

This Report will be made public on 16 June 2020

Report Number **C/20/12**

To: Cabinet
Date: 24th June 2020
Status: Key Decision
Responsible Officer: Charlotte Spendley – Director Corporate Services
Cabinet Member: David Wimble - Cabinet Member for the District Economy

SUBJECT: Community Infrastructure Levy Governance Framework

SUMMARY:

The introduction of the Community Infrastructure Levy (CIL) by Folkestone & Hythe District Council in August 2016 necessitates the development of governance arrangements for spending the money that is to be collected. This report seeks approval of a CIL Governance Framework.

REASONS FOR RECOMMENDATIONS

To ensure the Council has a process in place to ensure the deployment of CIL income follows clear and appropriate processes.

RECOMMENDATIONS:

1. To receive and note report C/20/12.
2. To agree that the Council accepts the proposed CIL Governance Framework contained in Appendix 1, which is to have immediate effect.

1. INTRODUCTION

- 1.1 The introduction of the Community Infrastructure Levy (CIL) in August 2016 necessitates the development of governance arrangements for spending the money to be collected. This report is concerned with CIL administration and governance arrangements so as to ensure the deployment of CIL income follows clear and appropriate processes. A draft CIL Governance Framework has been prepared and is included as an appendix to this report.
- 1.2 CIL collected will be used to provide infrastructure to support growth within the district. In adopting CIL in August 2016 the Council has formally adopted a 'Regulation 123 List' which sets out the types of infrastructure that will be funded via CIL. At present this is only a broad list, identifying infrastructure types that will be considered for support and project exclusions that will continue to be funded via Section 106 (s106) contributions.

Relevant background

- 1.3 Cabinet report A/16/16 dated 20th July 2016 provided Members with an overview of work undertaken on the Community Infrastructure Levy until its adoption in August 2016. At its meeting of 8th July 2015, following two rounds of public consultation, Cabinet approved submission of a CIL draft charging Schedule, for Independent Examination in Public (EIP). The Inspector's March 2016 report on the EIP concluded that the Shepway District Council CIL Charging Schedule provided an appropriate basis for the collection of the levy in the District. Cabinet subsequently considered the outcome of the EIP at its meeting of 25th May 2016, and as per the requirements of the Government's CIL Regulations, agreed a recommendation to submit the CIL Charging Schedule for adoption by Council at its meeting of 20th July 2016.
- 1.4 As set out in Cabinet report C/17/64 dated December 2017, the Council proposed minor changes to the CIL Payment in Kind Policy in order to clarify that the delivery of appropriate infrastructure can satisfy a charge arising from the levy. The minor change was agreed by Cabinet.

2. APPORTIONMENT OF CIL INCOME

- 2.1 The Regulations state that the CIL is to be allocated as follows:
 - Administrative CIL: 5% of CIL receipts may be retained by FHDC
 - Neighbourhood CIL: 15%-25% of CIL receipts must be paid to Town and Parish Councils, the proportion depends on whether a Neighbourhood Plan is in place
 - Strategic CIL: the remaining 70-80% of CIL to be allocated to infrastructure projects by FHDC

Administrative CIL

- 2.2 The Regulations allow the Council to retain up to 5% of annual CIL receipts to be spent on the administrative expenses in relation to the administration and collection of the CIL. Administrative expenses have and will include: examination costs (upfront and possible future costs following review), staff,

training, IT software and indexation subscriptions. This money is ring-fenced and has to be reported on annually.

Neighbourhood CIL

- 2.3 In line with the Regulations, 15% of CIL receipts (capped at £100 per Council tax dwelling per annum in the parish area) will be transferred to Town and Parish Councils twice a year, where development has occurred in their area, rising to 25% of CIL receipts (without any cap) for Town and Parish Councils that have made Neighbourhood Plans. St Mary in the Marsh Parish is the only area within the district that has an adopted, or 'made', Neighbourhood Plan. At the time of writing, there are no additional Neighbourhood Plans being prepared by Town or Parish Councils.)
- 2.4 The Neighbourhood CIL may be spent by Town or Parish Councils on a range of infrastructure projects, as long as it meets the requirement to support:
- the development of the area by funding the provision, improvement, replacement, operation or maintenance of infrastructure; or
 - anything else that is concerned with addressing the demands that development places on the area.
- 2.5 Town and Parish Councils must produce and publish an annual report detailing CIL receipts, balances and spending for each financial year.

