

COMMUNITY INFRASTRUCTURE LEVY (CIL) GOVERNANCE

Cabinet – 5 March 2015

Report of	Chief Planning Officer
Status:	For Decision
Also considered by:	Local Planning & Environment Advisory Committee – 27 January 2015
Key Decision:	No

Executive Summary:

In March 2014, the Local Planning and Environment Advisory Committee resolved that a member/officer workshop should be set up to begin to consider CIL governance issues. Two workshops have now been held and the recommendations in this report represent officers' understanding of the majority view expressed. There was a strong view from the workshops that a new board should be established to decide on CIL expenditure. The report sets out recommendations for the structure of the new board, guidance on the information that will need to be supplied to support bids for funding and the factors that the Council will take into account in making a decision. It is also recommended that the Council prepares an Infrastructure Plan, which will inform the allocation of funding to schemes that support development planned in the Allocations and Development Management Plan.

Portfolio Holder Cllr. Piper

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Recommendation to Local Planning and Environment Advisory Committee:

That the recommendation to Cabinet is endorsed.

Recommendation To Cabinet:

- (a) That a Community Infrastructure Levy (CIL) Spending Board is established to recommend to Cabinet how CIL funding should be prioritised with Terms of Reference consistent with the body of this report.
 - (b) That the CIL pro-forma (Appendix A) is published to set out the information that bidding organisations, including SDC, will need to provide.
 - (c) That the guidance on the CIL decision making process (Appendix B) is published.
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Reason for recommendation:

To ensure that the Council is able to make decisions on how CIL funding is prioritised in an open and transparent manner.

Introduction and Background

- 1 The Council adopted the CIL Charging Schedule on 18 February 2014 and qualifying developments permitted since 4 August 2014 are now liable to pay CIL.
- 2 As part of the process of adopting the CIL Charging Schedule, Cabinet tasked Local Planning and Environment Advisory Committee with developing the CIL governance arrangements. In March 2014, the Local Planning and Environment Advisory Committee resolved that a member/officer workshop should be set up to begin to consider CIL governance issues. It was proposed that, following this workshop, LPEAC would formally debate different CIL governance models and make a recommendation to Cabinet.
- 3 Two CIL governance workshops were held with LPEAC members in October and November 2014. The recommendations in this report represent what officers understand to be the majority view of those in attendance. The workshops focused on the structure and processes that will be used to make decisions on CIL expenditure priorities not on what schemes, or types of schemes, money will be spent on.
- 4 Following a recommendation from LPEAC in October 2014, Cabinet resolved that the Council should publish a regulation 123 list, which sets out broadly what CIL will be spent on. The list is not intended to be exclusive. It also resolved that all town and parish councils should receive the equivalent of 25% of the £125 per sq m residential CIL rate when chargeable development takes place in their area, regardless of whether or not it has a neighbourhood plan. Officers have briefed town and parish council colleagues on CIL on a number of occasions over the past 2-3 years and will continue to do so to ensure that they are aware of the limitations of CIL expenditure and the requirements placed upon them.
- 5 The Government intends that CIL will largely replace the use of planning obligations for securing the provision of infrastructure required to support new development. CIL can not be used to rectify existing deficiencies in infrastructure provision. It has long been identified that **CIL will not fund all of the infrastructure schemes that partner organisations have previously identified as being necessary to support development in the District**. There is a great deal of uncertainty when estimating CIL receipts because of the number of different variables (e.g. house sizes, locations of development, amounts of existing on-site floorspace, percentage of affordable housing). However, it is estimated that between 2014 and 2026 the delivery of the development proposed in the Allocations and Development Management Plan would lead to the Council receiving approximately £6 million (after 25% of £125 per sq m has been passed to town and parish councils). This equates to an average of approximately £500,000 per annum. Costed projects previously identified in the (now out of date) infrastructure planning evidence that the Council used to support the

preparation of the Charging Schedule for the 2014-2026 period sum to approximately £33,000,000.

