



**Developer Contributions
Supplementary Planning Document
Consultation Draft**

19th January 2011

Developer Contributions SPD

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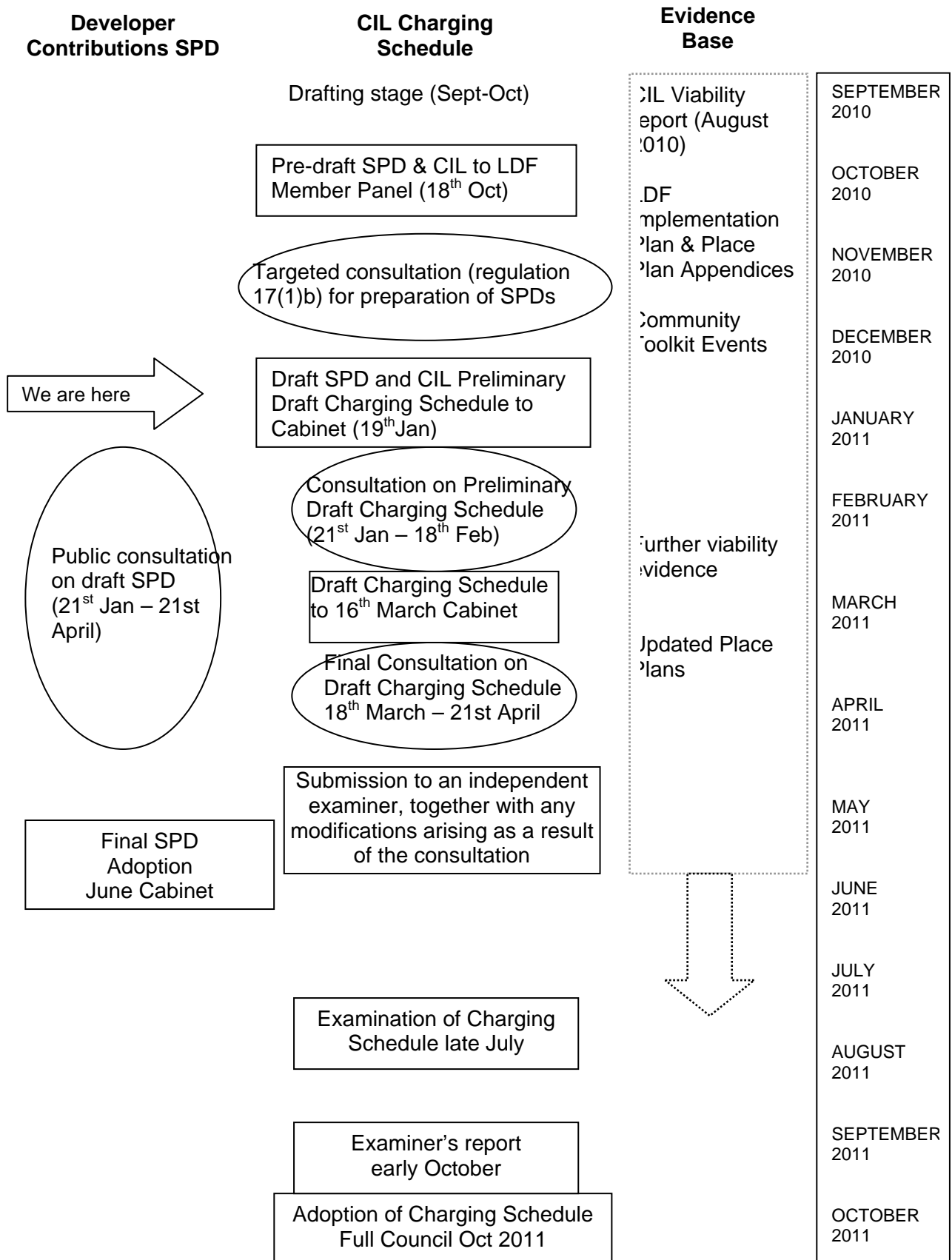
Responding to the consultation

We welcome your views on the scope and approach of the SPD at this consultation stage. Please email your comments by **21st April 2011** to:

planning.policy@shropshire.gov.uk

If you do not have access to email, a letter will suffice but please note that only emails will automatically be acknowledged. Correspondence cannot be entered into. Letters should be addressed to the Policy Manager, Strategy and Policy Group, Development Services, Shirehall, Abbey Foregate, Shrewsbury SY2 6ND.

