



WORTHING BOROUGH  
COUNCIL

Worthing Planning Committee  
24th August 2022  
Agenda Item no.7

Ward: Durrington

## Update on the Deed of Variation to the s106 Agreement relating to West Durrington development

### Report by the Director of Economy

#### 1.0 Summary

- 1.1 A public question is to be presented to the Planning Committee by the West Durrington Residents Association in connection with delays in delivering the community facilities at West Durrington. This report assists Members in responding to this question and provides an update on negotiations. The public question to be asked is as follows:

***‘Can the Head of Planning provide an update to the committee on progress of variation to the S106 that included the construction of Community Park Facilities on West Durrington Development.’***

#### 2.0 Background

- 2.1 At its meeting on the 20th November 2020 Members agreed to a number of changes to the original s106 in connection with the West Durrington urban extension and for Officers to negotiate with the West Durrington Consortium to secure these changes. A copy of the report is attached.
- 2.2 Since that time the West Durrington Consortium has secured permission for an additional 240 dwellings on phase II of the development directly to the north and construction work has started on site.
- 2.3 Some of the changes relate to the non-delivery of the new primary school. Since that time the Department for Education (DfE) has negotiated separately with the Consortium and has agreed to the purchase of a larger area of land in lieu of the education contribution. A new full permission has been granted for

the new school and it is understood work is due to start on site shortly. The original s106 agreement will need to reflect these changes albeit that these were envisaged in the 2020 Committee report and Heads of Terms.

- 2.4 In addition the Consortium has met its requirements under the original s106 agreement to make the offsite 3G contributions which have helped to pay for the new 3G pitch at Palatine Park. The offsite skateboard contribution has also been paid and a green gym project at Northbrook Recreation Ground is proceeding. These contributions have been paid in good faith in advance of any Deed of Variation being signed.

### **3.0 Current Position**

- 3.1 The Consortium agreed to the Heads of Terms following the Committee report but negotiations have stalled subsequently due to a variety of reasons. The Covid pandemic, in particular impacted progress as the intended occupier of the Community Centre, South Downs Leisure Trust (SDLT) could not contemplate taking on another building as its existing leisure centres were either closed or struggling to fully open. However, more recently we have sought to re-engage with SDLT and direct resources to try and finally resolve negotiations with the Consortium.
- 3.2 The main difficulty negotiating with the Consortium has been trying to agree to the transfer of the community land (see plan appended to the attached report) and the amount of funding to come with the land to deliver the full range of community facilities originally envisaged. The Council, recognising that there was a need for additional corporate resources to negotiate changes to the original s106 agreement, appointed a dedicated Project Manager to assist on the project. In addition, in the last 6 months cost consultants have been appointed to prepare a detailed breakdown of the cost of delivering the various community resources. This highlighted an even greater gap than envisaged between what the Council thinks it will cost to deliver the community facilities and what monies the Consortium have set aside.
- 3.3 To break the current impasse with the Consortium it was agreed with the Consortium that we should tender the works to get an actual cost to assist negotiations. Unfortunately, most consultants/contractors are very busy and there has been a delay in receiving the tender. The costs for the community facilities were eventually received 3 weeks ago and the Council is reviewing the various costs. However, it is clear that only an indicative build cost has been provided for the community centre as only planning drawings are available. As the cost of construction for the community centre is the main

cost involved at a recent meeting with the Consortium it was agreed that more detailed plans would be prepared for the community centre to allow for a full tender process to be undertaken.

- 3.4 Whilst, the delays with negotiations are frustrating there does seem to be agreement with the Residents Association that it would be far better for the Council to deliver the community facilities rather than the Consortium. The Residents Association have been working with your Officers to resolve a number of ongoing problems with the development particularly in relation to landscaping, the pumping station and delivery of the central green water feature. As a result there is a lack of confidence that the Consortium would construct the various community facilities to the standard required. For the Council to take on the responsibility for construction of these facilities it is essential that there is sufficient budget available.
- 3.5 To ensure greater transparency with these negotiations with the Consortium the Councils internal project team has recently discussed setting up a Partnership Board with key partners attending (Consortium, residents and other stakeholders - local school and community groups). This Partnership Board will be set up shortly and can help to improve communications and more effectively hold the Consortium or in time the Council to account to ensure the delivering of these key community facilities planned for the urban extension.

