

APPENDIX 2

1.1 Activity Name: Section 106 (S106) Agreements (Service Area: Communities and Place)

- i. Assurance Level for this report: Limited Assurance; and
- ii. Recommendations arising from this review have been prioritised as:

High Priority:	5
Medium Priority:	6
Low Priority:	0
Rejected:	0

1.2 Within 2021-22, the then Cabinet Member for Housing and Planning highlighted S106 as a high risk area for Internal Audit Plan consideration and inclusion. The request was reviewed and agreed by both ARA and the Audit and Governance Committee.

1.3 **Scope** – This audit reviewed the procedures and controls in place with regard to S106 agreements. Developer contributions relating to Gloucestershire County Council responsibility such as education and highways have not been reviewed as part of this audit.

1.4 Key Findings

- i. Ownership and responsibility for the management of S106 agreements is not clear. The current process includes many 'hand offs' between service areas, resulting in several of the observations within this audit;
- ii. At the point of this audit there is no complete record of all S106 agreements. The previous Head of Place indicated that all S106 agreements would be updated to Exacom (dedicated system for managing Community Infrastructure Levy (CIL) and S106 agreements) by June 2021. Although initiated, this exercise has not been fully completed;

Risk: Lack of effective governance arrangements resulting in S106 developer contributions either not being collected promptly or being mismanaged;

Recommendation: A review of the ownership and governance arrangements for S106 agreements should be completed. This should determine who is the overall owner(s) responsible for the maintenance and management of all S106 agreements, including subsidiary responsibilities for the various elements of the process. Following completion of the review the findings should be implemented.

- iii. Following the cyber incident, the previous S106 Officer used their initiative and took on responsibility to identify and record all S106 agreements on a spreadsheet. However, the S106 Officer recognised that the spreadsheet record is not fully up to date and complete and Internal Audit work has confirmed this assessment;

Risk: Records held and maintained by the Council are not complete resulting in the potential return of developer financial contributions or planning improvements not implemented;

Recommendation: Exacom should be nominated as the priority system for the administration of S106 agreements and fully utilised.

The use of spreadsheets, which can be manually intensive and have a heightened risk of data inaccuracy including a lack of an effective audit trail, should be stopped.

Work should be undertaken to identify all operating S106 agreements (both financial and non-financial) and to update the appropriate information into the Exacom system.

- iv. Regular reconciliations between the S106 Officer spreadsheet to Uniform, Exacom, Housing Projects and Strategy Team Leader and general ledger records were not performed before or after the cyber incident (high priority);
- v. Due to the cyber incident, Planners were unable to provide Internal Audit with the required information (selected sample) to prove the basis of the developer contributions and monitoring fees. Internal Audit was therefore unable to provide positive assurance in this area;

Risk: Unauthorised or incorrect charges are applied resulting in financial losses or an adverse impact on the community due to a reduction in the developer's obligations;

Recommendations: Once the planning and document management systems have been successfully restored, management should provide Internal Audit with details of the developer contributions calculations and figures (including the monitoring fee).

Documentary evidence of management review and approval should also be provided.

- vi. A single or multiple data source confirming complete and accurate information on S106 agreements was not available at the point of audit. This impacts the Council's ability to ensure effective and robust management, oversight, and monitoring of all S106 agreements. Internal Audit established the following from a review of the S106 Officer spreadsheet:
 - a. Five developer contributions totalling approximately £180k had not been fully used by the stated deadlines;
 - b. Expenditure on three S106 agreement projects had, in total, exceeded the developer contributions by approximately £50k;
 - c. For one case, developer contributions of £75k, to be payable over five years following the commencement of the development (6th January 2020), had not been paid. The S106 agreement was dated September 2015;

- d. Three S106 agreements for affordable homes totalling £85k (received in 2018), although within stated expenditure timeframes, had not been spent at the point of the audit. This was due to a lack of suitable housing schemes being available; and
- e. Follow-up actions and monitoring between the S106 Officer and developers has not been updated to the S106 spreadsheet.

Risk: Ineffective management oversight resulting in overspend and return of developer contributions due to deadlines being passed;

Recommendations: Management should, at least quarterly, obtain summary information of the status and position of all operating S106 agreements to confirm effective monitoring and that developer obligations are being fulfilled.

In addition, a review of developer contributions spend should be undertaken to confirm deadlines are being met, there are no overspends and, where appropriate, developer money is returned.

Consideration should be given to providing the Planning Committee with a half yearly report of the status of all S106 agreements.

- vii. The Government Planning Protocol states that S106 agreements '*should normally include clauses stating when and how funds will be used by and allow for their return, after an agreed period of time, where they are not*'. Not all Council S106 agreements have included a deadline for use of developer contributions. In these cases, the S106 Officer advised Internal Audit he applied a deadline period of five years whereas the Housing Projects and Strategy Team Leader applies 10 years. Formal details and approval for either approach was not provided to Internal Audit (medium priority);
- viii. Following developer fulfilment with the S106 agreement, relevant officers are not instructed to update the Land Charges register to reflect developer compliance with or discharge of their obligations (medium priority);
- ix. The full extent of the operational risks for S106 agreements including risk appetite have not been documented. As at the point of this audit one operational risk had been identified, which related to a lack of resources to manage S106 agreements (medium priority);
- x. Other areas identified for action related to the accounting, approval, and reporting of developer monitoring fees (three medium priority recommendations).