This report investigates the likely significant impacts on the District in terms of the contribution towards sustainability that might arise if the options and approaches proposed for the Tandridge District Development Management Document are implemented.
Contents

1. Introduction

2. Background

3. S106 Planning Obligations and Community Infrastructure Levy (CIL)
   • What are planning obligations?
   • Types of planning obligation
   • What is CIL?

4. The Relationship between planning obligations and CIL

5. Spending and Governance
   • S106 Planning Obligations
   • CIL

6. Monitoring and Reporting
Part 1 Introduction

1. Scope of the Document

1.1. Proposed development is likely to create demand for new or additional infrastructure. The infrastructure may be directly related to the development (site specific/local) or indirectly related (strategic) and is required in order to support sustainable growth.

1.2. The Community Infrastructure Levy (CIL) Regulations have significant implications for the way the Council secures funds towards the required infrastructure. The regulations limit the use of pooled S106 contributions and also set statutory tests that each obligation must satisfy in order to be acceptable as a reason for granting planning permission.

1.3. CIL does not replace S106 agreements but the CIL regulation 2010 has tightened up the S106 tests and places a limit on the use of planning obligations. S106 agreements cannot be pooled in the same way as before to fund infrastructure, instead they should be focused on site specific mitigation required by a new development\(^1\).

2. Purpose of this Document

2.1. The purpose of this guidance is to:

- Clarify how Tandridge District Council intends to use planning obligations and Section 106 (S106) agreements since the adoption of the Community Infrastructure Levy (CIL) in June 2014. It demonstrates that there will be no “double counting” between CIL and S106 (developers paying twice towards the same item of infrastructure) and that there is a clear and transparent system for identifying what infrastructure should be funded through CIL, and in what circumstances an item of infrastructure would be in addition to the CIL payment, as a planning obligation;
- Set out the Council’s policies and procedures for securing developer contributions; and
- Provide clear guidance to developers, landowners, infrastructure providers, the general public and other relevant stakeholders as a guide to the Council’s position on planning obligations and CIL. It should assist with the planning application process by clarifying the scope and scale of planning obligations likely to be sought for different developments.

Please note this document is likely to change overtime.

\(^1\) The limit on use of S106 planning obligation is effective from April 2015.
3. **Background**

**National Planning Policy Overview**


**Town and Country Planning Act (TCPA) 1990**

3.2. Under Section 106 of the Town and Country Planning Act (TCPA) 1990 (as amended), the planning authority can legally enter into an agreement (“s106 agreement”) with developers in relation to planning applications to make unacceptable development acceptable in planning terms. These agreements can be in the form of unilateral undertakings which are solely signed by persons with interest on the land.

**The National Planning Policy Framework**

3.3. The National Planning Policy Framework (NPPF) sets out government policy on use of obligations, replacing Circular 05/05 “Planning Obligations”. The NPPF defines a planning obligation as “a legally enforceable obligation entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impact of a development proposal”.

3.4. The NPPF states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (paragraph 206, NPPF). The purpose of planning condition is to control the application site or adjoining land under the applicants control and therefore make the proposal acceptable. On the other hand, planning obligations is to mitigate the impacts of proposed development, to make development that would otherwise be unacceptable acceptable in planning terms (see section on what are planning obligations for further details).

4. **S106 Planning Obligations and Community Infrastructure Levy**
What are planning obligations?

4.1. Section 106 of the Town and Country Planning Act 1990 (as amended) enables planning obligations to be secured through a S106 agreement between a council and a landowner. This mechanism is designed to make a development proposal acceptable in planning terms that would not otherwise be acceptable. Planning obligations provide a means to ensure that a proposal for development contributes towards the creation of sustainable communities and should be used to mitigate the negative site-specific impacts of a development.

4.2. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and where they meet the three tests (paragraph 204, NPPF):

(i) necessary to make the proposed development acceptable in planning terms;

(ii) directly related to the proposed development; and,

(iii) fairly and reasonably related in scale and kind to the development.

4.3. In accordance with the CIL regulations, after April 2015, it will no longer be possible to pool planning obligations from more than five developments towards the implementation of a specific infrastructure item or once a local CIL charging schedule has been adopted.2

4.4. The requirement of a Section 106 obligation varies according to the size, impact and nature of the proposed development.