#### **4.0 Legal**

- 4.1 Section 106A Town and Country Planning Act 1990 ("TCPA 1990") provides that a Section 106 Agreement may be varied by agreement. If the Council does not agree to its variation, a formal application for its modification will need to be made to the Council. If the application is refused there is a right of appeal to the Secretary of State (sections 106A and 106B (TCPA 1990)). The formal application procedure is only available once the Section 106 Agreement is five years old or more, as in this case.

#### **5.0 Financial implications**

- 5.1 It is important that, if the Council takes on additional land or requirements to build community facilities, funding is in place to deliver the facilities and to be able to maintain land and buildings without a future burden on revenue budgets.
- 5.2 Any final decision on taking on the responsibility for building the community centre and associated leisure facilities would need to be taken by Worthing

Strategic Committee and Full Council (requiring additions to the relevant Capital Programme).

## 7.0 **Recommendation**

7.1 Members to note the current position and ongoing negotiations with the Consortium.

## **Local Government Act 1972**

### **Background Papers:**

s106 Agreement linked to the grant of planning permission for the West Durrington development (reference WB/11/0275/OUT)

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# Agenda Item 8



WORTHING BOROUGH  
COUNCIL

Worthing Planning Committee  
25 November 2020  
Agenda Item no. 8

## **Proposed Deed of Variation to s106 Agreement - West Durrington**

### **Report by the Director for the Economy**

#### **1.0 Summary**

1.1 This report provides an update on negotiations to vary the original s106 agreement signed in connection with the West Durrington development (reference WB/11/0275/OUT). A number of the original triggers for payment or for the carrying out of works have been missed by the original signatories of the agreement (the Consortium, the County Council and Borough Council). The report sets out the key variations discussed over several months with the Consortium and seeks the Planning Committee's agreement to the Heads of Terms appended to the report (**Appendix I**).

#### **2.0 Background**

2.1 Planning permission was granted under reference WB/11/0275/OUT for the erection of 700 dwellings at West Durrington subject to the grant of a s106 Agreement securing various development contributions, highway works and community facilities. Attached to this report is an extract from the s106 agreement showing the main community facilities to be delivered adjacent to the proposed school and an extract from the original Masterplan for the site (**Appendix II**).

2.2 In accordance with the terms of the agreement the Consortium submitted an application for reserved matters for the Community Centre and this was approved under reference AWDM/1465/17. The Community Centre layout included changing facilities for the football pitch located to the north-east.

- 2.3 Following the grant of various reserved matters applications, the 700 dwellings are nearing completion, albeit there are still works outstanding including highway works to Titnore Lane, the construction of the school, community centre and other recreational/leisure facilities.
- 2.4 Outline planning permission was granted in 2019 for a further 240 dwellings (phase II) on land to the north of the site (reference AWDM/1882/16 ). Planning Committee resolved to grant reserved matters for these dwellings earlier this year, subject to a Deed of Variation to the s106 agreement signed in connection with the outline permission.

### **3.0 Proposed Amendments to the s106 Agreement**

- 3.1 The original agreement has been complied with in many respects with the delivery of affordable housing, payment of highway contributions and provision of buffer planting and the construction of some of the approved play areas and areas of open space. However, there have also been a number of triggers missed for various reasons within the original agreement, requiring either various highway works to be undertaken, provision of the community centre and recreational facilities as well as requests for land or contributions.
- 3.2 As a result your Officers have been negotiating amendments to the original agreement with the Consortium and the Committee is requested to support the various amendments as set out below and summarised in the attached Heads of Terms as Appendix II.

### **West Sussex Infrastructure (Outstanding) Requirements**

#### *Education*

- 3.3 The original agreement required the Consortium to deliver 1.1 hectares of land for a one form entry primary school together with a financial contribution towards its construction. The agreement also allowed the County Council to request an additional 0.8 hectare to deliver a 2 form entry school if required albeit this land would need to be purchased at residential value.
- 3.4 The trigger requiring a request for the additional land was missed by WSCC, however, it was subsequently determined that all the additional land was not required and subsequent discussions with the DfE working with a nominated Trust have determined that a smaller site could still secure a 2 form entry school.
- 3.5 The Consortium has negotiated directly with the DfE and have agreed that the additional school land would be provided in lieu of the educational contribution. It is anticipated that a planning application will be submitted for the detailed design of the school later in the year. The agreement is to be amended to reflect these discussions and to require the revised school land to be transferred to the

nominated Trust within 3 months of the grant of planning permission for the school.

