

HIGHWAYS AND TRANSPORT

SECTION 106

JUNE 2009

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PROTOCOL AND PROCEDURES FOR ENVIRONMENT HIGHWAYS & TRANSPORT SECTION 106

1. What are Developer Contributions (S106)

- 1.1 Developer Contributions are monies secured through S106 legal agreements to mitigate the impact of new developments. As such the County Council negotiates developer contributions for a number of its functions including education, libraries and highways. Government Circular 05/05 sets out the guidance on the fundamental principles that should be considered when preparing and negotiating developer contributions.

2. How Contributions are secured

- 2.1 There are 10 districts within Hertfordshire. Each is a separate Planning Authority. As a statutory consultee under the Town and Country Planning Act the county is required to consider planning applications that effect publicly maintained highways. The County Council is also a planning authority in relation to minerals, waste and county matters (e.g. schools).
- 2.2 The S106 process begins with the planning authority on receiving either an informal consultation or a planning application, contacting the County Council. Highways comments are provided on behalf of the County Council by the Highways Development Control Team in the Transport Planning and Policy Unit, based at County Hall.
- 2.3 Contributions are secured by the Transportation Planning and Policy Unit (TPP). The County Council has an approved planning obligations toolkit for officers and developers regarding the S106 process. This toolkit sets out a standard charge for highways and sustainable transport based on the number of dwellings or vehicle trips associated with a proposed development.
- 2.4 The toolkit is in line with best practice, to speed up the planning process and give more certainty to developers of what may be required from them, although it is not a statutory policy document and adopted Local Planning Authority (LPA) LDF/SPD will take precedent. The guidance extends the range of developments from which S106 contributions are received and provides a general guide on how to deal with larger developments, which remain negotiated on an individual basis.
- 2.5 The majority of negotiations across the County are for small developments where the approved toolkit/ SPDs are used.

3. Consultation on Planning Applications

- 3.1 The TPP consults other units which are at the front line of service. This includes Hertfordshire Highways (HH), Passenger Transport Unit (PTU) and Rights of Way (RoW). Each of the front line services has the opportunity to comment within the consultation process on both (i) major planning applications (ii) smaller scale developments. The processes for these are described in more detail below.
- 3.2 For all major planning applications local County Members and each of the front line services will be consulted by TPP. TPP has to respond to the LPA within a 21 day period on all planning application consultations and will set a timescale to receive a response. Ideally this should be a minimum of 7 days.

- 3.3 Major schemes are those above the thresholds of a Transport Assessment (e.g. above 100 dwellings), consultation may also take place on applications likely to be controversial.
- 3.4 Officers from TPP take a decision on when to consult with Members based on the major application criteria mentioned above. This working practice has been developed considering the number of consultations received, around 5000 per year, the size and implications of the majority of these which are generally small, and the need to respond within 21 days. When responding to the LPA the LHA must ensure its comments are objective and defensible at appeal. If comments are deemed unreasonable the LHA may be liable for costs.
- 3.5 In responding to planning applications the County Council is responding as LHA and District Members are not directly consulted. It is for the LPA to consult their own Members, however they will need to consider their position if they are specifically involved in the Development Control Committee process.
- 3.6 In addition to the direct consultation on major applications from TPP, the front line service units have comment only access to PROMS (the connect based database which records consultations on planning applications and TPP responses), through which they can make their response regarding smaller scale developments if they wish. Comments made on PROMS are viewable by anyone who has access to connect, including all HCC employees and Members.
- 3.7 Within Hertfordshire Highways the Programmes and Strategy Manager (PSM) from the Transport Programmes and Strategy Unit (TPS) will consult internally with all Herts Highways colleagues and formulate a single Herts Highways response.
- 3.8 Within PTU the Forward Planning Team will respond to consultations and within RoW the Countryside Access Team.

4. Environment Department S106 Procedure

- 4.1 Following an internal audit in 2004 a S106 procedure was developed. Based on the recommendations from the audit this procedure is divided into three elements. These three elements are set out in table 1.

