

**STRATEGIC PLANNING
SUSTAINABILITY AND
TRANSPORTATION COMMITTEE**

13 March 2018

**Community Infrastructure Levy (CIL) Administration and
Engagement**

Final Decision-Maker	Strategic Planning, Sustainability and Transportation Committee
Lead Head of Service/Lead Director	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Isabel Elder, Principal Planning Officer, Strategic Planning; Tay Arnold, Planning Projects and Delivery Manager, Strategic Planning
Classification	Public
Wards affected	All

Executive Summary

This report updates the Committee on the administrative arrangements required in order for Maidstone CIL to be successfully implemented, and seeks approval for undertaking engagement with all interested parties on relevant aspects of the administrative arrangements.

This report makes the following recommendations to this Committee:

That Officers be instructed to:

- a) Continue to develop administrative arrangements for the CIL;
- b) Engage with all interested parties, both internal Council departments, parishes and the public, where relevant prior to the agreed implementation date; and
- c) Ensure that infrastructure providers are aware of the CIL and the impact it will have on infrastructure requests under s106.

Timetable

Meeting	Date
Strategic Planning, Sustainability and Transportation Committee	13 March 2018

Community Infrastructure Levy (CIL) Administration and Engagement

1. INTRODUCTION AND BACKGROUND

Context

- 1.1 Following consideration of the examiners report and the modified charging schedule at this Committee's 12 September 2017 meeting, the Council approved the introduction of a Maidstone Borough CIL charging schedule at its meeting on 25 October 2017 and resolved it should take effect from 1 October 2018.
- 1.2 At the 12 September 2017 meeting it was resolved that officers would look at the key issues in regards to the administration and governance of the CIL and these were presented to this Committee on 7 November 2017. It was resolved that:
 - a) Officers be instructed to commence preparatory work for the development and delivery of the administrative arrangements, and
 - b) a subsequent report setting out the scope and timing of stakeholder engagement be submitted.
- 1.3 This report develops the key issues identified in the November 2017 report, having specific regard to the administration arrangements within the Council.
- 1.4 For the purposes of this report, administration relates to the process of collecting CIL receipts and the passing of CIL monies to Parish Councils and Neighbourhood Forums. CIL is liable on development from the day planning permission first permits that chargeable development. In instances where there are pre commencement conditions, CIL will be liable when these have been discharged. Applications that are in the appeal process prior to 1 October and which are allowed post 1 October, will become CIL liable. CIL will therefore apply to all relevant applications determined from 1 October.
- 1.5 The administration of CIL requires various procedures to be followed, as laid out in the Community Infrastructure Levy Regulations 2010 (as amended)

Key administration issues identified in 7 November 2017 SPST Committee report:

- 1.6 **Key Issue A1:** How responsibility for the day-to-day operational tasks of CIL implementation is distributed across the Planning Department/Council: whether to a single bespoke section, or whether some elements are allocated more widely for instance across validation, development management, enforcement or building control.
- 1.7 **Response to A1:** The prescriptive nature of CIL requires co-ordination of responsibilities and services in order to oversee the day to day operation of

the CIL. To facilitate this, officers will be recruited to bespoke CIL posts within the Strategic Planning team. In the short term, these posts will be funded from existing revenue budgets. As CIL income is generated, the costs will be offset from the 5% administrative fee, which can be taken from the CIL collected.

- 1.8 Discussions with relevant internal departments have commenced which is identifying symmetry with the CIL processes and identifying opportunities for collaborative approaches.
- 1.9 A process map to identify the individual stages of the CIL collection process has been produced and will assist with the above discussions. It will also focus on internal mechanisms for meeting CIL administrative requirements.
- 1.10 **Key Issue A2:** Whether or not the CIL Additional Information Form should be added to Part 1 of the Local Validation List and whether the Assumption of Liability Form should be added to Part 2 of the List.
- 1.11 **Response to A2:** Following the introduction of CIL, all applications for full planning permission including householder and reserved matters following an outline application and applications for lawful development certificates are required to complete and submit an Additional Information Form (Form 0). The form identifies whether the development is CIL liable and will be added to Part 1 of the local validation list, following a 6 week notice period. Failure to submit the Form 0 will result in the planning application not being validated.
- 1.12 Submission of the Assumption of Liability (Form 1) will be added to Part 2 of the local validation list which will encourage it to be submitted with the planning application, but which can not be enforced. An application cannot fail the validation process for the failure to submit the Assumption of Liability with the application papers Form 1 can be sent to the Council up until the day of commencement. Liable persons will be encouraged by the Council to submit it as soon as possible after the planning permission is granted.
- 1.13 **Key Issue A3:** How the Council should approach applications submitted during the transitional period, in the weeks and months leading up to 1 October 2018.
- 1.14 **Response to A3:** From 1 October all planning applications that permit development that meets the CIL eligibility criteria will be CIL liable. Prior to this date a review of the number of undetermined major applications will identify those that need to be approved before 1 October. A change from S106 to CIL may affect a scheme's viability resulting in an increased pressure to determine applications before 1 October.
- 1.15 A future stage will be to further raise awareness with the public, developers, third parties and house builders of the CIL implementation date. Officers will widely publicise the date and key details of the CIL eligibility criteria and the Council's processes. These will be published on the Council's website. This will make clear the statutory determination dates and provide clarity as to when applications will be processed prior to CIL being implemented. For example 8 weeks before 1st October for minor applications,

