

Meeting of:	Cabinet
Date of Meeting:	Monday, 04 November 2019
Relevant Scrutiny Committee:	Environment and Regeneration and Homes and Safe Communities
Report Title:	Section 106 Off-site Affordable Housing Contributions
Purpose of Report:	To consider the process for allocating Section 106 off-site affordable housing contributions
Report Owner:	Cabinet Member for Legal, Regulatory and Planning Services and Cabinet Member for Housing and Building Services
Responsible Officer:	Rob Thomas, Managing Director
Elected Member and Officer Consultation:	Head of Regeneration and Planning Head of Housing and Building Services Operational Manager for Public Housing Operational Manager for Planning and Building Control Finance Support Manager Lawyer - Legal Division Principal Planner (Planning Policy)
Policy Framework:	This is a matter of Executive decision by Cabinet

Executive Summary:

- This report seeks Cabinet authorisation to amend the Council's adopted Section 106 Protocol for Implementation (Appendix C), specifically in relation to Section 106 contributions received from developers to provide off-site affordable housing.
- The adopted Local Development Plan 2011-2026 (LDP) requires new residential developments, where viable, to provide affordable housing on-site. It is only when exceptional circumstances have been demonstrated that an off-site financial contribution has been considered and agreed, such as insurmountable development viability issues caused or exacerbated by the affordable housing requirements; or site specific circumstances which would make affordable housing delivery and/or management extremely difficult.
- The Council currently holds £5,893,961.94 for the delivery of affordable housing in the Vale of Glamorgan. These off-site contributions have been secured from numerous development sites across the Vale of Glamorgan due to various circumstances.
- Delivery of affordable housing using these contributions can be challenging for a number of reasons, including land availability, which justifies a different approach than other section 106 contributions which can generally be spent quickly in the area where the development occurs.
- This report seeks Cabinet authorisation to introduce a new two-stage approach for considering these Section 106 off-site affordable housing contributions, to allow for contributions to be considered strategically, as well as locally.

Recommendations

1. That Cabinet notes the proposals contained within this report.
2. That Cabinet refers the report to the Scrutiny Committees for Environment and Regeneration and Homes and Safe Communities, for consideration and for any comments to be referred to the next available Cabinet meeting.
3. That subject to the consideration of any comments from the relevant Scrutiny Committees, that Cabinet agree to an amendment to the Council's adopted Section 106 Protocol for Implementation (Appendix C), specifically in relation to Section 106 contributions received to provide affordable housing.
4. That, subject to the consideration of any comments from the relevant Scrutiny Committees, Cabinet approves the proposals for a new two-stage approach for considering Section 106 off-site affordable housing contributions (Appendix D).
5. That subject to the consideration of any comments from the relevant Scrutiny Committees, that Cabinet agrees delegated authority to be granted to the Head of Regeneration and Planning jointly with the Head of Housing and Building Services, in consultation with the Cabinet Members with the portfolios for Planning and Housing, to allocate Section 106 off-site affordable housing contributions.
6. That in the event that the Head of Regeneration and Planning, Head of Housing and/or relevant Cabinet Members cannot agree on a decision, delegated authority be granted to the Managing Director and Leader of the Council to make the final decision regarding the allocation of Section 106 off-site affordable housing contributions, in accordance with the process set out in Appendix D.

Reasons for Recommendations

1. To note the proposals to amend the Section 106 Protocol for Implementation (Appendix C) in relation to Off-Site Affordable Housing Contributions
2. To ensure appropriate scrutiny of the proposed amendment to the Section 106 Protocol For Implementation for Off-site Affordable Housing (Appendix D).
3. To ensure that the expenditure of Section 106 off-site affordable housing contributions is considered strategically and in line with the Council's Housing Building Programme.
4. To ensure that the expenditure of Section 106 off-site affordable housing contributions is considered strategically and in line with the Council's Housing Building Programme.
5. To ensure that Section 106 contributions for off-site affordable housing are allocated appropriately.
6. To ensure that Section 106 contributions for off-site affordable housing are allocated appropriately.