Table 1 - Environment Department S106 Procedure

S106 Elements	Responsible Unit and Procedure
(i) Negotiation and Preparation of S106 Agreements	Transport Planning and Policy Unit (TPP) The local planning authority consults TPP Development Control team for transport comments on planning applications. Where appropriate developer contributions are sought and Planning Permission is granted subject to the signing of the S106 legal agreement.
(ii) Collection and Management of S106 funds	Transport Planning and Policy Unit (TPP) All S106 agreements are entered into a data base (PROMS). The data base is updated when funds are received and generally on a quarterly basis.

(iii) Delivery of Schemes	<p>Hertfordshire Highways</p> <p>(i) Transport Programmes and Strategy Unit (TPS) Delivery of sustainable transport schemes identified primarily through the development of Urban Transport Plans and subsequently delivered through the Forward Works and Integrated Works Programmes.</p> <p>(ii) Highways Area Offices - Highways Management Unit (HMU) and Network Management Unit (NMU) Delivery of small local schemes following agreement/coordination with TPS.</p> <p>Passenger Transport Unit (PTU) Delivery of schemes solely passenger transport infrastructure and service related.</p> <p>Rights of Way Unit (RoW) Delivery of schemes related to public Rights of Way and un-surfaced unclassified roads.</p>
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- 4.2 Internal audit continue to monitor and report progress on the implementation of each of the three procedural elements. Appendix 1 shows a flowchart of the process.

5. Funding Request Process

- 5.1 Before the release of any S106 funding it must be demonstrated that the following have been considered and met:
- The specific requirements of the legal agreement.
 - Compliance with Circular 05/05.
 - S106 strategic priority hierarchy.
- 5.2 **Specific requirements of the Legal Agreement** - The wordings of some legal agreements are very site or measures specific i.e. ring fenced. Where this is the case only schemes which meet the specific measures or requirements will be authorised.
- 5.3 **Compliance with Circular 05/05** – This circular outlines that s106 must be relevant to planning, necessary to make the proposed development acceptable in planning terms, directly related to the proposed development, fairly and reasonably related in scale and kind to the proposed development, reasonable in all other respects. Expenditure of all S106 must comply with Government Guidance.
- 5.4 **S106 Priority Hierarchy** - Whenever possible and appropriate, TPP seek to negotiate non site/scheme specific agreements. This enables flexibility and reduces the need for deeds of variations. As such many of the agreements negotiated are for 'sustainable transport measures' either in the local vicinity or identified within an approved transport plan. The latter can where appropriate enable strategic and larger schemes to be designed and implemented through several S106 agreement funding sources being pooled.
- 5.5 Every scheme submitted for S106 funding is required to be considered against the S106 funding policy hierarchy. The three funding priorities are set out in table 2.

Table 2 - Sec106 Priority Hierarchy

Priority Level	Requirement
Priority Level 1	A Scheme identified in an approved Plan (e.g. Urban Transport Plan), Programme (e.g. HH Forward Works Programme) or Strategy (e.g. Rail/Bus Strategy, RoW Improvement Plan, County Wide Strategies).
Priority Level 2	A scheme that meets one or more of the approved DfT LTP targets. Funding for schemes and initiatives should only be considered if no level 1 schemes have been identified within the required funding timescale.
Priority Level 3	Small local schemes. Funding for schemes and initiatives should only be considered if no level 1 or 2 schemes have are programmed or identified within the required funding timescale.

6. S106 and the County Capital Funding Programme

- 6.1 All proposed works from S106 are required to be included in the County Capital Programme. The programme is completed annually and sets out the spending programme for all County Council departments for the following financial year and is the process by which County Council spending is agreed and approved.
- 6.2 All S106 funded schemes are therefore required to be identified and provisionally approved one year in advance. Appendix 2 sets out the timescales for the identification of schemes to meet the Capital Funding Programme requirements.
- 6.3 It is recognised that opportunities can present themselves outside of the normal sequence of events such as opportunities for partnership working, match funding and external bidding. There are corporate protocols for these types of opportunities which involve risk assessments, Executive Member briefings, and Highways and Transport Panel Reports etc. In following these protocols reference should be made if there is a need to secure Sec 106 funding and formal s106 approval will then be agreed through the s106 process.

