

Report to: **Scrutiny Committee**



Date of Meeting 4th February 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Scoping of Section 106/CIL Issues

Report summary:

Following a request to scope future work on S106 and CIL Issues this report is to update Members on the finding of the SWAP audit into this area of work and to provide information on the current spend. A review of this process is already envisaged by Officers and forms part of the draft Organisational Development Service Plan for 21/22.

Recommendation:

1. That Members acknowledge the findings of the SWAP audit into Section 106/CIL and the recommendations made in the audit report.
2. That Members note that a review of the S106 spend and participatory spend process forms part of the draft service plan for Organisational Development.

Reason for recommendation:

To ensure that Members are aware of the work that has already taken place and is ongoing with regard to this issue to inform their scoping of the matter.

Officer: Ed Freeman: Service Lead – Planning Strategy and Development Management

Portfolio(s) (check which apply):

- Climate Action
- Coast, Country and Environment
- Corporate Services and COVID-19 Response and Recovery
- Democracy and Transparency
- Economy and Assets
- Finance
- Policy Co-ordination and Regional Engagement
- Strategic Planning
- Sustainable Homes and Communities

Financial implications:

There are no direct financial implications identified at this stage. The additional s106/CIL resource highlighted in the report has been included in the draft 2021/22 budget although fully funded from income received.

Legal implications:

There are no legal implications other than as set out within the report.

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information

Link to [Council Plan](#):

Priorities (check which apply)

- Outstanding Place and Environment
 - Outstanding Homes and Communities
 - Outstanding Economic Growth, Productivity, and Prosperity
 - Outstanding Council and Council Services
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Background

At the Scrutiny Committee meeting of the 10th December 2020 Members considered a proposal from Cllr Vicky Johns to consider the S106/CIL process following concerns that it takes a long time to move forward with delivering projects. Some of the reason for this was thought to be the limited staff resources in this area. Members were advised that a SWAP audit was in progress to consider this area of work and that the committee should wait for the outcome of the audit. It was resolved that the proposal be put on the forward plan and scoped in February 2021.

The Audit

South West Audit Partnership have now completed an audit of the S106 and CIL system. The purpose of the audit was to ensure that appropriate arrangements are in place to manage the receipt and expenditure of S106 and CIL contributions. The audit was brought forward at the request of the leader having originally been planned for quarter 4.

The report gives “limited assurance” noting that the S106 spend and collection work is not up to date due to the substantial work that has been involved in populating the Exacom system and the redeployment of officers into the community hub to help to support the community through the Covid-19 pandemic. The report notes that no monies have been lost or returned to developers as a result of this lack of resource but there are a significant number of outstanding actions required on the system.

The report makes two priority 2 recommendations relating to appointing additional temporary staff resource to help get the system up to date and the updating of guidance on the participatory budgeting process. A further two priority 3 recommendations are made in relation to the introduction of the public facing Exacom module and the use of Exacom for recovering outstanding payments. Officers acknowledge the findings of the audit and are committed to addressing the identified issues as a priority.

The report was reported to Cabinet at their meeting of the 6th January with Members noting the findings of the audit and the need to appoint additional staff resource as a priority. Audit and Governance Committee are also considering the findings. The full report is appended for Members information.