1. Background

- 1.1** The Vale of Glamorgan Council's Local Housing Market Assessment 2017 (LHMA) identified a need for 576 units per annum between 2017 and 2022 across the Vale of Glamorgan, comprising 479 units of social rented accommodation and 97 units of intermediate housing.
- 1.2** The LHMA concludes that even if the headline net housing need was delivered every year, this would by no means meet the actual need present in many of the housing market areas, as need often remains unidentified until such time as a new development starts on site when the hidden demand becomes evident.
- 1.3** The LHMA identified that the highest need is within the 'Barry' and 'Penarth and Llandough' housing market areas, followed by the urban settlements along the south of the county boundary.
- 1.4** The need is further evidenced by the figures from the Council's Homes4U waiting list. See Homes4U waiting list in Appendix A.
- 1.5** There are a number of ways the Council is seeking to address the need for affordable housing in the Vale of Glamorgan, including:
 - Through the Local Development Plan and working with the private sector to contribute to the development of affordable housing on market housing led schemes via planning permissions and associated Section 106 Agreements;
 - Working with the Council's zoned Registered Social Landlords and the use of Public Subsidy (e.g. Social Housing Grant); and
 - The Council's House Build Programme.
- 1.6** The adopted Local Development Plan 2011-2026 (LDP) requires new residential developments, where viable, to provide affordable housing on-site. LDP Policy MG4 sets a target contribution of 30% within Barry; 35% within Llantwit Major, Rhose and St Athan on residential sites resulting in a net gain of 5 dwellings or more and in Cowbridge, Penarth, Dinas Powys, Wenvoe, minor rural settlements and the rural Vale of Glamorgan 40% based upon a net gain of 1 or more dwellings.
- 1.7** This policy has been very effective, and enabled the Council to address affordable housing need, in addition to market need, within the sustainable settlements identified within the LDP strategy. In the last 5 years, 3,152 market housing units have been delivered across the Vale of Glamorgan and 921 affordable housing units (30% overall).

- 1.8** There is a strong presumption within national and local policy that affordable housing will be provided on site. It is only when exceptional circumstances have been demonstrated that an off-site financial contribution has been considered and agreed, such as insurmountable development viability issues caused or exacerbated by the affordable housing requirements; or site specific circumstances which would make affordable housing delivery and/or management extremely difficult. This is in accordance the Council's adopted Supplementary Planning Guidance on Affordable Housing (2018).
- 1.9** Within the Section 106 account, the Council currently holds £5,893,961.94 for the delivery of affordable housing in the Vale of Glamorgan. These off-site contributions have been secured from numerous development sites across the Vale of Glamorgan due to various circumstances. A full list of contributions is itemised in Appendix B.
- 1.10** Section 106 off-site affordable housing contributions can only be used to deliver affordable housing, which is defined as housing where there are secure mechanisms in place to ensure that it is accessible to those who cannot afford housing at open market values, including without limitation Social Rented Housing and Intermediate Housing, and where there is provision for the home to remain affordable for future eligible households or where stair-casing to full ownership takes place, any subsequent capital receipts should be recycled to provide replacement affordable housing.
- 1.11** In terms of allocating Section 106 off-site affordable housing contributions, the Section 106 Protocol for Implementation (hereafter referred to as 'the Protocol') is a consultation procedure which is carried out by the Senior Planner (Development Contributions), with Cabinet Members, Service Areas and Local Ward Members upon receipt of a Section 106 financial contribution. The existing Protocol is set out in Appendix C.
- 1.12** The purpose of the Protocol is to ensure that financial contributions received by the Council are allocated in a democratic manner, having regard to the legal framework, the impact and needs arising from a new development and best value for money.
- 1.13** The Council has historically used Section 106 off-site affordable housing contributions to support zoned Registered Social Landlords (RSLs) to purchase individual dwellings for social housing; and/or to support RSLs to deliver affordable housing sites, for example, the development at St. Mary's Church.
- 1.14** It is likely that going forward the Council will also seek to utilise Section 106 off-site affordable housing contributions to support the Council's House Building Programme. The principle of developing new homes was established by the Council following a Cabinet meeting on 11 August 2014 (C2439) and sites across the Vale of Glamorgan are being considered and progressed for development.

- 1.15** A number of Section 106 off-site affordable housing contributions have already been allocated to developments within the programme, including Maes Y Ffynnon, Bonvilston (Cabinet Minute C488) and Brecon Court, Barry (Cabinet Minute C238).
- 1.16** In addition to these schemes, the Council is also exploring a number of sites which are in the preliminary phases of development, for up to an additional 367 affordable housing units (subject to design, feasibility and the necessary permissions).

