

**Manchester City Council
Report for Information**

Report to: Economy Scrutiny Committee – 22 July 2021

Subject: Section 106 – Impact of the implementation of the policy in delivering the city's priorities

Report of: Director of Planning, Building Control and Licensing

Summary

This report sets out Manchester City Councils S106 policy and the impact of the implementation of the policy in delivering the city's priorities. S106 is one of the Planning levers that the City Council has, to secure either direct contribution or funding towards the delivery of the City's priorities through the planning process. This report sets out the City's current policy, examine the impact of the S106 contributions and consider the future direction of travel, in light of nationally proposed planning reforms.

Recommendations

The Committee is requested to note the report.

Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city

Our Manchester Strategy outcomes	Summary of how this report aligns to the OMS
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	The planning system plays a key role in the delivery of outcomes to support economic growth and sustainable neighbourhoods. This includes the use of S106 obligations.
A highly skilled city: world class and home grown talent sustaining the city's economic success	See above
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	Through supporting growth and new homes, the planning process seeks to provide opportunities for Manchester residents to raise individual and collective aspirations
A liveable and low carbon city: a destination of choice to live, visit, work	The planning system strives to deliver environments and development that

	responds to the Councils climate change and quality agenda.
A connected city: world class infrastructure and connectivity to drive growth	See above

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

1.0 Introduction

- 1.1 The planning process in Manchester supports the delivery of key objectives for the city and focusses on securing necessary outcomes through the legislative framework. Planning Obligations, which are part of this process are included within s106 Agreements and seek to mitigate impact of a proposed development where it is not possible to do so by condition. Such agreements are legally binding and are entered into between a local planning authority and the owners and developers of land on which planning permission is sought. Such agreements may include obligations to undertake work and/or obligations to make a payment.
- 1.2 As a planning authority we secure significant environmental and other benefits which are not reliant on a s106 agreement. In the last 12 months this includes the work for example which has started on Mayfield Park. In Newton Heath approximately 500 trees are to be planted through a condition of a planning permission together with the formation of five public landscaped squares and improved access to the Rochdale canal. The provision of affordable housing is also captured through a condition in this case. It is also usual practice to require through condition a local labour agreement securing many thousands of jobs for Manchester residents from construction through to sites being operational.
- 1.3 The investment and outcomes for the city captured through the planning process is therefore substantial and our focus will always be on how we can deliver the latter in line with the Councils main priorities. This is permanent jobs, new homes, infrastructure and schemes that protect our heritage such as the CIS Tower, Debenhams, London Road Fire Station and House of Fraser.
- 1.4 By their very nature planning proposals deliver a wide range of social, economic and environmental benefits. Significant amounts of investment in the city and large quantity of direct and indirect jobs amounts, expenditure within local communities and the city in general and significant Council tax receipts.
- 1.5 S106 agreements are just one tool we have to support this delivery. Where we are able to use such agreements, obligations have to meet several legal tests that they are:
 - 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
- 1.6 In recent years, the legal framework was tightened so that now any agreement has to be more specific on the planning purpose for the contribution at the date of planning consent. The obligation must provide direct and appropriate mitigation for the impacts of the development that cannot be addressed through conditions of the planning permission.

1.7 In Manchester, we use planning obligations most commonly to secure affordable housing, to specify the type and timing of this housing, to secure financial contributions to provide infrastructure and new environmental works. However, these are not the only uses for a s106 obligation (which binds the land and not a person or organisation) and includes:

- Restricting the development or use of the land in any specified way
- Requiring specified operations or activities to be carried out in, on, under or over the land
- Requiring the land to be used in any specified way; or
- Requiring a sum or sums to be paid to the Authority

1.8 Within the legal context, planning Obligations are used for three purposes:

1. Prescribe the nature of development (for example, requiring a given portion of housing is affordable)
2. Compensate for loss or damage created by a development (for example, loss of open space)
3. Mitigate a development's impact (for example, off site highway work)

1.9 The key factor is that obligations are used to make an individual development acceptable in planning terms. This is important as a local planning authority cannot stray beyond the limitations of the relevant regulations.

2.0 Existing Planning Policy

2.1 The local policy framework for Developer Contributions is set out in the Core Strategy. Reflecting the regulations referred to above, the policy states that they will be used to 'mitigate harm that may be caused by a development'. In drawing up planning obligations, a high priority will be given to the objectives set out in the Regeneration Frameworks for each area of the City.