Timetable



Introduction

Provision of infrastructure

- 1.1 A commitment to ensuring that infrastructure is provided alongside development is a strong theme throughout the Shropshire Core Strategy and is embedded in the Spatial Vision, Strategic Objectives and Policies CS1, CS2, CS3, CS4, CS5, CS6, CS7, CS8, CS9, CS13, CS17 and CS18.
- 1.2 The majority of developments in Shropshire are small-scale. Their cumulative effect is a gradual, but significant, impact on the infrastructure requirements of the towns and villages in which they occur. For example, nearly 60% of new dwellings built in Shropshire over 1998-2008 were on developments of less than 5 dwellings. A mechanism to share the burden fairly is therefore particularly important if development is to be accompanied by adequate new infrastructure.
- 1.3 In the past, while large developments contributed towards infrastructure provision, small developments rarely did so. In order to address this discrepancy, and to ensure that development is in future matched by accompanying infrastructure, Shropshire's Core Strategy Policy CS9 requires all development to make "contributions to local infrastructure in proportion to its scale and the sustainability of its location".
- 1.4 Having established the principle that all development should make contributions, Policy CS9 (reproduced in Appendix 1) proceeds to provide a framework for prioritising competing infrastructure demands. The first call on developer contributions is critical infrastructure, defined as "essentials without which the development simply would not take place". In relation to infrastructure, this includes provision of essential utilities, facilities, water management and safe access for the development. These overlap with design requirements, which are discussed in more detail in paragraphs 1.7 -1.11.
- 1.5 The second call on developer contributions is priority infrastructure, as identified in the LDF Implementation Plan. The LDF Implementation Plan and the 18 Place Plans that form its appendices provide a delivery framework for infrastructure delivery as explained below in paragraphs 2.6 – 2.8 and paragraphs 3.11 – 3.17. Any remaining contributions will be directed to the third priority, namely key infrastructure as identified in the LDF Implementation Plan.

Developer Contributions to local infrastructure

- 1.6 The appropriate mechanism for making contributions to local infrastructure will vary between developments, but one or more of the following will normally apply:
 1. Planning Conditions
These are the main mechanism for provision of essential on-site design requirements and critical infrastructure.

2. Planning Obligations

For employment-related and other non-residential developments, planning obligations (section 106 agreements and undertakings) will continue to be the main mechanism for ensuring that contributions are made where necessary. Contributions will be directly related to the proposed development.

All residential developments involving 1 or more market dwellings will have a section 106 agreement in relation to affordable housing contributions, as required by Core Strategy Policy CS11. Affordable housing contributions are detailed in the Type and Affordability of Housing SPD and are therefore not considered further in this Developer Contributions SPD.

A small proportion of residential developments may also require an additional section 106 agreement where there are site-specific requirements that are not covered by the Community Infrastructure Levy. For example, Shrewsbury's and Oswestry's Sustainable Urban Extensions will give rise to specific requirements that are more appropriately addressed through planning obligations due to the type of infrastructure required and the mix of residential, employment, retail and leisure development on these sites.

3. Community Infrastructure Levy

The Community Infrastructure Levy provides a fair and consistent mechanism for pooling contributions from all eligible developments. It provides certainty so that developers can calculate in advance the level of contribution required. The Levy will apply to all residential developments of one or more market dwellings.

Although the Levy is usually a financial contribution, it is also possible to make payments "in kind", for example the transfer of land or buildings in lieu of all or part of the Levy.

Design Requirements

1.7 Quality design is of fundamental importance and is a primary consideration when assessing a planning application. Design requirements include:

- meeting the requirements of Core Strategy Policy CS6: Sustainable Design and Development Principles and the accompanying Design and Sustainability SPD
- meeting the requirements of Core Strategy Policy CS17: Environmental Networks
- meeting the requirements of Core Strategy Policy CS18: Sustainable Water Management

1.8 The Design and Sustainability SPD is being prepared in two parts. Part One is being prepared concurrently with the Developer Contributions SPD and covers

sustainability considerations, in relation to water and drainage; energy efficiency and generation; and waste management and resource efficiency. Part Two is concerned with place making, covering design requirements such as transport, ecology and recreation.

- 1.9 Design requirements for on-site infrastructure (for example, landscaping, amenity open space, car and bicycle parking, suitable road access, waste storage and site drainage) will normally be dealt with through planning conditions, although section 106 agreements may be required in some cases to ensure delivery. These aspects are covered by the above Core Strategy policies and the Design and Sustainability SPD and are therefore not considered further in this Developer Contributions SPD.
- 1.10 On-site infrastructure that is primarily to meet the needs of the occupants of the new development is usually a design requirement.
- 1.11 The impact of a development on wider, shared infrastructure will be addressed through planning obligations or the Community Infrastructure Levy as appropriate.

