

Appendix C – Corporate Policy Framework considerations

A. Council New Public Open Space Policy

- 1.1. The council's current open space policy framework is set out in the Council's Open Spaces Strategy policy document adopted in December 2021. Normally this document is reviewed in five-year periods, so it would be coming up for a review in 2026.
- 1.2. This Open Spaces Strategy is in line with the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) for Open Space, which have replaced Planning Policy Guidance Note 17: Planning for Open Space Sport and Recreation (2002) and its companion guide, Assessing Needs and Opportunities: A companion guide to Planning Policy Guidance 17 (2002).
- 1.3. The current policy document called: "Provision for Open Space Sport and Recreation – Delivery Plan 2021" states that new public open space provided on development sites should be maintained by the developer to the satisfaction of the District Council for a period of 12 months after practical completion. Upon the expiry of this 12-month maintenance period, the open space shall be transferred to either the Council or nominated maintenance organisation following the payment of a commuted sum as required. The space will be required to be to the standards outlined in the document.
- 1.4. The specified commuted sum period is currently set at 30-years, with applicants entering into a S106 Agreement with the Council.
- 1.5. Currently the policy presents three options for the maintenance of the open space unless it is of more than local significance. These are, in the following order:
 - Transfer to a Management Company;
 - Transfer to the District Council;
 - Transfer to a Town or Parish Council.
- 1.6. There is an interest in changing this policy framework to having Town and Parish Councils as the first tranche of organisation to take receipt of new open spaces for maintenance accompanied by a commuted sum through S106 agreement. The District Council would be the second choice to take receipt of new open space and the final choice of organisation to maintain the new open spaces would be a management company or 'Man Co'.
- 1.7. There will be a need to review the 2021 adopted Open Space Strategy and the supporting document Provision for Open Spaces Sport and Recreation – Delivery Plan to give effect to such changes.

B. Funding Open Space Maintenance

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- 1.8. It is proposed to modify the funding mechanism that supports the maintenance of new public open spaces. It is proposed that commuted sums remain an important component to the funding package, however, it has been found that the current 30-year commuted sum requested tends to be off-putting to developers who feel the charges are excessive and present viability issues.
- 1.9. It is proposed to revert to a commuted sum maintenance period of 15 years following the 1-year maintenance period which is the responsibility of the developer post practical completion of the open space.
- 1.10. It is unlikely that developers can be compelled to transfer public open space to the Council with the associated commuted sum but experience prior to 2015 indicates that most are willing to consider this option.
- 1.11. Following the 15-year period, if the open space was to be maintained by a parish or town council, it is proposed that the respective authority would build a parish precept into their council tax funding framework, if they were content to maintain the open space concerned. This approach will ensure that the local community directly contributes to funding the maintenance of new public open space provided for the benefit of that community.
- 1.12. The parish Precept can be set locally by parish or town council concerned to support the maintenance of local infrastructure of which public open spaces are part. If they were not comfortable to maintain the open space, the district council would build a charge into the relevant Special Expense Area council tax funding framework to continue the maintenance of the open space concerned.

C. Seeking to Renegotiate Existing S106 Agreements

- 1.13. Should the need to change the policy approach be agreed, it will be desirable to create as much momentum as quickly as possible for the change. Part of the implementation of it will include seeking to renegotiate existing S106 Agreements. Variations to legal S106 Agreements must be agreed by the developer party with whom the agreement is with and any other signatories relating to the matter under consideration. In the light of this scenario, it is not possible to predict whether the renegotiation of an individual S106 would be an easy or a challenging process or even be possible.
- 1.14. For any change to Public Open Space maintenance and management policy to achieve early outputs it will be necessary and appropriate to seek to renegotiate some existing agreements to translate them into agreements that meet new policy approaches and requirements.

D. Applying a New Policy Consistently Across New Open Space Sites

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- 1.15. Any new policy approach will need to be consistently applied across all sites that come forward from the adoption of the new policy approach. This will particularly apply following the adoption of the new local plan from 2026 when a number of new sub-strategic and strategic sites will be delivered with associated new public open spaces. There may also be a limited number of such sites that come forward on a 'windfall' basis between now and the adoption of the plan to which the changed policy approach would apply.
- 1.16. It will be important to consult with developer partners and other stakeholders in relation to any proposed policy change in this area.

