

**Manchester City Council
Report for Information**

Report to: Resources and Governance Scrutiny Committee - 5 November 2019

Subject: Annual S106 Monitoring Report

Report of: Strategic Director – Growth and Development

Summary

The purpose of the report is to update the Committee on the Council's Section 106 (s106) activity for the municipal year (2018/19). Together with the appendices it provides an update on the management and administration of planning obligations and sets out the progress on unspent funds.

In accordance with the outcome of the consideration of the monitoring report presented to Committee at its meeting on 8 November 2018, the report also provides information on:

- The governance arrangements in the delivery of s106 agreements,
- Progress on transparent viability assessments,
- Practical examples of the delivery and spend of funding,
- Consultation with Ward members; and
- The consideration of the use of Community Infrastructure Levy (CIL) within the city centre.

Recommendations

Members 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
Consideration of planning applications includes how development proposals contribute to reducing emissions and improve air quality. This includes measures to be incorporated into scheme design and/or other mitigation measures. This are likely to be covered by condition although they could also be subject to a planning S106 agreement. Of note are the obligations requiring contributions to new public realm, environmental improvements, tree planting and proposals to enhance our Parks.

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

Contact Officers:

Name: Eddie Smith
 Position: Strategic Director Growth and Development
 Telephone: 0161 234 3030
 E-mail: e.smith@manchester.gov.uk

Name: Julie Roscoe
 Position: Director of Planning, Building Control and Licensing
 Telephone: 0161 234 4552
 E-mail: j.roscoe@manchester.gov.uk

Name: Richard Elliott
 Position: Head of Local Plan and Infrastructure
 Telephone: 0161 219 6494
 E-mail: r.elliott@manchester.gov.uk

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.

S106 Monitoring Report to Resources and Governance – November 2018
 Planning and Viability Report to Executive – May 2018

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 to 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. S106 Agreements may include obligations to undertake work and/or obligations to make a payment. The Council monitor compliance with the obligations.
- 1.2 Significant environmental and other benefits are delivered through the planning application process which does not involve the need to enter into a s106 agreement. For instance, at Circle Square a major open space and a landscaped river side walkway are being delivered as part and parcel of the planning approval. Major areas of open space are being created at Great Jackson Street and a new city centre park will be created at Mayfield through the same process. The monetary value of these is substantial but they do not appear within the s106 schedule, having been negotiated and embedded into the planning consent and conditions. In the same way local labour agreements are also now routinely covered by a planning condition.
- 1.3 Where an agreement is necessary this will set out the timetable for compliance for each obligation, what the contribution is to be spent on and the timeframe in which the Council must spend it. Developers are required to notify the council when they reach key stages of a development. Where these stages trigger payment of a financial obligation, an invoice is issued for the amount due. There are usually provisions in the s106 agreement for this amount to be index linked.
- 1.4 The signing of an agreement does not guarantee any related financial contribution will be received. As they are to mitigate impacts of development they are only paid if a development occurs and the triggers have been reached. A proportion of planning permissions are never implemented, consequently a proportion of expected contributions will fall away. Where a development does proceed, it may be several years before obligations are triggered.

2.0 S106 Agreements

- 2.1 The proposed obligations form part of the assessment of a planning application. An agreement is negotiated in accordance with the relevant legal and policy framework by the local planning authority.
- 2.2 Planning officers must therefore consider the Community Infrastructure Levy Regulations 2010 (CIL Regulations), the National Planning Policy Framework (NPPF) and the development plan (the Core Strategy)

- 2.3 Regulation 122 of the CIL Regulations stipulates a planning obligation may only constitute a reason for granting planning permission if it meets all of the following tests:
- a) It is necessary to make the development acceptable in planning terms
 - b) it is directly related to the development; and
 - c) It is fairly and reasonably related in scale and kind to the development.
- 2.4 Paragraph 56 of the NPPF reiterates the three tests in the CIL Regulations. Furthermore, it confirms that planning obligations should only be used where it is not possible to address unacceptable impacts through a condition. Recent amendments to the NPPF have clarified that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable and it is for the applicant to demonstrate otherwise. The weight to be given to a viability assessment prepared by the applicant is for the local planning authority having regard to all the circumstances, including whether the plan and the viability evidence underpinning it is up to date (paragraph 57).
- 2.5 The existing policy in the Core Strategy states that where needs arise as a result of development, the Council will seek to secure planning obligations in line with the CIL Regulations or successor regulations/guidance. With priority assessed on a site by site basis it further states that contributions may be sought for amongst others, affordable housing, education, public realm and the enhancement of environmental value. It also clarifies that in drawing up planning obligations a high priority will be given to the regeneration objectives set out in the frameworks for each area.
- 2.6 Having regard to the Regulations and national policy, it informs that 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 may be taken into account.

