

Resources and Fire & Rescue Overview and Scrutiny Committee

17 March 2016

Infrastructure Funding

Recommendation

The Committee note the contents of the report and the current position relating to Section 106 Monies.

1.0 Introduction

- 1.1 This report provides an update on the current processes supporting the collection of Developer Contributions through S106 agreements.
- 1.2 The report also explains the Community Infrastructure Levy (CIL) and how the two relate.

2.0 Section 106 Planning Obligations - Background

- 2.1 Planning obligations are created under Section 106 of the Town and Country Planning Act 1990. They are legally binding obligations that are attached to a piece of land and are registered as local land charges against that piece of land. Planning obligations enable a council to secure contributions for services, infrastructure and amenities in order to support and facilitate a proposed development.
- 2.2 The requirements of a Section 106 obligation will vary according to the size, impact and nature of the proposed development. It would not be fair to expect a developer to contribute towards existing service deficiencies such as a shortage of school places or library facilities, or repairs to the highway, where no additional need would arise from the development. However, it would be fair to expect them to contribute to limiting the impact of their own development on the local area.
- 2.3 The Community Infrastructure Levy Regulations 2010 place three tests on the use of planning obligations. Since April 2010, planning obligations, including those secured via S106 should meet all three tests. These are that the obligation is:
 - Necessary to make the development acceptable in planning terms
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development

Planning officers will not ask for any contribution unless it relates fairly to the development.

- 2.4 From April 2015, the Community Infrastructure Levy Regulations have been fully implemented and these impose a restriction on the pooling of contributions, secured via S106 to support the delivery of infrastructure. This means that service areas now need to be specific in the identification of the use for requested funds and to ensure that no more than 5 contributions will be used in support of any particular project. The risk of non-specific S106 funding requests is that the sixth and subsequent developments will not be liable for making infrastructure contributions with the knock on impact being infrastructure funding gaps.

3.0 Community Infrastructure Levy - Background

- 3.1 The Community Infrastructure Levy (CIL) came into force in April 2010 and it allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area.
- 3.2 CIL attempts to make sure that almost all planning applications for new buildings or extensions, rather than just large applications contribute towards funding infrastructure needed to support development in that area. The CIL is a development tax, to be determined locally by the District and Borough Councils.
- 3.3 CIL may be levied on new residential and commercial development. Whilst the CIL rate will relate to the overall cost of identified infrastructure required in the area, CIL revenue may be spent on any infrastructure needed, not necessarily in the vicinity of a particular development.
- 3.4 Once implemented, CIL will be paid to the District and Borough Councils as the collection authorities who will then pass on a proportion to the County Council for the services it provides. This is fundamentally different to the payments due from Section 106 agreements which WCC receives funds directly from the developer.
- 3.5 In accordance with the CIL Regulations 2010 (as amended), each collecting authority is required to produce what is known as a Regulation 123 ('R123') list. This list sets out what infrastructure is intended to benefit from the CIL contributions. It is not intended that the CIL contributions will pay for the infrastructure in their entirety, the delivery of the infrastructure may also rely on additional funding from other sources. However, a scheme named on the R123 list cannot also be funded through a S106 contribution.
- 3.6 It is important to note that a proportion of CIL income collected will be made directly to Neighbourhoods for them to spend. If a Neighbourhood Plan has been adopted up to 25% of the CIL income collected from development in that area will be forwarded. If a Local Plan hasn't been adopted this amount is reduced to a maximum of 15% of the total of the contributions.

3.7 Currently none of the District or Borough Councils within Warwickshire have implemented CIL. Discussions continue between the County Council and the individual District and Borough Councils regarding future governance of CIL and the content of the R123 lists. The current estimate is that all 5 District and Borough Councils will have adopted CIL by the end of 2017.

4.0 Current S106 Process

4.1 The Infrastructure Delivery Team (IDT) within the Communities Group was established to address the challenges that were presented by numerous and in some cases large and historic S106 agreements and balances. The IDTs core remit is to coordinate, manage and monitor infrastructure needs, including s106 funds.

4.2 An Infrastructure Officer Group comprising representatives from all areas of WCC as well as Health agencies has been established to oversee and steer the work of the IDT.

4.3 There is an agreed and documented process for the coordinated response to planning applications and subsequent production of S106 agreements. This starts with the IDT making stakeholders aware of individual planning applications and continues through to the production of a S106 agreement. A copy of the process flow chart is attached at Appendix A.

4.4 WCC currently requests S106 contributions in support of service delivery across a number of areas including: Highways; Public Transport; Education; Libraries and Public Rights of Way. The IDT also works with Health providers to ensure a coordinated response to planning applications. This work has also resulted in linkages with The Ambulance Trust and support in respect of requests for the provision of defibrillators on potential development sites.