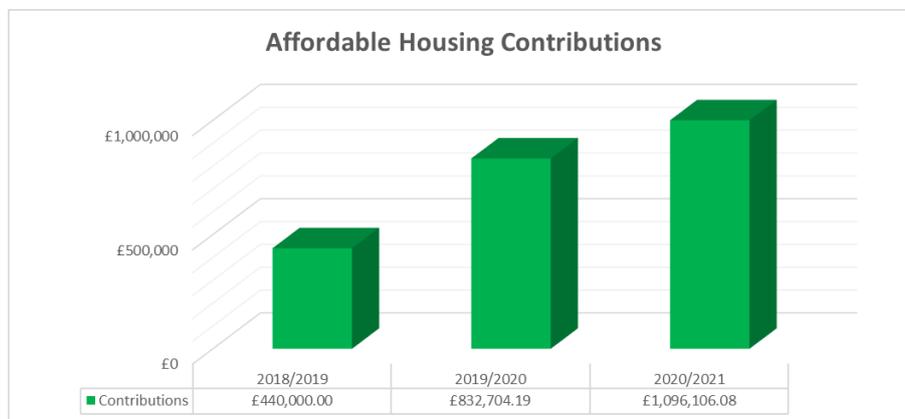
2.2 Needing to secure planning obligations in line with the relevant regulations and guidance, the policy is clear that we would seek contributions for a range of matters with priority assessed on a site by site basis. This includes as set out in 1.4 above, affordable housing, education, health and wellbeing facilities, community facilities, provision of green infrastructure including open space, training and employment initiatives and highway improvements

2.3 The Policy also states that the nature and scale of any planning obligation sought has to relate to the form of development and its potential impact upon the surrounding area. Where appropriate, any such provision will be required to be provided on site. Where this is not possible, a commuted sum payment is likely to be sought. In determining the nature and scale of any planning obligation, specific site conditions and other material considerations including viability, redevelopment of previously developed land or mitigation of contamination are material factors.

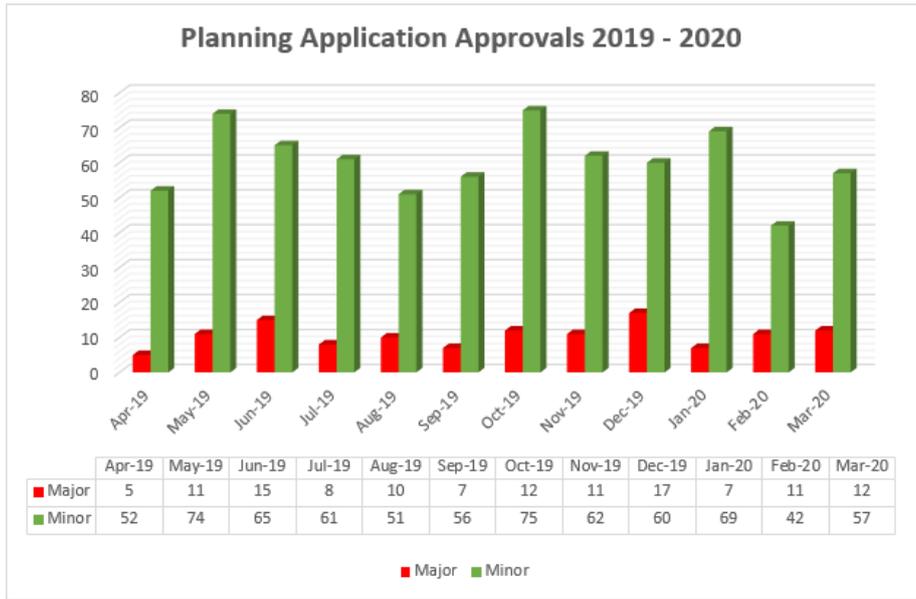
2.4 The role viability plays is significant and is a key determining factor in our decision making, particularly in relation to affordable housing contributions.

Developers address the level of contribution that can be delivered on this basis through a viability assessment. These are assessed independently and verified by the City Council.