3.0 Viability

- 3.1 Although the focus of the monitoring report is on s106 activity, questions have previously arisen over the part viability plays in the process. This will be a key factor in determining the approach to CIL (which is referenced elsewhere in the report) but as noted in the report to the Committee in November 2018 (and 2.6 above) viability also plays a major role in the application decision making process.
- 3.2 Developers will seek to challenge the level of contribution sought by local planning authorities on the basis of viability. Members may recall that viability assessments in Manchester have been requested upfront when a planning application is being validated for some time; however, until October 2018, developers would submit viability assessments in confidence on the grounds that they contained commercially sensitive information.

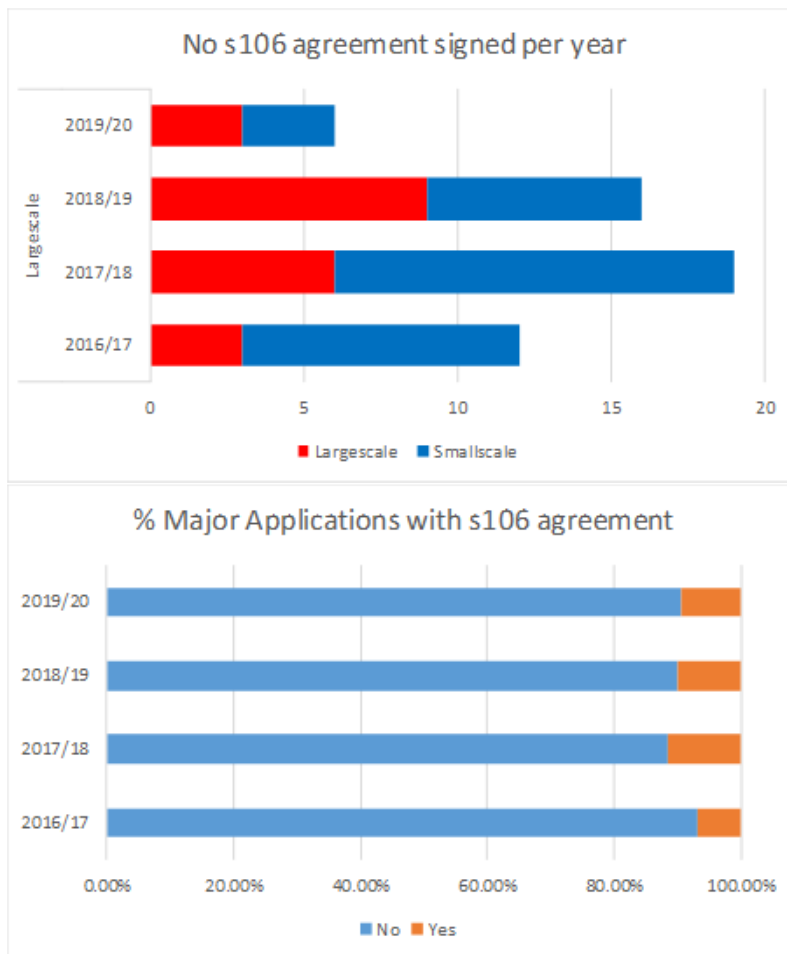
- 3.3 This approach had led to criticism and concern about the robustness in the process and that developments were not providing appropriate contributions.
- 3.4 Following a review of the planning validation checklist (which included consultation with stakeholders) all viability assessments submitted as part of an application are released into the public domain and key headlines and figures are set out in the planning officer's report. The assessments are externally evaluated by professional development surveyors; their analysis is then reviewed by the Council's Head of Development who provides the final sign off. Where a reduced contribution is justified, the s106 agreement will include a mechanism to allow a review of viability at identified stages in the development process to allow the Council to capture any uplift.
- 3.5 The changes to the validation checklist, coupled with the amendments to the NPPF referred to elsewhere in this report, has negated the need to produce an extensive Supplementary Planning Document (SPD) on the matter in advance of the review of the development plan (as suggested in last year's monitoring report).
- 3.6 A draft SPD has, however, been produced which:
- Clarifies the planning process and the importance of pre application advice on the affordable housing requirement;
 - Reiterates the validation process and the requirement for an Affordable Housing Statement (including its content)
 - Provides detailed advice on the viability assessment form and content
 - Embeds the requirement for future viability testing; and,
 - Establishes the expectation that the developer meets the Council's and its advisor's reasonable costs for assessing viability.
- 3.7 The status of an SPD is to add further detail to policies in the development plan and cannot change policy itself. An SPD is capable of being a material planning consideration, but is not itself part of the development plan. The SPD is only therefore intending to focus on process.

