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Date: 8 April 2019

## **MEETING OF INTERNAL OVERVIEW & SCRUTINY COMMITTEE**

<b>On:</b>	Tuesday 16 April 2019	<b>At:</b>	2.00 pm
<b>Venue:</b>	Town Hall - Bridge Street, Bideford, EX39 2HS		

### **NOTICE OF MEETING**

<b>To:</b>	Councillor P Watson (Chair) Councillor K James (Vice-Chair) Councillors: R Boughton, C Cottle-Hunkin, J Hutchings, T Inch, P Pennington and C Simmons  Non elected Members: S Dengate and I Harper
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**Members are requested to turn off their mobile phones for the duration of the meeting**

## **AGENDA**

### **PART I - (OPEN SESSION)**

1.	<b>Apologies For Absence</b>
2.	<b>Minutes</b> (Pages 3 - 8) Confirmation of the minutes held on 12 March 2019.
3.	<b>Action list - 12 March 2019</b> (Pages 9 - 10)
4.	<b>Public Contributions</b>
5.	<b>Declaration Of Interests</b> Members with interests should refer to the agenda item and describe the nature of their interest when the item is considered.

6.	<b>Urgent Matters Brought Forward With The Permission Of The Chair</b>
7.	<b>Agreement of Agenda Items Part I And II</b>
8.	<b>S106 Agreements - revised procedure</b> (Pages 11 - 16) To receive a report from the Planning & Economy Manager.
9.	<b>External Grants</b> To receive an update from the Planning & Economy Manager.
10.	<b>Income Generation Task &amp; Finish Group</b> To receive an update from the Strategic Manager (Resources).
11.	<b>Forward Plan</b> (Page 17)
12.	<b>Exclusion Of The Public</b> The Chairman to move:-  That the public be excluded from the remainder of the meeting because of the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Local Government Act 1972.
	Meeting Organiser: Mary Richards, tel 01237 428705

## TORRIDGE DISTRICT COUNCIL

### INTERNAL OVERVIEW & SCRUTINY MEETING

Town Hall - Bridge Street, Bideford, EX39 2HS

Tuesday, 12 March 2019 - 4.00 pm

PRESENT Councillor P Watson (Chair)  
Councillors K James, R Boughton, C Cottle-Hunkin, J Hutchings,  
T Inch, P Pennington and C Simmons

S Dengate and I Harper

ALSO PRESENT S Dorey - Senior Solicitor  
S Hearse - Strategic Manager (Resources)  
D Heyes - Finance Manager  
S Kearney - Planning & Economy Manager  
M Richards - Democratic Services Officer  
H Roper - Service Improvement Officer

The Chair welcomed everyone to the meeting.

#### 72. APOLOGIES FOR ABSENCE

There were no apologies.

#### 73. MINUTES

It was proposed by Councillor T Inch, seconded by Councillor James and –

Resolved:

That the minutes of the meeting held on 12 February 2019 be agreed and signed as a correct record.

(Vote: For - unanimous)

#### 74. ACTION LIST

Minute 69 a) - Budget 2019/20, Medium Term Financial Strategy 2019-20 to 2023-24: Local Housing Allowance

A brief discussion clarified that the matter had been raised to understand why the allowance for North Devon was greater than for Torrington. Councillor Hurley will be attending a meeting and is hoping to speak further with Kit Malthouse as he had not been satisfied with a previous response and lack of response to follow up correspondence.

Minute 69 b) - Budget 2019/20, Medium Term Financial Strategy 2019-20 to 2023-24: Letter to Central Government regarding Council Tax Funding of CSP and Minute 69 c) - Budget 2019/20, Medium Term Financial Strategy 2019-20 to 2023-24: Local Authority Settlements

A short debate took place on the message the Committee wished to convey to Central Government. The Strategic Manager (Resources) explained that the Government was currently conducting a comprehensive review of how Local Government is funded. Uncertainties had been addressed to a degree by multi-year settlements; a conclusion to the Business Rate Retention Scheme was expected; and the National Audit Office had carried out a review of Local Government funding. It was suggested a response to the conclusions of the reviews might be a way to address the matters raised.

The Strategic Manager (Resources) told the Committee that across the County, the District Councils were jointly focusing on the reviews and consultations.

Councillor Pennington still wished for a letter to be sent to Central Government from TDC's Internal Overview & Scrutiny Committee. The Chair confirmed that this will be progressed and Councillor Pennington will be involved.

75. DECLARATION OF INTERESTS

Members were reminded that declarations of interest should be made as and when the specific agenda item to which they related was under discussion.

