

STRATEGIC PLANNING, SUSTAINABILITY AND TRANSPORTATION COMMITTEE

8th January 2019

CIL Governance Report

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	Tay Arnold, Planning Projects Delivery Manager Isabel Elder, Principal Planning Officer
Classification	Public
Wards affected	All

Executive Summary

Further to the administrative arrangements for CIL being in place, this report focuses on the governance arrangements for CIL and recommends to Committee how decisions regarding the Strategic portion of CIL could be made.

This report makes the following recommendations :

1. This Committee agrees the governance proposals for managing the strategic portion of CIL as follows:
 - A. That a CIL steering group be established comprising the Director of Regeneration and Place (as Chair) and other appropriate Council officers;
 - B. That this committee should be the final decision making body for the strategic portion of CIL.
2. This committee agrees that the processes, as set out in the report, for the allocation of the strategic portion of CIL be agreed.
3. That these recommendations are referred to Full Council for approval, so that the appropriate delegations can be made.

Timetable

<i>Meeting</i>	<i>Date</i>
Strategic Planning, Sustainability and Transport Committee	8 th January 2019

CIL Governance Report

1. INTRODUCTION AND BACKGROUND

- 1.1 On 7th November 2017, SPST Committee received a report outlining the key issues which would need to be addressed as the Council established its administrative and governance arrangements for the implementation of CIL in Maidstone Borough. On 13th March 2018, officers presented further details on the proposals for the administrative arrangements as these needed to be in place by the implementation date of 1st October 2018. The report also made reference to the regulations regarding how Parishes could spend the neighbourhood portion of CIL as set out in the regulations.
- 1.2 SPST subsequently received a report on 11th September 2018, updating them on the progress that had been achieved for the administration arrangements and set out the parameters of what the strategic CIL portion could be spent on. It detailed the differences between CIL and S106. These differences were elaborated on and discussed at two Member training sessions held on 24th September and 27th September.
- 1.3 Due to the time critical path to deliver the administration arrangements, it was agreed that a report on Governance would come to SPST once the CIL administration was in place. This report will look at the proposed governance arrangements, of how decisions regarding the larger pot of strategic CIL can be taken.
- 1.4 In contrast to the administration arrangements, which are heavily legislated, the CIL Regulations and national guidance provide very little prescription, and no clear framework, for how Charging Authorities should make decisions on spending CIL monies. Guidance in this area is limited effectively to what types of infrastructure CIL monies may or may not be spent on. Once collected, CIL is divided in to three funding pots: administration; strategic spend; and non strategic spend.
- 1.5 Strategic CIL is the largest portion of CIL. It will be either 70% or 80% of the total CIL receipt depending on how much is taken for the neighbourhood area, which is dependent on whether they have a plan or not. It must be spent on infrastructure which is needed to support the delivery of the adopted Maidstone Borough Local Plan as set out in the Infrastructure Delivery Plan (IDP) and schemes identified on the Regulation 123 list.

Update on governance issues from 7th November 2017

- 1.6 The initial report to SPST on the CIL arrangements on 7th November 2017, identified the key governance issues that would need to be looked at. It included the following:

Key governance issues

G1: The final decision making body, with responsibility for the allocation of
--

CIL monies and the regularity of their decision making.
G2: The process by which recommendations on the allocation of CIL monies are reached, and the involvement of infrastructure providers, corporate leadership, members, officers and other stakeholders in this process.
G3: The extent to which the overall CIL "pot" is sub-divided in some predetermined manner, either between infrastructure types/projects, between geographical areas or between large/long term infrastructure and smaller/short term infrastructure.
G4: The nature of the delivery agreement with an infrastructure provider, on allocation and the extent to which conditions and clawback are imposed.
G5: How the Council works with Parish Councils to develop local infrastructure priorities for neighbourhood portion spend.
G6: How the Council works with local communities in non-parished areas to develop local infrastructure priorities for neighbourhood portion spend.

1.7 **Key Issue G1:** The final decision making body, with responsibility for the allocation of CIL monies and the regularity of their decision making

- This report is recommending that the SPST committee is the final decision making body and that there is an annual bidding and decision making process. To acquire this; SPST will need to request that this responsibility is delegated from Full Council.

1.8 **Key Issue G2:** The process by which recommendations on the allocation of CIL monies are reached, and the involvement of infrastructure providers, corporate leadership, members, officers and other stakeholders in this process.

- This report recommends that a CIL steering group be established, who will meet to assess proposals and then make recommendations to SPST as the final decision maker. Stakeholders, other non SPST members, officers and members of the general public will be kept informed by the information being included in the CIL annual report which will be published on the Councils website no later than 31st December each year.
- Specific information about each proposed scheme will also be available in the SPST report which will be publically available prior to the meeting. All meetings are webcast, so stakeholders will have the opportunity to view the meeting and see how decisions have been made and their outcome.