4.5 Most recently the IDT has started to work with colleagues from Fire and Rescue to ensure that service needs are reflected in responses to consultations by the District and Borough Councils on their Local Plans and associated planned development.

4.6 The level of contributions requested in support of Highways and Transport and School Places are the most significant in financial terms. In terms of S106 income, between 60 and 70% is for the provision of school places.

4.7 Highways and Public Transport contributions are negotiated by WCC directly with developers through the planning process. If any required infrastructure falls outside of the extent of the planning permission, i.e. it is remote from the development site, funding for it often needs to be secured by a S106 Agreement. Examples of such infrastructure would be pedestrian and cycling links, pedestrian crossings etc.

4.8 In addition to the collection of funds through S106 planning obligations WCC can negotiate agreements under Section 278 of the Highways Act 1980. S278

agreements licence a developer to carry out improvement works on the public highway which are deemed necessary when planning permission is granted for a development. Examples of work covered by this type of agreement include new access into a development site i.e. a roundabout, signalised junction, right turn lane or a simple priority junction. A Section 278 Agreement may also be required for works such as a new signalised pedestrian crossing or improvements to existing junctions close to the development site.

- 4.9 WCC has a statutory duty to ensure that there are sufficient early years and school places in its area and to promote parental choice through increasing the diversity of provision. The methodology for calculating contributions towards education involves establishing the need for education related expenditure, generated by the child yield of new development. The average child yield information is applied to the scale, mix and tenure of development in order to derive an estimate of the number of nursery, primary, secondary and higher education age children. Typical capital costs of each school place are then applied to the child population estimates.
- 4.10 The pupil yield from developments varies across the county and is, for example higher in Stratford Town than in rural areas of Stratford District. Similarly the birth rates are different in each area of the county. For this reason there are slightly differing calculations, tailored to local circumstances. The capital cost of an education place also varies. However, within Warwickshire we assess costs based on the latest Department for Education school place build costs.
- 4.11 If a new school is required we will seek a financial contribution based on the number of places as well as the provision of an area of serviced land of a suitable size. The land will usually be transferred to WCC ownership prior to the build of the school.
- 4.12 Contributions towards the provision of new stock for Warwickshire Libraries are requested for developments with more than 25 homes. The request is formula based and reflects the projected numbers of residents from the development and the average percentage of library membership across the county.
- 4.13 An update on the current level of S106 funds will be provided at the meeting.

5.0 Next Steps

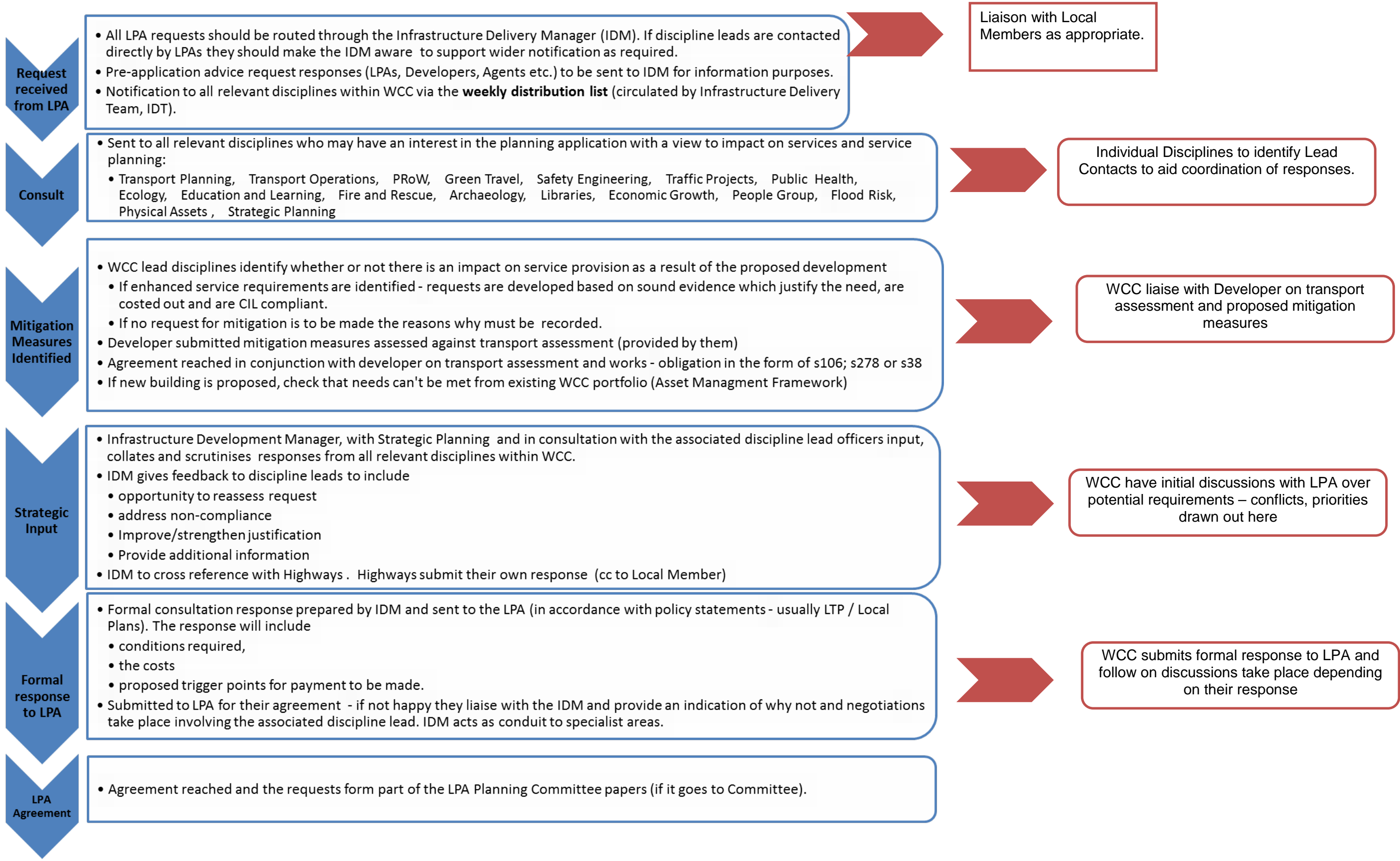
- 5.1 The Infrastructure Delivery Team will work with service providers to estimate when income is likely to be received as well as ensuring that they do not exceed pooling limits for specific infrastructure projects.
- 5.2 Work will continue with service areas and the District and Borough Councils to ensure that all requests for funding are robust and fully CIL compliant.

