

**COMMUNITY INFRASTRUCTURE LEVY (CIL) SPENDING BOARD - REVIEW OF GOVERNANCE**

**Planning Advisory Committee - 12 March 2019**

Report of	Chief Planning Officer
Status	For consideration
Key Decision	No

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**Executive Summary:** There have been a number of reports, written over the years as Sevenoaks District Council looked to become a CIL Charging Authority. These were as a result of a number of discussions and working parties with Members which considered the Governance arrangements for how the Council would allocate contributions from the Community Infrastructure Levy (CIL). These reports and discussions resulted in an agreed recommendation to set up a CIL Spending Board on 5 March 2015.

The purpose of the Board is to make recommendations to Cabinet on whether local or strategic infrastructure projects should receive CIL funding. Following this original decision to set up the Board, membership was agreed in May 2015. It was also decided that the Council’s CIL governance arrangements would be reviewed annually by the Planning Advisory Committee to ensure that they are relevant and fit for purpose. This paper is therefore part of this review.

In July 2017, as the Council got closer to allocating CIL funds, the governance was reviewed and a change in the structure of the CIL Spending Board agreed. At this stage the criteria for assessing any bids made for the CIL monies. Since this new structure was agreed, the CIL Spending Board has met twice, in May 2018, and December 2018. It was recommended at these two meetings that over £3 million be allocated across 13 local and strategic infrastructure projects. The recommendations to fund all 13 projects were ratified by Cabinet in June 2018 and January 2019.

It has been over 18 months since the last CIL governance arrangements were agreed. This report looks at the current arrangements and proposes changes, following feedback from Members and Officers.

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**This report supports the Key Aim of ensuring that Sevenoaks District remains a great place to live, work and visit and that development is supported by the relevant infrastructure**

Portfolio Holder	Cllr. Robert Piper
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**Recommendation to Planning Advisory Committee:** Members are

- a) asked to note the report updating them on progress made; and
  - b) invited to make any further comments and agree the proposed way forward.
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**Reason for recommendation:** To ensure that the Council is able to make decisions on how CIL is prioritised in an open, transparent, appropriate, fair manner and to ensure consistency.

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## **Introduction and Background**

- 1 The Council has been charging the Community Infrastructure Levy (CIL) since August 2014. From August 2014 to March 2018, the Council has collected over £6.5 million of CIL contributions, with over £1.8 million passed to relevant town and parish councils to help fund local infrastructure improvements. The remaining contributions collected (approximately £2 million) remain with the District Council to allocate and spend on local and strategic infrastructure projects.
- 2 In May 2017, Members of the Planning Advisory Committee were presented with a report to consider proposals for amending the Council's governance procedures for CIL. Members also considered proposals to create a CIL Spending Board, with a fixed membership, to allocate CIL funding to local and strategic infrastructure projects. These recommendations were approved by Cabinet in July 2017.
- 3 The last two Spending Boards have followed the guidance laid out in the agreed Governance and whilst both Spending Boards have run smoothly and CIL money has been allocated to worthy projects. It is considered that there are a few areas of clarification and a few changes in the guidance and procedures that are required to enable the Governance of CIL to remain open, transparent, appropriate, fair manner and to ensure consistency.

## **Current CIL Governance Arrangements**

- 4 As part of the current CIL Governance arrangements, it was agreed that the process of allocating CIL money would be reviewed on an annual basis. This is to ensure that the Council's processes and procedures remain relevant and fit for purpose. Whilst this review is slightly delayed it was considered appropriate to wait for 2 Spending Boards to meet to allow a full assessment of this process to take place.
- 5 Whilst it is noted that some Members are keen for another CIL Spending Board to meet as soon as possible. It is important to ensure that any amended governance arrangements are fit for purpose, in place and that further training takes place to ensure that members are aware of all the new proposed changes. It is therefore likely that the Board will not meet until July/August, later this year.

- 6 The current arrangements and procedures for the CIL Spending Board are set out in the Council's Constitution Appendix X1 (Appendix A).
- 7 These arrangements and procedures are summarised below:
  - Membership of the Spending Board (15 members)
  - Role of members of the Board and Members conduct.
  - Board Structure, procedures and speaking protocol.
  - The types of recommendations the CIL Spending Board could make.
  - The pro-forma that is required to be submitted as part of a bid.
  - Criteria for the Council's assessment of the bids.
  - Details of the two stage validation process.
  - It also confirmed that Cabinet will ratify any recommendation from the CIL Board.
- 8 A summary of this process and timings are provided in a flow chart in Appendix B.