76. PUBLIC PARTICIPATION

There were no public contributions.

77. URGENT MATTERS BROUGHT FORWARD WITH THE PERMISSION OF THE CHAIR

There were no urgent matters brought forward.

78. AGREEMENT OF AGENDA ITEMS PART I AND II

There were no Part II items.

79. PLAY STRATEGY - CALL-IN

Further to the decision of the Community & Resources Committee on 14 January 2019 to refuse the recommendation that a budget of £15,000 - £20,000 from the Policy Contingency Reserve for the preparation of a District wide Play Strategy for the Council be refused, additional information was provided in the report presented by the Planning & Economy Manager to the Internal Overview & Scrutiny Committee.

The old strategy, which ran from 2007 to 2012 was considered to be outdated. The Planning & Economy Manager reported that the Council did not have sufficient resources to commission a strategy which is why the proposal had been put forward to appoint consultants.

The Committee discussed TDC play space assets; the need to work with communities, with TDC taking on the role of enabler; and the wider implications in relation to future housing development. Members debated the costs involved in appointing consultants but at the same time acknowledged the need for a strategy.

It was proposed by Councillor Simmons and seconded by Councillor James -

That the recommendation of the Council's Community and Resources Committee (14th January 2019) be rejected and that an amount of up to £20,000 be provided from the Council's Project Reserves to enable the commission of consultants to prepare a play space strategy for Torridge because that will provide benefits for Torridge that might eventually make more savings than the "up to £20,000".

It was proposed by Councillor Pennington and seconded by Mr Dengate –

That the recommendation of the Council's Community and Resources Committee (14th January 2019) be rejected and that an amount of up to £15,000 be provided from the Council's Project Reserves to enable the commission of consultants to prepare a play space strategy for Torridge because that will provide benefits for Torridge that might eventually make more savings than the "up to £20,000".

(Vote: For 5, Against 5)

The Chair, using a casting vote, voted against the proposal

A vote was taken on the proposal by Councillor Simmons and seconded by Councillor James –

That the recommendation of the Council's Community and Resources Committee (14th January 2019) be rejected and that an amount of up to £20,000 be provided from the Council's Project Reserves to enable the commission of consultants to prepare a play space strategy for Torridge because that will provide benefits for Torridge that might eventually make more savings than the "up to £20,000".

(Vote: For 6, Against 4)

The motion was carried.

#### 80. QBR 3

A number of questions on the QBR had been received and answers had been provided directly. A paper detailing the questions and answers was circulated.

The Service Improvement Officer highlighted the main issues:

- Housing Benefit Subsidy Shortfall – increased by circa +30%
- Income showed a decrease of circa 4% over last year which was mainly due to planning issues including a reduction in housing delivery and a reduction in the New Homes Bonus
- Increased expenditure on court cases and staffing i.e. waste and planning

Positive performance had been recorded in the following areas:

- Recycling - recycling rates had increased from 40% to 52% since the introduction of the new regime
- New Homes Bonus – the community grant scheme had supported over 140 projects and £1.2 million had been distributed
- Land charges were now back on track and within target
- Planning performance figures were improving, particularly validation times

Channel shift had been evidenced through the following highlight figures:

- Footfall normally decreased by 10% year on year, however, since December and the move to one site footfall was down 35%
- Website usage had increased by 50% in the last 4 years
  - services, such as planning, land charges and green waste now had electronic submission facilities
  - some third parties such as the DWP and Devon Home Choice also had electronic submission facilities
  - many requests were now received by e-mail

Work was being carried out on the TDC Economic Strategy, drawing on evidence from the LEP Local Industrial Strategy.

The Finance Manager drew the Committee's attention to the 5 key areas of overspend and the reserves identified to partly offset the projected overspend. It was anticipated that the remaining balance would be met from the Transition in Government Funding Reserve later in the year. With regard to capital, the Finance Manager told the Committee that the net Capital Programme Budget for 2018/2019 had been £15,267,661. The earmarked capital reserves are reviewed regularly to accurately reflect when the money will be spent. It was noted that current investments totalled £5m.

Questions were invited and further explanations provided. The meeting then considered the questions and answers paper. Members showed particular interest in the harbour, seeking more information about the amount of business which had been through the harbour during 2018/19 and the nature of the cargo. The Committee felt strongly that consideration must continue to be given to alternative usage and operations.

It was agreed unanimously –

That:

A recommendation be made that the future opportunities for the harbour be added to the agenda for the new Council's visioning day.

New build homes were also discussed in detail and the importance of designing and adopting a growth agenda was highlighted.