7. Annual s106 Meetings - Scheme Identification and Selection Process

- 7.1 In 2004 internal audit recommended that regular steering groups should be set up by TPP to discuss development of projects and S106 funding.
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- 7.4 The S106 steering group meetings will be held in March prior to the April Highways Joint Member Panel meetings (HJMP). Attendees will include HH - Transport Programmes &

Strategy Unit, Highways Management Unit, Network Management Unit, PTU, RoW and District Council Officers. The meetings will be minuted.

- 7.5 Members will be given the opportunity to comment on s106 funding and possible schemes at the quarterly HJMPs. However greater significance should be given to the January HJMP meeting so that officers from the Highways Management Unit can report any requests for schemes from Members to the annual March S106 steering group meeting. Feedback from any requests can then be given at the April HJMP. The highways S106 timeline identifying dates of relevant meetings is attached in Appendix 3.
- 7.6 To support the annual S106 meeting, S106 funding and current/forthcoming development sites will be discussed quarterly at the TPS district area officer steering groups. The meetings will be chaired by the appropriate area TPS PSM. The appropriate TPP AHDCM will attend each of these meetings and lead on the S106 item. These meetings will be held prior to the quarterly HJMPs so that any changes can be incorporated into the quarterly S106 table provided for the HJMPs. The AHDCM will provide a full assessment for any new request of the suitability of releasing funding for the next quarterly meeting.
- 7.7 Appendix 4 shows an example of the S106 table. As the table includes both present and future possible schemes and projects, each scheme listed will include clarification of its status. Table 3 sets out the status descriptions.

Table 3 - S106 Scheme Status Description

Status Description
Possible scheme - Currently being assessed for suitability.
Supported scheme - Confirmed that proposed scheme meets (i) legal s106 requirements (ii) compliance with circular (iii) scheme hierarchy.
Committed scheme - Within the County Capital Build Programme or approved annual preparation/ build programme – Need to include estimated year for delivery in the s106 table.

- 7.8 The S106 table is revised by TPP following each steering group meeting. As mentioned above it is then reported to the HJMP for Member comments. Any comments from Members are reported back through to the officer steering groups to consider or action as appropriate. Final approval of expenditure is determined through the authorisation process agreed by Cabinet in November 2006 explained in more detail in section 9.

8. Environment Department Highways S106 Board

- 8.1 Overseeing the Environment Department S106 Procedure and Steering Groups will be the S106 Board. The Board consists of senior officers from TPP, TPS, PTU, and RoW, and is supported by officers of the respective units. The aim of the Board will be to monitor / oversee s106 spend and discuss any problems or issues raised. It will meet twice a year (May / November). Appendix 5 gives an outline of the responsibilities of the S106 Board.

9. Funding Request Form (CS99)

- 9.1 The Highways S106 Request for Funding form (CS99) is available from connect. This form should be completed and submitted to TPP for all highway funded schemes.

The form requires officers to:

- Provide scheme details;
- Identify how the scheme contributes to corporate challenges and strategic outcomes, LTP2 targets;
- Identify how the scheme may have an impact on equalities;
- The financial amount being requested;
- Which transport strategies the scheme meets;
- Expected timetable for design and delivery.