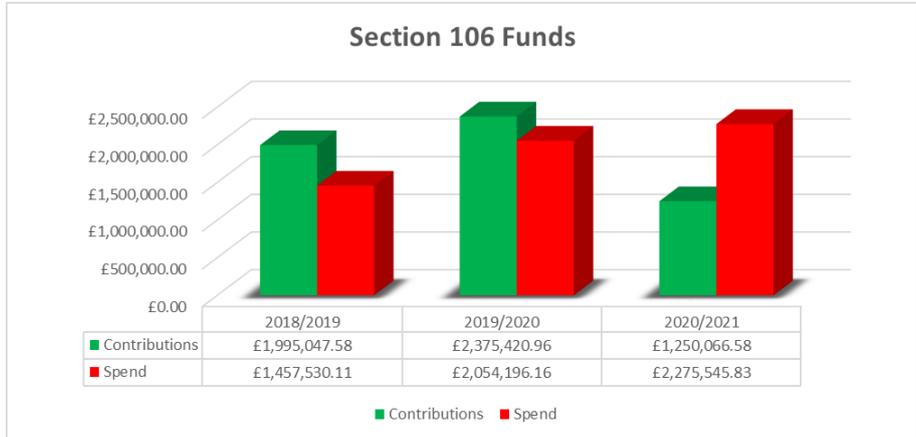
- 2.5 Although the evidence appears to suggest many schemes within the City remain marginal, there is confidence in the Manchester market which means developers are entering into agreements to provide affordable housing contributions, notwithstanding profit levels falling below that set out as a reasonable return by Government.
- 2.6 To determine if there is any uplift in market conditions which may improve viability and secure an additional contribution, we include a clause in agreements which require a review of viability at an agreed future date.
- 2.7 Contributions received from S106 agreements are transferred into a Housing Affordability Fund, currently this has a balance of just over £3.0m from the planning agreements.
- 2.8 The graph below also shows how contributions received for affordable housing have increased over the last three years. On the implementation of those planning permissions identified in appendix 1 (which provides information on S106 agreements completed during 2019/20 and 2020/21), this would significantly increase.



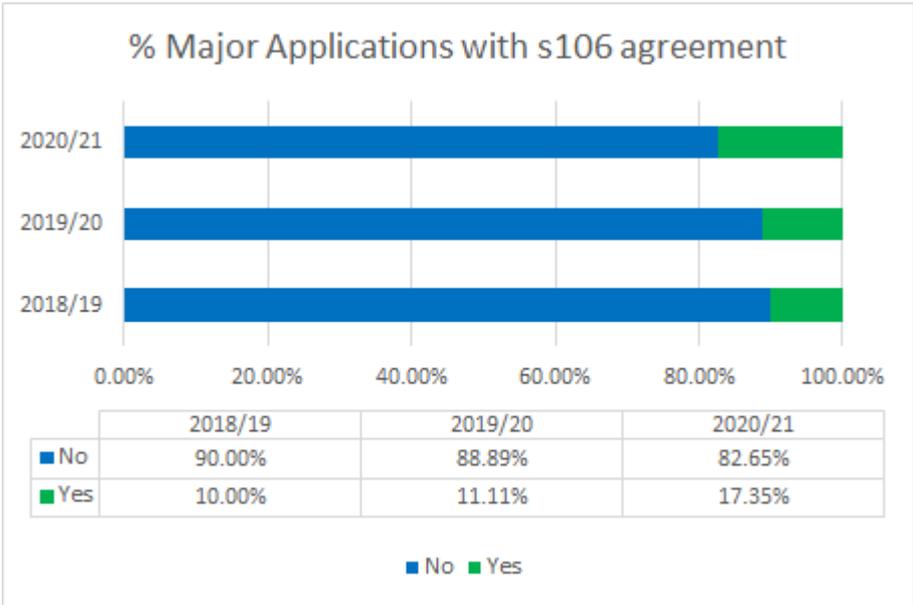
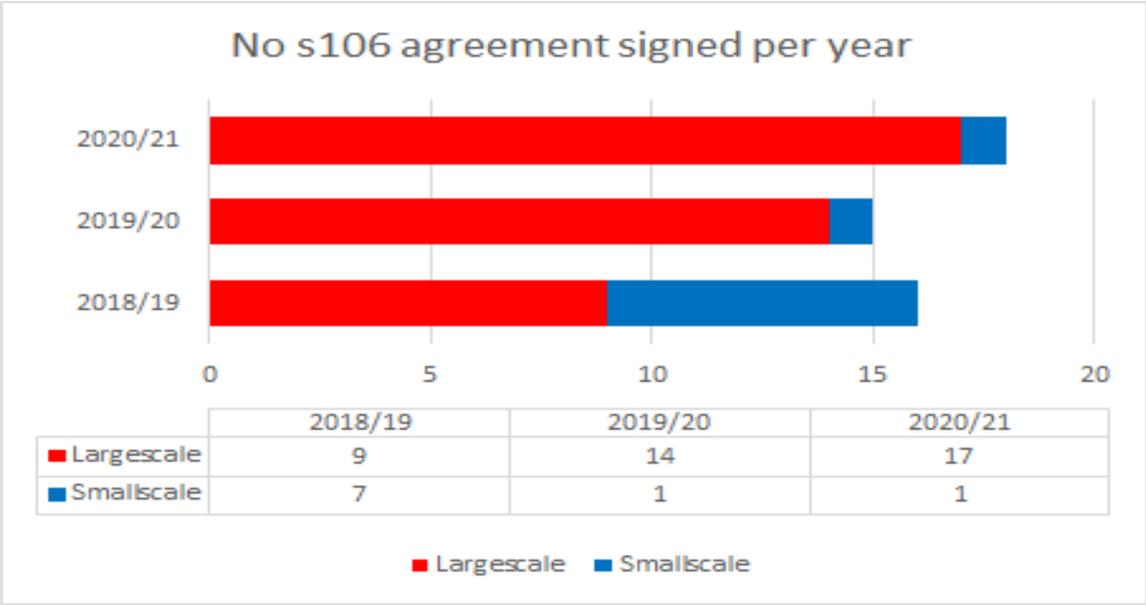
- 2.9 Section 4 provides information on the HAF.
- 3.0 Activity over 2019/20 and 2020/21**
- 3.1 Although planning application numbers can be unpredictable, we have seen numbers remain relatively stable over recent years in the City.