1.9 **Key Issue G3:** The extent to which the overall CIL "pot" is sub-divided in some predetermined manner, either between infrastructure types/projects,

between geographical areas or between large/long term infrastructure and smaller/short term infrastructure.

- It is not proposed that there will be predetermined split of the CIL into different categories. The evidence for MBC's CIL charging schedule was based on projects identified in the IDP, which is directly related to the delivery of the adopted local plan. CIL receipts should therefore be spent on projects which are in the IDP and on the Regulation 123 list. The amount of CIL received will influence the precise allocation process.
- The CIL steering group could also recommend to SPST not to allocate CIL to any schemes in that year either because of a lack of funds or because it wanted to choose a different scheme in the future and it wanted to wait until a larger reserve of CIL had been received or because it wasn't satisfied that the schemes were the best use of CIL receipts or because no bids had been received.

1.10 Key Issue G4: The nature of the delivery agreement with an infrastructure provider, on allocation and the extent to which conditions and clawback are imposed.

- An agreement will be put in place stipulating the terms and conditions of the release of the strategic CIL funds. This will be drafted by legal in discussion with the CIL team.

1.11 Key Issue G5: How the Council works with Parish Councils to develop local infrastructure priorities for neighbourhood portion spend.

- This was reported in the 13th March report, whereby officers recommended for good practice, that Parishes develop a detailed Infrastructure Spend Plan (ISP) for their area. Officers have made a commitment to work closely with Parishes to support them. An initial meeting was held in June 2018 and a further workshop will take place in February 2019. This is to ensure parish councils have all the information they require before the first possible payment date of 28th April 2019.

1.12 Key Issue G6: How the Council works with local communities in non parished areas to develop local infrastructure priorities for neighbourhood portion spend.

- The report to SPST on 11th September outlined how the Council will work within the non parished areas.

Strategic CIL.

1.13 The Council's Infrastructure Delivery Plan (IDP) is a key supporting document for both the Local Plan and the CIL, as it identifies the individual infrastructure schemes required to sustainably deliver the Local Plan. The IDP is a 'living' document and will be reviewed on an annual basis as new projects come forward to support the current Local Plan and those projects identified

in the document are delivered. It acts as a tool for identifying the appropriate funding mechanism, as it states what CIL will be expected to contribute towards and what other funding sources, such as S106 will pay for.

1.14 Strategic CIL can only be spent on infrastructure as identified in the 2008 Planning Act, which defines infrastructure as:

- Roads and other transport facilities
- Flood defences
- Schools and other educational facilities
- Medical facilities
- Sporting and recreational facilities
- Open spaces

1.15 It is critical therefore, that the Council makes effective decisions on the allocation of CIL monies, to facilitate the delivery of infrastructure in a timely manner to support planned growth, and to ensure that infrastructure delivery does not become a constraint to planned development, or adversely affect the Council's five year housing land supply position.

1.16 In common with most authorities, there is a "funding gap" between the cost of infrastructure required to support the Local Plan, and the amount of money available to deliver it. The presence of the gap confirms that there will be "competition" for CIL funds, and emphasises both that the release of CIL monies will need to be carefully considered, and that the infrastructure providers will need to look for alternative sources of funding to address the gap over the lifetime of the plan.

Proposed governance process for strategic CIL

1.17 Given the lack of national guidance on how to allocate the strategic portion, officers have researched how other Charging Authorities have approached this. The broad established approach in operation across the country is for the infrastructure providers, who will ultimately deliver the infrastructure, to "bid" for funds from the CIL pot; identifying the proposed project and how and when they intend to deliver it.

1.18 It is proposed for Maidstone that there is a single annual bidding process whereby applicants will submit a standardised proforma to the Council (see Appendix 1), stating the amount of CIL they wish to secure and the project that they are proposing to deliver. The CIL project officer will then undertake an initial review of the bids against an agreed list of criteria. If the proposal does not fulfil the basic criteria it does not progress.

1.19 The suggested basic criteria are:

- Does the project align with an infrastructure type or project included in the adopted Regulation 123 list?
- Is the infrastructure identified in the current IDP?

1.20 In making the initial assessment against the above criteria, the CIL project officer may involve a technical expert to undertake further analysis of the deliverability and accuracy of costings, to ensure that the bids are robust

and viable. All bids that meet the basic criteria will then be brought to the CIL steering group, along with any technical analysis. Once all the bids have been reviewed by the steering group, the recommended ones will then be referred to the final decision making body: SPST, for approval. It is proposed that SPST also receive details of all the bids submitted. A clear set of terms of reference for the steering group will be drawn up and be made publically available.