The Current Position

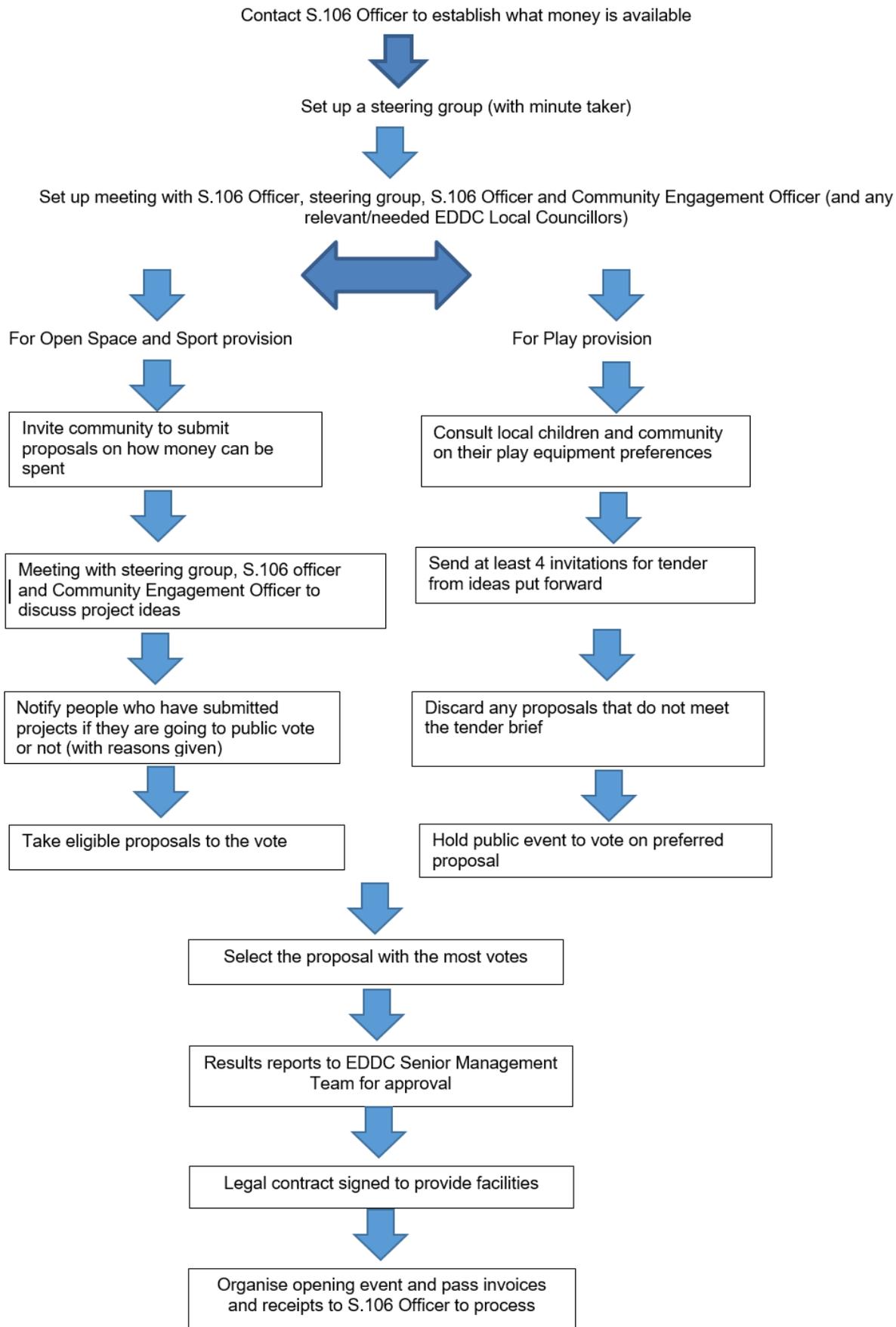
A lot of work has been on-going to get the Exacom system up to date and the information on the Exacom system is now largely complete and a public facing module giving access to the data through the website is being readied to go live shortly. The additional staff resources recommended by SWAP are in the process of being recruited and will help to enable the remaining tasks to be completed and enable further progress to be made on supporting the spend of monies in the community.

We are in the process of updating the information about the spend process that is available on the website as recommended by the SWAP audit, however the audit did not look at the spend process itself. The spend process involves a range of resources corporately including the comms team and often engineers in the street scene team when council land is involved. The process is based on the principles of participatory budgeting and involves the respective town or parish council with the support of the EDDC's Community Engagement Officer undertaking a lot of work to engage with the community on their needs and aspirations for provision of sport, open space and play provision. These processes were established many years ago and seek to ensure that the sports, open space and play facilities that are delivered meet the needs and aspirations of the community. Officers are not aware of any other local authorities in the area that use a participatory budgeting process to determine spend with many authorities using the funding to support their own capital programme and not engaging with communities over how the monies are spent. Although the process takes significant resources and can be time consuming it has delivered many innovative and popular facilities that may not have been so popular without the involvement of the community in their delivery or may not have been delivered at all.

The full process and guidance notes that are available on the Council's website are appended to this report for Members information and understanding of the existing process. It should be noted that this relates to the spend of monies collected for open space, sport and play areas only.

