

Subject:	CIL Governance & S106 Member Protocol		
Date of Meeting:	17th June 2021		
Report of:	Executive Director Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE.

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 The report seeks approval to the governance arrangements that will be put in place to decide and agree expenditure of Community Infrastructure Levy funds received by the council going forward.
- 1.2 The report also seeks approval for a draft CIL Advisory Protocol which provides guidance on how members can be involved in the identification and planning of S106 expenditure. It also proposes a pilot scheme to ring fence some existing s106 funding to be prioritised for spending in wards on priorities identified by ward councillors with their communities.

2. RECOMMENDATIONS:

- 2.1 That the Committee approves the governance arrangements for planning, administering and monitoring expenditure of CIL receipts collected for the Citywide and Neighbourhood portions outlined in appendices B & C of this report.
- 2.2 That the committee approves the draft CIL Advisory Protocol in appendix C for use, publication and future updating as necessary, subject to any minor alterations (grammatical, spelling or for clarity) to be agreed by the Head of Planning in consultation with the Chair of TECC Committee.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 On 12 September 2019, this committee agreed that further work on the governance options for spending CIL receipts would be brought to a future meeting of this committee. This was to allow a suitable sum of CIL receipts to accumulate and to allow for consultation across the council on spending priorities.
- 3.2 The Community Infrastructure Levy (CIL) started on 5th October 2020. The liability to pay arises as planning permission is granted; at that stage the council issues a "liability notice". Payment is due when development commences, at which point a "demand notice" is issued. In the first 5 months, 20 liability notices

for a total amount of £429,949.99 and 2 demand notices for a total amount of £2,962.50 have been issued.

- 3.3 Projections suggest that CIL could raise an annual average of around £2 -£2.5 million (how much is raised in a particular year depends on the level and type of development). As CIL is not paid until development starts it will take some time for significant resources to be accrued – particularly in light of the current economic uncertainty caused by Covid, Brexit, availability of materials; and potential recession affecting how quickly developments will be commencing after planning permission is granted.
- 3.4 The proposed governance of CIL (its collection, spend, monitoring and reporting) has been of increasing interest to members, developers, neighbourhood forums, community groups and other stakeholders. As there will not be significant receipts in the first twelve months, it is proposed the governance arrangements are flexible to start with; to allow time for them to bed them in. Appendix A illustrates how receipts are allocated between the various portions.
- 3.5 This report sets out the proposed initial governance arrangements for CIL and the involvement of local members in oversight of the remaining resources secured through existing section 106 agreements. In particular:
- Proposed governance structures at Member and officer levels.
 - Governance of the Citywide CIL spend (Appendix B)
 - Governance of the Neighbourhood Portion of CIL (Appendix C).
 - Improvements to governance of resources secured through new and historic section 106 agreements (Appendix D)

This report draws on experience of other CIL charging authorities and CIPFA guidance on the principles of CIL and financial governance. The governance proposals are intended to ensure transparency and effective identification and management of risk.

- 3.6 The key aspects of the proposals include:
- Decisions on Citywide CIL being taken by P&R Committee annually
 - Approval of annual ward councillor funding bids for Neighbourhood CIL by TECC Committee
 - A review mechanism for large (over £150,000) pending Neighbourhood CIL receipts by TECC committee to consider wider community impact of developments beyond the ward the development is based in
 - Greater clarity on how members can engage with the S106 process, especially prior to planning approval
 - Creation of an Officer group to support the bid, evaluation and approvals process
 - Exploring how some existing S106 funding can be targeted to local priorities in wards where development has been undertaken
- 3.7 The draft government white paper on reform to the planning system includes initial proposals to replace the existing CIL & S106 regime with a new, tariff-based system. The details of this new system and timescale for implementation are still unclear. The council will therefore continue to receive funds via both

mechanisms and needs to make decisions on how to allocate CIL funding received in the interim.

