

# COMMUNITY INFRASTRUCTURE LEVY (CIL) GOVERNANCE FRAMEWORK

PRESENTATION TO OVERVIEW & SCRUTINY COMMITTEE

19<sup>th</sup> MAY 2020

# Introduction

- Since the adoption of CIL in 2016, it has taken some time for CIL-liable developments to go through the planning process, be granted permission and for development to start on site – the point at which CIL is liable to be paid.
- However, as CIL funds have now begun to accumulate the Council needs to put in place a process for identifying priorities and allotting funds to particular infrastructure projects so as to ensure the collection and allocation of CIL monies (i.e. the deployment of CIL income) follows clear and appropriate processes.

# Allocation of CIL income

- The Regulations state that the CIL is to be allocated as follows:
  - Administrative CIL: 5% of CIL receipts may be retained by FHDC
  - Neighbourhood CIL: 15%-25% of CIL receipts must be paid to Town and Parish Councils, the proportion depends on whether a Neighbourhood Plan is in place \*
  - Strategic CIL: the remaining 70-80% of CIL to be allocated to infrastructure projects by FHDC

\* St Mary in the Marsh is the only area within the district that has an adopted, or 'made', Neighbourhood Plan.

# The 2019 CIL Regulations

- Regulations laid before parliament in June 2019 proposed a series of changes to the way in which local authorities charge, collect and report on developer contributions raised through S106 and the Community Infrastructure Levy (CIL). The Regulations apply in England only and came into effect on the 1st September 2019.
- The regulations introduce a requirement for councils to publish Infrastructure Funding Statements (IFS). These statements will replace existing Regulation 123 lists and should include details of how much money has been raised through developer contributions and how it has been/is to be spent. Statements must be published on local authority websites at least once a year. Councils will be required to publish their first statements by 31 December 2020.
- The requirement to prepare and annually publish an IFS presents a real opportunity to work proactively with infrastructure providers and communities to set out in a clear and transparent manner the infrastructure that they have, and may be funding through CIL and section 106 planning obligations.

# Governance for CIL spend

## *Proposed allocation of CIL receipts to Kent County Council*

- The District Council acknowledges the crucial role played by the County Council in the delivery of key strategic infrastructure. Collaborative working between County Councils and charging authorities is especially important in relation to the preparation of Infrastructure Funding Statements, bearing in mind the potential impact on the use of highway agreements by the County Council and the timely delivery of schools.
- Under the proposed governance arrangements the District Council is pledging to assign 35% of CIL receipts from the strategic pot to Kent County Council in order to enable KCC to spend this proportion of the receipts in accordance with their own priorities for infrastructure delivery within Folkestone & Hythe district.
- A requirement of the proposed governance arrangements is that the County Council's priority infrastructure schemes shall be recorded within the Infrastructure Funding Statement (IFS); the associated spend of CIL receipts by the County Council must be in accordance with the prioritisation of CIL funds and be spent within Folkestone and Hythe district.

# Governance for CIL spend

## *Scheme prioritisation through reference to the Infrastructure Funding Statement*

- The scheme prioritisation process for the allocation of CIL spend by the District Council is to cross-reference the IFS once this document has been prepared and has been endorsed by the District Council. Interim arrangements for the allocation of spend is explained on the next slide.
- Decisions to be taken by the District Council on spend of CIL receipts from the strategic pot would be taken in accordance with the IFS priorities and through the involvement/discussions between the Planning Policy team which leads on preparation of the IFS and one of the following Directors, depending on the directorate area where a particular project falls:
  - Director of Place
  - Director of Housing and Operations
  - Director of Corporate Services
- In terms of reporting, it is proposed that a Cabinet statement is prepared every 6 months to provide an update on CIL receipts received and expenditure

# Governance for CIL spend

## *Interim arrangements for allocation of District Council spend*

- In the intervening period until the IFS has been prepared, the District Council proposes to allow delegated authority to a named Director in consultation with the Cabinet Member for Finance (to ensure Member oversight for any investment decisions made) to approve CIL spending up to a specified financial limit of £50,000 on any single project to be CIL awarded funding.
- Under interim arrangements it is expected that the allocation of CIL funding up until the end of December 2020 is to be in general conformance with the Regulation 123 list, although it is recognised that as the December 2020 deadline for abolition of the Regulation 123 list approaches delegated authority for the spend of CIL monies up to the capped amount of £50,000 will increasingly be made in accordance with those projects referenced within the emerging IFS.
- Should there be a request for spend of CIL monies above the £50,000 capped limit then the decision on spend will be taken by Cabinet.

# Governance for CIL spend

## *Monitoring and reporting*

- There is a requirement for FHDC, as the Charging Authority, to prepare an annual report detailing CIL receipts, balances and spend for each financial year. The progress on spends will be monitored and reported to the S106/CIL working group.
- All parish and town councils that are in receipt of CIL monies shall have to produce a similar annual report relating to their Neighbourhood Allocation.

## ***How are S106 projects identified, prioritised and reported?***

- Development often places extra demand and pressure on the environment and infrastructure of the local area. For example, new homes can mean more demand for school places and doctor's surgeries. New supermarkets can put pressure on the road system and public transport.
- Local authorities can require s106 contributions from developers to secure scheme benefits needed to support the new development and to mitigate the impact of the development. It is set out in national planning regulations that in order to set a S106 obligation, it must meet the following three legal tests:
  1. necessary to make the development acceptable in planning terms;
  2. directly related to the development; and
  3. fairly and reasonably related in scale and kind to the development.
- Section 106 obligations and CIL receipts are recorded and monitored on an annual basis to ensure that the Council is receiving all of the monies due under the legal agreements and that an update report should be provided to the then Development Control Committee at least on an annual basis.

# What are the criteria for distribution of S106 monies? (St Mary in the Marsh PC)

- S106 money is allocated to a range of projects or ring-fenced to specific programmes which will deliver improvements in accordance with the specific terms negotiated through legal agreements. The legal agreement identifies, as tightly as possible, exactly what the money secured is for and/or how it is to be prioritised in the future when it is paid.
- S106 monies are often paid in instalments at key stages during the construction of a development. The stages at which payments are due are known as 'Trigger Points'. For example S106 contributions could be payable by instalments towards (say) the expansion of an existing primary school, with (for example) 50% paid upon commencement of development and the remaining 50% paid upon completion of a development.
- When S106 money is available, i.e. is held on account by the District Council following receipt of payment from a developer, and that money is required for a project, the party seeking a transfer payment (e.g. KCC in the case of a school expansion) is required to contact the Development Control Manager and clearly set out details of the project, its S106 justification, responsibilities for governance on spend and associated programming for delivery for S106 monies to be released. This is to ensure monies are spent in accordance with the specific legal agreements in a controlled project management environment.

# Questions?