

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Thursday, 16 October 2025</b>
Relevant Scrutiny Committee:	Place Scrutiny Committee
Report Title:	Revised Section 106 Protocol for Implementation
Purpose of Report:	To seek Cabinet's endorsement of a revised Section 106 Protocol for implementation
Report Owner:	Cabinet Member for Community Engagement, Equalities and Regulatory Services
Responsible Officer:	Director of Place
Elected Member and Officer Consultation:	<p>Head of Sustainable Development,  Operational Manager for Planning and Building Control,  Lawyer – Legal Division,  Principal Lawyer,  Operational Manager Accountancy,  Finance Support Manager,  Operational Manager, Strategy and Resources,  Head of Strategy, Community Learning and Resources,  Library and Cultural Services Manager,  Arts Development Officer,  Project Manager, Sustainable Communities for Learning,  Operational Manager, Healthy Living and Performance,  Head of Neighbourhood Services,  Operational Manager Engineering,  Operational Manager Transport Services,  Senior Sustainable Transport Officer,  Engineering Manager Highways Development and Traffic,  Head of Housing and Building Services,</p>

	<p>Operational Manager, Public Housing Services, Housing Development Programme Manager, Neighbourhood Services Manager, Landscape Architect, Team Leader Countryside Services, Ecologist, Operational Manager for Regeneration, Team Leader Community Development, Programme Development Officer (Plan for Neighbourhoods), Senior Community Development Officer, Programme Manager Project Zero, Principal Planner Planning Policy, Major Projects Manager.</p>
Policy Framework:	This is a matter for Executive decision by Cabinet
<p>Executive Summary:</p> <ul style="list-style-type: none"> <li>• This report seeks Cabinet's approval of a revised Section 106 Protocol for implementation which relates to all financial planning contributions secured through a Section 106 agreement, save for education contributions required to support the Council's Sustainable Communities for Learning (SCfL) rolling programme and off-site affordable housing contributions for which there are separate implementation processes already in place.</li> <li>• The revised Section 106 Protocol adopts a more holistic, place-based approach to the allocation of Section 106 funds to suitable schemes which align with the relevant legal definition(s) and serve the needs of the occupiers of the new development. It also allows relevant Town and Community Councils to be more directly involved in the Section 106 implementation process, strengthening collaboration and local engagement.</li> </ul>	

## **Recommendations**

1. That Cabinet approve the revised Section 106 Protocol (attached at Appendix A) for implementation which relates to all financial planning contributions secured through a Section 106 agreement except for education contributions required to support the Council's Sustainable Communities for Learning (SCfL) rolling programme and off-site affordable housing contributions.
2. That delegated authority is granted to the Head of Sustainable Development to authorise Section 106 spend on suitable schemes up to a value of £40,000.
3. That the Planning Obligations Supplementary Planning Guidance is amended to reflect the revised Section 106 Protocol for implementation.

## **Reasons for Recommendations**

1. To ensure the effective future implementation of Section 106 obligations whilst engaging relevant Members, Town and Community Councils and service areas in the process.
2. To ensure the effective future implementation of Section 106 contributions on suitable schemes.
3. To ensure that the Planning Obligations Supplementary Planning Guidance is up to date and reflects the current Section 106 implementation process.

## **1. Background**

- 1.1 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) provides the current legislative framework for planning obligations. This legislation enables the Council to enter into legal agreements with developers to seek planning contributions to mitigate negative development impacts and / or restrict the use of land or activities carried out on land.
- 1.2 The Community Infrastructure Levy Regulations (2010) came into force on 6th April 2010 in England and Wales and therein Regulation 122 had immediate effect, which gave a regulatory basis to particular tests associated with planning obligations. It states that a planning obligation may only legally constitute a reason for granting planning permission if it is:
  - (a) Necessary to make the development acceptable in planning terms;
  - (b) Directly related to the development; and
  - (c) Fairly and reasonably related in scale and kind to the development.
- 1.3 Circular 13/97 Planning Obligations states that planning obligations should only be sought where they meet the following tests:
  - (i) Necessary to make the development acceptable in planning terms;

- (ii) Relevant to planning;
- (iii) Directly related to the development;
- (iv) Fairly and reasonably related in scale and kind to the development; and
- (v) Reasonable in all other respects.

- 1.4** The Council's approved [Planning Obligations Supplementary Planning Guidance](#) (SPG) (July 2018) sets out the Council's policies for seeking section 106 obligations including financial contributions. This often results in financial payments being made to the Council to provide new or enhanced facilities or infrastructure in the vicinity of new developments such as education facilities, sustainable transport or community facilities.