It is clear that it is a resource intensive process that in recent years has caused frustration among town and parish councils looking to spend S106 monies. This has already been understood and acknowledged by officers and a review of this process has already been proposed as part of the Organisational Development Service Plan and agreed at the joint Scrutiny and Overview Committee for recommendation to Cabinet.

Section 106 Open Space, Sport and Play Monies Spend Process



Spend Process Guidance Notes

How can we access open space, sports and play money?

There are important procedures that need to be followed to ensure that you, the town or parish council, are allocated your funds. If you get in touch with our section 106 officer, she will tell you how much money is available.

By following the simple process outlined in the rest of this information, you can make sure the funds are allocated correctly and speedily:

- Set up a steering group with town and parish council representatives and other relevant organisations. This steering group should ensure that local people know what is happening. Town and parish newsletters are a good way to do this.
- Set up a meeting with our section 106 officer, community engagement officer and your steering group. At this meeting you should look carefully at the process and decide what work your steering group is willing and able to do to ensure the funds are spent appropriately. A schedule of future face-to-face meetings must also be agreed. Either the steering group or the section 106 officer and/or community engagement officer will write up an action plan outlining what will happen and when, and who is responsible for each stage of the process. Relevant East Devon District councillors should be made aware of the process and invited along to meetings where appropriate so they can also help town and parish councils if needed.
- Our section 106 and/or community engagement officers are able to advise, or be involved in, every stage of planning events and activities to publicise the projects. They are a very useful resource and are happy to help. However, if the steering group decides not to ask them to get actively involved, then you must make sure are kept fully informed of any activities or events that are planned before any action is taken.
- Our communications officer will be able to offer support with publicity for your events. You should make sure our section 106 officer and/or community engagement officer should make sure that they are aware of any planned activities well in advance. This is a valuable resource, as the communications officer has a comprehensive list of media contacts and will be able to issue press releases or statements on your behalf. Budgets are always under pressure and this is a good way to gain free publicity.
- Children and young people must be given an opportunity to vote on the projects. Play and sport is particularly relevant to them so their votes need to be actively sought. If this is to be done by you, the advice of our community engagement officer must be sought on how to do this most effectively and in line with child protection guidance.
- We strongly recommend that Parish and Town Councils undertaking the participatory budget process take minutes at their steering/working groups and publish them on their websites to ensure that the process is open and transparent.
- Having a Neighbourhood Plans in place that has already identified open space, sports and play facilities needed in the area can reduce the time taken to complete the process, particular if consultation has already been undertaken on the open space, sport and play requirements in the Parish or Town and is included in the Plan.

How to spend money available for sport

Please make sure you read the 'How can we access open space, sports and play money' part of this guide first.

The group (East Devon officers and the town or parish council steering group) should:

1. Look at how much money is available for sport. The definition of a 'sport' is provided by [Sport England](#).
2. Look at your parish plan or neighbourhood plan if you have one. This is a useful starting point and may help you decide what sports provision your parish needs.
3. Invite your local community to submit their proposals on how this money could be spent. This should be done through a publicity campaign in the media and through posters. This can be done for very little cost, if any, by involving us.
4. After initial ideas for projects have been submitted by the community, they must be passed to the section 106 officer. A meeting should be held at which the town or parish council, section 106 officer and community engagement officer are present to discuss the initial project ideas to ensure they meet the Section 106 funding criteria. This meeting and actions from it must also work out if the eligible projects are affordable and possible, for example are there potential sites available for the project.
5. Anyone who has submitted a project must be notified whether it is going to the public vote or not. If not they should be given reasons why it isn't.
6. All the eligible, affordable and possible proposals should be taken to the community for their votes. This voting must be well publicised. Age brackets and postcodes of voters should be collected to ensure all ages and geographical locations within the parish are fairly represented. The voting is most successful when held in places where people are already gathering, for example at farmers' markets, Christmas fayres or local cafés.
7. The most popular project should be the one that gets the pot of money. If there is any money left over after this project is funded it should go to the second most popular project, and so on. By allocating funds in this way, it ensures the most popular projects actually happen. The results will be kept on file and if additional section 106 money becomes available that would be spent on the next most popular project.
8. Our section 106 officer will report the results to our senior management team for approval, and the steering group reports to the parish/ town council. A legal contract must be set up by us between the landowner of the site and us.
9. Organise an opening event at the finished sports facility, making sure that members of the community, councillors, developers whose money contributed to the sports project and the local media are invited.
10. Your town/parish council or other organisation pass received invoices onto our section 106 officer to be reimbursed.
11. In the unlikely event of any discrepancies, the final decision as to which project(s) are supported lies with us and ward councillors as custodians of section 106 monies.