2. Key Issues for Consideration

- 2.1** The purpose of this report is to consider the allocation of Section 106 off-site affordable housing contributions.
- 2.2** There are circumstances where it is difficult to spend a Section 106 off-site affordable housing contribution within the ward it has arisen from. This is often due to land availability; land values within the rural Vale and the amount of the Section 106 contribution.
- 2.3** The Council is restricted to spending the contributions within a specific time-scale; else the developer can claim the contribution back. If the Council does not spend the contributions in a timely manner, it undermines the future position for seeking them.
- 2.4** The Council has received a number of Section 106 off-site affordable housing contributions from developments identified in the minor rural settlements within the Vale. Whilst there is a level of identified need within these areas, and hidden need, the LHMA presents an acute need in the market areas of 'Barry' and 'Penarth and Llandough'.
- 2.5** For example, in 2018/19 there were no new build affordable housing units delivered in Penarth and there are currently 938 people on the Homes4U waiting list in Penarth. In the same financial year, there were 22 new build affordable housing units delivered in Barry, yet there are currently 3,241 on the Homes4U waiting list.
- 2.6** In terms of second-hand social rented properties, there have been 84 properties based within Barry recently advertised over a 12 week period (13 June 2019 and 12 September 2019). 4,358 bids were received against these properties, giving an average of 52 bids per property. In Penarth, 21 second-hand social rented properties have been advertised over the same period, attracting 1,064 bids, giving an average of 50 bids per property. These figures demonstrate the acute need within the market areas of 'Barry' and 'Penarth and Llandough' and the Council has a responsibility to address this acute need.

- 2.7** Having undertaken a review of potential sites for the House Building Programme, the majority are within Barry and Penarth due to land availability i.e. they are publicly-owned sites, either by the Council, Welsh Government or Cardiff and Vale University Health Board. Furthermore, these are areas where there is a high level of need in the Vale of Glamorgan, as demonstrated in the LHMA and within Appendix A.
- 2.8** The sites have the potential to deliver affordable housing and to address some of the most acute and specialist needs in the Vale (for example, adapted or accessible accommodation).
- 2.9** It is therefore requested that the Protocol set out in Appendix C is amended to allow for flexibility and to reflect the Council's strategic programme for delivering affordable housing. It is proposed that the Protocol is amended so that there is a two stage approach for considering the allocation of Section 106 off-site affordable housing contributions, as follows:
- 2.10** Upon receipt of a Section 106 off-site affordable housing contribution, the Managing Director, Head of Regeneration and Planning, Operational Manager for Planning and Building Control, Head of Housing and Building Services, Housing Development Manager, Leader of the Council, relevant Cabinet Members and Local Ward Members are notified in writing and consulted in order to highlight any potential opportunities within the ward for the delivery of affordable housing, allowing for a six month consultation period. During this period of consultation, the Housing Department will look at the need for affordable housing specifically within the host ward and adjoining ward(s); consider land availability and potential opportunities for implementing a scheme with this contribution.
- 2.11** In the event that a scheme is identified within the ward the money has arisen from (or the adjoining wards), the scheme will be progressed, subject to the necessary Cabinet approvals, detailed design, planning permission and procurement etc. Local Members will be notified at each of the stages as the scheme progresses.
- 2.12** In the event that during the first stage, having investigated opportunities within the host ward and adjoining wards, the Housing Department considers that a scheme cannot be developed within the ward or an adjoining ward (for example, due to limited land availability), and/or the Housing Department consider the contribution should be prioritised elsewhere to address an acute need within another ward/housing market area within the Vale of Glamorgan, and/or the contribution should be directed into the House Building Programme, Officers within the Housing Department will be required to prepare a report.
- 2.13** The report will need to set out the reasons why the contribution should be prioritised elsewhere and identify what options have been explored; where the

department consider the contribution should be prioritised, and also demonstrate need and deliverability. The report will need to be presented to the relevant Heads of Services and relevant Cabinet Members for a decision.