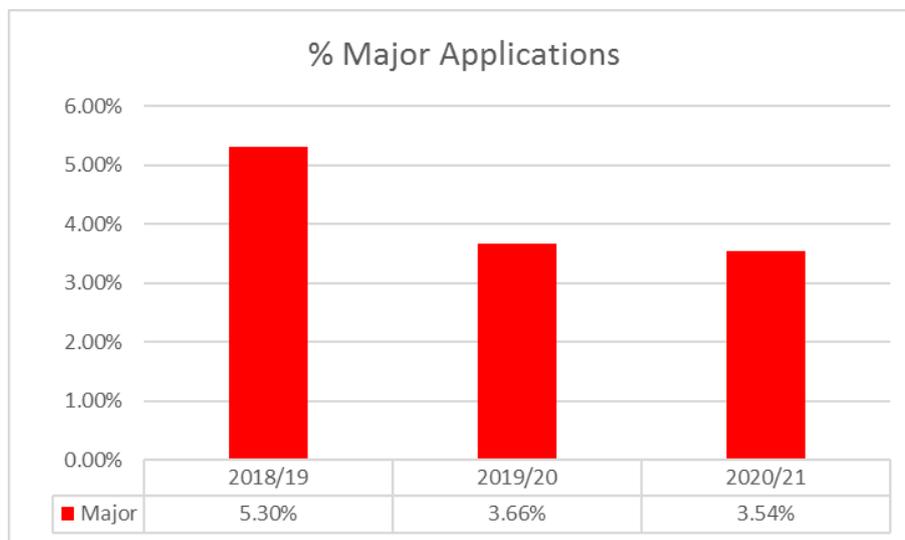
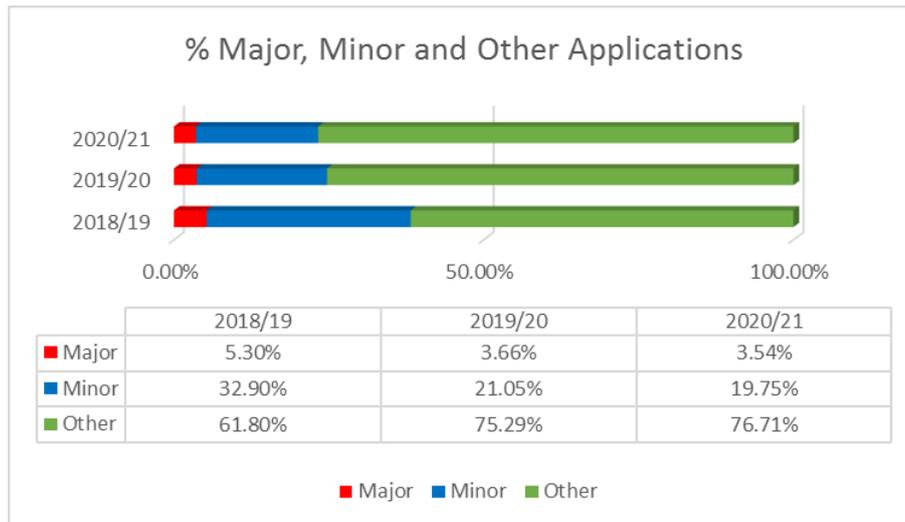
3.2 Notwithstanding the challenges of 2020 and predictions that nationally applications and by association s106 agreements would be low, Manchester has fared reasonably well.