- 9.2 For Herts Highways, once completed the form is required to be signed off by the Herts Highways Budget Manager. The authorised Chief Officer for all Hertfordshire Highways S106 funding requests, including those from third parties such as District Councils, is the Head of Transport Programmes & Strategies Unit.
- 9.3 For PTU, once completed the form is required to be signed off by the Head of Passenger Transport Network Planning.
- 9.4 For RoW, once completed the form is required to be signed off by either the Head of Rights of Way or the Countryside Access Team Leader.
- 9.5 After a request for s106 funding has been submitted to the TPP unit it will be checked by the AHDCM against the terms of the actual agreement who will confirm if the request is suitable. The AHDCM will confirm that:
- The request meets the agreement requirements;
 - The priority hierarchy process has been followed.
- 9.6 An approval form is originated by the AHDCM before the Head of TPP consults the County Secretary, the Finance Director and the Executive Member for Performance & Resources before committing the s106 finance.
- 9.7 This follows a Cabinet resolution made in November 2006 that requires 'The Head of Transport and Planning & Policy Unit (Chief Officer) will make a decision on whether to release these funds based on the terms of the agreement after consulting with the County Secretary, the Finance Director and the Executive Member for Performance & Resources.
- 9.8 No expenditure shall be permitted against highway contributions held until all required approvals are obtained
- 9.9 Notification of authorisation will be sent to Environment Finance and the requesting officer who has applied for the funding. PROMS and the S106 Highway Contribution Table will be updated to indicate that the funds have been released.
- 9.10 Funding is only valid for one financial year. If a scheme is deferred or over runs into a different financial year a new request is required to be completed and submitted.

10. Monitoring

- 10.1 Monitoring of s106 spend is required for all s106 funded schemes and projects. This is used to identify and ensure that the most effective interventions and measures are used.

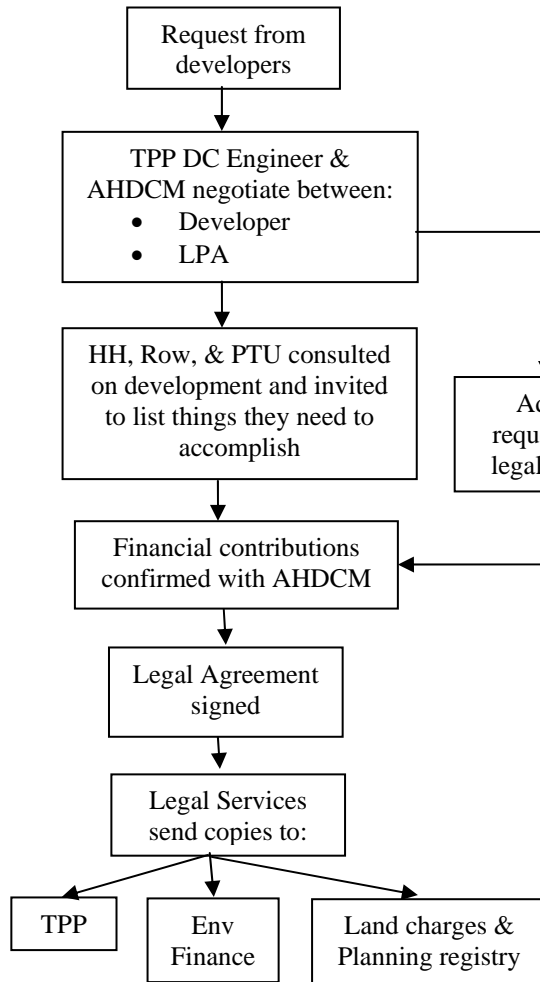
- 10.2 On the completion of all S106 funded schemes a short report should be completed. This shall be presented at the annual S106 steering group meetings in March outlining progress of scheme development/delivery, S106 spend and reasoning if spend has not been achieved. The Highways S106 Request for Funding form (CS99) is available from connect.