- 2.14** If the Heads of Services and relevant Cabinet Members agree with the reasons set out in the report, delegated authority will be granted for the Head of Regeneration and Planning, Head of Housing and Building Services in consultation with relevant Cabinet Members to allocate the contribution to deliver a scheme elsewhere in the Vale of Glamorgan.
- 2.15** In the event that the Head of Regeneration and Planning, Head of Housing and/or relevant Cabinet Members cannot agree on a decision, the Managing Director and Leader of the Council will have delegated authority to make the final decision.
- 2.16** For clarification, Local Ward Members will be notified and consulted upon the receipt of contributions and will act as a consultee during the first stage of the process; Heads of Services in consultation with Cabinet Members will act as the final decision makers (unless there is a disagreement).
- 2.17** In the event that a scheme is not identified within the ward where the money has arisen (or an adjoining ward), or if the parties consider that the contribution should be prioritised elsewhere, this does not suggest that there is no longer a need for affordable housing within the ward the money has arisen and the Council will continue to investigate alternative means of delivering affordable housing in areas of need. Furthermore, the Council's zoned RSLs will still continue to address need within the minor rural settlements within the Vale of Glamorgan.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** Long Term - The strategic consideration of affordable housing contributions will enable the long term priorities identified within the Local Housing Market Assessment to be achieved, so that sustainable communities are developed within the Vale of Glamorgan, providing opportunities for living, learning, working and socialising for all.
- 3.2** Prevention - The use of contributions to increase the number of sustainable, affordable homes delivered within the Vale of Glamorgan will prevent homelessness, and provide decent homes and safe communities.
- 3.3** Integration - The delivery of affordable housing will help prepare for a more diverse population and address some of the social issues the Council currently faces, e.g. aging population and the need for adapted homes, by embedding social cohesion and integration at the forefront of decision making.

- 3.4 Collaboration - The Council will work collaboratively with Elected Members, internal departments and external organisations such as Registered Social Landlords to deliver affordable housing using Section 106 off-site affordable housing contributions.
- 3.5 Involvement - Multiple internal departments and external organisations will work together to deliver affordable housing in a holistic way using these contributions

4. Resources and Legal Considerations

Financial

- 4.1 Off-site financial contributions for affordable housing secured via Section 106 Agreements will enable the Council to deliver affordable housing.

Employment

- 4.2 There will not be any staffing issues which arise as a result of the recommendations. The Council's Section 106 Officer and Housing Development Manager posts are funded within existing budgets.
- 4.3 The development of affordable housing will provide targeted recruitment, training, apprenticeship and employment opportunities for local people on each site.

Legal (Including Equalities)

- 4.4 Section 106 of the Town and Country Planning Act 1990, as amended by Section 12 of the Planning and Compensation Act (1991) and the Community Infrastructure Levy Regulations 2010 (as amended), provides the legislative framework for planning obligations, including off-site affordable housing contributions. The Council has acted in accordance with this legislation when securing these contributions.
- 4.5 The Well-being of Future Generations Act requires the Council to work towards achieving a more equal Wales of cohesive communities. The delivery of affordable housing will ensure that the Council is responding to this duty.

5. Background Papers

Local Housing Market Assessment (2017)

Vale of Glamorgan Council adopted Local Development Plan (2011-2026)

Supplementary Planning Guidance (Planning Obligations)

Supplementary Planning Guidance (Affordable Housing)

Appendix A: Homes4U Waiting List

Area	1 Bed	2 Bed	3 Bed	4 Bed	5 bed	6 Bed	Total
Barry*	6	1					7
Baruc ward	367	225	78	15	1	1	687
Butrills ward	403	165	63	19	2		652
Cadoc ward	208	84	36	7	3		338
Castleland ward	335	148	50	13			546
Cornerswell ward	120	83	34	10		1	248
Court ward	128	82	24	5	1		240
Cowbridge ward	137	93	36	5			271
Dinas Powys ward	140	99	33	9	1		282
Dyfan ward	107	97	37	9	1		251
Gibbonsdown ward	123	75	44	7			249
Illyd ward	136	92	32	8	3		271
Llandough ward	94	62	19	4	1		180
Llandow/Ewenny ward	12	13	2	2			29
Llantwit Major ward	177	121	56	16	1		371
No new area selected*	90	17	9	3			119
Penarth*		1	2				3
Peterston-S-Ely ward	19	11	8	3			41
Plymouth ward	59	32	10				101
Rhose ward	93	88	28	5		1	215
St Athan ward	53	52	22	6			133
St Augustines ward	109	53	12	1	1		176
St Brides Major ward	29	20	6	2			57
Stanwell ward	112	82	30	4	1	1	230
Sully Ward	30	14	4	1			49
Wenvoe ward	92	83	28	7	2		212
Grand Total	3179	1893	703	161	18	4	5958

*These people have not selected any particular preference within the town/area.