How to spend money available for play

Please make sure you read the 'How can we access open space, sports and play money' part of this guide first.

The group (our officers and your town or parish council steering group) should:

1. Look at how much money is available for play and where it could be spent. This is within usually 600 metres of the development the section 106 contribution has come from.
2. Look at your parish plan or neighbourhood plan if you have one. This is a useful starting point and may help you decide where to spend the money.
3. Consult local children on what they do and don't like about play areas and what the important activities are in a play area for example, sliding, climbing, rather than ask them to select specific pieces of equipment. This ensures that the play companies have some flexibility and can perhaps put in new and exciting pieces of equipment the children may not know about.
4. Send at least four play companies an invitation to tender detailing what you want them to provide and what your budget is. If it is a council owned play site, then we will do this for you. If it's owned by you or the community then we can help you with this process.
5. Your steering group should discard any of the designs that come back and don't meet the brief and/or the budget. They should end up with a short list of about three designs for the community to vote on.
6. Plan and hold a play event and/ or go into local schools and encourage children and young people from within the parish to take part by voting for the play area they want. A play event could include face painting, games, or circus skills. A small amount of the section 106 money is set aside to pay for consultation. The voting could be held as part of a local event, for example a village fête. Alternatively nearly all schools are keen to get involved in local community projects so the voting could be held as part of an assembly. You just need to make sure that you get the views of the right age ranges.
7. Whichever play area design receives the most votes is the one that will happen.
8. Our section 106 officer reports the results to our senior management team for approval, and your steering group reports to your parish/town council. A contract must be signed with the play company, and a legal contract must be set up by us between the landowner of the site and us.
9. If the play area is owned by the town or parish council or other organisation they would pass received invoices onto the section 106 officer to be reimbursed.
10. Once the play area is built an opening event is organised. Members of the community, councillors, developers whose money contributed to the play area, and the local media should be invited.
11. In the unlikely event of any discrepancies, the final decision as to which project(s) are supported lies with us and ward councillors as custodians of section 106 monies.

How to spend money available for open space

Please make sure you read the 'How can we access open space, sports and play money' part of this guide first.

The group (our officers and your town or parish council steering group) should:

1. Look at how much money is available for open space, what exactly it can be spent on and where it could be spent.
2. Look at your parish plan and neighbourhood plan if you have one. This is a useful starting point and may help you decide where to spend the money.
3. Invite your local community to submit their proposals on how this money could be spent. This should be done through a publicity campaign in the media and through posters. This can be done for very little cost, if any, by involving us.
4. After initial ideas for projects have been submitted by the community, they must be passed to the section 106 officer. A meeting should be held at which the town or parish council, section 106 officer and community engagement officer are present to discuss the initial project ideas to ensure they meet the Section 106 funding criteria. This meeting and actions from it must also work out if the eligible projects are affordable and possible, for example are there potential sites available for the project.
5. Anyone who has submitted a project must be notified whether it is going to the public vote or not. If not they should be given reasons why it isn't.
6. All the eligible, affordable and possible proposals should be taken to the community for their votes. This voting must be well publicised. Age brackets and postcodes of voters should be collected to ensure all ages and geographical locations within the parish are fairly represented. The voting is most successful when held in places where people are already gathering, for example at farmers' markets, Christmas fayres or local cafés.
7. The most popular project should be the one that gets the pot of money. If there is any money left over after this project is funded it should go to the second most popular project, and so on. By allocating funds in this way, it ensures the most popular projects actually happen. The results will be kept on file and if additional section 106 money becomes available that would be spent on the next most popular project.
8. Our section 106 officer will report the results to our senior management team for approval, and the steering group reports to the parish/ town council. A legal contract must be set up by us between the landowner of the site and us.
9. Organise an opening event at the finished sports facility, making sure that members of the community, councillors, developers whose money contributed to the sports project and the local media are invited.
10. Your town/parish council or other organisation pass received invoices onto our section 106 officer to be reimbursed.
11. In the unlikely event of any discrepancies, the final decision as to which project(s) are supported lies with us and ward councillors as custodians of section 106 monies.