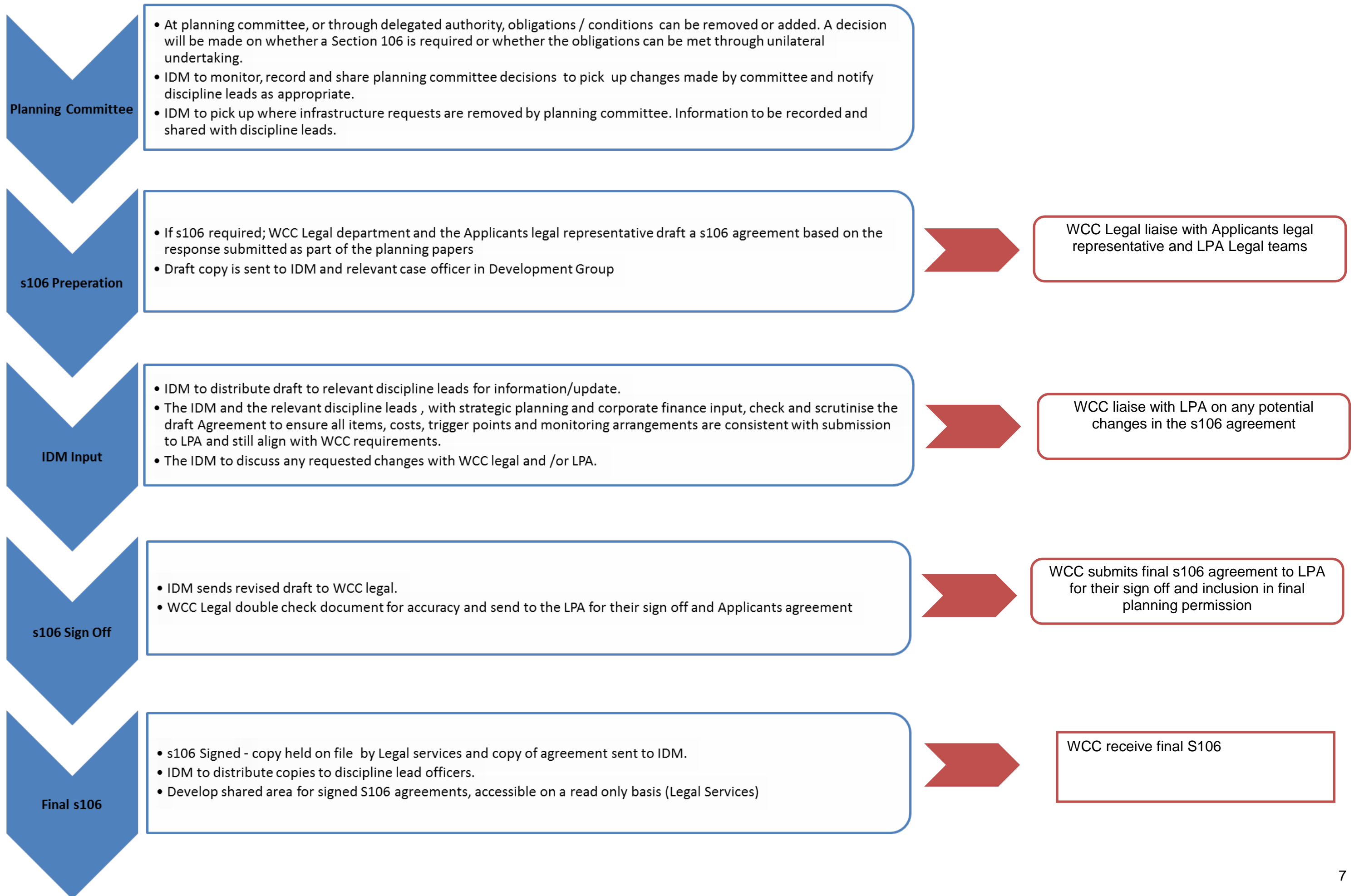
- 5.3 We will continue to work with the District and Borough Councils to ensure the effective build out of developments which in turn will support the timely collection of S106 contributions.
- 5.4 Summary sheets to be developed for all S106 agreements signed since April 2016. This in turn will support the maintenance of transparent pooling information. An example of a summary sheet is attached at Appendix B.
- 5.5 Continue to work with the District and Borough Councils to establish a mechanism for determining when CIL or S106 will be the most appropriate form of income collection.
- 5.6 Continue to support the District and Borough Councils with their information collection and evidence base in support of the adoption of their Local Plans.
- 5.7 Develop a WCC Planning Obligations Guidance Document to help support and provide transparency around requests for financial contributions.
- 5.8 Work with the District and Borough Councils to help mitigate against the risks to the County Council with the introduction of CIL. WCC needs to be fully aware that:
- When a CIL charge is implemented monies will be collected and distributed by each District / Borough Council.
 - The distribution of the monies will be based on the annual review of a project priority lists (Reg 123 List)
 - The items prioritised will be decided by each District and Borough Council in connection with developments or other matters they will choose.
 - The current draft CIL project lists put forward by the District and Borough Councils are indicative for the CIL examinations and therefore are not guaranteed.
- 5.9 WCC will need to ensure active engagement with the District and Borough Councils re the annual update of the Regulation 123 List to ensure our priorities are included.