11. Frequently Asked Questions

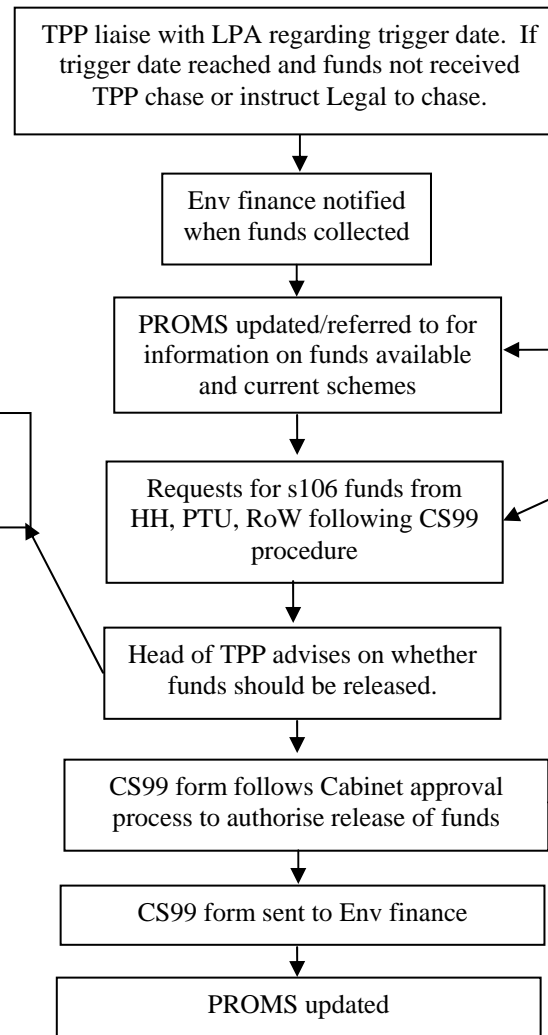
- 11.1 Appendix 6 identifies some Frequently Asked Questions.

APPENDIX 1 - S106 PROCESS

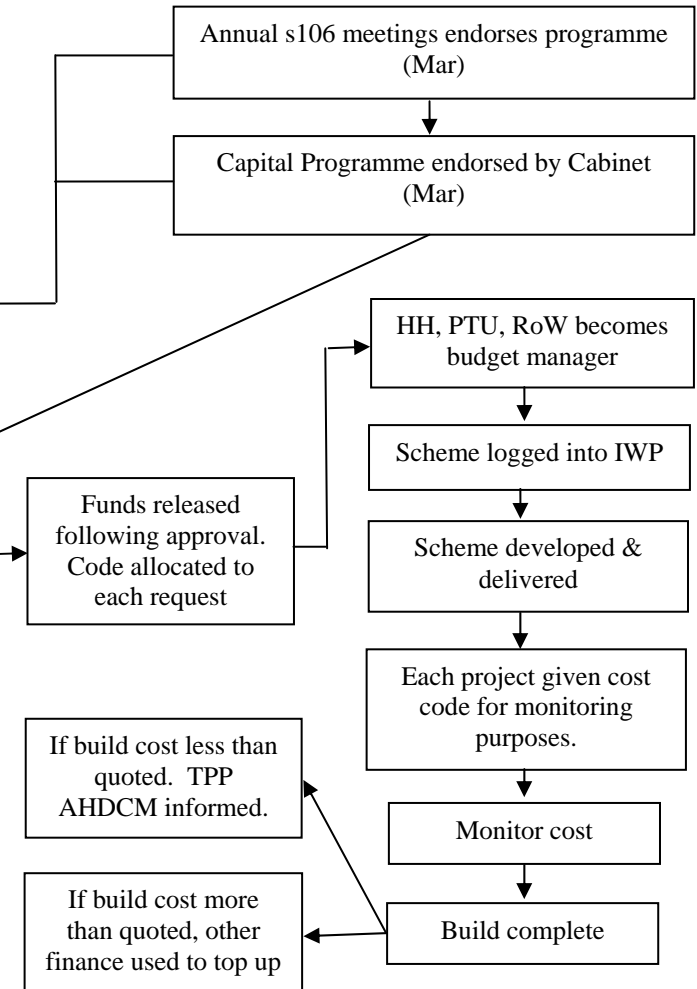
NEGOTIATIONS (TPP, C Secs, Developers, LPA)



FUNDS (TPP, HH, RoW, PTU)



DEVELOPMENT (HH, RoW, PTU)



APPENDIX 2 - CAPITAL FUNDING PROGRAMME

The County Council Capital Funding Programme

The County Capital Funding Programme sets out the spending programme for all County Council departments for the following financial year and is the process by which County Council spending is agreed and approved.

The County Capital Programme includes all funding sources both internal and external. Therefore the funding for all Hertfordshire Highways schemes and projects, regardless of funding source, including funding from grants, developer contributions or contributions from third parties, are required to be approved through the County Council's annual County Capital Funding Programme. Schemes identified outside the Capital Bidding process will not be funded.