It was proposed by Councillor James, seconded by Councillor A Inch and –

Resolved:

That the charges below be included in the Council's Fees and Charges:

<b>Description</b>	<b>Gross Fee*</b>
Administration/Set Up Fee	£72
Termination Fee (if termination occurs within the first year of the term)	£72
Termination Fee (if termination occurs after the first year of the term)	£48
Amendments (which require a change in the original Lease)	£36
Deed of Surrender (termination of lease prior to end of the Break Notice) + Termination Fee as above	£36
Garden Lease Administration Fee	£30
Garden Lease Termination Fee	£30
* VAT is chargeable where the option to tax the property has been exercised	

(Vote: For – unanimous)

#### 81. INCOME GENERATION

The Strategic Manager (Resources) reported that the Income Generation Task & Finish Group had met and actions had been taken. Income was expected during the coming financial year from 2 projects - Caddsdow Blue and Wilkey's Field. A further meeting of the Income Generation Task & Finish Group to be scheduled.

#### 82. CONSIDERATION OF THE FORWARD PLAN

A meeting of the External Grants Task & Finish Group to be scheduled.

The Strategic Manager (Resources) explained that the call-in in relation to the Avon Lane site would ordinarily have been brought to the next available Internal Overview & Scrutiny meeting. However, in view of the controversial nature of the matter together with the pending election and purdah, it was felt the discussion should be deferred for consideration by the new council. It was unlikely that it would be brought to the first meeting as that was generally set aside for training and setting the Forward Plan. This was discussed and Councillor Laws asked whether it would be appropriate to disclose the names of the councillors who had made the call-in. The Strategic Manager (Resources) advised that it was unclear whether that information should and can be released.

The meeting commenced at 4.00 pm and closed at 5.50 pm.

Chair:

Date:



**OVERVIEW & SCRUTINY (INTERNAL) COMMITTEE – 12 March 2019**

Action List

Minute No.	Action	Person responsible for Action	Date Contacted	Completed
Minute 69 a)	Budget 2019/20, Medium Term Financial Strategy 2019-20 To 2023-24  Local Housing Allowance rate –MP to be lobbied.	Cllr Hurley wrote to Geoffrey Cox and Kit Malthouse. However, not satisfied with the response he has written 2 more times to Kit Malthouse.		Ongoing - further response awaited.
Minute 69 b)	Councillor Pennington requested that a representation be made by the Internal Overview & Resources Committee to Central Government regarding Council Tax funding of CSP.	Strategic Manager (Resources)		Was discussed with Chair and Vice Chair 26 March for Strategic Manager (Resources) to report back to Committee.
Minute 69 c)	That a response be made to the relevant offices of Central Government raising concerns about the local authority settlements over the years and the uncertainty that it is creating.  12/3/2019 – Letter to be written	Strategic Manager (Resources)/Cllrs Watson, James and Pennington	19/03/2019	
Minute 80	QBR 3 – To add the harbour to the agenda for the new Council’s visioning day.	Strategic Manager (Resources)	19/03/2019	Completed – meeting held.

Minute 81	Income Generation – A further meeting of the Income Generation Task & Finish Group to be scheduled.	Strategic Manager (Resources)	19/03/2019	
Minute 82 a)	Consideration of the Forward Plan - A meeting of the External Grants Task & Finish Group to be scheduled.	Planning & Economy Manager	19/03/2019	On Forward Plan
Minutes 82 b)	Consideration of the Forward Plan - To disclose the names of the councillors who had made the call-in Avon Lane site. It was unclear whether that information should and can be released.	Strategic Manager (Resources)	19/03/2019	Completed – not to be released.

**REPORT OF**     **Planning and Economic Development Manager**

**To:**             **Internal Overview and Scrutiny**

**Subject:**       **Section 106's**

**Date:**           **April 2019**

**Reference:**

<p><b>PURPOSE OF REPORT:</b> To provide an overview of the Section 106 process and funding allocation</p>
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## 1. INTRODUCTION

Local Authorities can secure planning obligations from certain developments with these obligations secured through Section 106 agreements which legally bind the local authority and landowners to deliver these obligations.

Obligations can be in the form of on site provision or can be in the form of a financial commuted sum

This report will consider:

- Planning Background
- How are Section 106 agreements agreed
- Monitoring of Section 106 agreements
- Distribution of funds and application process for unallocated funds

## 2. REPORT

### 1. Planning Background

Planning obligations, also known as Section 106 agreements (based on that section of The 1990 Town & Country Planning Act) are agreements made between local authorities and developers and attached to a planning permission to make acceptable development which would otherwise be unacceptable in planning terms (having regard to Local Plan policy). A Planning obligation will aim to balance the pressure created by the new development with improvements to ensure that where possible the development makes a positive contribution to the local area and community.