### **Feedback from Members and Officers**

- 9 Since the new governance procedures were agreed in 2017, Members and Officers have provided feedback on the governance arrangements and the operation of the CIL Spending Board. Whilst Members and officers agree that the meetings have been successful, a number of constructive comments were raised as to how the governance for the next CIL Spending Board could be improved or processes clarified.
- 10 The feedback received from officers and Members covers all stages of the CIL spending process as follows:
  - Overall Governance of CIL - This looks at the key issues and those which cover more than one stage of the overall process.
  - The Bidding Process - This looks at the information requested through the pro-forma, the timings of the process and also the advice given to people making the bids.
  - Validation Process - This looks at issues raised over how we assess the bids and the reasons why a bid would be considered invalid.
  - The Spending Board - This includes considering the format of the report, the structure of the Board, the Key Considerations and the recommendations of the Board.
  - Contracts for the monitoring and spending of CIL Spending.
- 11 Please see Appendix C for a summary of the proposed changes to the CIL Governance Procedures many of which need further legal consideration before being finalised. This lists all the comments made in relation to the governance of CIL. It highlights the key issues, indicates where changes are proposed and where no changes are proposed.

## **Proposed Changes to the CIL Governance Arrangements**

- 12 Following an appraisal of all the feedback summarised in Appendix C, officers consider that there are a number of changes that need to be made to the governance of CIL however many of them require more legal research. Most of these are small changes to the existing system and it is clear the current processes and format of the CIL Spending Board does not need to be considerably changed.
- 13 Through discussions with Members, the following proposed changes were identified as the most important to be addressed:

### **Definition of “Top Up”:**

- 14 Looking through the CIL Legislation, the phrase ‘Top up’ is not used at all. The Legislation also does not define the percentage or amount of CIL that can be given towards any infrastructure project. Therefore, provided that the CIL money is spent on infrastructure to support development in the District, the Legislation does not provide strict rules on the amount of money that can be spent.
- 15 It is considered important that when providing information in regard to CIL, through our Infrastructure Delivery Plan and through the CIL Spending Board that it is made clear that CIL cannot provide for all infrastructure requirements rising from developments. Rather than define a top up or limit the amount of spending on each project it is recommended that the Council needs robust criteria and requirements to ensure that all applicants have maximised other sources of funding.
- 16 Whether an applicant has maximised that funding may also need to be considered as part of the individual project itself and also in the context of connected infrastructure projects. This is because CIL could be required to pay the full amount on one specific project, which forms part of a wider infrastructure project, already funded in the surrounding area.
- 17 In light of the above it is therefore suggested that no amount should be set and that it is left to the assessment of the bids and the discretion of the CIL Spending Board as to whether the bid is successful. This approach would therefore continue to allow flexibility to the CIL Board to be able to allocate funding to whatever project they considered submitted an appropriate and supported bid or prioritise where they thought there was a specific need.

### **Whether Planning Permission should be in place:**

- 18 It is also considered important to clarify how officers and the CIL Spending Board, considers bids which do not yet have planning permission in place.
- 19 The criterion currently advises that having planning permission in place is more of a “pre-requisite” to the bid application. However, when considering large schemes supported locally, with a clear plan in place it appears that this should be more “advisory”.

- 20 Whilst it is important to recognise that in some projects planning permission is a clear indication that the project is deliverable, in other cases the other benefits of scheme may indicate that it is worth considering the application without planning permission in place.
- 21 This is because some projects which are supported by a number of neighbourhood, local and business plans are unlikely to have all their paperwork and funding in place. But the security of CIL funding could ensure the project has more certainty. It is therefore considered that the CIL Spending Board should have more flexibility in these cases to weigh up the benefits against the lack of planning permission for a project. The way to assess this needs more legal investigation.
- 22 It is recommended that the following changes are made:
- Change criteria for assessing bids.
  - Change recommendations to allow the CIL Spending Board to be able to set aside funds for such a project subject to planning permission being in place.
  - Ensuring that any monies are not paid over until the scheme is finally deliverable.