Planning Obligations

Use of Planning Obligations

- 2.1 For all categories of development, section 106 agreements or undertakings may be necessary for site-specific works.
- 2.2 In addition, all developments involving a new dwelling will require a section 106 agreement to meet Core Strategy Policy CS11's requirement for a contribution to affordable housing. Guidance on Policy CS11 is contained in the Type and Affordability of Housing SPD and is therefore not considered further here.
- 2.3 The Government's Circular 05/2005 requires planning obligations to be:
 - (i) relevant to planning;
 - (ii) necessary to make the proposed development acceptable in planning terms;
 - (iii) directly related to the proposed development;
 - (iv) fairly and reasonable related in scale and kind to the proposed development;
 - (v) reasonable in all other respects.
- 2.4 In addition, Regulation 122 of the Community Infrastructure Levy Regulations, which came into force on 6 April 2010, makes it unlawful for a planning obligation to be taken into account in determining a planning application if it does not meet the three tests set out in Regulation 122. These statutory tests are identical to tests (ii), (iii) and (iv) above.
- 2.5 In determining whether planning obligations are required to make the proposed development acceptable in planning terms, the Council will have regard to the infrastructure requirements that are identified in the current Place Plans.

Infrastructure identified in Place Plans

- 2.6 Shropshire has 18 Place Plans appended to the LDF Implementation Plan, detailing infrastructure requirements, funding and delivery. Development is expected to contribute towards some of this infrastructure, although developer contributions will remain only a small proportion of total infrastructure funding. Place Plans are 'live' documents that are updated regularly and informed by the community's requirements, Parish/ Town Plans and Neighbourhood Plans. They provide an indication of what may be required to make a proposed development acceptable in planning terms, namely test (ii) above, although each case will have to be treated on its merits to ensure that tests (iii) and (iv) above are also met. As such, they can provide a useful indication of known infrastructure constraints on development and matters of local concern that may affect the development.
- 2.7 In the Place Plans, infrastructure that is identified as 'critical' is infrastructure without which development cannot take place. 'Priority' infrastructure is that identified as a priority by the local community. Development is expected to

contribute to infrastructure, as required by Core Strategy Policy CS9, in the order of priority identified in LDF Implementation Plan's "Place Plan" appendices.

- 2.8 Planning obligations may be necessary for other matters not identified in the relevant Place Plan, depending on the specific impacts of the development.

Preventing duplication with the Community Infrastructure Levy

- 2.9 Planning obligations will not normally be used to obtain generalised contributions towards indirect infrastructure requirements, as to do so would duplicate the Community Infrastructure Levy. The types of infrastructure requirements that are the beneficiaries of the Levy are published on the Council's website, and updated from time to time. Changes to the infrastructure list are subject to approval by Shropshire Council's Cabinet.

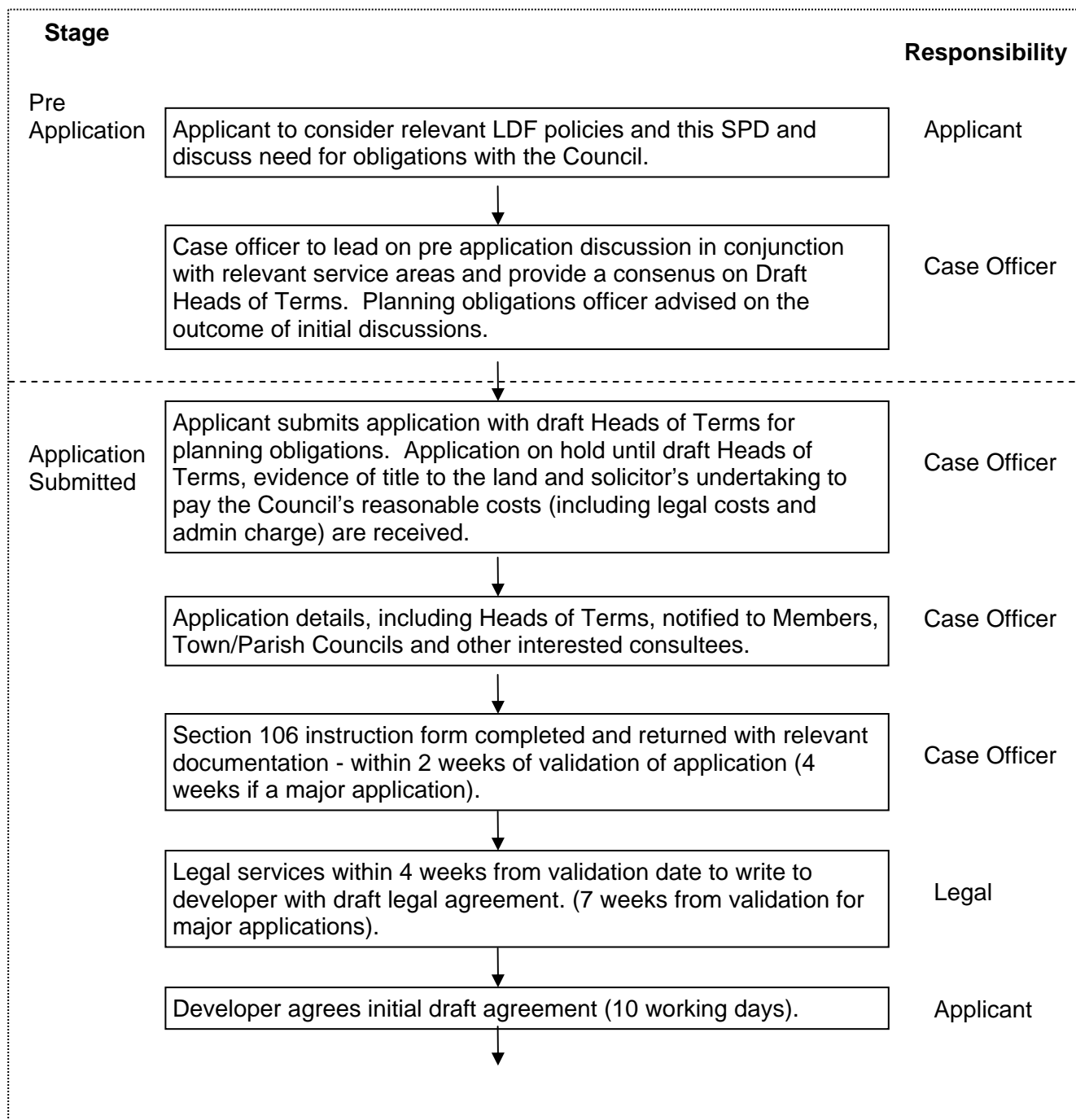
- 2.10 No such restrictions apply to infrastructure that is not on the Levy list. For example, developer contributions to upgrades to some of the major junctions on the A5 will be achieved through planning obligations, where appropriate, rather than the Levy.