4.0 S106 Agreement Activity 2018/19

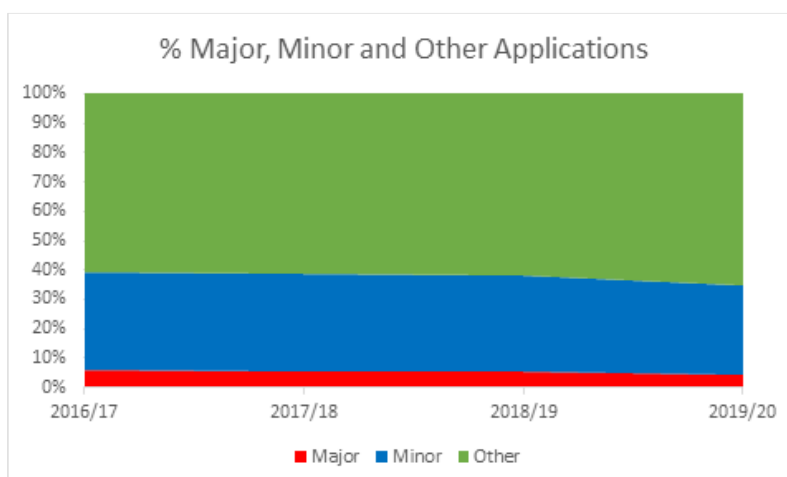
Agreements signed

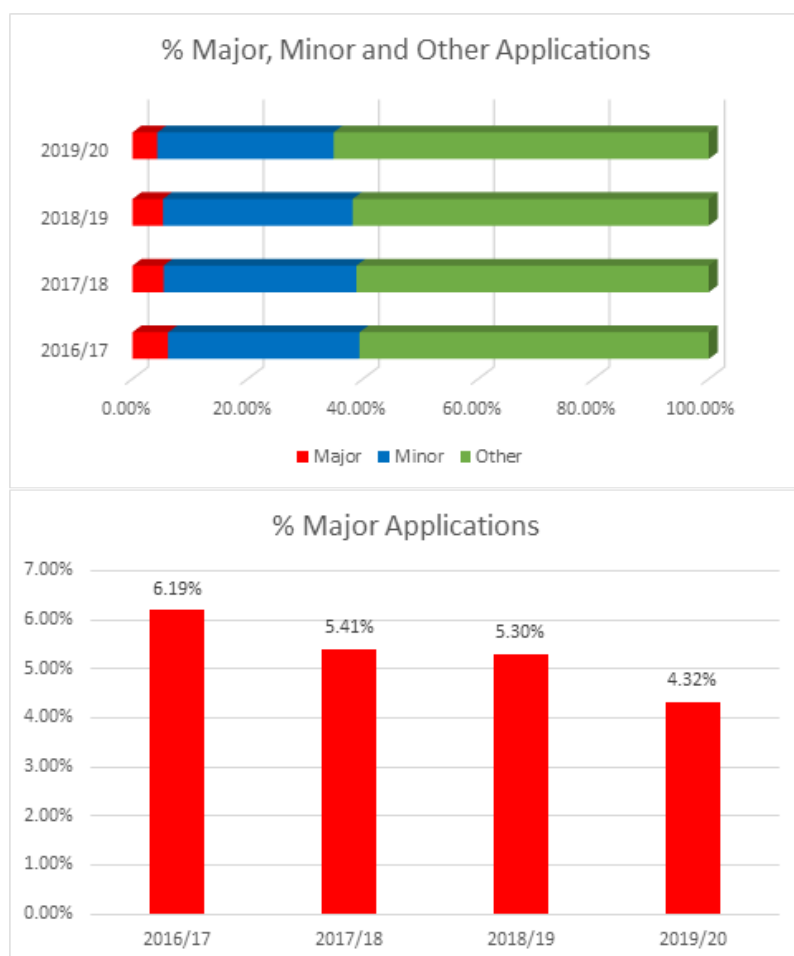
- 4.1 During the financial year 2018/19, 16 S106 agreements were completed

This is generally consistent with the previous year. The graphs below set out the historic trend in the city.