	Name	Contact Information
Report Author	Janet Neale	janetneale@warwickshire.gov.uk 01926 418646
Head of Service	Mark Ryder	markryder@warwickshire.gov.uk
Strategic Director	Monica Fogerty	monicafogarty@warwickshire.gov.uk
Portfolio Holder	Peter Butlin	peterbutlin@warwickshire.gov.uk

Section 106 Negotiation and Agreement – WCC Process and Interaction with LPA / Developer

20/07/2015 (V007)





Planning Agreement by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990.

Summary of Contributions Payable to WCC

Planning Authority	Warwick District	Relating to the development of Land at Opus 40, Birmingham Road, Warwick. (Dated: 27/07/2015)
Legal Reference	DE34827	
Planning Application Ref.	W/15/0646	
Proposed dwellings	Up to 85	

NB. WDC Members agreed to reduce all contributions in excess of £8,000 by 20% to meet the full cost of Highways mitigation. The reduction covered all contributions not just WCC.

Education Contribution	£186,992.00	To be applied towards the provision of enhanced pre-school and reception facilities at Woodloes Primary School.	10% on occupation of the first dwelling, 50% on occupation of 50% of the dwellings and the balance upon occupation of 90% of the dwellings.
Highways Authority Admin Fee	£550.00		
Library Contribution	£1,860.00	To be applied to the provision of new and replacement stock, targeted collections and targeted promotions to inform new residents of services available to them.	Prior to occupation of 50% of the dwellings.
Off-site Highways Contribution	£306,000.00	To be applied for the purpose of mitigation works at the highway access to the Application site.	Prior to commencement of the development or within 7 days of the commencement.
	Stanks Island Land	The provision of land within the application site	Transfer the Stanks Island Land to the County Council as soon as practicable upon receipt of formal written notice served by the County Council on the owner by 25/06/2020.

Rights of Way Contribution	£8,000	To be applied towards the cost of providing signage alongside the Grand Union Canal to provide information about access to local amenities and routes into Warwick.	Prior to occupation of 50% of the dwellings.
Sustainability Travel Pack contribution	£75 per dwelling £6,375	For the provision of information packs for owners and occupiers of residential dwellings and for the purpose of promoting sustainable travel and delivering road safety in the local area.	Prior to commencement of the development.