4.5. Policy CSP11 of the adopted Tandridge District Council Core Strategy is used as a policy justification to support applicants of the requirement that financial contributions may be required if the development increases the demand for off-site services and infrastructure where sufficient capacity does not exist. The requirement for developer contributions are discussed with the applicant at a pre application meeting, however, the exact requirements are specified following consultation of the planning application with the infrastructure providers within the area on a case by case basis. For example they might be used to prescribe the nature of development by:

- Requiring that a proportion of housing built is affordable;

2 The CIL Charging Schedule set out the District’s CIL rates.
- Securing a contribution to compensate for loss or damage resulting from the development e.g. loss of open space; or
- Mitigating the development’s impact e.g. by encouraging public transport usage or highway improvements.

4.6. For planning obligations to be effectively sought within the District, the Council has produced a Code of Practice (to be updated as the Local Plan progresses and when appropriate). The Code was originally published by the Council in September 2007, and explains how Tandridge District Council will negotiate planning obligations under section 106 of the Town and Country Planning Act 1990. It was amended in October 2008 to reflect the adoption of the Tandridge District Core Strategy 2010.

**Negotiating planning obligations**

4.7. Developers should start discussions on planning obligation requirements with the council as soon as possible, ideally during the pre-application stage of the process. The ‘heads of terms’ of any planning agreement will need to be finalised before applications are reported to elected members, either through planning committee or a delegated report.

4.8. A planning obligation can be financial, in which case it will require a sum or sums to be paid to the authority on a specified date or on particular trigger points as appropriate, for example on completion of the development.

4.9. A planning obligation can be non-financial, in which case it might:

- Restrict the development or use of the land in any specified way;
- Require specified operations or activities to be carried out in, on, under or over the land; or
- Require the land to be used in any specified way.

**Types of planning obligations**

4.10. Table 1 sets out the type of planning obligations which may be required as part of any S106 Agreement, triggers or thresholds at which they will be required and the Council’s approach to the level and scale of contributions.
Table 1: Heads of terms

<table>
<thead>
<tr>
<th>Planning Obligation Detail</th>
<th>Amount(s)</th>
<th>Trigger</th>
<th>Core Strategy Policy with links</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Affordable Housing</strong></td>
<td></td>
<td>To be determined on a case by case basis</td>
<td>To be determined on a case by case basis</td>
</tr>
<tr>
<td>Applies to:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Provision to be negotiated on a site by site basis.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• On sites within the built up areas of 15 units or more or sites of or greater than 0.5 hectare or</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• On sites within the rural area (see Annex 3) of 10 units or more</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Travel Plan Monitoring Fee</strong></td>
<td>£4,600 to £6,150 (depends on the type and size of applications)</td>
<td>To be determined on a case by case basis</td>
<td>See SCC Travel Plan Good Practice Guide Appendix A</td>
</tr>
<tr>
<td>Contribution towards the cost of monitoring compliance with the travel plan and helping to ensure its success</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Transport/Rights of Way</strong></td>
<td></td>
<td>To be determined on a case by case basis</td>
<td>To be determined on a case by case basis</td>
</tr>
<tr>
<td>Site-specific infrastructure (e.g. road safety improvements)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Flood Protection and Water Management</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Site-specific flood mitigation measures</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What is CIL?

4.11. The CIL is a mechanism introduced by Government to allow local planning authorities to raise funds from some forms of new development in order to pay for the infrastructure that is, or will be, needed as a result of that new development. The CIL Regulations require the local authority to prepare a Regulation 123 list that sets out a list of types of projects, which will be funded by CIL. Funding for items included on the Regulation 123 list cannot normally be sought through planning obligations. This is to avoid double charging of a development for the same infrastructure.

4.12. CIL will be charged when planning permissions are commenced and the charge will be set based on the type, size and potential location of the development. Unlike planning obligations, CIL is non-negotiable and is mandatory on all qualifying development.

4.13. Certain types of development and institutions are exempt from paying CIL, as set out in part 6 of the Regulations. Claims for relief cannot be made after the development has commenced and are void if the development has commenced, and no claim for relief has been submitted. The following types of development can apply for relief from CIL:-

- Social housing schemes
- Charitable institutions
- Self-build homes
- Self-build annex or extensions

4.14. CIL is applied as a charge on each square metre of new building, and will be payable by most residential and convenience retail including convenience based supermarkets and superstores\(^3\) in Tandridge. Chargeable development will be CIL liable and charges are index-linked. The types of development that are liable for CIL are:

- All development containing at least 100 square metres of new build.
- Development of less than 100 square metres of new build that results in the creation of a new dwelling.
- The conversion of a building that is not in-use (see definition below), which results in new dwellings (i.e. any form of residential or student accommodation).