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, around 5 % of all schemes received, has remained relatively stable over recent years although there has been a slight dip from 2016/17.





S106 agreements completed during this period include:

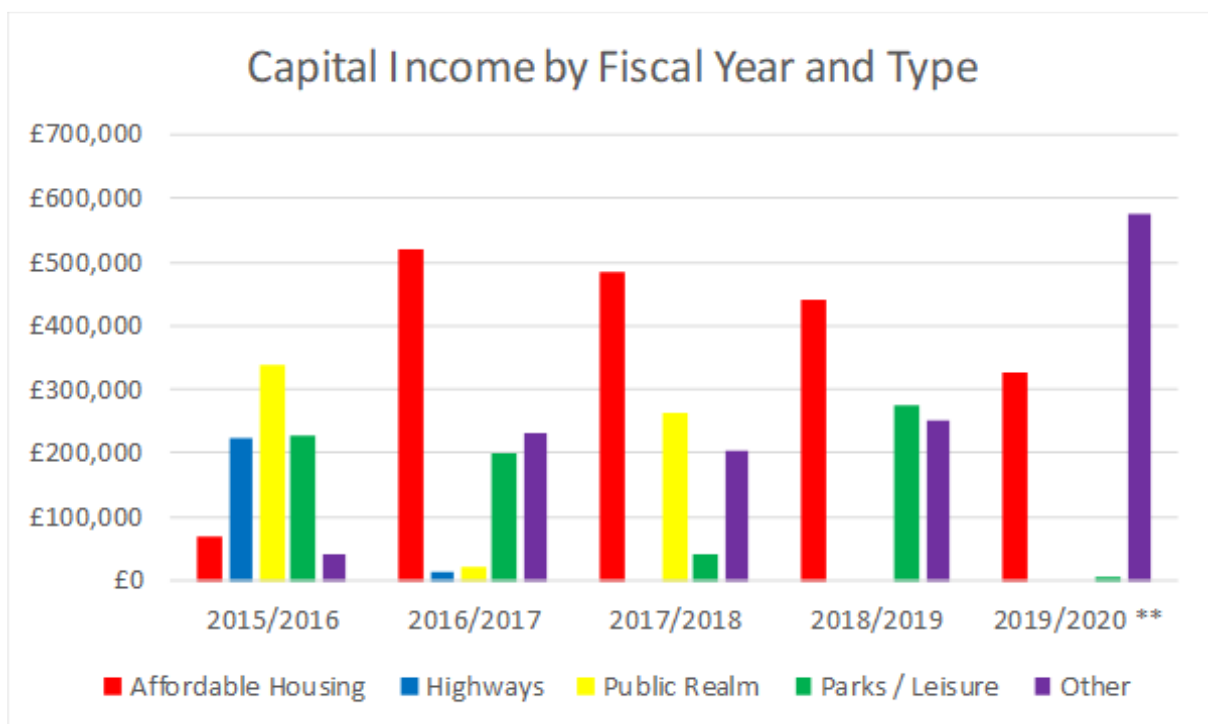
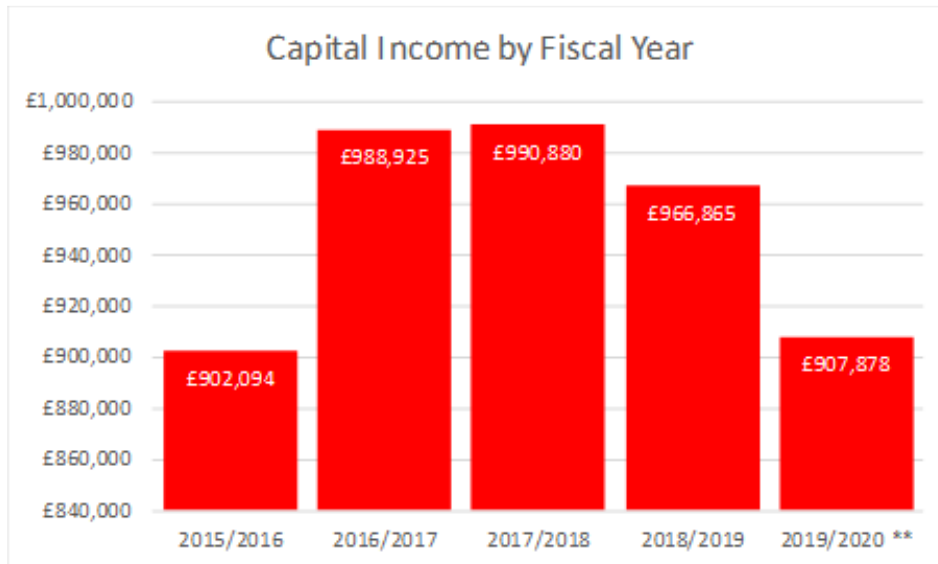
Ward	Planning App	Location	Obligation	Total
Cheetham	118831/F O/2018	Former Boddingtons Brewery Site Dutton Street Manchester M3 1LE	Highways / Environmental Improvements	£ 500,000.00
Crumpsall	118538/O O/2017	North Manchester Business Park Land Off Brightside Road Manchester	Affordable Housing	£ 450,000.00
Deansgate	114664/F O/2016	Land Bounded By Jacksons Row, Bootle Street, Southmill Street & 201 Deansgate Manchester M2 5GU	Affordable Housing	£ 2,230,000.00
Deansgate	119380/F O/2018	1-5 New Wakefield Street Manchester M1 5NP	Environmental Improvements/ infrastructure/ affordable housing	£ 500,000.00