### *Highways*

- 3.6 The s106 agreement requires various off-site improvements to a number of junctions including the implementation of the Titnore Lane Speed Management and Hazard Awareness scheme. The triggers for these works to be completed were prior to the occupation of the 251st and 351st dwelling, however, these works have not been completed. Various delays have been caused in relation to the signing of the necessary highway agreements and WSCC has agreed a revised timescale that will ensure all works to be completed within 12 months of the completion of the development.
- 3.7 The Deed of Variation will need to agree to the new trigger date for works to be completed and also amendments are required to the provision of off site bus shelters and the provision of the Tasman Way bus gate.

### ***Borough Council (Outstanding) Infrastructure Requirements***

#### *Community Facilities*

- 3.8 As indicated in Appendix II the West Durrington development included a range of community facilities to the east of the school site, including a new community centre, a multi use games area (MUGA), allotments and a full size football pitch. The original agreement allowed for either a management company (set up by the Consortium) or the transfer of the open space to the Council for future maintenance. The Consortium elected not to transfer open space to the Council and has set up a management company to deal with future maintenance, however, the Consortium has recently agreed to transfer the land for the main community facilities and the land to be transferred is edged red on the attached plan (Appendix II). The Deed of Variation will need to set out the timeline for the transfer of this land together with a commuted sum to deal with future maintenance.
- 3.9 Following the grant of the reserved matters approval for the community centre, the Consortium sought to agree the specifications for the internal fit out of the building. However, it was immediately apparent that it was extremely difficult to assist the Consortium architects on internal specifications without having an occupier (leaseholder) for the building. It was therefore agreed with the Consortium that work on constructing the Centre should be delayed to undertake a marketing exercise to identify a suitable tenant to occupy the building.
- 3.10 This marketing exercise was undertaken last year and the selected tenant was then involved in detailed discussions about changes to the approved plans to meet its requirements. No agreement has been reached with the Consortium as the changes would have required amending the approved plans and more

importantly result in additional construction costs for the Centre.

- 3.11 The Covid pandemic has unfortunately meant that the prospective tenant has not been able to commit to a 25 year lease and the Council is left with the option of requiring the Consortium to build the Centre as approved or alternatively seeking a contribution equivalent to the cost of constructing the community centre. This alternative option would give the Council some flexibility in deciding the final design of the Centre in conjunction with the eventual occupier of the building. This approach has been agreed with the previously appointed tenant (who still may take the building depending on the pandemic) and is supported by the Parks and Communities teams.
- 3.12 This delay in construction would also allow for a review of the layout of the building in relation to the football pitch. Consultation with the Parks team has questioned whether a stand alone changing room adjacent to the football pitch might not be a more appropriate option and this will need further consideration.
- 3.13 As a number of new properties have been occupied, your Officers are conscious that the new community is likely to be concerned about the delay in delivering the community centre. However the Consortium is providing the other facilities including the MUGA, play facilities, pitch and allotments. The Residents Association has also been made aware that the Council is considering delaying the delivery of the community centre and there is an acceptance that the involvement of the eventual occupier would be beneficial.
- 3.14 The s106 also requires the Consortium to market an area of land for additional community space (originally earmarked for a Medical Centre). The Consortium has marketed this land and has had interest from a day nursery although the pandemic appears to have slowed progress and Members will be updated at the meeting.

*Off site Skateboard Contribution 3G Contribution*

- 3.15 The s106 required the Consortium to pay the Council £120,000 for the provision of an off-site skateboard facility. It was originally intended that the facility would be provided at an early stage of the development but a site for such a facility could not be found and subsequently the Parks team felt that an alternative leisure facility would be more appropriate to serve the area. A green gym is planned for Northbrook Recreation Ground to utilise this funding.
- 3.16 The off site contribution was only due when a contract had been let for the skateboard facility and if not called for, prior to the completion of the 500th dwelling, the obligation would fall away. The Consortium has been asked to extend the trigger to enable the alternative off site leisure facility to be provided and for this contribution to be paid upon signing any Deed of Variation.