The Community Infrastructure Levy Regulations 2010, sets out strict legal guidance as to what constitutes a lawful obligation and states that an obligation may only be taken into account as a reason for granting planning permission where it is:

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

Local Planning Authorities (LPA's) include within their Local Plans general policies relating to the principles and use of planning obligations. Supplementary Planning Guidance also



prepared by LPA(s) go into greater depth about the likely level and type of obligations that will be sought either across the LPA or within a particular geographical area. Therefore only planning obligations relating to policies detailed in the Local Plan can be secured where the associated policy permits this on any given site.

Planning Obligations can be in the form of direct provision on site or in some circumstance be in the form of a financial commuted sum paid either to the Local Authority or Devon County Council depending on the nature of the contribution. The most common obligations include:-

- Public Open Space
- Recreation Provision
- Community Hall Provision
- Affordable Housing
- Education (DCC)
- Highways (DCC)
- Town Centre Improvements

## **2. How are Section 106 agreements agreed?**

Discussion concerning planning obligations take place as early as possible in the planning process and ideally an applicant will seek pre-application advice especially where the site is considered major development. Through the planning application process, applicants are required to submit a document entitled 'Heads of Terms' which sets out the planning obligations they are proposing to provide and how this fits with current planning policy. In most cases applicants will have had pre-application discussions with both TDC and DCC staff to establish the planning obligations required to be provided. Recent changes within TDC's planning department will mean that Ward Members will be sent a copy of the Heads of Terms document once received by TDC.

The wording surrounding Planning Obligations within a Section 106 agreement will determine when and how the contributions are required to be delivered. The Section 106 agreement will contain a number of triggers and clauses that will specify at what point in a development an obligation has to occur and where any contribution can be spent. The triggers are agreed through negotiation with the developer and can range from 'prior to the commencement of the development to the occupation of a percentage of the units within the approved scheme'. On larger developments the sum owed can be split between two or more trigger points. The negotiating officers will ensure the risk of non-compliance is minimised by not agreeing to obligations being delivered too far into the development,

## **3. Monitoring Section 106 agreements**

Section 106 agreements are registered as a local land charge upon completion and then monitored by TDC officers. This is done by liaising with planning and building control officers to monitor the build out status of developments as well as liaising with developers directly and where necessary site visits are undertaken. When financial trigger points are reached, Torridge DC will invoice developers for the sums that are required to be paid to the District Council if these have not already been received. For obligations due to Devon County Council such as Education and Highways, DCC will monitor these directly.

Section 106 agreements will often detail a claw back clause which allows the developer to claim back any money for capital projects which has not been spent within a set time period. This can range from two years to ten years although it is more usually around five years. Even where this is not explicit within the document, it is generally expected that if a developer were to request



repayment of a Section 106 financial contribution that had not been spent within 5 years, it would be difficult for a Local Authority to refuse such a request on the grounds of reasonableness. Therefore it is beneficial for all concerned to monitor Section 106's closely including the spending of any receipts.

#### **4. Distribution of funds and application process for unallocated funds**

Generally financial contributions received by the Council for Capital projects are directed to proposals overseen by the Local Authority and which have already been identified as requiring funding and have delivery plans in place. Such projects include upgrading existing larger parks and recreational facilities and the regeneration of specific areas. The use of funding on such projects by the District Council is in most cases tightly limited by the restrictions within the legal agreement including being spent within the area related to the proposed development

Where funding is received and a specific projects have not been identified, Ward Members along with Parish and Town Councils in certain circumstances are encouraged to become involved in identifying projects for the use of financial contributions where there is scope within the Section 106 to allow this.

Once a project is identified, 'not for profit' organisations including Town and Parish councils are encouraged to bid for these un-allocated resources. To apply for funding, a 'Section 106 Funding Application Form' is required to be submitted to the District Council for assessment. This Application will seek details of the site and project that the relevant organisation wish to put the contribution towards, with its aims and principles and an explanation of why this is the preferred scheme. There is a requirement within the application process to involve the Ward Member.

It has to be ensured that any project complies with the stipulations placed in the legal agreement. If the proposed scheme does not comply with the stipulations in the legal agreement it will not be possible to support the scheme as this would breach the Section 106 agreement in place.

Where the District Council is in receipt of maintenance contributions for specific areas of land, the District Council is happy to work with Parish Councils and Town Councils to explore transferring land and/or maintenance contributions where appropriate. Some developers choose to retain recreation/play areas however and in these circumstance the Local Authority does not receive a maintenance contribution.