1.21 Membership of the CIL steering group is proposed as follows :

- Director of Regeneration and Place (Chair)
- Officer leading on CIL
- Strategic Planning Manager
- Head of Planning
- Head of Finance
- Head of Legal
- CIL project officer (as administrator)

1.22 No Councillor involvement is proposed in the steering group due to its operational nature, members will be involved as the final decision makers. It is proposed that the chair of this group is the Director of Regeneration and Place. The Director, in this capacity will have the overall lead responsibility for the teams in which CIL, S106, the local plan and the IDP sit. An understanding of the intrinsic relationship of developer contributions, the Councils desired infrastructure objectives and local plan requirements is crucial to the successful allocation of contributions and achieving the best outcome. The steering group will ensure that projects are assessed based on their individual merits. The Chair will be able to weigh up the evidence before them to chair the meetings most effectively. The advantages of this steering group are:

- It provides a robust framework to assess bids against a set criteria;
- There will be no 'conflict of interest' or 'lobbying' as bids will be assessed by officers against the agreed criteria; and
- It utilises the expertise from within and across the Council.

1.23 A potential issue with this approach is the impact on officer time as no one can anticipate the number of schemes that will be submitted and or require assessment.

1.24 Once the CIL steering group has assessed the bids, a report will be brought to SPST, who it is intended will be the final decision making body. The report will show the recommendation(s) for funding by the steering group to seek formal agreement by this Committee. The decision making body will be responsible for allocating the CIL to fund schemes. Details of all the bids submitted will be summarised for the committee, as well as an explanation regarding the successful bid(s) and the reasoning behind their recommendation(s).

1.25 The CIL steering group in assessing the applications for funding, will have the option, as stated above, to recommend how all of the CIL received in that year is allocated but it could also make the recommendation that no CIL or only part of the CIL receipts be spent in that year. The report to SPST will explain to members how much CIL has been received in the year

and if there were any unallocated funds from previous years. There may be unallocated funds as the amount previously received may not have been significant to spend meaningfully or that there weren't deemed any schemes at the time, which they felt needed to be delivered in the short term or that there were no bids received in that year. It may also be the case that the Council has chosen a specific scheme as a priority and until enough CIL had been received, it has chosen not to allocate funds. The reasons supporting a recommendation to spend or to save funds for future years spend will all be presented to members in the report.

1.26 The advantages of SPST being the final decision maker are:

- SPST has responsibility for the Local Plan, the Infrastructure Delivery Plan and delivering the CIL Charging Schedule. It receives updates on all related government guidance and legislation. Reports and decisions on CIL expenditure would therefore have a natural synergy with the other responsibilities.
- SPST members would already have received relevant training as part of the annual package and would be aware of the complexities of CIL.
- The option of the steering group being the final decision maker was looked at but having looked at a number of Councils who have both a Committee system and a CIL in place, there were no authority's that had a steering group making the final decision. Common practice found was for a Committee to make this final decision.

1.27 In order to make SPST the final decision maker, this decision as per the constitution would need to be referred to Full Council. This report to Full Council will encompass all the previous decisions regarding the CIL governance processes, which were brought in previous reports, so that full delegation to SPST can be made at the same time.

1.28 The CIL regulations state that the Council must publish an annual report on the income received and its expenditure. This must be published no later than the 31st December each year. It is therefore suggested that the schemes proposed to receive strategic CIL funds be brought to SPST Committee each year prior to this date, in order that they can be approved and then published alongside the annual report. This will provide transparency of what the CIL will be spent on and will inform all interested parties of the decision on how CIL will be spent and how much. It also provides synergy with the approach for the non strategic spend.

2 AVAILABLE OPTIONS

2.1 With the CIL now in operation in Maidstone, since 1st October 2018 and the administrative arrangements in place, it is important that the approach to governance is discussed and approved.

2.2 This report builds on the CIL report to SPST on 7th November 2017 which outlined the governance issues that would need to be agreed in order to make decisions about both the strategic and the non strategic portions of CIL. Subsequent reports to this committee in March and September 2018 have looked at the non strategic CIL process.

2.3 As referenced throughout this report, there are no prescriptive guidelines on governance in the regulations for the strategic portion of CIL and each authority has the ability to develop its own arrangements based on their own circumstances. This report has proposed a governance process for this committee to consider with other options also listed below:

Option 1:

2.4 Do nothing and have no governance arrangements to support the implementation of CIL. This is not recommended as the Council, the public and the boroughs stakeholders, need to be clear on how funds will be allocated. The Council needs to be transparent in how it deals with CIL and with no arrangements in place the Council could be seen as making decisions behind closed doors or at worst the money lying idle and not spent. Therefore this option is not recommended.