*Off Site 3G Contribution*

3.17 The s106 secured a contribution of £340,000 for an offsite 3G facility either at Palatine Park or Shaftesbury Avenue. Members will recall that planning permission has now been granted for a 3G facility at Palatine Park with additional funding being secured from the Football Foundation. The s106 requires amending as the funding is only provided once a contract has been let and this sum reduces by 50% if not requested by the completion of the 500th dwelling. Whilst this trigger has now been missed the Consortium has agreed, in principle, to make the contribution now that planning permission has been granted for the offsite 3G facility. Ideally the payment should be made prior to any contract being let.

#### *Public Art*

3.18 The s106 secured £40,000 towards a public art sculpture on the central green area of open space. However, following discussions with the Residents Association the preference is for this money to be spent on enhancing the community facilities and it is proposed that the agreement be amended to allow this flexibility.

#### *Health Contribution*

3.19 The s06 envisaged an off site contribution as the CCG (Primary Care Trust at the time) were considering redeveloping the Durrington Medical Centre.

However, the Strand Surgery has since moved to the former Lloyds tower site and the agreement needs amending to reflect this changed provision.

#### *West Durrington Consortium (outstanding) Requirements*

3.20 The Consortium has failed to meet a number of the triggers set out in the original agreement in terms of the delivery of off site highway works and delivery of on site facilities. The allotments, football pitch and MUGA should have been completed by the 450th dwelling. Whilst this work is ongoing the agreement needs to be reflected to provide new trigger dates.

## **4.0 Legal**

4.1 Section 106(1) of the Town and Country Planning Act 1990 provides that any person interested in the land in the area of a Local Planning Authority may, by agreement, enter into an obligation requiring a sum of money to be paid to the Authority. Section 106(5) provides that the obligation is enforceable by way of an injunction and section 106(11) provides that the obligation becomes a Local Land Charge.

4.2 S106 agreements may require that the Council uses certain contributions for specific purposes such as transport improvements. Provided the money from the Council is for transport infrastructure or is available for general infrastructure projects use of this money, subject to the Committee's approval, would be lawful.

## **5.0 Financial implications**

5.1 The proposed Deed of Variation is required to ensure the appropriate delivery of a range of community facilities. Failure to sign the Deed of Variation may risk some of the approved infrastructure funding being secured for the local community.

## **6.0 Recommendation**

6.1 It is recommended that the s106 signed in connection with the outline planning permission WB/11/0275/OUT be amended as set out above and in line with the Heads of Terms set out at Appendix I.

## **Local Government Act 1972**

### **Background Papers:**

Relevant planning applications referred to in the report.

S106 Agreement attached to outline permission reference number WB/11/0275/OUT

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**West Durrington Draft Heads of Terms for  
Deed of Variation to original s106 (signed 27<sup>th</sup> April 2012)**

Original s106 Provision	Proposed Revision and Justification
<p><b>Clause 14 - Low Cost Units</b> *need clarification that only 9 units were provided by Bovis Homes and rest delivered as shared ownership (s106 refers to 35).</p>	<p><b>Ensure resale to residents with a restricted income that prevents accessing the housing market but does not limit to those on the housing waiting list.</b></p> <p>The provision of these low cost units has been very problematic for owners to resale as those on the Councils waiting list cannot afford to secure a mortgage.</p>
<p><b>Clause 16 – Education</b> Transfer of Plot A with an education contribution and the ability to secure Plot B at residential land value.</p>	<p><b>The owners covenant to transfer the education land (Plot A and part Plot B) as indicated on the attached plan to WSCC or DfE in lieu of the education contribution within 3 months of the grant of planning permission for the new primary school.</b></p> <p>This reflects discussions between the Consortium and DfE and the negotiated position whereby the additional land offsets the requirement for a separate education contribution.</p>
<p><b>Cause 17 - Highways</b></p>	<p><b>New trigger for delivery of the off-site highway improvements (within 12 months of the completion of the development). Amend timing for further surveys along Titnore Lane to reflect above amendments and amend triggers for junction improvements. Amend requirements for off-site bus stops.</b></p> <p>To reflect delays with s278 agreements and negotiations with WSCC.</p>

