/a

19/20	40,477	n/a
20/21	30,016	n/a
21/22	41,405	n/a
22/23	28,652	£23,648

### Calculations of income based on new fee structure.

Full salary cost for S106 Planning Agreements Officer, including oncosts, is £55,450.

Based on previous 5 years an average of 30 x S106 Agreements completed per annum.

Average of 5 x Head of Terms per S106 Agreement.

S106 Monitoring Charge to increase by 11% to £321 per Head of Term – April 2024.

S106 Discharge of Obligation fee increase to £145, in line with Discharge of Condition Fee.

#### 2024/2025 Year Assumptions

- Pre-Completion Head of Term Fee increased to the equivalent of 2 Heads of Terms = £642.
- S106 Affordable Housing element increased:
- 1 x £321 standard Head of Term fee
- 1 x £321 viability appraisal monitoring
- Plus £321 for every fixed future viability appraisal review required.

#### S106 Monitoring Charge Forecast for 24/25

30 completions x (321 x 5) 1,605 = £48,150

S106 Agreements including Affordable Housing

Based on 4 S106 completions with an average of 3 Heads of Terms = £3,852

Discharge of Obligation Fee based on 28 fee payments of £145 = £4,060

Forecast Total Income for 24/25 = £56,062

In summary - the proposal in effect deals with a historic income pressure as summarised in the above table and forecasts a modest additional income above the current budget of £4K which can be put forward as a saving.

#### Impact on FTE

<b>Number of posts to be deleted</b>	n/a	<b>Headcount at risk of redundancy</b>	n/a
--------------------------------------	-----	--	-----

#### IMPLEMENTATION TIMETABLE

<b>Task / activity</b> <i>What needs to happen to enable the saving? Insert rows as needed</i>	<b>Who</b> <i>Lead/person responsible?</i>	<b>Start date</b> <i>When is it expected to start?</i>	<b>Due by</b> <i>When is it expected to end?</i>
Proposed fee increase to be approved as part of the February Budget in accordance with the Corporate Fees & Charges Policy.	Pete Boustred/ Richard Williams	Feb 2024	March 2024
Following approval the additional costs can be incorporated into our	Simon Mackie	01.04.2024	N/A - new charges will be

## Savings proposal outline case

S.106 legal agreements – simple instruction to SCC legal to update existing templates.			applied and reviewed annually
Review any communications with stakeholders to notify of fee changes.	Simon Mackie	01.04.2024	May 2024
Future fee increases to be in line with corporate Fees & Charges policy with set CPI % applied.	Simon Mackie	Yearly – part of Feb Budget setting process	
<b>Investment required</b> ( <i>what investment will be needed to implement the proposal?</i> )			
n/a			
<b>Baseline data and assumptions</b> ( <i>what's the basis of the savings?</i> )			
The s.106 monitoring fees have been in place historically rising with inflation – this review seeks to rebalance the cost of delivering the monitoring with the development industry covering these costs to SCC – the assumptions are that we will continue to receive new s.106 agreements			
<b>Impact of saving (SCC)</b> ( <i>What impact will this have on other services? What do you need from other services to deliver the saving?</i> )			
SCC Legal Services also reviewing their charges/hourly rates – the s.106 monitoring charges sit separately and will be plugged into existing templates			
<b>Impact of saving – External</b> ( <i>How will this saving impact on residents, partners, businesses or visitors (paying particular attention to protected characteristics)?</i> )			
Any increase in fees and charges to developers will affect the viability of the scheme – this could, ultimately result in less development coming forward, and for those schemes that do viability can be used to justify nil provision of affordable housing			
<b>Risks and mitigations</b>			
<b>Risk</b>	<b>Mitigation</b>		
At the national level s.106 and CIL is being reviewed – and possibly replaced with the 'Infrastructure Levy' - meaning that income from s.106 monitoring may drop	Announced in the Levelling Up & Regeneration Act 2023 and requires considerable secondary legislation – any replacement will take time to adopt and will include a mechanism for securing obligations and financial mitigation from development – unclear what that may mean for s.106 and this monitoring charge		
<b>Dependencies, issues and other factors that may affect delivery</b>			
<i>Are there any dependencies to the realisation of the saving (ie staff leaving the organisation)</i>			
Current post is not fully funded and may become at risk – this proposal makes the post cost neutral – essential post linking the development to the Planning Team and SCC Legal enabling for s.106 process to be managed and for DM to meet expected targets and deliver planning permissions; particularly for Major development			
<b>Performance monitoring</b> ( <i>how will progress be monitored?</i> )			
Ongoing – our existing Planning Obligations Officer monitors income and this is cross checked against the AG0100 budget as part of the monthly review with SCC Finance Analysts			
<b>Signed of by Executive Director Role and name</b>			

## Savings proposal outline case

<b>Signed of by Finance BP Role and name</b>	
<b>Signed of by PMO Role and name</b>	
<b>Date</b>	

### Key

#### **Category**

Direct Saving – Straight forward budget reduction/removal

Improvement – BAU saving that needs a delivery plan to complete

Transformation – Project required to deliver

#### **Confidence rating**

High – high confidence in the saving being delivered

Medium – medium confidence in the saving being delivered

Low – low confidence in the saving being delivered