Deansgate	119806/F O/2018	Land Bounded By Chester Road, Mancunian Way And Former Bridgewater Canal Offices Manchester	Medical (or Affordable Housing), Environmental Improvements, Highways,	£ 1,340,000.00
Deansgate	120067/F O/2018	Charlotte House 10 Charlotte Street Manchester M1 4FL	infrastructure	£70,000.00
Didsbury East	119242/F O/2018	825 Wilmslow Road Manchester M20 2SN	Affordable Housing	£ 300,000.00
Didsbury West	115035/J O/2017	Spire Hospital Barlow Moor Road Manchester M20 2AF	Parks and Leisure	£ 15,625.00
Hulme	113473/F O/2016	Thorncross Close Off Ellesmere Street Manchester M15 4LU	Affordable Housing	£ 500,000.00
Hulme	118625/F O/2017	Land Bounded By Dinton Street, Cornbrook Road, Chester Road And Trentham Street Manchester M15 4FX	Affordable Housing	£ 150,000.00
Hulme	121351/J O/2018	Talbot Mills 44 Ellesmere Street Manchester M15 4JY	Revised Application, Revised Development, Revised Planning Permission	n/a
Moston	113376/J O/2016	FC United Of Manchester Broadhurst Park 310 Lightbowne Road Manchester M40 0F	Non Financial	n/a
Piccadilly	117058/F U/2017	53 Marshall Street Manchester M4 5FU	Environmental Improvements	£ 40,000.00
Piccadilly	117059/F O/2017	32 Mason Street Manchester M4 5EY	Environmental Improvements	£ 37,500.00
Piccadilly	118120/F O/2017	Land Bounded By Thompson Street / Mason Street / Bendix Street And Rochdale Road Manchester	Affordable Housing / Public Realm	£ 550,000.00
Piccadilly	120881/F O/2018	23 New Mount Street Manchester M4 4DE	Affordable Housing	£ 400,000.00