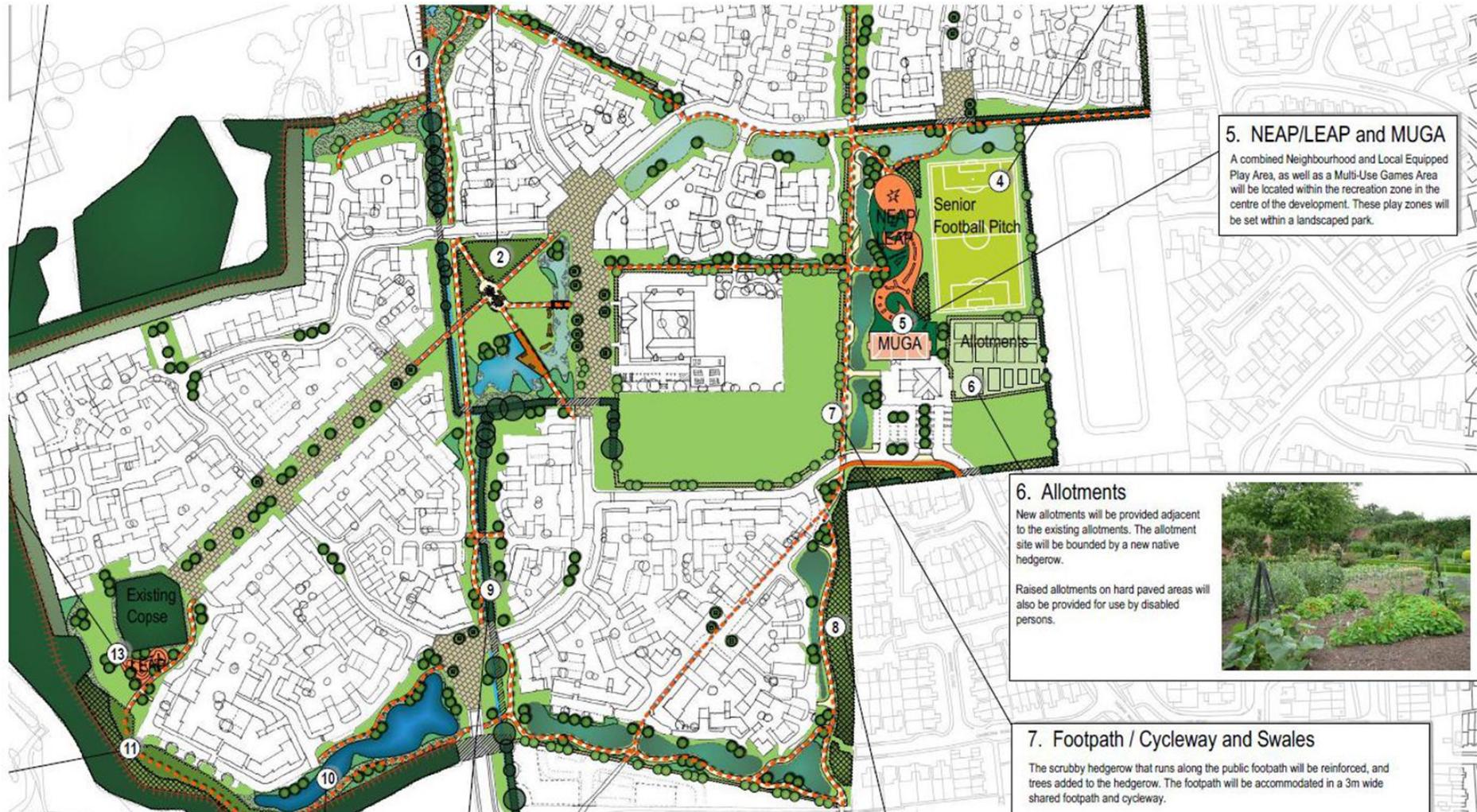
<p><b>Clause 18 – Transport and Highway Contributions</b></p>	<p><b>New triggers required as payments not made/delayed. Consider whether the triggers relating to Travel Plan Coordinator need amending.</b></p>
<p><b>Clause 19 - Open Space and Landscaping</b></p>	<p><b>Need to reflect only part of the open space (identified on the attached plan) is to be transferred to the Borough Council.</b></p> <p>Note: Concerns raised by Residents Association and Management Company landscaping not undertaken in accordance with approved details.</p>
<p><b>Clause 20, 21 and 22 - Leisure Facilities, Sports Pitch and Allotments.</b></p>	<p><b>Triggers need amending to reflect the build programme for Sports Pitch, Allotments and MUGA (&amp; Trim Trail and LEAP). Within 6 months of the completion of the development (700<sup>th</sup> dwelling?).</b></p> <p>To reflect delays in construction and handover.</p>
<p><b>Clause 23 – Transfer Dedication and Private Maintenance</b></p>	<p><b>Clauses need to reflect Management Company and part transfer of land to WBC and above delays in completion.</b></p>
<p><b>Clause 29 – Off- Site synthetic sports pitch Contribution.</b></p>	<p><b>Amend trigger to require payment Within 6 months of the grant of planning permission for the off-site pitch.</b></p> <p>To reflect delays in securing planning permission and discussions with the Consortium. Planning Permission at Palatine Park now granted.</p>