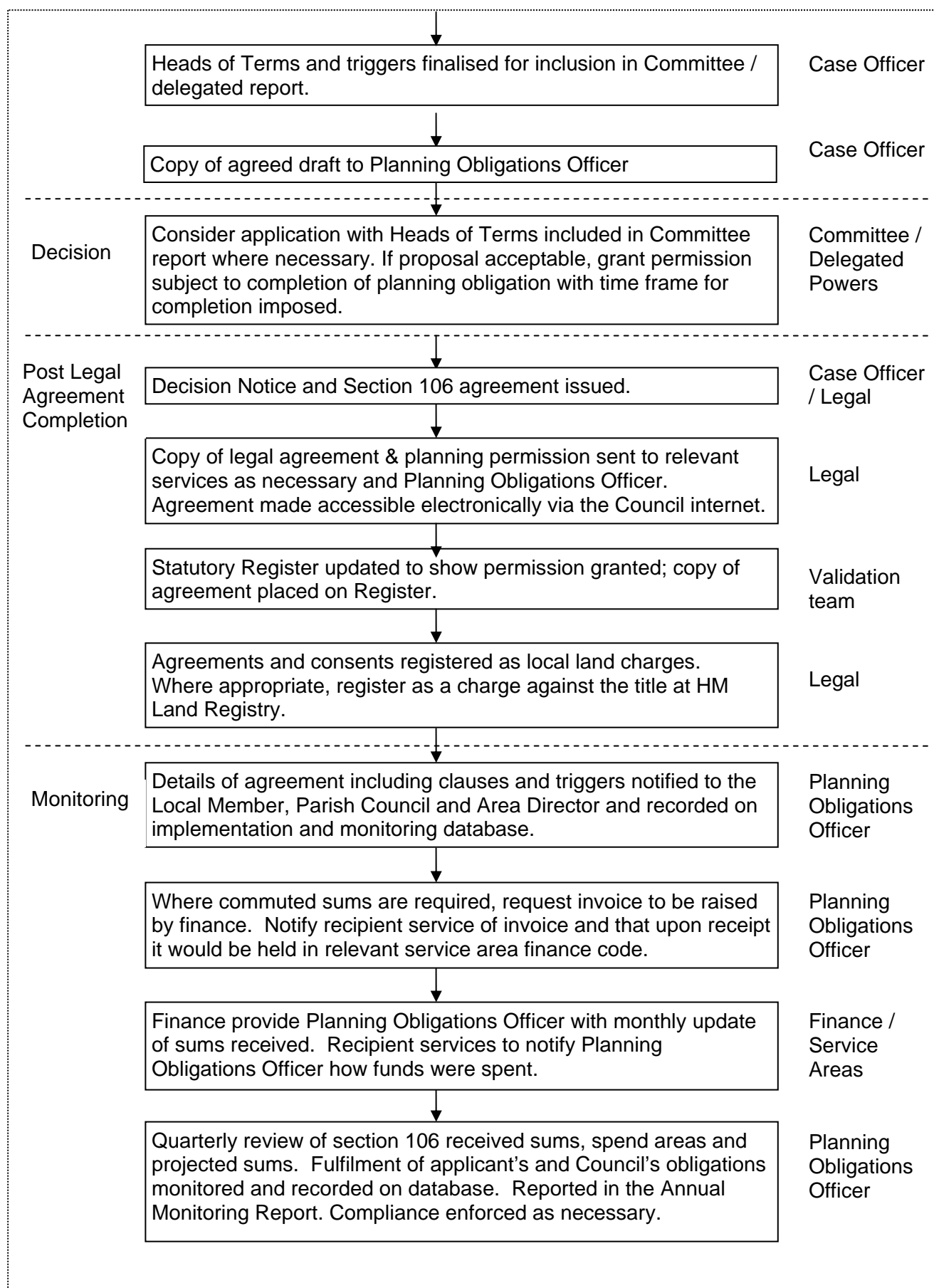
- 2.11 The types of infrastructure that are proposed as beneficiaries of the Levy at adoption of the Charging Schedule are listed in Annex C of the Charging Schedule.