Total £7,083,125.00

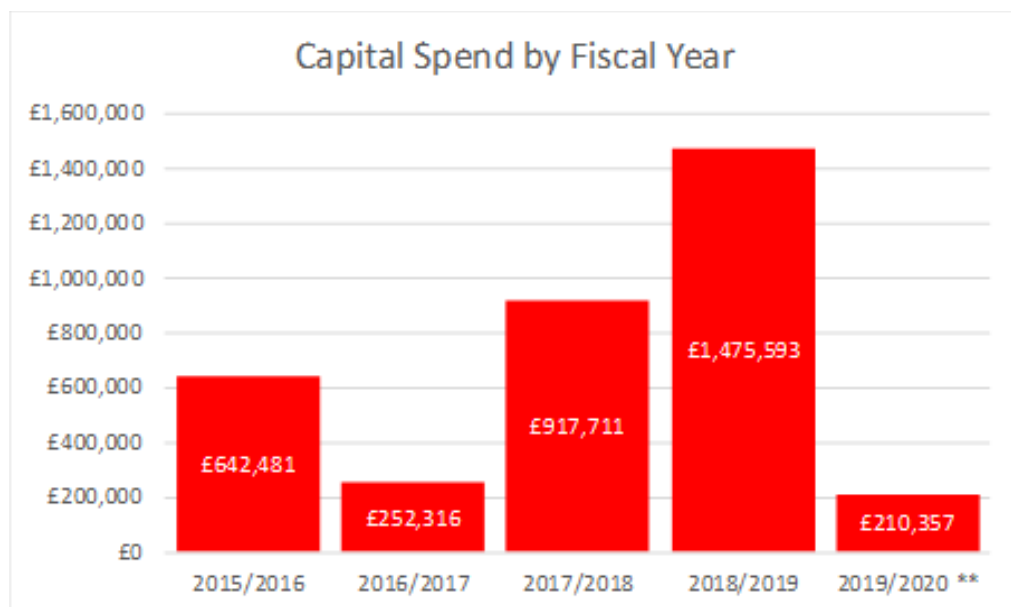
Financial contributions received

- 4.2 A total of £966,865 was received in S106 financial contributions which is generally consistent with the previous financial year. To date income collected in the current fiscal year is £907,878.



S106 spending/transfers in 2018/19

- 4.3 £1.4m has been spent or transferred over this period. There is significant planned expenditure towards major long term schemes, most notably affordable housing and environmental improvements/public realm.



Current S106 balances

- 4.4 As a result of income and expenditure set out above and on-going work to develop future spending plans, current S106 balances are:

Money held in account £6.5 m

Specific plans in place (spend commenced/reserved and committed *) £4.6m

Contribution transferred into Housing Affordability Fund £1.4m

Funds awaiting to be reserved £0.5m

*£545k is awaiting transfer into the Housing Affordability Fund

Of the funds waiting to be reserved, a significant proportion have been received in the last 12 months; some of the contributions having only been received in the last three months.

- 4.5 It is also noted the current balance does not include £150k received from Transport for Greater Manchester (TfGM) for tree planting in the city centre, in lieu of a S106 agreement for Second City Crossing (granted under an Act of Parliament). The money sits alongside the s106 account. A schedule of S106 agreements is attached at appendix 1.
- 4.6 The number of agreements signed during this period is less than the previous year (which saw 19 agreements completed), but the monetary value of the obligations is significant. If the schemes are delivered, a significant amount of this money would be transferred to the Council's Housing Affordability Fund (HAF), which brings together a range of funding sources to support the delivery of affordable homes. £1.4m has already been transferred from active agreements and a further £545k is due to be transferred.
- 4.7 The Council is also using its own land and capital receipts in lieu of a s106 agreement as a key driver to deliver new affordable homes. 600k has been

received from a capital receipt for a scheme in south Manchester and a policy compliant financial contribution was initially to be secured from the capital receipt on the implementation of the proposal for St Michaels in the city centre. This will now be delivered through a s106 undertaking and is detailed in the list of agreements completed during 2018/19.

- 4.8 No refunds have been made during this period. There is, however, one financial obligation which is being pursued. This relates to a development at Silverwood on Barlow Moor Road and a sum of £34k.
- 4.9 The schedule of s106 agreements in appendix 1 includes a risk rating. The reasons for a rating will vary. One obligation is highlighted as a possible red risk; however, this is not due to the time scale for spend but is a flag to officers to clarify the project (a project had previously been identified but progress is not known). A second obligation relates to Silverwood referenced in 4.8 above where money is owed. There are also several 'amber' ratings but again this is less about the timing of potential spend (one has 8 years remaining) but is to flag up the fact that project leads need to be identified or officers having to check whether a trigger has been met.