<b>Clause 30 - Community Building and Sports Changing Facilities</b>	<p><b>Amend to require transfer of the land for the community centre with a contribution equivalent to the cost of construction at the same time as the transfer of land relating to the MUGA, Sports Pitch and Allotments.</b></p> <p>To reflect delays in construction caused by negotiations with the proposed tenant and the changed position following Covid 19 pandemic.</p> <p><i>Note: Can the Consortium provide a breakdown of its construction budget for the Community Centre and changing rooms to enable a contribution to be agreed?</i></p>
<b>Clause 32 – Off site Skateboard Contribution</b>	<p><b>Amend definition to allow for outside gym equipment at Northbrook Recreation Ground. Contribution to be paid upon completion of 700 dwelling.</b></p> <p>Reflects local demand and concerns about provision of skateboard facility.</p>
<b>Clause 34 – Sculpture Contribution</b>	<p><b>Amend definition to provide flexibility to spend sculpture contribution to be spent on the Community Park (including Community Centre and Changing Facilities). Contribution to be made to the Council upon transferring the Community Park land.</b></p> <p>Reflects the Councils desire for alterations to the approved Community Centre to meet tenant's wishes and the future maintenance of the open space by a Management Company.</p>
<b>Clause 35 – Alternative Community Use Land</b>	<p><b>Trigger to be amended due to delays securing a purchaser. Consortium to provide an update.</b></p>

<b>Clause 39 – Primary Care</b>	<b>Amend to allow for contribution to be spent in adjoining Ward. S106 helped secure The Strand Medical Group move to a new site. Payment upon completion of the 700 dwelling.</b>
<b>Contribution</b>	
	Reflects original intention to assist the relocation of the Strand to improved facility.
<b>WSCC and WBC Covenants</b>	<b>Amend to reflect the above revisions.</b>



## APPENDIX III



## **Schedule of Other Matters**

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### **1.0 Council Priority**

1.1 To deliver facilities that meet local needs.

### **2.0 Specific Action Plans**

2.1 Improve health and wellbeing for our local communities.  
Ensure the delivery of facilities originally approved as part of the West Durrington development.

### **3.0 Sustainability Issues**

3.1 The community centre would be designed and built to be energy efficient.

### **4.0 Equality Issues**

4.1 Access for all abilities to the sports and leisure facilities will be an essential requirement.

### **5.0 Community Safety Issues (Section 17)**

5.1 Provision of play equipment for all age groups will help to reduce crime and anti-social behaviour in the area.

### **6.0 Human Rights Issues**

6.1 Considered through the planning applications approving the West Durrington development.

### **7.0 Reputation**

7.1 Delivering the facilities long planned for the area would enhance the reputation of the Council.

### **8.0 Consultations**

8.1 The setting up of a Partnership Board would assist the consultation with local residents and wider local community.

## **9.0 Risk Assessment**

9.1 If the Council does not deliver the facilities there is a risk that the new residents will continue to have a lack of community and leisure facilities.

## **10.0 Health & Safety Issues**

10.1 Matter considered and no issues identified

## **11.0 Procurement Strategy**

11.1 Any procurement process following the transfer of the land would follow the Council's adopted policies

## **12.0 Partnership Working**

12.1 It is proposed to work in partnership with the Residents Association to ensure that the community facilities meet the needs of the local community.