12 weeks for majors and 16 for EIA applications. Due to there being a potential spike in the number of applications received before CIL is implemented applicants will be encouraged to make their submission earlier so that it can be assessed within the statutory time frame.

1.16 Given the complexities involved in negotiating certain s106 agreements, particularly on major development schemes, and the timescales necessarily involved it will be imperative that this is considered in any promotion to the public, developers and third parties or any review of applications requiring determination as set out above.

1.17 When applications are submitted and validated by the Council, applicants will be informed that their application could become CIL liable if it is not determined prior to 1 October.

1.17 **Key Issue A4:** How the Council should engage with infrastructure providers ahead of and during the transition, to ensure that requests for developer contributions are compliant with the CIL Regulations and the Council's Regulation 123 List.

1.18 **Response to A4:** Prior to CIL implementation there will be correspondence with infrastructure providers to discuss the implications of CIL and how it will replace how S106 agreements have been traditionally used by the Council. S106's and S278's will still be required but will be limited to site specific mitigation measures only as identified in the Regulation 123 list and the provision of affordable housing.

1.19 **Key Issue A5:** How the Council administers the neighbourhood portion within Parish Council areas.

1.20 **Response to A5:** CIL is collected from development built in each Parish or Neighbourhood area. The CIL is divided into three financial pots; Administration (5%), non strategic spend and strategic spend.

1.21 The non strategic spend is the 'neighbourhood portion' which can be spent by the Parish councils or Neighbourhood forum within whose area, the development falls (subject to them having appropriate financial procedures in which to do so). The distribution of neighbourhood CIL money is 15% for areas without a made neighbourhood plan (capped at £100 per dwelling per annum) or 25% where there is a made neighbourhood plan in place and which was made before a relevant planning permission first permits development. CIL monies must be spent on infrastructure as defined in para 1.32 and 1.33. The remaining CIL – the strategic spend (70% or 80%) - is retained by MBC and will be allocated to strategic projects. The process for this will be the subject of a future report on governance.

1.22 If an area makes a neighbourhood plan after the implementation of CIL, then the date that the permission first permits the development, will be the date that will dictate the amount the Parish or Neighbourhood Forum will receive. All the permissions after the plan is made will result in a 25% CIL receipt and all permissions before a made plan will result in a 15% CIL receipt.

1.23 A process map has identified options for Parishes depending on their circumstances and their ability and or wish to hold CIL money. Discussions on this will commence shortly, with the Council hosting a workshop in the near future to brief and inform Borough Councillors, and Parish Councils about CIL. The workshop will discuss the administration processes of CIL which will include the collection of CIL and the passing and spending of money to Parish Councils and Neighbourhood Forums. Issues and governance surrounding the spending of the larger strategic CIL money will take place in the future and not at this workshop. The details of what will be discussed in the workshop are detailed below.

1.24 In order to be able to accept the neighbourhood CIL and for them be able to be spend it, Parish Councils and Neighbourhood Forums must have appropriate governance and spending powers in place before CIL monies are released to them.

1.25 Parishes and Neighbourhood Forums that do not have appropriate financial arrangements have a number of choices:

a) To not accept the CIL and ask the Council to spend the money in consultation with the community on their behalf.

b) Develop procedures especially in Parishes or Neighbourhood Forum areas that are going to have significant development.

c) Collaborate with other Parishes and Neighbourhood Forums and pay for a shared governance and accounting service or

d) Draw down funds from the Council on an ad hoc basis when they have identified and costed a specific project.

1.26 Where a Parish or Neighbourhood Forum do not have the required governance or financial procedures in place to spend the neighbourhood portion, the Council will spend the CIL in their local area, on their behalf, in a clear and transparent way.

1.27 CIL payments to Parishes and Neighbourhood Forums can be paid up to twice a year for the preceding 6 months' income.