Monitoring Planning Obligations

- 2.12 The Council (through its planning obligations officer) will track compliance with each provision contained in a legal agreement as a development proceeds to ensure that all service departments are spending financial contributions and completing non-financial obligations in accordance with the terms of agreements. In order to provide this service, the Council will levy an administration charge on each legal agreement equivalent to 2% of the value of the contribution, unless agreed otherwise with the applicant. This will be in addition to the normal costs and any external specialist advice costs required for processing and completing the legal agreement.

Figure 1: Procedure for Processing and Monitoring a Planning Obligation





The Community Infrastructure Levy

Legislative Context

- 3.1 The Planning Act 2008 and accompanying Community Infrastructure Levy Regulations 2010 (Statutory Instrument 2010 No. 948) enable financial contributions to be levied from all development that involves one dwelling or is 100 square metres or more. Shropshire Council is the Charging Authority and is responsible for the Levy, although under the provisions of the Localism Bill it may in future be required to pass a proportion of the Levy to other parties, such as the local community.

Qualifying Infrastructure

- 3.2 The Community Infrastructure Levy is only for infrastructure required to support the development of the area. Its purpose is not to remedy pre-existing deficiencies, although it may be used to increase the capacity of existing infrastructure or repair failing existing infrastructure, as well as to provide new infrastructure. Although the Levy will make a significant contribution, core public funding will continue to bear the main burden of infrastructure funding. The Levy is intended to fill the funding gaps that remain once existing sources of funding have been taken into account.
- 3.3 Infrastructure that will benefit from the Levy is listed in Annex C to the Community Infrastructure Levy Charging Schedule. Updates to the list will be published on the Council's website. To ensure that planning obligations do not duplicate the Levy, restrictions apply to the use of planning obligations to provide or fund infrastructure in these categories.
- 3.4 Levy funding is not designed for maintenance payments (for example, maintenance of public open space, roads, etc). Provision for future maintenance is a matter between the infrastructure provider and the adopting authority, at the point of adoption.

Differential Levy rates

- 3.5 The Community Infrastructure Levy Charging Schedule sets the contribution required from developers for different categories of development, in different locations. Evidence on economic viability in Shropshire concludes that a Levy is viable on residential development, but is not viable on many industrial and business related developments. Some other types of development, notably retail and leisure developments, vary so greatly in their economic viability and impact on local communities that it is difficult to justify one Levy rate for all developments in their use class. Consequently industrial, business, retail, leisure and other non-residential developments have a 'nil' Levy rate. Where such developments have a significant impact, developer contributions may instead be sought through planning obligations.

- 3.6 Regulation 14 specifies: *“In setting rates....a charging authority must aim to strike what appears to the charging authority to be an appropriate balance between –*

(a) the desirability of funding from CIL (in whole or in part) the actual or expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and

(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.”

The “appropriate balance” between these two considerations differs between Shrewsbury, the Shrewsbury and Oswestry sustainable urban extensions, the towns and key centres, and the rural areas. The Sustainable Community Strategy and the Core Strategy Spatial Vision seek strong, vibrant and prosperous market towns. This objective must not be jeopardised by stifling development. While it is important to ensure that development in market towns is matched by infrastructure, the appropriate balance is for caution in setting the Levy rate. However, in the rural areas the Core Strategy approach recognises that greater developer contributions to infrastructure are necessary if rural settlements are to improve their sustainability. Furthermore, the effect of the Levy on development in rural areas may be to open up development opportunities that would otherwise not be available, rather than to stifle rural development. Consequently the appropriate balance is towards a higher Levy rate in rural areas.