Structure

- 6 There was a strong view from the workshops that a **new spending board** should be established to decide on CIL expenditure. Whilst this will create additional pressure on member time and work for officers, there is considered to be benefit in a dedicated board considering this issue. This will help to ensure that members are kept up to date with changes in CIL legislation that may affect expenditure and that sufficient time is made available to debate different schemes bidding for funding.
- 7 Those present at the workshops considered that members should not be able to vote on proposals in their ward. Therefore, a **'pool system'** was proposed, which would see approximately 15 members identified as a group from which CIL Spending Boards of 7 members would be called. All relevant ward members, whether part of the 15 member group or not, will be given the opportunity to speak for or against the proposals for a total of 3 minutes. It is proposed that this should be written into the terms of reference rather than be at the discretion of the chairman.
- 8 A **fixed chairman and vice chairman** for the CIL spending boards should be appointed on an annual basis. However, these members would not be able to sit on a board meeting if there is a proposal in their ward. If this is the case then the board should appoint a chairman for that meeting.
- 9 It is considered that CIL expenditure should be a function of the Council's executive. Therefore, the final decision making on CIL expenditure should rest with Cabinet. The view from the workshops was that **Cabinet should be asked to ratify the recommendations of the CIL Spending Board or request that it reconsiders a certain issue**, rather than re-open the detailed debates that will have been had at the Spending Board.
- 10 Meetings of the CIL Spending Board would be held in public. **Interested parties would also be given the opportunity to speak for or against proposals for a total of 3 minutes each.** This would include town/parish council representatives. A representative from the organisation promoting the scheme would be expected to attend.
- 11 It was recognised that the CIL spending board is likely to have to determine applications for CIL funding from SDC. As a result, it was proposed by attendees at the workshop that **members of Cabinet should not be part of the Spending Board group.** For the same reason, it was considered that **representatives of other organisations (such as KCC members) should not be invited to sit on the board.**
- 12 The workshop recommended that **Spending Board meetings should be held 2-3 times per year.** It is likely that 2 meetings will be sufficient in the first year, when receipts are likely to be lower than they will be in future years because of the need for schemes to be granted permission after CIL charging came into effect and then

built out (CIL is generally paid 60 days after this). There will be the power to call extraordinary meetings, if necessary.

Form of Spending Board Meetings

- 13 It was proposed that CIL Spending Board meetings should assess applications for funding made by relevant organisations (including SDC). Applications should be made by way of the completion of a **standard pro-forma** (along with any relevant appendices) and **attendance by a relevant individual(s) at the Spending Board**, in order that members' questions on the schemes can be answered.
- 14 Applications for CIL funding would first be **validated by the lead officer** appointed to the CIL Spending Committee (it is proposed that this should be the Strategic Planning Manager). This validation process would be carried out with the chairman of the committee to ensure that schemes do not go to Spending Board meetings if:
- sufficient information is not provided in advance to enable members to make an informed decision (i.e. if the pro-forma is not completed);
 - if the scheme is clearly not a form of infrastructure; or
 - the scheme promoter is not able to deliver the scheme or does not have support from the statutory provider of that form of infrastructure.
- 15 Papers relating to those schemes that are to be considered by a Spending Board meeting will be circulated in advance by Democratic Services in the normal way.
- 16 Spending Board meetings will consider whether or not a scheme should be funded and then, if it is decided that it should not, **reasons will be given**. A potential reason for why a funding bid may not be successful is that further information is required. Where this is the case, the applicant may be encouraged to reapply once this information is available. In some cases an independent assessment of project costs may be sought from the scheme promoter.

Information considered by the Spending Board

- 17 A **pro-forma has been prepared** (appendix A) that organisations bidding for funding would be expected to complete. This requires information to be provided on:
- The public benefit of proposed schemes;
 - The value for money that a scheme provides;
 - The proportion of funding that CIL will be providing (with the expectation being that it will be some way short of 100%);
 - The deliverability of the scheme;
 - The maintenance arrangements that are in place; and

- The information that will be provided by the bidder following any grant of funding.

Infrastructure Planning

- 18 The Council needs to strike a balance between identifying the infrastructure that is required to support development in advance and providing flexibility to infrastructure providers to address requirements that result from windfall developments. If the Council does not have a plan of the infrastructure that is required to support planned development then there is a risk that CIL receipts necessary to provide critical infrastructure will be spent on smaller, less critical schemes on first come, first served basis. **The Council's CIL receipts should be treated as an 'accumulation fund' to pay for the most critical schemes.** It is not necessary for each meeting of the spending board to allocate the funding available at the time of the meeting. If schemes are not deemed important enough, the money should not be allocated.
- 19 It is proposed that the Council should undertake consultation with infrastructure providers in early 2015 to identify schemes necessary to support the development planned in the Council's Allocations and Development Management Plan. This consultation will be used to **develop a new Infrastructure Plan**, which will inform the allocation of funding to developments that are consistent with development planned in the Allocations and Development Management Plan. The Plan will have regard to likely available funding.
- 20 The **CIL Infrastructure Plan will be considered by Local Planning and Environment Advisory Committee after May 2015** and (subject to any modifications) put to Cabinet to agree. The Infrastructure Plan will be reviewed every two years.
- 21 A Draft CIL Infrastructure Plan was previously prepared to inform the preparation of the Council's Charging Schedule. This is based on information that is now a number of years out of date. It also did not seek to provide a realistic plan for how CIL funding would be prioritised. It should not be relied upon to fulfil the role that the now proposed infrastructure plan will.