#### **Other Proposed Changes**

23 Here is a summary of the all the other proposed changes identified so far by officers in Appendix C:

24 Changes to the pro-forma

- To include point of contact for project, legal issues and finance.
- Request further information as to whether the project has received any source of funding from the Council including CIL.
- To request whether CIL funding had been received from Parish and Town Councils.
- To request information as to the status of all existing and proposed funding.
- That a guidance note is provided to assist any applicant in submitting a bid.

25 Changes to the officers assessment criteria

- To ensure they compliment the CIL Board Key Considerations.
- To make it clear what the environmental benefits of a scheme will be expected to be. This will suggest that schemes that provide wider ecological and landscape benefits will be looked upon more favourably.
- Additional advice as to how to assess bids where planning permission is not in place.
- To consider how through the assessment we encourage applicants to maximise other sources of funding.
- That the criterion for assessing bids is made more publically available.

- Clearer guidance as to how to consider bids were the Parish and Town Councils have also contributed CIL towards the project, to ensure that this is encouraged.

This requires further work with Legal to ensure that this document is worded correctly. We therefore suggest the Chief Planning Officer continue to work with Legal to continue to consider this issue and draft a document to achieve the above aims.

## 26 Changes to CIL Spending Board Key Considerations

- To ensure they match officers assessment criteria
- Change the requirement for Local Member support, so whilst it is encouraged it would not invalidate a bid.

## 27 Changes to CIL Board Recommendations:

- The Board will be reminded of their role and the procedure at the beginning of the meeting.
- Additional options should be provided to the recommendations to make them more flexible, allowing the Board to delay payments, set aside funding for particular projects, set aside funding until planning permission or other sources of funding are in place or defer an application for example.

## 28 Changes to the CIL Spending Board Report:

- Officers will look to include the percentage of CIL requested compared to the overall cost of the project.

## 29 The CIL Spending Board:

- More detailed guidance notes and clarification regarding the format of the CIL Spending Board.
- Make clear in the constitution the amount of visual aids a speaker can use.
- Amend the Constitution to clarify that the amount of money requested cannot be changed at the CIL Spending Board by Members or applicants. This includes the need to alter recommendations to allow the Board to defer applications.
- A bid can still be considered if there is no speaker.

## 30 Formation of a Legal Contract

- That the Chief Planning Officer continue to work with legal to draft and secure two separate legal contracts, one for those already covered by CIL Legislation and one for those private organisations and businesses that are not.

## **Other Options Considered and/or Rejected**

- 31 Members could decide not to agree the proposed changes to the current governance arrangements. However, the proposed changes seek to build on the existing arrangements to make the process more consistent, manageable and robust to ensure that future funding allocated by the CIL Spending Board is appropriately spent.
- 32 In addition, any further identified weaknesses in the system can be addressed through the annual review process.

## **Key Implications**

### Financial

There are no financial implications regarding this report.

### Legal Implications and Risk Assessment Statement

There are no legal implications regarding this report.

### 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.

## **Conclusions**

It is clear that there is still a significant amount of work that Officers need to do to ensure that the details and wording of some of the suggested changes are robust and appropriate.

It is therefore asked that Members agree that Officers continue to work on the proposed changes and submit a final report for recommendation to Cabinet in due course in order to ensure the bidding process and the CIL Spending Board runs more smoothly and that all parties are more informed of the process.

## **Appendices**

Appendix A - Appendix X1 of the Council's Constitution - CIL Spending Board Terms of Reference

Appendix B - CIL Spending Board Process Flowchart

Appendix C - Summary of Suggested Changes to the CIL Governance Procedures

**Background Papers**

Governance of the Community Infrastructure Levy (CIL) (Planning Advisory Committee - 16 May 2017)

Governance of the Community Infrastructure Levy (CIL) (Cabinet - 15 June 2017)

Referral from Cabinet - Further Advice to PAC re Governance of the Community Infrastructure Levy (22 June 2017)

Planning Advisory Committee response to referral - Community Infrastructure Levy (Cabinet - 13 July 2017)

**Richard Morris**

**Chief Planning Officer**