---

\(^3\) Superstores/supermarkets are shopping destinations in their own right where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.
4.15. Planning obligations will continue to be required (in addition to CIL payments) for larger scale developments, which are likely to have a greater impact on the locality. Wherever possible, the provision of site-related infrastructure will be required on-site, as in most cases provision will be integral to the design of the development. For example, a large housing development will be required to lay out new open space for the residents of its development on-site.

4.16. However, there will be cases where this is neither practicable nor appropriate, for example when development is phased and this may be delivered as part of a later phase. In these instances the Council will require financial contributions towards the provision of open space. In exceptional circumstances, if the open space cannot be delivered on-site, the Council would require contributions towards off-site provision that would be provided close to the development.

4.17. Where provision is made for a new facility, for example new open space, provision for the long-term maintenance of the site must be provided by the developer either by way of handing the site over to a third party, by ensuring a maintenance contract with a management company or, where an acceptable commuted sum is agreed with the Community Services team.

4.18. In terms of change of use and redevelopment (which are exempt from CIL), these types of development can have an impact that may be required to be mitigated in order to make the application acceptable in planning terms. These applications may need to enter into a Section 106 agreement to address any site-related mitigation measures required.

4.19. Table 2 sets out to clarify the split between CIL and S106 agreements, the types of infrastructure that CIL payments and S106 payments will be used to fund or to be delivered in kind. It should be noted that the list of infrastructure types is not exhaustive.
<table>
<thead>
<tr>
<th>Type of Infrastructure</th>
<th>S106 infrastructure/mitigation</th>
<th>CIL funded infrastructure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affordable Housing</td>
<td>Provision of units on-site or contributions towards off-site provision to overcome impacts directly related to developments</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Education</td>
<td>Not applicable</td>
<td>Schools and educational places/facilities</td>
</tr>
<tr>
<td>Transport</td>
<td>Local site-related transport requirements to overcome impacts directly related to developments.</td>
<td>Other transport infrastructure projects</td>
</tr>
<tr>
<td>Health</td>
<td>Development of specific new health facilities to overcome impacts directly related to developments.</td>
<td>Other healthcare provision</td>
</tr>
<tr>
<td>Community facilities</td>
<td>Development specific new community facilities.</td>
<td>Improvement of and creation of community facilities</td>
</tr>
<tr>
<td>Green infrastructure</td>
<td>Site related tree planting and landscaping. Provision of on-site or site related informal open space, land, play facilities and recreational equipment on large housing sites.</td>
<td>Improvement of informal open space, land, play facilities and recreational equipment across the District.</td>
</tr>
<tr>
<td>Sports facilities</td>
<td>Unlikely to require development specific sports facilities through a Section 106 agreement.</td>
<td>Formal sports land and facilities not on large strategic sites or related to a large strategic site</td>
</tr>
<tr>
<td>Flood defence</td>
<td>Site-related flood defence infrastructure, such as the installation of SUDS.</td>
<td>Other flood defence infrastructure</td>
</tr>
</tbody>
</table>
How CIL relates to other developer obligations

4.20. Developers may be asked to provide contributions for infrastructure in several ways: through CIL, planning conditions, planning obligations and/or section 278 (S278) or highways agreements. The CIL Regulations require that S278 agreements cannot be required for works that are intended to be funded through CIL. Where S278 agreements are used, there is no restriction on the number of contributions that can be pooled.

Standard charges and obligations for S106

4.21. Where a development will require site-specific mitigation which falls outside of those items on the CIL Regulation 123 list and is in compliance with the three requirements set out in CIL Regulation 122, a planning obligation will be required. This section sets out those charges and obligations which the council envisages being frequently required through S106 agreements when meeting the eligibility requirements which are set out.

4.22. While this is intended to provide clarity and transparency for the planning process, it does not form an exhaustive or complete list of planning obligations which might be required in every case. Some developments may require a very case-specific form of mitigation to be acceptable in planning terms and mitigate all site-specific impacts; and this will be down to the negotiation process which will operate on a case by case basis.

4.23. Where a major infrastructure item, such as a school or a health centre, is best delivered on a particular site, the council will consider accepting these items through payment in kind of CIL. In such instances the delivery of agreed infrastructure will be in lieu of a CIL payment and will be contingent on the council implementing an infrastructure in-kind policy, in line with the CIL Regulations. This occurrence is not envisaged through existing site allocations and is likely to arise only in exceptional circumstances, if at all.