Strategic CIL

- 2.6 Strategic CIL receipts must be spent on infrastructure types identified in the Regulation 123 List. The Infrastructure Delivery Plan (IDP) will act as a framework for allocating Strategic CIL funding, in accordance with the arrangements set out in this report. The IDP sets out specific projects, relating to the identified types of infrastructure in the Regulation 123 List.

The 2019 CIL Regulations – implications for CIL going forward

- 2.7 Regulations laid before parliament in June 2019 proposed a series of changes to the way in which local authorities charge, collect and report on developer contributions raised through section 106 and the Community Infrastructure Levy (CIL). Parliament officially approved the government's CIL and section 106 changes on 15th July 2019. The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 amend the Community Infrastructure Levy 2010 Regulations in England only and came into effect on the 1st September 2019.
- 2.8 The regulations introduce a requirement for councils to publish Infrastructure Funding Statements (IFS). These statements will replace existing Regulation 123 lists and should include details of how much money has been raised through developer contributions and how it has been spent. Statements must be published on local authority websites at least once a year. Councils will be required to publish their first statements by 31 December 2020.

- 2.9 The regulations state that the IFS is to include details of how much money has been raised through developer contributions, both from CIL and section 106 planning gain agreements, and how it has been/is to be spent.
- 2.10 The Council considers that the requirement to prepare and annually publish an IFS presents a real opportunity to work proactively with infrastructure providers and communities to set out in a clear and transparent manner the infrastructure that they have, and may be funding through CIL and section 106 planning obligations. The Ministry of Housing, Communities and Local Government (MHCLG) is to publish new guidance detailing how councils should produce their Infrastructure Funding Statement.

3. GOVERNANCE FOR THE DETERMINATION OF CIL SPEND

- 3.1 Governance arrangements for CIL do not need to be published for consultation or independent examination. In accordance with the proposed framework, the corresponding operational aspects of the Strategic CIL governance arrangements will be put in place by the appropriate internal services.

Proposed allocation of CIL receipts to Kent County Council

- 3.2 The District Council acknowledges the crucial role played by the County Council in the delivery of key strategic infrastructure. Indeed, charging authorities must consult and should collaborate with the County Council in setting the levy and should work closely with them in setting priorities for how the levy will be spent in 2-tier areas. Collaborative working between County Councils and charging authorities is especially important in relation to the preparation of infrastructure funding statements (see Schedule 2 introduced by the 2019 Regulations) bearing in mind the potential impact on the use of highway agreements by the County Council and the timely delivery of schools.
- 3.3 Under the proposed governance arrangements the District Council is pledging to assign 35% of CIL receipts from the strategic pot to Kent County Council in order to enable KCC to spend this proportion of the receipts in accordance with agreed priorities for infrastructure delivery within Folkestone & Hythe district.
- 3.4 A requirement of the proposed governance arrangements is that the County Council's priority infrastructure schemes shall be recorded within the District's Infrastructure Funding Statement (IFS); the associated spend of CIL receipts by the County Council must be in accordance with the prioritisation of CIL funds. This ensures full transparency for the deployment/investment of CIL receipts.

Scheme prioritisation through reference to the Infrastructure Funding Statement

- 3.5 As the District Council is to prepare an IFS in conjunction with the County Council, and other stakeholders, the scheme prioritisation process for the allocation of CIL spend is to cross-reference the IFS once this document has been prepared and has been endorsed by the District Council.