## **2. Key Issues for Consideration**

- 2.1** The [current Section 106 Protocol for implementation](#) was approved in 2015. The Protocol applies to all financial contributions secured through a Section 106 agreement, except for education contributions required to support the Council's Sustainable Communities for Learning (SCfL) rolling programme and off site affordable housing contributions for which there are separate implementation processes already in place. These separate processes were previously approved by Cabinet on 16th July 2018 and 4th November 2019, respectively.
- 2.2** The Council signed up to the Placemaking Wales Charter in 2023. Placemaking plans were subsequently prepared for Llantwit Major, Penarth and Cowbridge and approved by Cabinet in June 2025. The Barry placemaking plan is due to be adopted shortly. Each placemaking plan has been co-commissioned with the four respective Town Councils, as the Council feels strongly that they should be a major partner in the delivery and evolution of the plans.
- 2.3** The legal framework will be the starting point for considering the expenditure of contributions, however, where appropriate, the placemaking plans can also help to guide the use of Section 106 funding towards suitable projects within the four towns.
- 2.4** With the placemaking plans and placemaking principles in mind, the Section 106 implementation process has been reviewed. The revised Section 106 Protocol under consideration is attached at Appendix A. As per the current position, this will apply to all financial planning contributions secured through a Section 106 agreement except for education contributions required to support the SCfL rolling programme and off-site affordable housing contributions to allow them to be considered strategically as well as locally. For clarity, the protocol for commissioning public art will also remain as set out in the [Public Art SPG](#) (July 2018).
- 2.5** The revised Section 106 Protocol has 5 stages. At stage 1, relevant officers, Members and Town and Community Councils are notified on receipt of a planning contribution and given 21 days to make suitable suggestions for spend. It should be noted that any community group proposals must be submitted via ward Members and / or Town and Community Councils.

- 2.6** Stage 2 involves notifying those parties consulted at stage 1 of any potential projects and giving them a further 14 days to comment. Schemes with a value of under £40,000 are assessed by the Section 106 officer and relevant service areas. The final decision is delegated to the Head of Sustainable Development and the scheme proposer and stage 1 parties are notified of the decision.
- 2.7** Stages 3 and 4 apply to schemes over £40,000. These are reviewed by a Section 106 funding panel comprising of the Section 106 officer (advisory role), Head of Sustainable Development / Operational Manager Planning and Building Control, relevant service area officer(s), relevant Cabinet Member(s) and at least one local ward Member. If multiple strong proposals are received, the Panel may require that community engagement be undertaken to identify local priorities. The Panel's decision is shared with the stage 1 parties. If relevant Members (as defined in the new Protocol) disagree, they have 14 days to request that the decision is called in for Cabinet to determine.
- 2.8** Stage 5 relates to implementation. Relevant service areas, Town and Community Councils or community groups are authorised to spend the Section 106 contribution(s) on the agreed schemes and feedback is provided to the local community if engagement took place under stage 3. The Town Boards (if applicable) are also advised of the decision.
- 2.9** This new approach seeks to give Town and Community Councils more direct involvement in the Section 106 implementation process. In addition to the relevant legal framework and definition(s) contained in the Section 106 agreement, regard will also be had to placemaking plans, placemaking principles and Vale 2030 objectives when considering potential schemes.
- 2.10** It should be noted that all Section 106 funded schemes must be achievable and deliverable within the required time frames specified in the legal agreement. Reviews will therefore need to be undertaken on a regular basis to ensure that this is the case.
- 2.11** The new approach does not relate to maintenance contributions that are paid to the Council, for example, financial contributions paid upon the transfer of land to maintain areas such as public open space.

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

- 3.1** The revised Section 106 Protocol for implementation has been developed in line with the sustainable development principle of the Well-being of Future Generations (Wales) Act 2015 and demonstrates the five ways of working:
- Long Term: Suitable Section 106 schemes seek to balance the short term needs of residents with the need to safeguard their long term needs.
- Prevention: Section 106 spend seeks to prevent problems occurring or becoming worse as a result of new development.

Integration: The revised Section 106 Protocol considers the legal agreement definition as well as relevant Vale 2030 objectives, Project Zero, placemaking plans and placemaking principles.

Collaboration: The revised Section 106 Protocol allows for greater collaboration with Town and Community Councils and Town Boards (if applicable) as part of the implementation process.

Involvement: The revised Section 106 Protocol allows Town and Community Councils and community groups to be more engaged in the implementation process and to put forward suitable proposals for the Section 106 spend.