E. It may take a time for a policy change to take effect

- 1.17. In light of the considerable amount of time it takes to vary S106 agreements, and the complex legal negotiations that are required, it will take some time to give effect to a changed policy approach relating to existing planning permissions.
- 1.18. It will be important to ensure any time delays are kept to a minimum and for this to be the case a robust and resilient planning legal resource will be needed to progress this work. There are likely to be a number of complex S106 agreements that will need to be renegotiated and varied with the agreement of the developer parties.
- 1.19. Similarly, a realistic work programme will need to be drawn up to progress the work required to progress the review of the public open spaces policy framework. This will need to include seeking member approval to progress this work through informal briefing and Cabinet, carrying out the technical work required, and consulting on the proposed new policy approach with communities, developers and other stakeholders.
- 1.20. A full work programme will need to be drawn up and a robust project management approach taken to effectively manage all work streams involved.

F. Approach to consultation and communications

- 1.21. It will be necessary to draw up and approve a comprehensive consultation, engagement and communications plan covering how we communicate with:
 - Town, Parish Councils and Parish Meetings,
 - Other appropriately constituted groups who may wish to manage areas of open space,
 - The wider community as needed,
 - Professional stakeholders such as developers and site promoters,

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- All relevant stakeholders across the council involved in this area of operation, including green space maintenance services, legal and financial services, community services and others,
- The County Council's Ecology Services – especially linked to potential Biodiversity Net Gain opportunities etc.,
- The wildlife trust and other green stakeholders – again linked to rewilding and BNG and LNRS opportunities,
- Other identified stakeholders as required.

1.22. Project leaders will need to coordinate consultation, engagement and communications arrangements with the Council's communications team to enable a comprehensive approach.

G. The Potential Role of Biodiversity Net Gain (BNG)

1.23. There is a potential role for BNG associated with a new policy approach to the management and maintenance of Open Space. Biodiversity Net Gain is an approach to development that leave biodiversity in a better state after development and before. It places a legal requirement on developers to provide an increase in appropriate natural habitat over and above that being affected by development.

1.24. There is significant work involved in following the legal requirements to establishing land as being suitable for BNG and the Council would need to carefully consider the resourcing requirements involved in pursuing a proactive approach to using open space in this way. Additional resources are likely to be required to enable this work. There are benefits in that income can be derived from the BNG credits system, but quite significant technical work would need to be done up front.

H. The Involvement of Elected Members

1.25. There will be a need to comprehensively involve elected members concerning the proposals set out in this report to establish if they support making the proposed changes to process. Scrutiny Panel have an opportunity tonight to consider the issues prior to preparing a Cabinet report for a formal decision to make the policy and other changes required. Following this an all-member briefing could be useful to share the new approach and the rationale for it with remaining council members. There will then be a need to keep members close to the technical, consultation, engagement and other work during the processes involved to implement the changes.

I. Maintaining a Flexibility of Approach

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- 1.26. It will be important to maintain an agile approach to new open space site delivery, adoption and maintenance in the lead up to, during and post any changes that are implemented.
- 1.27. It will need to be ensured that a 'one size fits all' approach is avoided. The new policy position, if members approve it, will need to be implemented with a degree of case specific intelligence behind it. For example, it may not always be possible to give effect to the first new policy preference and we may need to turn to a different solution on a site-specific basis.
- 1.28. It will also be necessary to adopt this approach so that we ensure that we maintain positive and 'can do' behaviours from our developer partners. For example, it will be important that developer partners do not hold a council receiving new open space 'to ransom'. For example, when developers hand over new open space to Parish/Town Councils for ongoing maintenance, ensuring they do not refuse to provide a commuted sum for 15 years to contribute to site maintenance.

J. Developing a Project/Programme Management Timetable

- 1.29. As with all work of this nature, it will be necessary to develop a clear project/programme management timetable to guide delivery of this work. This will need to include all of the inter and co-dependencies and ensure a 'one council' approach to this work. There will be a need for a project/programme type change management board.
- 1.30. Corporately this work is seen as a piece of business-as-usual work and not a project because it is work the council is already does. Whatever the scale of the work turns out to be, it will need to be governed using the Councils up to date project and programme management framework.
- 1.31. Detailed decisions around this governance will need to be made in the lead up to a member decision being made to proceed with this open space policy review work.

K. Considering the financial aspect of this work for the District Council

- 1.32. It will clearly be necessary to factor in financial considerations to this work. This may result in increased revenue expenditure for the council. There will be a need to carefully consider the use of Special Expenses Area funding, and potentially effects on the District Council's general fund for open space sites that serve a more than local function, like, for example, Welland Park in Market Harborough. There will need to be a detailed analysis of how any new policy is to be funded moving forward. It will be necessary to work closely with the finance team on this.

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