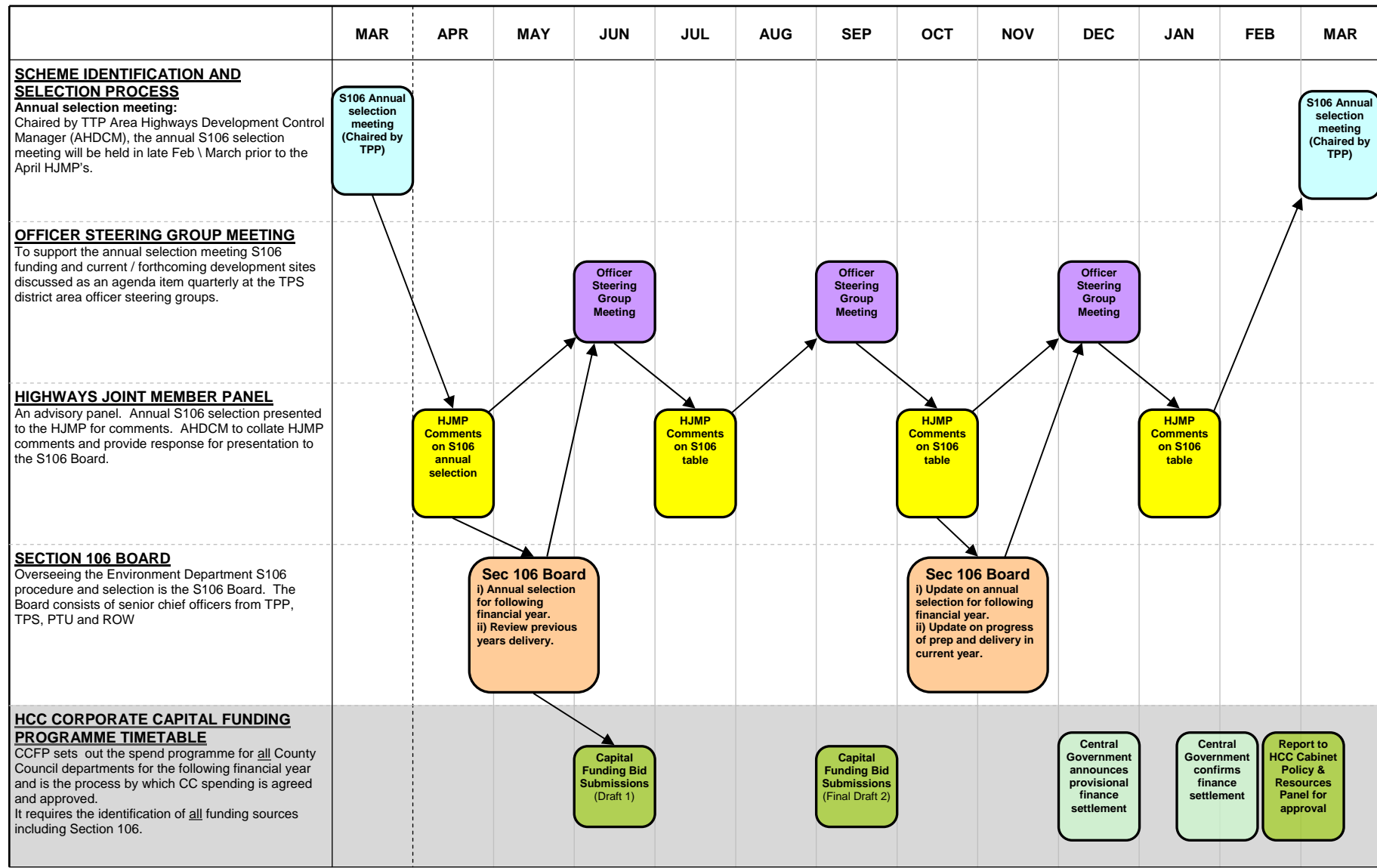
A business case 'Capital Bid' is required for all funding requests within the County Capital Funding Programme. For Hertfordshire Highways the business case requires a clear link to be identified to the priorities in the Sustainable Communities Strategy, Corporate Plan the Transport Asset Management Plan (TAMP) and the Second Local Plan (LTP2) targets.