## **4. Climate Change and Nature Implications**

- 4.1** Planning obligations can be used to mitigate the impacts of new developments having regard to climate change and nature implications.

## **5. Resources and Legal Considerations**

### **Financial**

- 5.1** The planning obligations sought through Section 106 legal agreements are an important mechanism to mitigate against the impacts of new developments and fund new and enhanced facilities for local residents.

### **Employment**

- 5.2** None arising out of this report.

### **Legal (Including Equalities)**

- 5.3** The planning obligations system is covered by Section 106 of the Town and Country Planning Act 1990 (as amended) and the Community Infrastructure Levy Regulations 2010 (as amended). It is essential that Section 106 spend is carried out in accordance with the legal requirements set out in the relevant Section 106 agreement and these are shared with all parties when consultation is undertaken by the Section 106 officer.
- 5.4** Terms of Reference will be drawn up for the Section 106 Funding Panel which will consider suitable schemes with a value over £40,000.
- 5.5** It should be noted that the Planning (Wales) Bill was recently published by the Welsh Government. The purpose of the Planning (Wales) Bill is to consolidate legislation relating to planning in Wales. Consolidation involves bringing together all or most of the (generally primary) legislation on a specific subject so that it can be easily found and modernising the form and drafting of the law to make it easier to understand and apply.
- 5.6** Consolidation will bring together several existing Acts on a subject, updating and harmonising the provisions, to eventually create a new, single Act. Consequently,

it is likely that the legislative wording covering the subject may change in due course, although the content will remain largely the same.

## **6. Background Papers**

Town and Country Planning Act 1990

The Community Infrastructure Levy Regulations 2010

Planning (Wales) Bill

Planning Obligations SPG

Affordable Housing SPG

Public Art SPG

Vale of Glamorgan Adopted Local Development Plan 2011-2026

## APPENDIX A

### Revised Section 106 Protocol for Implementation

#### Stage 1: Section 106 Contribution Received

- Notification of receipt of contribution and relevant legal definitions sent to the following consultees who are given **21 days** to suggest any potential opportunities for implementation:

- Chief Executive
- Director of Place
- Head of Sustainable Development
- Operational Manager for Planning and Building Control
- Operational Manager Accountancy
- Relevant Service Areas
- Council Leader
- Relevant Cabinet and Ward Members (including adjacent wards within 100m of application site)
- Relevant Town / Community Councils,

*Note 1 - Ward Members and Town/Community Councils should liaise with local community groups to inform spending suggestions at this stage.*

*Note 2 - If the legal agreement specifies a scheme(s) that the Section 106 contribution is to be spent on, projects must accord with this.*

- Town Boards (if applicable)
- Community proposals must be submitted via Ward Members and / or Town/Community Councils and must:
    - Align with the relevant legal definition(s) and be deliverable within the required timeframes
    - Explain how they meet community need
    - Reference local Placemaking Plans or general Placemaking Principles
    - Reference applicable Vale 2030 strategic objectives

*Note 3 - A proforma is available for proposal submissions from constituted groups*



- Community proposals that do not comply with the above requirements will not be considered further. Section 106 officer to check eligibility of schemes.

## **Stage 2: Proposal Review**

- After the initial 21-day consultation, all Stage 1 parties are notified of potential projects and given a further **14 days to comment**.
- Proposals **under £40,000** are assessed by the Section 106 Officer and relevant service areas. Final decision on Section 106 spend is delegated to the Head of Sustainable Development.
- Proposer of scheme and stage 1 parties notified of decision.

## **Stage 3: Panel Assessment**

- Proposals **over £40,000** are reviewed by the Section 106 Funding Panel.
- If multiple strong proposals are received, the Panel may require further community / stakeholder engagement to identify local priorities. Engagement duration depends on community size, proposal complexity, and available resources.

## **Stage 4: Notification of Outcomes**

- Outcomes of Panel shared with proposers and stage 1 parties.
- Relevant members\* may request that the decision is called in by Cabinet to review within **14 days** if dissatisfied.

*Note 4 - \* Relevant members include local ward members and members from adjacent wards if the relevant application site is within 100m of the ward boundary*

## **Stage 5: Implementation**

- Relevant service areas or Town / Community Councils, community groups, voluntary sector organisations etc are authorised to spend the Section 106 contribution on the agreed scheme(s) within a defined time frame to comply with the legal agreement.
- Feedback is provided to the local community where engagement occurred under stage 3.
- Town Boards (if applicable) are also advised of the outcome.