- CIL income received between 1st April and 30th September in any financial year will be paid by 28th October of that financial year and
- CIL income received between 1st October and 31st March will be paid by 28th April in the next financial year.

These are set out in Regulation 59 (d) of The Community Infrastructure Levy (Amendment) Regulations 2013.

1.28 An agreement will be prepared identifying the expectations of each Parish and Neighbourhood Forum, identifying their responsibilities and liabilities. This will be based on those prescribed in the Community Infrastructure Levy

Regulations 2010 (as amended). This will give confidence to both parties and transparency of what is expected.

1.29 The agreement will identify in line with legislation how the money will be transferred, the timescale and process of acceptance; how it can be spent; the timescale in which it should be spent; the requirement for annual reporting, dispute resolution and also request evidence that they have appropriate financial and other procedures in place.

1.30 Each year, the Parishes and Neighbourhood Forums will be required to produce an annual report explaining what the CIL has been spent on. Legislation requires that each Parish/ Neighbourhood Forum will have to prepare and submit a report on income and expenditure to the Council, in line with prescribed procedures and publicise it on their website and that of the Council.

1.31 All CIL monies need to be spent within 5 years of receipt and spent on offsetting the impacts of development in the area. Failure to meet either of these criteria will result in the Council issuing a repayment notice. The Council will then be responsible for spending the CIL money on behalf of the local community with their involvement.

1.32 The Community Infrastructure Levy Regulations 2010 (as amended) state that Parish Councils and Neighbourhood Forums must spend the CIL for their area on:

- the provision, improvement, replacement, operation or maintenance of infrastructure; or
- anything else that is concerned with addressing the demands that development places on an area

1.33 Infrastructure is broadly defined in the Planning Act 2008. There are typically three broad categories of infrastructure:

- Physical infrastructure - highways, transport links, cycle ways, energy supply, water, flood alleviation, waste management
- Social infrastructure - education, health, social care, emergency services, art and culture, sports halls, community halls
- Green infrastructure - parks, woodlands, play areas, public open space

1.34 CIL may be used for the purchase of Capital Infrastructure for example, community buildings. A procedure for the retention/ future use of any CIL bought capital assets will be devised along Council guidelines so that the asset remains a benefit to the community for its useful economic life. Maintenance and all associated costs will be the responsibility of the organisation who has commissioned it unless otherwise agreed.

1.35 Each Parish Council and Neighbourhood Forum is required in the CIL regulations to submit an annual report to the Council identifying what CIL has been spent on. Prior to the first payment of CIL, MBC will provide a specific

proforma for the information to be submitted. This will cover such items as precisely what the money has been spent on, by whom, the process followed in making that decision, future arrangements, maintenance, liability in case of accidents or vandalism, insurance etc.

1.36 To assist all Parish Councils and Neighbourhood forums in making the best use of their receipts, they will be encouraged to identify the priorities for their area and produce and publish on their website a Parish/ Neighbourhood Forum CIL Infrastructure spend plan. This should have short, medium and long term objectives and where appropriate provide an outline or details of projects. It should prioritise the projects identified in the adopted Neighbourhood Plan and form the basis of local consultation. It would be prudent for the plan to also acknowledge that something specific may arise as a direct result of the development that may require the allocation of CIL funds.

1.37 These plans are discretionary but will enable the community to see what is being proposed and will be a useful tool for consultation and consensus building in the local area.

1.38 With regard to spending CIL money, Parishes and Neighbourhood Forums may choose to:

- a) Spend money on a specific project in their Parish or Neighbourhood Forum area
- b) Spend money on a specific project in a neighbouring area (with their neighbours consent)
- c) Choose to collaborate together where there will be mutual benefits across Parish boundaries
- d) Choose to fund an infrastructure project run by MBC or KCC,
- e) Choose to partner with a third party, land owner or organisation. Ultimately the parish will be responsible for ensuring that the CIL is spent appropriately and will be responsible for accounting for it.

1 AVAILABLE OPTIONS

2.01 This report provides further information on the proposed CIL administration processes which will need to be in place prior to CIL implementation on 1 October. The report provides an opportunity for this Committee to see the progress made to date and the stages that are being progressed.

2.02 Discussions with relevant internal departments are ongoing which is identifying symmetry with the CIL processes and identifying opportunities for collaborative approaches.

2.03 Officers are developing guidelines and procedures to be followed as well as proforma's to be completed and standard letters to be issued to ensure the smooth transition.

2.04 Further publicity and clarification to the public and developers will be a key next stage in order that applications are submitted in good time to be approved before 1 October and that awareness is raised of the implications of CIL. Existing applications already in the system will need to be reviewed as to the impact CIL will have on them and the potential impact on their viability as S106 is scaled back to just be for site mitigation.