- 3.7 The sustainable urban extensions at Shrewsbury and Oswestry (Core Strategy Policies CS2 and CS3) will not rely entirely on the Levy rate. On-site design and section 106 obligations will also be an important part of the package that is required to ensure that development in these locations is sustainable (see paragraphs 2.9 – 2.11), and this is reflected in the Levy rate for the sustainable urban extensions.
- 3.8 The Levy rate has been set at a level that is viable for most development. Provision for discretionary relief for exceptional circumstances is possible where there the development also has a section 106 obligation for a sum greater than the Levy amount, and payment of the Levy would have an unacceptable impact on the economic viability of the development (Regulation 55). For example, a planning obligation for affordable housing provision will normally be of greater value than the Levy amount and a developer may be able to demonstrate that it is not viable to provide both. In these circumstances the Council has the discretion to waive the Levy. Such cases will be expected to provide “open book accounting” with regard to their viability.

Revising the Charging Schedule

- 3.9 The operation of the Levy, the current market conditions and overall economic viability of development in Shropshire will be reassessed annually. Consultation with the development industry and other stakeholders takes place annually in November / December as part of the SHLAA Market Assessment

Review Panel and Developer Panel. Updates on market conditions and economic viability are reported in the annual SHLAA (Strategic Housing Land Availability Assessment), while the operation of the Levy and the economic viability indicators in relation to the affordable housing target rate are reported in the LDF Annual Monitoring Report.

- 3.10 When it is considered necessary to change the Charging Schedule, a preliminary draft will be prepared for the first round of public consultation, followed by a Draft Charging Schedule for a second period of consultation, followed by an examination by an independent person before the Charging Schedule can be adopted by the Council. This entire process will take at least 40 weeks. It is envisaged that the Charging Schedule will be revised as often as is appropriate to ensure that it reflects changing circumstances.

The LDF Implementation Plan and its “Place Plan” Appendices

- 3.11 Core Strategy Policy CS9 specifies that contributions by development towards infrastructure will be in accordance with the priorities identified in the LDF Implementation Plan. The LDF Implementation Plan is drawn from the 18 Place Plans that form its appendices. The Place Plans and the LDF Implementation Plan will be updated annually. They form the basis on which Shropshire Council, as the CIL Charging Authority, makes decisions on the spending of the Levy monies in the year ahead.

- 3.12 The LDF Implementation Plan and its Place Plan appendices (July 2010 version) are available at <http://static.shropshire.gov.uk/publications/PlanningLDF/Shrops-EV9-implementation-plan-v9-28-07-10.pdf> and <http://static.shropshire.gov.uk/publications/PlanningLDF/Shrops-EV9-shropshire-regeneration-prospectus-appendix.pdf> respectively .