Option 2:

2.5 That the Committee requests officers provide an alternative to that proposed in this report. However, this could result in a delay in the governance arrangements being agreed and could lengthen the lead in time for infrastructure providers to be briefed as to how they can potentially access CIL funds.

Option 3:

2.6 That this Committee considers the issues identified in this report and agrees the proposed process for making decisions about the strategic CIL: That a CIL steering group be established for assessing bids which will make recommendations to SPST for approval. This option requires that SPST requests from Full Council: appropriate delegated powers to SPST to implement and deliver the CIL governance arrangements. MBC's constitution sets out that SPST is responsible for overseeing the development, review and the implementation of the Council's CIL Charging Schedule (subject to the approval of Full Council) as well as the Infrastructure Delivery Plan.

Option 4:

2.7 That the CIL steering group is given full responsibility for appraising bids and for making all decisions regarding the spending and allocation of CIL receipts and selecting which proposal(s) would be in the best interests of the Council. A report would then be brought to SPST for information only. This option would require SPST to request from Full Council, that delegation be given to the Chair of the newly established CIL steering group to spend the CIL budget available. This option would mean that the whole decision process would be the responsibility of one non political group and members would not be able to challenge these decisions. The constitution would need to be amended accordingly and a clear set of terms of reference laid out as the Chair would make the final decision.

- 3.1 For the reasons set out in part 2 of this report, **Option 3** is recommended as it will enable a process to be adopted which will be transparent to all interested parties. It will involve both officers on a professional basis to make recommendations and SPST as the decision maker. SPST committee is seen as the most appropriate Committee as it has responsibility for delivering the Local Plan, the IDP and CIL.
-

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.

If the Council chooses options 1 or 2, there could be uncertainty in the short term with infrastructure providers and members being unclear as to the governance arrangements for CIL in the borough. Decisions regarding the allocation of CIL may need to be made and with no process in place, this will not be possible. CIL could be left unspent and its ability to lever in additional matched funding lost. Option 4 would mean only one group would assess all the applications and approve them. There would be no member involvement. The meetings would need to be webcast and the minutes made publically available. Delegation would be required from Full Council and would only be to the Chair as it can not be given to a group.

5 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

If Option 3 is selected, this will be reported to Full Council requesting that powers be delegated to SPST to implement all aspects of the delivery of the CIL charging schedule including all governance arrangements.

6 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<ul style="list-style-type: none">Accepting the recommendations will materially improve the Council's ability to achieve corporate priorities. We have set out the reasons other	Rob Jarman Head of Planning and Development

	choices will be less effective in section 2.	
Risk Management	Already covered in the risk section	Rob Jarman Head of Planning and Development
Financial	<ul style="list-style-type: none"> This report proposes governance arrangements for CIL. Given the potential amounts to be collected via CIL, it is important that robust financial decisionmaking processes are put in place. Administrative costs associated with CIL can be recouped through a top-slice of CIL income. 	Paul Holland, Senior Finance Manager
Staffing	<ul style="list-style-type: none"> We will deliver the recommendations with our current staffing. 	Rob Jarman Head of Planning and Development
Legal	<ul style="list-style-type: none"> Accepting the recommendations will fulfil the Council's duties under The Planning Act 2008. Failure to accept the recommendations without agreeing suitable alternatives may place the Council in breach of the Planning Act 2008 	Susan Mauger Senior Planning Lawyer (Locum)
Privacy and Data Protection	<ul style="list-style-type: none"> Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in 	Susan Mauger Senior Planning Lawyer (Locum)

	line with the Councils privacy policy on GDPR.	
Equalities	<ul style="list-style-type: none"> • Equalities will be a key consideration of communication and engagement plans. Particularly in relation to engaging the wider community as part of key issue G6. 	Equalities and Corporate Policy Officer
Public Health	<ul style="list-style-type: none"> • Health inequalities will be a key consideration particularly in relation to key issue G5 and G6 when working with Parish Councils and communities in non-parished areas 	Senior Public Health Officer
Crime and Disorder	<ul style="list-style-type: none"> • N/A 	Rob Jarman
Procurement	<ul style="list-style-type: none"> • On accepting the recommendations, the Council will then follow appropriate procurement exercises. We will complete those exercises in line with financial procedure rules. 	Rob Jarman

7 REPORT APPENDICES

- Appendix 1: CIL Bid submission proforma
-