Factors considered in determining whether schemes should be funded

- 22 Appendix B sets out the **factors that the Council will consider in determining whether or not a scheme should be funded.** It is proposed that this document should be published as guidance but should not limit members on the Spending Board from giving weight to other factors that are relevant on a case-by-case basis. The factors listed include:
- The public benefit of proposed schemes;
 - The value for money that a scheme provides;
 - Whether the scheme is included in the Council's CIL Infrastructure Plan or there is good reason why it is not;

- Whether the CIL contribution will be matched by funding from other sources, including funding from the CIL paid to town and parish councils. The Council will not fund 100% of infrastructure schemes;
 - Whether the scheme is supported by the relevant ward member(s).
 - Whether evidence has been provided to demonstrate that the scheme is deliverable and that there are sufficient maintenance arrangements in place.
- 23 Members at the workshops considered that the **support of ward members** should be a prerequisite of funding being granted. It was also considered that the **support of town/parish councils** would be highly beneficial but this was not considered to be vital. Where a scheme would benefit more than one town/parish then support should be sought from all of the relevant councils.
- 24 A scheme would not need to take place in Sevenoaks District to qualify for funding. However, there must be a **clear benefit to residents in Sevenoaks District** and a clear link between the infrastructure scheme and new housing or large retail development in Sevenoaks District.
- 25 There was **no support for weighting the criteria** to be used in reaching decisions. The Spending Board would instead be expected to reach a balanced judgement and give reasons for its decision.
- 26 In some circumstances funding would be agreed 'in principle'. For example, an infrastructure scheme would **not need to have planning permission** to secure an agreement for funding but the funding would not be transferred until the delivery of the scheme was guaranteed.

Once the funding decision has been made

- 27 Successful applicants for CIL funding will be expected to **maintain communication** with Sevenoaks District Council on the progress of their scheme after a decision has been made to provide funding. Where funding has been agreed 'in principle' or where staged payments are agreed, the scheme promoter will be expected to provide information to justify funding being transferred.
- 28 Scheme promoters should **continue to provide information until the scheme has been completed** and all CIL funding has been spent. At minimum, an annual return will need to provide information on the progress of each scheme that funding has been allocated to in order that the Council is able to fulfil its monitoring requirements under the CIL Regulations. A requirement to submit this information forms part of the declaration that the scheme promoter is required to sign.

Timetable

- 29 It is proposed that the new arrangements should come into force from **May 2015**.
- 30 The workshops recommended that any arrangements should be **reviewed after 12 months** (i.e. from May 2016).

Training for CIL Spending Board members

- 31 It is acknowledged that not all board members will have been involved in CIL considerations before. Therefore, initial training will be provided for all board members, after May 2015 but prior to the first meeting.
- 32 Training will cover the most up to date CIL legislation, the information that is to be considered by the board, and the factors to be considered in determining whether or not a scheme should be funded.

Conclusions

- 33 It is recommended that a new CIL Spending Board is established, in accordance with the recommendations in this report.

Other Options Considered and/or Rejected

Cabinet could decide not to agree to the adoption of the proposed governance arrangements. This option is not recommended by Officers on the basis that the proposals have been developed through a member-led process that has considered the issue in some detail. In addition, any identified weaknesses in the system can be addressed through the proposed review process.

Key Implications

Financial

There are no financial implications of this recommendation. However, the establishment of a new committee will place additional work pressures on existing staff, unless there is a reduction in the number of other committee meetings.

Legal Implications and Risk Assessment Statement.

Governance arrangements that are consistent with the CIL regulations must be agreed. If they are not then the Council runs the risk of challenges from developers over the use of CIL to the Ombudsmen being upheld.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Appendices

Appendix A – CIL Bid for Funding Pro-forma

Appendix B – Decision Making Process Guidance

Background Papers:

[Draft CIL Infrastructure Plan](#) (July 2013).

Richard Morris
Chief Planning Officer