Appendix B - Contributions Received

Application reference and site name	Ward	Amount	Received Date	Expiry Date	Progress report	Balance (£) at 31.03.2019
2011/01248/FUL Former Lower School, Town Mill Road, Cowbridge	Cowbridge	Affordable Housing £34,934.48	16/12/2015	16/12/25	Members notified.	34,934.48
2015/00954/FUL Brynethin, Dinas Powys	Dinas Powys	Affordable Housing £576,376 £283,606.71 Total: 859,982.71	25/10/2016 01/09/2017	None None	Members notified.	859,982.71
2013/00884/OUT West of Port Road, Wenvoe	Wenvoe	Affordable housing- £822,354.32	16/01/2017	16/01/22	Contribution committed to Maes Y Fynnon, Bonvilston. Member approval for circa £50k to be utilised to purchase a property in Sully alongside RSL partner (final amount to be determined). £14,601.02 spent in 2018/19.	807,753.30
2015/00095/FUL Ardwyn, Dinas Powys	Dinas Powys	Off Site Affordable Housing 1 st instalment £107,105.38 2 nd instalment £23,790.00 Total: £130,985.35	23/03/2017 06/10/2017	23/03/27 06/10/27	Members notified.	130,895.35
2016/00879/FUL & 2016/00878/FUL Llwyn Nwydog Farm, Cowbridge Road, Talygarn	Cowbridge	Affordable Housing - £87,256.20	28/03/2017	28/03/27	Members notified.	87,256.20

2015/00249/FUL Land to the East of St. Nicholas - Redrow	Wenvoe	Affordable housing 1 st instalment £217,188.22	4/05/2018	4/05/28	Members notified.	439,599.33
		2 nd instalment £222,411.11	08/11/2018	08/11/28		
		Total:				
2013/01152/OUT Former ITV, Culverhouse Cross	Wenvoe	Affordable Housing £2,193,238	13/04/2018	13/04/28	Contribution partially committed to Maes Y Fynnon, Bonvilston. Balance under consideration.	2,193,238.00
2014/00242/FUL Land to the rear of St David's Primary School, Colwinston	Llandow/Ew enny	Affordable Housing £570,452	24/04/2018	24/04/28	Members notified.	570,452.00
2017/00541/FUL Northcliffe, Penarth	St. Augustine's Ward	Affordable housing £266,133.84	31/05/2018	31/05/28	Members notified.	266,133.84
2014/00995/FUL Land adjacent to Llantwit Major Bypass, Boverton	Llantwit Major	Affordable housing £2,486.20	13/12/2018	13/12/28	Members notified.	61,996.90
		£59,012.86	27/12/2018	27/12/28		
		Interest: £497.84	14/02/2019	14/02/29		
Total: £61,996.90						
2015/01129FUL Land at the Rectory	Wenvoe	Affordable Housing £53,163.83	12/02/2019	12/02/24	Members notified	53,163.83

In addition to the above, the Council has received the following since 01/04/2019:

2018/01368/FUL Westgate	Cowbridge	Affordable housing (£388,556)	18/06/2019	18/06/24	Members notified.	388,556.00
					Total:	£5,893,961.94

Appendix C: Adopted Section 106 Protocol for Implementation

1. Monies received – Managing Director, Head of Regeneration and Planning Operational Manager for Development Management Leader of the Council relevant Cabinet Members, and relevant service areas are notified in writing and consulted in order to highlight any potential opportunities for implementation, allowing for a **21 day** consultation period.
2. Local Ward Members (including adjoining wards within 100m of application site) and the relevant Cabinet Members notified in writing of any proposed scheme(s) and allowing a **14 day** consultation period for comments.

Note 1:

Where monies have already been specifically accounted for within the terms of the signed legal agreement this will be noted i.e. no scope for consultation on where the monies are spent.