3.3 During the financial year 2019/20 15 S106 agreements were signed with 18 signed in 2020/2021. This is generally consistent with the trend in previous years.



3.4 The graphs below provide information on applications by type received; the significance of this is that it would be highly unusual for S106 agreements to be linked with minor or other applications. The profile of the city is that major applications, are around 4-5 % of all proposals received. (*see note below on application type).



*Major applications are split into those involving 200 residential units or more or where the floor space is 10,000 sqm (these are known as largescale major developments) and where the number of residential units is between 10 and 199 and floorspace is between 1000 sqm and 9,999 sqm (known as small scale major developments)

Minor applications are those that involve between 1 and 9 residential units or where the floor space is less than 1,000 sqm

Other includes householder applications, changes of use etc

3.5 Appendix 1 also shows that have been a number of significant legal agreements signed which incorporate multiple requirements, with the following being of particular note:

- Erection of multi-use arena at Sport City incorporating a legal agreement that includes the design and implementation of a Residents Parking Zone; a scheme of highway improvement measures; events management plan; community operations plan; local benefits/local labour proposals and a waste collection service.

- Housing led mixed use redevelopment of the former Manox site in East Manchester incorporating a legal agreement which includes a residents permit parking scheme contribution; a financial contribution of £300 000 towards the improvement of recreational/sports facilities within the Miles Platting and Newton Heath Ward and also for the retesting of the affordable housing contribution in order to allow clawback in the future if necessary.

3.6 There are also several planning applications which have been minded to approve and are awaiting the completion of the legal agreements before a decision can be issued.

4.0 Spend

4.1 Once received, a financial contribution must be spent in accordance with the terms of the legal agreement and this includes when spend should take place. The monitoring and management procedures in place ensure services who are responsible for spend and the delivery of the 'mitigation' are aligned to enable this to take place in a timely manner.

4.2 There will inevitably be several factors that will influence when money is drawn down, this includes what the contribution is towards and or is reliant on match funding. Equally, there will be other processes that will impact on timing; appendix 2 provides some example of schemes supported by S106 financial agreements and this includes the memorial gardens and glade of light in the city centre. This relied on a number of agreements which had been negotiated over a period of time and had itself to receive planning permission before work could take place.

4.3 The contributions provided towards affordable housing, as noted in 2.7 are transferred into the Housing Affordability Fund. In addition to the S106 contributions, this includes, Right to Buy (RtB) receipts including Preserved RtB receipts from Registered Provider (RP) Partners, Housing Revenue Account (HRA) and Housing Capital Programme – General Fund / Capital Receipts.

4.4 A report to this Committee on 14 January 2021 provided an update on the delivery and provision of affordable housing in Manchester. Members will recall the creation of the HAF presents the Council with a real opportunity to invest directly into the provision of affordable homes in Manchester both in terms of the ownership and management of new and existing affordable homes and access to homes.

4.4 It is proposed that spend against the fund will be agreed by the Councils Housing Board at the request of a Housing Affordability Panel working in consultation with The Executive Member for Housing and Employment. The Panel comprising the Director of Housing and Residential Growth, the Head of Programme Management office and the Deputy City Treasurer.