The Capital Funding is written and submitted annually by the Transport Programmes and Strategy Unit with support from each of the LTP2 Target Development Groups. A short summary of the annual County Capital Funding Programme Timetable is set out below.

Timescale	County Capital Programme Stage
Early July	First Draft Capital Bid submissions required from all County Council Departments/ Units. Assessment of draft bids made by Chief Officers and revisions made as required.
Early September	Final Draft Capital Bid submissions made.
December	Central Government announces provisional finance settlement for the coming financial year and other specific grants.
Early January	Paper presented to the HCC Policy and Resources Cabinet Panel
Late January	Central Government announces the final finance settlement for the coming financial year.
February	Paper presented to HCC Cabinet for approval of revenue budget and capital programme and setting of council tax for HCC.

As the table illustrates, all the County Council's budgets are confirmed in February of each year. Following this confirmation the budget for Hertfordshire Highways is then split down into a number funding components.

APPENDIX 3 - HCC HIGHWAYS SECTION 106 TIMELINE



APPENDIX 4 - S106 TABLE EXAMPLE

Section 106 contributions - Highways - East Herts

As at 19/03/09							
District	Site	Available 2008/09 (As at 1/4/08)	Use* (*all contributions must be spent on services that will meet needs arising from the relevant developments)	Refund	CS99s Issued (08/09)	CS99s Issued (09/10)	Possible Schemes (see note)
East Herts	John Dyde TC, Anchor Street, Bishops Street	£67,372	1) Anchor Street / Station Road Junction (refer S278 agreement 3/3/06 (one traffic signal pole and head, one primary signal pole and head, traffic signal loops and road markings, tactile paving)	10/11/2011			
East Herts	Ware Goods Yard, Station Road, Ware	£11,418	1) Allocated to Travel Wise	5 years from date of commencem ent			Travelwise initiatives
		£5,709	2) Allocated to Green Route matters				Possible scheme to improve station frontage for Taxi's - developer to be consulted regarding proposed change of use of contribution.
		£45,671	3) Works connected with station interchange and "kiss and ride" Inform owner and developer within 6 months of implementation of works		0809/EH/02 - £43257 - Area enhancements including formalised taxi rank(APPROV ED)		

APPENDIX 5 - S106 BOARD TERMS OF REFERENCE.

S106 Board Terms of Reference

Membership

The Board consists of senior officers from TPP, TPS, PTU, and RoW:

- Head of Transportation Planning & Policy
- Head of Transport Programmes & Strategies Unit
- Integrated Transport Services Manager
- Head of Rights of Way

The board will be supported by officers from:

- TPP - Development Control Service Manager
- TPP - Area Highways Development Control Manager
- TPS - Service Manager
- HMU – District Manager
- PTU – Forward Planning
- RoW – Countryside Access

Role

The board will:

1. Discuss and review ongoing development needs.
2. Make a decision on any Sec 106 selection requests that could not be resolved through the steering groups.
3. Monitor / oversee s106 spend

Reports will be presented to the board in relation to the following:

1. A list of proposed s106 allocations.
2. Brief feedback from the annual s106 steering group meetings where issues / conflicts have arisen.
3. s106 finance approaching refund date and not allocated to a particular scheme.
4. Ongoing development needs and progress to date on needs previously identified.

Meeting Frequency

The board will meet twice a year during May and November. Meeting frequency will be reviewed on an annual basis in May.

APPENDIX 6 - FREQUENTLY ASKED QUESTIONS

Does my request meet the Agreement Requirements?

Agreement details are held by TPP. Confirmation should be sought from TPP before the submission of a funding request form (CS99).

Does my request meet the priority hierarchy requirements?

Check HH Plans and Programmes. Confirmation if required should be sought from TSP.

Can I submit maintenance schemes in whole or in part ?

It is inappropriate to use S106 for a maintenance scheme. Where maintenance is identified within a scheme separate maintenance funding should be requested and secured through the maintenance programme.