- 3.6 Decisions to be taken by the District Council on spend of CIL receipts from the strategic pot would be taken in accordance with the IFS priorities and through the involvement/discussions between the Planning Policy team which leads on preparation of the IFS and one of the following Directors, depending on the directorate area where a particular project falls:
- Director of Place
 - Director of Housing and Operations
 - Director of Corporate Services
- 3.7 In terms of reporting, it is proposed that a Cabinet statement is prepared every 6 months to provide an update on CIL receipts received and expenditure.

Interim arrangements for allocation of District Council spend

- 3.8 In the intervening period until the IFS has been prepared, the District Council proposes to allow delegated authority to a named Director (from those listed under paragraph 3.6) in consultation with the Cabinet Member for Finance (to ensure Member oversight for any investment decisions made) to approve CIL spending up to a specified financial limit of £50,000 on any single project to be CIL awarded funding.
- 3.9 Under interim arrangements it is expected that the allocation of CIL funding up until the end of December 2020 is to be in general conformance with the Regulation 123 list, although it is recognised that as the December 2020 deadline for abolition of the Regulation 123 list approaches delegated authority for the spend of CIL monies up to the capped amount of £50,000 will increasingly be made in accordance with those projects referenced within the emerging IFS. Should there be a request for spend of CIL monies above the £50,000 capped limit then the decision on spend will be taken by Cabinet.

Payment of Funds

- 3.10 The Council will ensure timely release of funds when invoices are received for satisfactorily completed works.

Monitoring

- 3.11 There is a requirement for FHDC, as the Charging Authority, to prepare an annual report detailing CIL receipts, balances and spend for each financial year. The progress on spends will be monitored and reported to the S106/CIL working group. All parish and town councils that are in receipt of CIL monies shall have to produce a similar annual report relating to their Neighbourhood Allocation.

4. CONCLUSION

- 4.1 Since the adoption of CIL in 2016, it has taken some time for CIL-liable developments to go through the planning process, be granted permission and for development to start on site – the point at which CIL is liable to be paid. However, CIL funds have begun to accumulate and the Council needs to put

in place a process for identifying priorities and allotting funds to particular infrastructure projects.

4.2 A draft CIL Governance Framework has been developed to set out this process clearly for Members and Officers of the council. The draft Governance Framework has been prepared by the Strategic Policy Officer with the close involvement and advice of legal, finance and development management specialists within the Council and also drawing on best practice from other authorities.

4.3 Members of Overview and Scrutiny Committee have considered the matter at meeting of 19th May 2020, and in endorsing the proposed governance framework they encouraged further dialogue between officers and representatives of town and parish councils relating to investment decisions to carefully consider how CIL funding is spent with the support of the District Council.

5. RISK MANAGEMENT ISSUES

5.1 A summary of the perceived risks to the Council is shown below:

Perceived Risk	Likelihood	Seriousness	Preventative Action
The proposed governance approach is not agreed, meaning no deployment of investment in accordance with the proposed governance arrangements	Low	Low	As governance arrangements for CIL do not need to be published for consultation or independent examination, if the governance framework is not agreed then operational aspects shall otherwise be put in place by the appropriate internal services.
KCC direct their proposed allocation of CIL receipts to projects not included within the IFS	Low	Medium	Maintaining close communication between officers of the district and county is a requirement of the IFS preparation. A Cabinet statement is to be prepared every 6 months to provide an update on CIL receipts received and expenditure, to include any spend by KCC.

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (NE)

The governance arrangements will be implemented in accordance with the CIL Regulations 2010 as amended and will also take account of the Planning Practice Guidance.

The Council require an appropriate governance system to be in place in order to spend the CIL income collected for infrastructure needed to support the development in the District.

6.2 Finance Officer's Comments (SP)

There are no direct financial implications arising from this report.

6.3 Diversities and Equalities Implications (RB)

The proposed Governance Framework provides a transparent process to make clear decisions on infrastructure related projects being funded by CIL. These projects could include schemes to assist specific sections of our community, for example improving wheelchair accessibility in public spaces.

Under the Equalities Act 2010 the District Council has produced an Equality and Diversity Policy, which ensures that these decisions will be made fairly.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting.

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Appendices:

Appendix 1. Draft CIL Governance Framework (dated March 2020)