5.0 The White paper and planning contributions

- 5.1 Members are aware from past reports that the Government has introduced a number of changes to the planning system and is continuing to do so as set out in its white paper on planning reform.
- 5.2 Issued last year, the paper set out three pillars of reform; the third 'Planning for infrastructure and connected places' contains an ambition to reform the system of developer contributions. It proposes the introduction of a new "infrastructure levy", a reform and extension of the Community Infrastructure Levy (CIL) combined with the abolition of section 106 agreements and planning obligations.
- 5.3 CIL was first introduced in 2010. It is discretionary and enables a LPA to levy a fixed charge per sqm of new floorspace and is intended to fund local infrastructure and support development. S106 agreements which have been around a long time take the form of negotiation and are designed to make schemes acceptable through site specific mitigation.
- 5.4 It is widely recognised that CIL is inflexible and cannot respond to changing markets; fundamentally CIL and its application has been subject to regional disparities in take up largely as it simply does not provide the funding necessary to support infrastructure. It can also not be used to provide affordable housing.
- 5.5 Although there is little detail on the new infrastructure levy, it is understood that it would be charged "as a fixed proportion of the development value above a threshold, with a mandatory nationally-set rate or rates", levied at the point of occupation, with an offset for any affordable housing provided on-site. This would be extended to changes of use, not just the creation of new floor space which is a change to the current CIL.
- 5.6 The lack of detail is disappointing given CIL has not been a resounding success and there is no clarity as to whether it would guarantee delivery of the required mitigation that it is meant to fund.
- 5.7 What we are told is that the levy is likely to be available for wider purposes than CIL but what infrastructure items will the levy cover and will it allow for credit against all on-site infrastructure provided, is not known beyond a suggestion for affordable housing.
- 5.8 The proposal is also silent on the question of who will decide whether, and, if so, how much, affordable housing is to be provided on-site and offset against the levy. There is a suggestion there will be a range of incentive options for LPAs for example: to how a scheme might deliver against an affordable housing requirement, including on-site delivery, land transfer, rights of first refusal or the opportunity to "flip" a unit back to market housing should market fluctuations result in the levy liability being insufficient to cover the value secured through in-kind contributions. However, there is very little detail as to how this is to be agreed, secured, delivered, varied or monitored on a site-by-site basis.

- 5.9 Concerns also include whether the introduction of a "development value" threshold, below which no levy will be charged, is too blunt an instrument to deal with the complexities surrounding viability. Where developments are only just viable in an uncertain market, they may not be deliverable due to a rigid levy liability.
- 5.10 There is no acknowledgment that section 106 agreements do more than just secure financial contributions and this is overlooked in the white paper. For example, and as noted in this report, they provide an ability to legally bind land to certain requirements and help secure a whole raft of benefits from sustainable travel methods, local employment, environmental improvements and much more.
- 5.11 They provide mitigation which cannot be conditioned on a planning permission. If section 106 agreements are abolished, and planning conditions, which are often unsuitable to address such matters, are to be increasingly standardised in line with the white paper proposals, there is a question over how any on-site mitigation measures are to be secured. Although Section 106 agreements themselves have their drawbacks, they can provide some flexibility and delivery certainty.
- 5.12 Unfortunately, the White Paper also appears to have a disconnect with other changes being made to the planning system. One example relates to a proposal for Biodiversity Net Gain. The idea is that when applying BNG principles, developers are encouraged to bring forward schemes that provide an overall increase in natural habitat and ecological features on or off site. Securing a net gain with possible maintenance costs raises a number of questions, firstly if this becomes mandatory what impact is this likely to have on other requirements and outcomes sought through the planning process and secondly how would this be delivered given the challenge noted above.
- 5.13 There is still some uncertainty around how the government will proceed with this aspect of the reforms with the housing ministry chief planner recently stating that the government will proceed "incredibly carefully" in bringing in any reforms. This followed widespread criticism that the proposal risks stalling developments on brownfield sites and jeopardising the delivery of affordable housing contrary to its intended purpose.
- 5.14 For now, we are anticipating some changes but the future of s106 agreements remains uncertain.

6.0 Conclusion

- 6.1 Our focus remains on delivering outcomes through the planning process to deliver the Councils key objectives. The legal framework provides a platform for supporting this and whilst S106 agreements have some limitations they are an invaluable tool in supporting economic, social and environmental benefits for the city.