Examples of Spend

Riverside Park Play Area S106

This project was to update/replace a number of items of play equipment (and associated works) in Riverside Park Play Area as identified by the obligations within the S106 agreement with a total fund £75,000.00

The 'Riverside Park' and play area was first developed in 2008 with the full support of local members and the new friends of Riverside Park. The site is situated in Northenden close to Mill Lane and is the only play provision within the ward. The area was the site of a mill and at the time had a number of antisocial behaviour problems. To date the Riverside Park has become an integral part of the community and well used by passing visitors and local residents which in turn supports the local shops and trade within the area.

The project delivered to the existing ward and park contributes to the neighbourhood offer for family activities and for visitors and will continue to contribute to a better quality of life and well-being of residents of Manchester. The scope of works (design / items of equipment) were developed in conjunction with local members, friends of Riverside Park and the neighbourhood team. The chosen contractors delivered a community workshop to develop and agree the new play space as part of the social value with additional planting to be completed on the community opening event planned for October 2019.

The works were procured in partnership with the MCC procurement team and the Council's parks operational team have overseen the project throughout whilst keeping community stakeholders informed. This is a joined up approach delivering shared outcomes in an efficient and meaningful way.

Park/recreation and leisure project S106

Over £600k had been secured from three separate agreements in the Ardwick area (previously in different wards). The associated obligations taken together are to deliver improvements to and around Whitworth Park, new tress, public realm, highway improvements and general environmental improvements.

Projects and work within the scope of the agreements have been implemented over a period of time. The final projects include:

Further work to Whitworth Park - there has been an ongoing consultation to update the park plan, which in turn sets out investment priorities. This has now been completed and the scope of works have been agreed to include; improvements to the play area, improvements to the paths and park infrastructure and a joined up piece of work with the Gallery to provide a power supply to a cabin which has been located on site to enable a gardening and growing project.

Works to the Active Lifestyles Centre, part of the wider environmental/park and leisure improvements project are now on site. The works includes renovating 3 small sided soccer pitches with new carpet, wall and fence lines whilst also updating the floodlights. The works are due to finish in December 2019; as part of the reopening there will be a community event, sponsored by the contractor as part of their social value package.

5.0 Member Engagement

- 5.1 Member engagement was raised at the meeting in November 2018 in the context of planning agreements. There are three aspects to this – at the time of the planning application, secondly, once money is received and finally at the time of spend.
- 5.2 Pre application discussions are an important part of the planning process. Although they are not mandatory they are always recommended and encouraged, providing an early insight into a proposal for members and neighbours. Negotiations on a proposal are carried out by officers, having regard to the policy framework and technical issues, members are often involved in the process. This can also take place as part of the Ward Coordination process.
- 5.3 Once formally submitted, an application will appear on a weekly list which is cascaded to all members and formal consultation and notification undertaken. In particular cases where Ward Councillors have requested to be kept updated on a scheme the case officer will e mail to inform of an applications submission.
- 5.4 The requirement for a S106 agreement may already have been identified at pre application stage (in the event the application is approved) and draft heads of terms provided as part of the suite of planning documents in the public domain.

- 5.5 Regardless of whether heads of terms have been submitted, this would be the time to raise comments and questions around the need for an agreement with officers, bearing in mind the legal and policy tests set out earlier in this report. This is not uncommon and officers are happy to meet to talk through issues involved.
- 5.6 Once money has been received, the planning service informs those responsible for delivering the associated works that the process for spend can begin. One of the matters the new Advisory Group (see below) is to review is how members are engaged once the money has been received and the relevant service to deliver a project notified.
- 5.7 An example of how engagement has successfully delivered a project involves the introduction of age friendly benches in Whalley Range which was delivered through S106 money. Instrumental and key to this was the involvement of the Ward members and the local community.

Twelve new age-friendly benches have now been installed across the local area; the locations for the benches were carefully chosen to be between shops, on the way to the local park and local facilities. A short film has been created showing how older people in the ward worked with the Council to install the benches which can be found on twitter

In addition to the benches a financial contribution was used to carry out improvements to the local highway network, taken together this has successfully provided an uplift in area.