- 3.8 In order to make informed decisions on the priority and level of financial support provided to infrastructure projects, the council also needs to review and refresh its Infrastructure Delivery Plan (IDP) 2017. This sets out the levels of investment, funding sources and priorities of the council over several financial years. A report updating this document will also be brought to the September meeting of this committee.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Alternative options to allocate the Citywide CIL portion are considered in Appendix B and for Neighbourhood CIL in Appendix C of this report.
- 4.2 The Council could delay deciding how to spend CIL receipts (apart from those that are passed directly to Rottingdean Parish Council.) However, there is growing interest in how monies will be allocated, especially from some community groups and elected members. This is likely to increase as the sums being received build up over the next year as liable developments commence construction.
- 4.3 The Council could decide not to implement a CIL Advisory Protocol. However members and the 2016 PAS Planning Review have previously identified that more guidance and training on planning obligations and how they can support the delivery of the council's objectives would be beneficial.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The proposals were presented to the TECC & Planning Committee Joint Member Working Group in early May. Their comments and a summary of how they have informed the final proposals is included as Appendix E.
- 5.2 The draft proposals were also presented to the Strategic Delivery Board for comment in March 2021.
- 5.3 Regular feedback will also be sought from neighbourhood groups on the processes for the Neighbourhood CIL portion and reported to future meetings of this committee.
- 5.4 All of the implementation phase of CIL was undertaken in accordance with the adopted BHCC Statement of Community Involvement 2015. Consultation on the charging schedule and its main modifications was undertaken prior to adoption in accordance with the CIL regulations.

6. CONCLUSION

- 6.1 This report sets out the initial arrangements that the Council will put in place to plan and administer the revenues collected through the CIL levy, following its introduction in the city in October 2020.

- 6.2 It also introduces a clear protocol for members to be more closely engaged with S106 planning and implementation.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 Once a scheme is approved and implemented there will be ongoing costs in terms of checking the amount of CIL payable on applications, advising developers of their liability, collecting, monitoring, reporting and enforcing the CIL scheme. CIL regulations allow charging authorities to use up to 5% of CIL receipts to fund expenses in connection with the ongoing costs of operation of the CIL scheme. It is anticipated that this income will be sufficient to fund these ongoing costs, estimated at approximately £0.100m per annum, after 3 years of operation. This will be monitored and reported as part of TBM (Targeting Budget Monitoring) process.

As detailed in the report and appendices proposed allocations of the sums received will be presented to Committee for approval.

Finance Officer Consulted: Jeff Coates

Date: 28/05/21

Legal Implications:

- 7.2 The relevant legislation, namely the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended) provides that a charging authority must spend its CIL receipts on funding infrastructure to support the development of its area. A charging authority may also apply CIL to funding infrastructure outside its area where to do so would support the development of its area. "Infrastructure" includes roads and other transport facilities, schools, sporting and recreational facilities and open spaces, but does not include the funding of affordable housing.
- 7.3 The legislation also provides that a proportion of the CIL receipts must be passed to a parish council where all or part of a chargeable development is within its area. The proportion will be 25% where there is a neighbourhood plan in place, or otherwise 15%. In areas where there is no parish council the charging authority retains the receipts but, as per the Planning Practice Guidance "should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods..."
- 7.4 So far as the expenditure of s106 contributions is concerned, this will be governed by the terms of the s106 obligation through which the contribution was secured.

Lawyer Consulted:

Hilary Woodward

Date: 26/5/21

Equalities Implications:

- 7.1 An Equalities Impact and Outcome Assessment (EIA) was prepared alongside the CIL Draft Charging Schedule and is available on the councils' website. The EIA was updated at the submission stage of the process. Income raised from CIL will go towards funding infrastructure necessary to support new development and communities

Sustainability Implications:

- 7.2 CIL and S106 receipts will help to fund infrastructure necessary to support new development and sustainable communities and should therefore have a positive impact in terms of sustainability outcomes. A Strategic Environmental Impact (SEA) for CIL concluded that a SEA was not required.
- 7.3 The bids that will be approved through this funding will need to have demonstrated their compliance with all relevant council policies relating to sustainability

Corporate / Citywide Implications:

- 7.8 The use of CIL and S106 receipts will be aligned to support additional infrastructure projects that are either in the refreshed Infrastructure Delivery Plan or meet the criteria agreed for small, local neighbourhood investment in wards where new developments have taken place.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – Portions of CIL Receipts
2. Appendix B – Citywide CIL Governance Proposals
3. Appendix C – Neighbourhood Portion CIL Governance Proposals
4. Appendix D – CIL Advisory Protocol
5. Appendix E – TECC & Planning Committee Member Working Group Consultation Feedback

Background Documents

1. CIL Charging Schedule
2. Infrastructure Delivery Plan 2016
3. S106 Technical Guidance,