2.05 Borough councillors and Parish Councils will be invited to a workshop on the CIL administration processes and procedures to be followed for collection and the allocation of the CIL neighbourhood fund. It will inform those present of the CIL and its implications and will allow for questions to be asked. It will explain how the neighbourhood CIL can be spent and their responsibilities and accountabilities.

2.06 Procedures for Parishes and Neighbourhood Forum areas that are unable to be passed funds will be drawn up by the Council. These options will include them drawing down funds on an ad hoc basis once a project has been devised and costed. The alternative is for the Council to spend the neighbourhood CIL on their behalf and to involve and liaise with the Parish and Neighbourhood Forum respectively. Where there are no Parish Councils or Neighbourhood Forums the neighbourhood portion of CIL will be spent by the Council. Details for this will be included in the future governance report.

2.07 Option 1 : Do nothing

The Council have committed to implementing CIL by 1 October 2018. This committee could request further reports regarding the administrative processes before commencing engagement with stakeholders. However this is not recommended as it could delay the implementation process and the Council's ability to publicise the procedures for CIL.

2.08 Option 2:

That this Committee considers the key issues identified in this report and instructs officers to

a) continue to develop administrative arrangements for the CIL,

b) inform all interested parties, both internal Council departments, Parishes, Neighbourhood Forums, developers and the public, of the CIL implementation date and the procedures that will be required to be followed for CIL prior to implementation and post 1 October 2018

c) ensure that infrastructure providers are aware of the CIL and the impact it will have on infrastructure requests under s106 and

d) prepare in the medium term, the governance arrangements for the strategic CIL money which is to be spent by the Council and report these later in the year.

This option will provide for officers to have in place the appropriate CIL administrative procedures prior to 1 October.

3 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.01 For the reasons set out in part 2 of this report, Option 2 is recommended as the Council has committed to implementing CIL and needs to have appropriate procedures and processes in place in order for it to be successful. Officers, Borough Councillors and Parish Councils need to be made aware of the implications of CIL and the changes that will occur post 1 October 2018.

4 RISK

The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council’s Risk Management Framework. We are satisfied that the risks associated are within the Council’s risk appetite and will be managed as per the policy.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.01 The CIL charging schedule and associated documents have been subject to statutory consultation and member decisions throughout their development.
- 5.02 This report responds to the Committee’s decision in November 2017. The Committee previously resolved that parish councils should be involved in the process of developing arrangements for the implementation of CIL.

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.01 If Option 2 is selected, officers will continue to develop administrative processes and ensure that there is adequate publicity of the CIL. Parish Councils, Neighbourhood Forums and other organisations, developers and the public will be informed. Procedures and processes will be devised to achieve CIL implementation on 1 October.

6 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council’s ability to achieve corporate priorities	Rob Jarman Head of Planning and Development

Risk Management	Already covered in the risk section	Rob Jarman Head of Planning and Development
Financial	The report identifies a number of administrative tasks associated with CIL, for which there is currently no budgetary provision. Accordingly the Council will need to retain 5% of CIL receipts as permitted by the regulations to fund administrative costs. Any up front costs will be absorbed in the short term from existing budgets. All costs accumulated from devising the CIL charging schedule and costs from implementation can be retrospectively claimed back from the first 3 years of the CIL charge. From year 4 only administrative costs in that year going forward will be able to use CIL funds to pay for them.	Paul Holland, Senior Finance Manager (Client Team)
Staffing	Two new posts will be recruited to however we will deliver the recommendations within our current staffing budget initially. Costs will be off set against the 5% administrative fee in future.	[Head of Service]
Legal	Mid Kent Legal Services will need to be consulted as a stakeholder in regard to operational changes as the implementation date approaches. Changes to the use of s106 and the impact this may have on workloads for the department cannot be understated. The potential for a rise in demand for determination of applications and completion of legal agreements in an attempt to 'beat the deadline' is a very real	Cheryl Parks Lawyer (Planning) Mid Kent Legal Services

	prospect.	
Privacy and Data Protection	Data held by the Council relating to personal details, financial information and other sensitive information will need to be managed very carefully and in line with the Council's agreed policies and procedures	Cheryl Parks Lawyer (Planning) Mid Kent Legal Services
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment	[Policy & Information Manager]
Crime and Disorder	NA	Rob Jarman Head of Planning and Development
Procurement	NA	[Head of Service & Section 151 Officer]

8. REPORT APPENDICES

None

9. BACKGROUND PAPERS

None