6.0 S106 Governance arrangements

- 6.1 The receipt and spend of money secured through S106 agreements has to be fully auditable and there is a need for procedures which allow for robust approval and spend of financial contributions.
- 6.2 In order to comply with 122 of the CIL regulations s106 agreements typically identify a specific project of a relatively narrow range of projects on which contributions may be spent. Such projects are identified through the planning process, in discussion with key consultees, to provide direct and appropriate mitigation for the impacts of the development. Spending decisions must accord with the provisions of the s106 agreement and there is limited scope to redirect monies towards alternative projects at a later date.
- 6.3 As already noted s106 agreements therefore include clauses stating when the funds will be paid (by reference to a trigger in the development phase) and for what purpose they will be used, usually project or location specific. There is also provision for the return of contributions if they remain unspent or uncommitted after an agreed period of time, (this can vary depending on the nature of the contribution). Contributions cannot be spent on any other project and will only become available for spending once a development has commenced on site. This can cause complications for projects where a

possible contribution from an agreement has been identified and adds to the importance of tracking payments and development.

- 6.4 A dedicated S106 Advisory Group has recently been set up to review spend, track process and help to unblock any issues. This is led by the Director of Planning and includes Strategic leads from:

- Neighbourhoods
- Highways
- Parks and Leisure
- Finance
- Legal
- Audit to attend where appropriate

Support is provided by a new Team lead who has taken responsibility for reviewing all data held on and the monitoring of S106 agreements (see 6.6 below). The Group will report to the Council's Strategic Capital Board.

- 6.5 An operational working group has also been set up to oversee specific projects and provide day to day guidance and advice on process. Early work to establish the group has already helped to reduce risks by identifying where spend had not taken place and/or there was little information on progress.

- 6.6 Over the last 12 months the information held on S106 agreements has been completely overhauled. Members may recall the previous 'workbook' comprised a spreadsheet which required all data to be manually inputted. Although the data is still being reviewed, this is almost complete and a new workbook has been developed. This is linked to the planning business system, legal records and SAP. This is fundamental as previously information on the money drawn down for example had to be reported and often requested by the Planning Service to be entered manually.

- 6.7 The Monitoring officer now has access to all financial data held against an agreement, this includes the capital code and the service area who has requested the money. The new workbook is a shared document, accessible to strategic leads and the members of the operational group. The system change and new processes introduced are integral to ensuring spend is monitored and takes place in a timely manner. This was a particular concern raised by members at the meeting in November 2018.

- 6.8 By way of example, once a contribution (or part) has been received there is an automatic trigger which requires the lead officer from the relevant part of the Council to be notified and details of the associated project to be fed into the shared document. This allows alerts to be applied on the system and a monthly report provided on progress. This would be discussed in the operational meetings and a performance report provided to the Advisory Group.

- 6.9 The integrated system provides real time and accurate reporting on all s106 activity, but it also allows for reports to be generated on individual agreements

or groupings (wards or typology of spend). Appendix 2 provides an example (using a hypothetical ward) of the information that would be available.

- 6.10 With a complete review of the information, reconciliation of all relevant records, how this is to be held moving forward, the tracking of spend in addition to the new governance arrangements, Audit has been asked to undertake a review and provide assurance on behalf of the Strategic Director. This is due to be reported before Christmas.

7.0 Community Infrastructure Levy

- 7.1 Members will be aware that the Community Infrastructure Levy (CIL) is a planning charge on new development introduced in the Planning Act (2008) and the CIL Regulations. An LPA may levy the charge once it has consulted on and approved a charging schedule setting out the rates. There is no obligation for an LPA to adopt CIL.
- 7.2 Where authorities have adopted CIL it is usually chargeable on new development that creates a net additional floorspace of 100 square meters or a new dwelling. The levy can be used to fund a wide range of new infrastructure but not affordable housing.
- 7.3 The rate of CIL is determined by striking an appropriate balance between the additional investment requirement to support development, and the potential effect on the viability of developments.
- 7.4 At the Committee meeting on 8 November 2018, Members raised a question about CIL and the city centre. As part of the review of the Core Strategy (the development plan), consideration will be given to the introduction of CIL across the city; as noted in 3.1 this will include assessing, if it is possible to establish an economically viable CIL rate and/or whether these could differ in different geographical areas.
- 7.5 At this time it is not possible to provide further information or clarity on how CIL would operate in relation to the city centre.

8.0 Conclusion

- 8.1 The report provides a summary of activity associated with S106 financial obligations for the period 2018/19. It sets out the legislative framework for negotiating planning agreements and provides an update on CIL.
- 8.2 Moving forward, the report details new governance arrangements and how contributions received will be monitored.