Timely delivery and geographical ringfencing

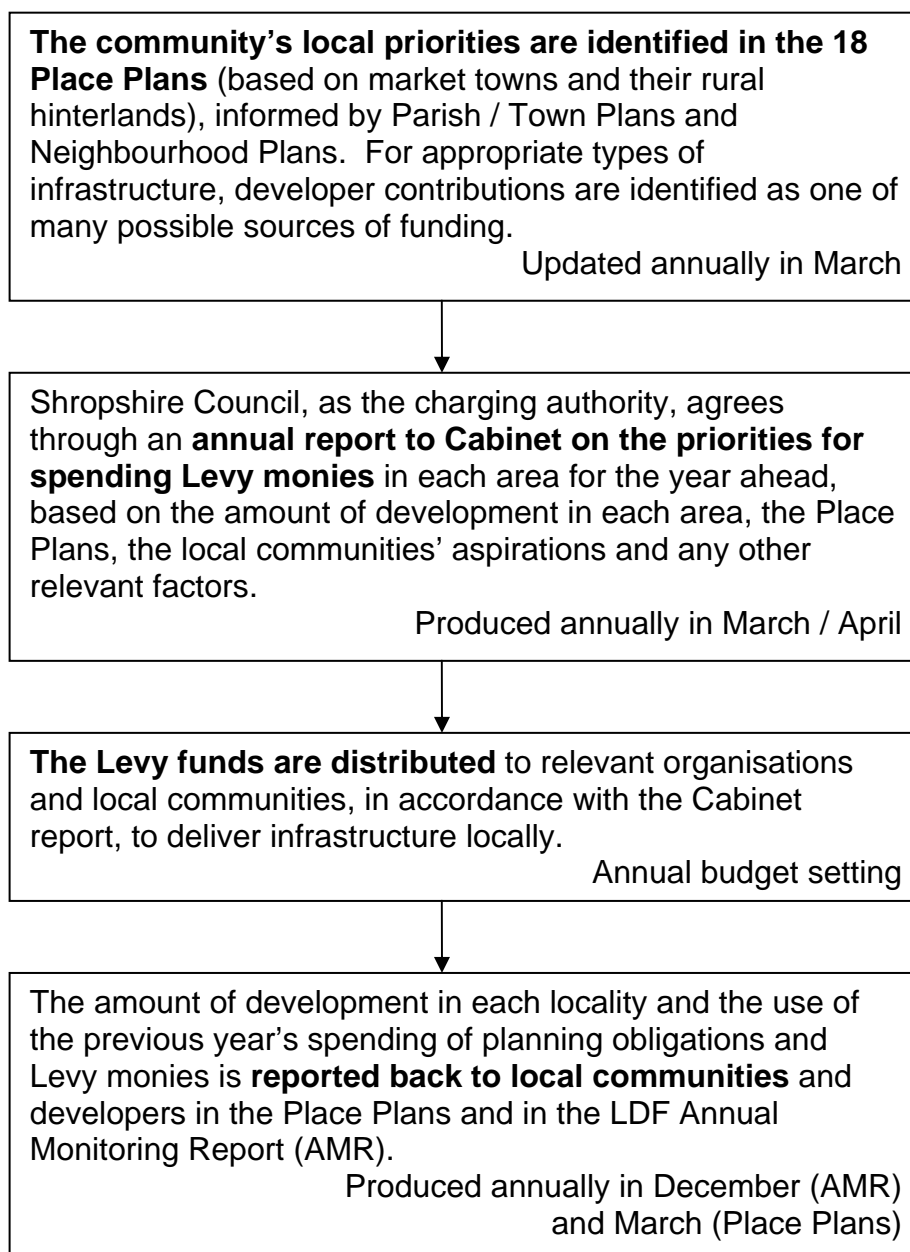
- 3.13 LDF Implementation Plan will address delivery issues to reassure developers and local communities that infrastructure will be provided in a timely manner. It will retain a close geographical relationship between development and infrastructure provision, ensuring that the Levy expenditure is closely related to the localities in which development has occurred, in accordance with Core Strategy Policies CS2, CS3, CS4 and CS5.

Strategic infrastructure

- 3.14 Although the majority of the Levy will go to local infrastructure, defined as infrastructure provided in or close to the locality in which the development is situated, a minority proportion will go to strategic infrastructure.
- 3.15 In the rural areas, the quantum of Levy directed to strategic infrastructure will not be greater than in Shrewsbury, the market towns and other key centres. As the contribution to strategic infrastructure cannot increase beyond this level, a higher Levy rate in rural areas will be guaranteed to be for local benefit.

Spending the Levy on locally identified priorities

- 3.16 Unlike planning conditions and planning obligations, the use of the Levy is not directly linked to a specific development. Nevertheless, it is clearly desirable to link the spending of the Levy to the locality in which the development occurred. This will be achieved through the following mechanism:



- 3.17 The area directors for Shropshire Council will, with the community action officers, maintain close links with local members and parish and town councils to agree how available funding will be released for local priorities following the receipt by Shropshire Council of funding arising due to development taking place locally (including the Levy, planning obligations and the New Homes Bonus).

APPENDIX 1: CORE STRATEGY POLICY CS9

Note: Policy CS9 below incorporates the changes to the Policy and Policy Explanation proposed by the Council at the time of the Core Strategy examination in November 2010.

CS9: INFRASTRUCTURE CONTRIBUTIONS

Development that provides additional dwellings or employment premises will help deliver more sustainable communities by making contributions to local infrastructure in proportion to its scale and the sustainability of its location, in the following order of priority:

- 1. Critical infrastructure that is necessary to ensure adequate provision of essential utilities, facilities, water management and safe access for the development, including that identified in the LDF Implementation Plan**
- 2. Priority infrastructure, as identified in the LDF Implementation Plan, including contributions from residential developments towards affordable housing as required to meet Policy CS11 *Type and Affordability of Housing***
- 3. Key infrastructure as identified in the LDF Implementation Plan**

EXPLANATION

It is fair that the burden of new infrastructure is shared by all development, in proportion to its scale. This is particularly important in a rural area such as Shropshire, where a high proportion of development is individually of a small scale but collectively has a significant impact on infrastructure. For example, over the period 1998-2008 around 60% of new dwellings were on sites of less than 5 dwellings, and made negligible contribution to infrastructure. By requiring all development to contribute, the cumulative impact of many small and medium sized developments will be better matched by infrastructure provision than has been the case in the past.

There will be geographical variation in the level of contributions sought, in reflection of both economic viability and the fact that some places have a higher level of requirement than others if they are to be sustainable places. For example, development in Community Hubs and Community Clusters and in the countryside may have to work harder, through greater developer contributions, to ensure that its net effect on sustainability is positive.