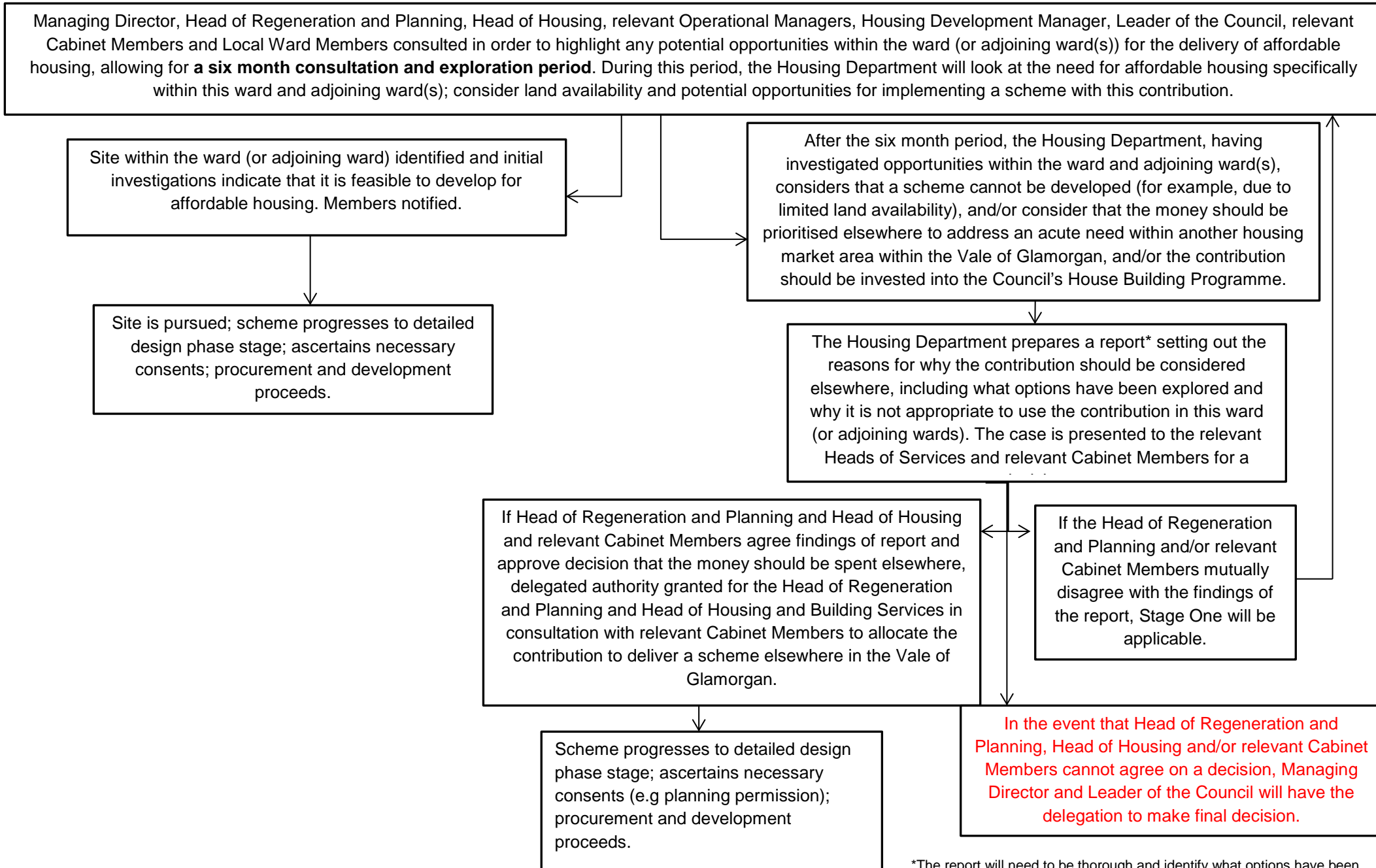
3. Local ward Members to comment on proposals for spends of money having regard to the broad term of the legal agreement during the **14 day** consultation period, unless further time is agreed.
4. After 14 day period, the service area is notified of any representations made, which must be considered for feasibility and if dismissed valid reasons provided.
5. Service area, in consultation with relevant Cabinet Members, recommends where the money is best spent.
6. Final decision is made by Head of Regeneration and Planning (Marcus Goldsworthy) in conjunction with the relevant Head(s) of Service(s) subject to 'call in procedure'.
7. Relevant Cabinet Members and Local member(s) notified. If aggrieved, any member has 14 days to request the decision is called in by Cabinet to determine.

Note 2:

Where monies are going to fund a capital scheme, prior approval will be required from Cabinet, for the inclusion of the monies into the capital programme. Cabinet approval must be obtained before the scheme commences

8. Service area notified and given authorisation to spend the Section 106 amount.
9. Project Implemented.
10. Annual Monitoring Report notes project implementation and contribution spent.

Appendix D: New Protocol for Implementation for S106 Off-site Affordable Housing Contributions



*The report will need to be thorough and identify what options have been explored; where the department would like to prioritise the contribution, and also demonstrate need and deliverability.