4.24. The negotiation of S106 agreements will benefit from early engagement with the council and the council recommend this should form part of the pre-application discussions.

---

4 If the obligation 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.
5. Governance and Spending

S106

5.1. To provide a clear audit trail for the spend and transfer of Section 106 monies, the service provider whether it be an internal department or an external service provider such as County is asked to provide justification of how they intend to spend the money. This is reviewed by the Chief Planning Officer and it is only on approval that the S106 monies can be transferred to the relevant service provider.

5.2. Figure 1 shows the current procedures: the monitoring to spending of S106.

CIL

5.3. The proposed structure for the governance of CIL is set out in Figure 2 below. A report was submitted to the Planning Committee in December 2013 on the Future Governance by Committee. Appendix A of that report included a CIL Governance Structure which is the basis of the table aforementioned, slightly amended for further clarity.
Figure 1: Monitoring of S106 Financial Contributions

Details entered into database and spreadsheet at point the agreement is signed and legal passes a copy to responsible Officer (Officer). Finance is notified of new agreement with financial obligation(s)

Receipt of financial obligation
Officer enters detail onto S106 spreadsheet and notifies Finance. Depending upon the method of payment (BACS or cheque), payments will be notified to Officer by Finance or vice versa

Obligation not received
Officer sends Developer a reminder

Obligation still not received
Officer instructs Legal to institute proceedings to recover obligation

Notification
Officer notifies the beneficiary of receipt of the obligation and asks to provide justification for spending. Will also be reminded of any 'spend by' or payback dates/quotes

Spending proposal is reviewed by CPO. On approval, Officer requests for contributions to be transferred to the beneficiary. The beneficiary must invoice the Council.

Payment Received

Once a contribution has been forwarded to the beneficiary, the Officer records it and the obligation is closed as complied with.
Figure 2: CIL Governance Structure

**Officer Management**
- CIL Process Group (CIL Collection & Administration)

**Partnership Work**
- TDC Officers (Senior Finance Officer, Legal Services, Head of Strategic Planning Policy) to identify & develop infrastructure projects
- Meet with other infrastructure providers (Environmental Agency, Highways, County Education, Community Services) to identify projects & other funding sources
- Meet with PC to identify projects & other sources of funding
- Submit bid forms to Council (June – September)

**Strategy**
- Regulation 123 List (consult on projects)
- Contacting infrastructure providers as part of the work required to update the Regulation 123 List.

**Endorsement**
- Local Plan Working Group (consider and endorse projects)

**Decision**
- Planning Policy Committee (Decision on allocation of funds)

Timelines:
- On going
- On going
- May-Jun.
- July
- Sept.
5.4. These above dates may be subject to change and will be monitored by TDC to ensure they are appropriate as the CIL progresses.

5.5. The CIL Regulation requires the Council to pass over a percentage of the CIL to Parish Councils (PC) as a ‘meaningful proportion’ known as a neighbourhood fund. For PC areas without an adopted neighbourhood plan, the amount is 15% of the CIL income in that area. For PC areas with an adopted neighbourhood plan, it increases to 25% of the CIL income in that area. The governance aspect for PC is covered in detail in the Guidance for Parish and Village Councils on receiving and the use of CIL funds.

6. Monitoring and Reporting

6.1. The monitoring and provision of S106 contributions used is set out in the authorities monitoring report.

6.2. The Council will ensure that there is transparency in how contributions are spent maintaining a clear audit trail demonstrating that financial contributions are spent on the measures for which they were secured.

6.3. Information on the operation of a CIL charge is required to be reported on annually as set out in CIL Regulation 64(4) and amended to include reporting requirements for the neighbourhood proportion. This will include:

- the total CIL receipts for the reported year;
- the total CIL expenditure for the reported year;
- summary details of CIL expenditure during the reported year; and
- the amount of CIL applied to administrative expenses (expressed as a percentage of CIL collected in that year).

6.4. The CIL Regulations allow the charging authority (in this case the council) to take a maximum of 5% of the total annual CIL receipts in order to fund the administrative expenses of operating the levy. These administrative costs can include the set-up costs for CIL (including consultation, preparation of evidence and examination) and the ongoing costs to the council of operating and collecting a CIL.

Authority Monitoring Report

6.5. Reporting on planning obligations and CIL will be through the Authority Monitoring Report (AMR). The Authority Monitoring Report should be published online on an annual basis by December of every year.