The policy refers to development that involves the creation of new dwellings or employment premises. "Development" in this context includes change of use / conversions and subdivisions. It does not apply to householder applications, listed building and conservation area applications, extensions of existing dwellings or

existing employment premises (unless the extension is then subdivided into separate units), except to meet their own critical infrastructure requirements and to comply with Policy CS6 *Sustainable Design and Development Principles*.

Critical infrastructure refers to water, electricity, access, transport facilities and other essentials without which the development simply would not take place. On-site works and the design of the development will often be sufficient to ensure adequate provision, but on occasion it may be necessary for developers to contribute to off-site works either directly or through pooled financial contributions. The standard of provision required in relation to water management is set out in Policy CS18 *Sustainable Water Management*. Safe access refers not only to vehicular access and adequate sightlines, but also access to the building by pedestrians and cyclists where relevant. It does not include access within the building, which is the subject of building regulations rather than development management. The definition of “essential” utilities is likely to change over time, reflecting for example the changing importance of digital networks, renewable energy, sustainable urban drainage (SUDS) and other essentials for the normal operation of business or family life.

After critical infrastructure, the priority for infrastructure contributions from development includes the delivery of affordable housing, reflecting the Shropshire Sustainable Community Strategy and the requirements of Core Strategy Policy CS11. Other priorities are identified in the LDF Implementation Plan, which details the partnership approach towards delivery of new infrastructure. The LDF Implementation Plan is updated regularly, and provides the mechanism by which infrastructure requirements and their relative priority are identified by Shropshire Council in association with local communities and delivery partners.

Key infrastructure requirements are also detailed in the LDF Implementation Plan. Identified infrastructure will help deliver Policies CS2, CS3, CS4, CS5, CS6, CS7, CS8, CS10, CS14, CS15, CS17, CS18 and CS19, for example through the provision of transport infrastructure, public open space and sports facilities, etc.

The appropriate level of contributions for infrastructure other than affordable housing will be set either in the Site Allocations and Management of Development DPD, or in a Community Infrastructure Levy (CIL) Charging Schedule, at a level that is economically viable for the majority of development. Dynamic viability analysis will be used to ensure that viability is reassessed regularly, and reflects changes to market prices, costs of construction and alternative land use values over time.

Contributions will be secured through a variety of ways, including by planning conditions, section 106 legal agreements, and the Community Infrastructure Levy. Where appropriate, contributions from a number of developments may be pooled to address a cumulative impact.

APPENDIX 2: PROVISION OF OPEN SPACE, SPORT & RECREATION

On site design requirements

The Design and Sustainability SPD will provide guidance on on-site design requirements in due course.

The benefit and importance of well designed and implemented open space is well documented and delivers a number of social objectives, including health and wellbeing. Therefore the amount of natural and semi natural open space, landscaping, amenity green space and other types of open space on a site forms an integral part of the quality of the design.

The creation and improvement of open spaces serves several purposes, for example, open space may simultaneously provide links for wildlife and pedestrians, sustainable drainage, landscaping, and shade, Such design issues will form an important part in the determination of the planning application.

Multi-functional open spaces therefore offer potential for sport and recreation facilities for the wider community as well as for wildlife enhancements. The identified local need for such amenities is detailed in the Place Plans. Where this is the case, the developer is encouraged to enter into negotiations with the Council regarding whether Levy funds would be appropriately spent on their development site.

Developer Contributions

The differences introduced by the Levy are summarised below.

Table A2: Impact of the Levy on contributions to open space, sport & recreation

	Developer Contributions	Delivery
Without the Levy*	Contributions from sites involving 5 or more dwellings, through the standard tariff	On site (in kind) or off-site (through a financial contribution) or a combination of both
With the Levy	Contributions from all dwellings, through the Levy	For most developments, levy funds will be spent off site**. Where a large site provides an opportunity for delivery of open space, sport and recreation facilities, the planning authority will enter into negotiations with the developer on a case by case basis. Levy funds may be used to purchase appropriate facilities***.

*Until the Levy is adopted, the planning policy that applies is as contained in the Interim Planning Guidance on Open Space, Sport and Recreation (approved by Shropshire Cabinet 13th October 2010). This applies a standard tariff to all residential developments in Shropshire over the threshold size of 5 or more dwellings.

**The Place Plans are used to identify the community's priorities for use of the levy funds. Delivery of open space, sport and recreation facilities are considered alongside other priorities, and will be more important in some places than in others.

***The type of open space, sport and recreation facilities on which it is proposed that Levy monies may be spent include: (a) sports facilities, (b) formal play equipment for children and young people, (c) enhancement of publicly accessible open spaces and (d) leisure and community facilities and services.