Where external organisations including Parish and Town Councils are successful in securing funds from the District Council, a funding agreement will need to be entered into by both parties.

Further information regarding Section 106 grant funding including the Application Form, Application Guidance and details for Capital Funding TDC currently hold can be found through the attached link:

<http://www.torridge.gov.uk/article/16276/Section-106-Grant-Funding>

A copy of the spreadsheet providing details for the Capital Funding TDC currently hold can also be found at Appendix A.



**3. IMPLICATIONS**

Legal Implications

Financial Implications

Human Resources Implications

Sustainability/Biodiversity Implications

None

Equality/Diversity

Risk Management

Compliance with Policies and Strategies

Ward Member and Leader Member Views

Date of Consultation – None

**4. CONCLUSIONS**

None

**5. RECOMMENDATIONS**

That Members note the contents of this report and discuss if they wish to do so.

**SUPPORTING INFORMATION**

Consultations:

Contact Officer:

Background Papers:



## Section 106 Capital Funds TDC currently hold

Site	Original Sum Received	Capital	Revenue	Year Received	Planning Obligation	Capital Balance	Allocated - Intended Use
<b>BIDEFORD</b>							
Strongvox Development - adj Pollyfield	£10,000.00	£10,000.00		2013/14	Recreational Facilities in locality of site	£5,760.00	No
Salterns Phase II, East the Water, Bideford	£27,300.00			2012/13	Affordable Housing within Bideford	£27,300.00	Yes - Newton Road Development, Bideford
Moreton Park, Bideford (Redgaw Development)	£18,024.00	£10,000.00	£8,024.00	2017/18	Off Site Recreation provision at Short Close - Lounderry	£10,000.00	Allocated - Short Close Open Space, Lounderry
9/10 Bridgeland Street, Bideford	£19,556.70			2013/14	CCTV improvements	£3,944	Yes
Atlantic Village Development	£100,000.00			2008/09	Bideford Town Centre Regeneration	£15,756.00	Yes
Old School House, Belvoir Road	£19,680.00	£10,824.00	£8,024.00	2017/18	Recreation/Play Provision within the vicinity of the Site	£10,824.00	No
Venn, Mines Road	£14,977.87	£8,238.00	£6,740.00	2018/19	To be used in the vicinity of the site	£8,238.00	Yes





**OVERVIEW & SCRUTINY (INTERNAL) COMMITTEE – FORWARD PLAN 2018/19**

	Cycle 1	Cycle 2	Cycle 3	Cycle 4	Cycle 5	Cycle 6	Cycle 7	Cycle 8	
	8 May 2018	19 June 2018	7 Aug 2018	18 Sept 2018	6 Nov 2018	18 Dec 2018	12 Feb 2019	12 March 2019	16 April 2019
	4pm	2pm	4pm	2pm	4pm	2pm	4pm	2pm	
Cllr James to report re Cornwall County Council Rolling Investment Fund  Peer Review Action Plan	End Of Financial Year QBR  Work Programme & Forward Plan 2018/19  Update from External Grants T&F Group  T&F Group update Govt's Response to select cttee report on effectiveness of LA scrutiny  S106 Agreements (S Dengate & J Hollis)	GDPR update (J Hollis)  Update on the Progress of Tourism Strategy  Update on Economy Strategy  Partner Evaluation (Mr Topham) (e-mail Mr Topham to invite)  Compulsory Purchase	Council Tax Discretionary Discount (ST)  Affordable Housing (SK)  QBR Q1 (DH)	QBR Q2  The Effectiveness of LA O&S Cttees. Report from Strategic Manager (Resources) on T&F Group  External Grants Update from Task & Finish	Section 106 Agreements (18 September, Minute 35)  Affordable Housing (18 September, minute 35)  Income Generation Strategy Review (SH)	<b>Budget Special</b>  Empty Homes Strategy (from meeting of 6 Feb for discussion before next financial year)	QBR Q3  Play Strategy (call-in)	S106 Agreements Planning & Economy Manager to report on revised procedure implemented  Report from Joint Working Group on External Grants	

Standing Item	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group	Income Generation – Report of the Task & Finish Group
			GDPR update	GDPR update	GDPR update	GDPR update		
					Council Tax Discount Task & Finish Group	Council Tax Discount Task & Finish Group		

**KEEP UNDER REVIEW**

Harbour Board Working Group	LGA Consultation
Land Charges	Economy – Chair to discuss with Ext Chair – joint meeting, once policies are ready for review.
Officer / Member	External Grants T&F Group (Joint with External Scrutiny)