

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Cabinet Member for Planning	Report Number: MCa/17/51
To: Mid Suffolk Cabinet	Date of meetings: 5 March 2018

COMMUNITY INFRASTRUCTURE LEVY (CIL) - CIL EXPENDITURE FRAMEWORK

1. Purpose of Report

- 1.1 Reports were presented to Cabinet for both Councils on 5th February (MSDC) and 8th February (BDC) to describe the current thinking around a joint CIL Expenditure Framework (see Background Documents below).
- 1.2 At both Cabinet meetings it was agreed that a joint Member Panel of six Members (three from each Council) be formed to shape and influence the detailed CIL Expenditure Framework. This Member Panel comprising Gerard Brewster, David Whybrow, Andrew Stringer, Lee Parker Frank Lawrenson and Clive Arthey met on three occasions during the week beginning 12th February. Agreement was reached about the detail of the framework together with a timeline for its implementation. The proposed scheme comprises Appendix A to this report with Appendix E.
- 1.3 A Communication Strategy for the framework has also been devised by the Joint Member Panel. This forms Appendix B to this report. All appendices are provided for consideration and agreement by Cabinet (except for appendices C and D which are already approved in January 2016) before being presented to both Full Councils for adoption.
- 1.4 Options - there is a diverse spectrum of approaches to CIL expenditure across the country from Unitary Authorities who have absorbed CIL into their individual Capital Programmes to others who ringfence all funds to be spent locally. A range of different approaches was identified in Appendix A of the Framework for CIL Expenditure report provided to Cabinet's on 5th and 8th of February 2018 and discussed in full during the workshops with the member advisory panel.
- 1.5 This report therefore seeks to obtain Cabinet approval of the detailed CIL Expenditure Framework (Appendix A) and the CIL Expenditure Framework Communications Strategy (Appendix B) and the timeline for implementation and Review Appendix E).

2. Recommendations

- 2.1 That Cabinet approve the detailed CIL Expenditure Framework (including details of implementation and review) forming Appendices A and E to this report and the joint CIL Expenditure Framework Communications Strategy (Appendix B) and refer the proposals to Full Council for final adoption. (Appendices C and D comprise the CIL "Regulation 123 lists" and were approved in January 2016 and accompany the other documents for reference purposes only)

- 2.2 That the Joint Member Panel (alongside Overview and Scrutiny) inform the Review of the CIL Expenditure Framework within the timescales contained in the Appendix E to this report.

Reason for decision: Community Infrastructure Levy (CIL) monies have been collected since the implementation of CIL in April 2016. There is no prescribed way for Councils to decide upon the spend of money collected through CIL so the Councils have to agree their own approach.

3. Financial Implications

- 3.1 The development of a detailed framework for CIL expenditure for consideration and adoption by both Councils is required as there is no set approach for CIL expenditure prescribed either by Central Government or through the CIL Regulations 2010 (as amended).
- 3.2 As such all Councils across the country where a CIL charging regime has been adopted and is being implemented have brought in their own schemes for how CIL monies are spent.
- 3.3 The CIL Regulations stipulate that CIL monies which are collected must be spent on Infrastructure. Each Council is required to publish a list of infrastructure that they will put the CIL towards. These lists, known as the "Regulation 123 lists", were adopted and published in January 2016. These documents (which are different for both Councils) constitute Appendix C and D to this report.
- 3.4 As such the development and adoption of a CIL expenditure framework is critical to the funding of infrastructure to support inclusive growth and sustainable development.

4. Legal Implications

- 4.1 Any detailed framework for CIL expenditure must be legally sound and robust and thereby not at risk of challenge. A legal representative from the Councils Shared Legal Service has attended each of the Joint Member workshop sessions and agreed the background documents to this report. This report has also been endorsed as being sound and legally compliant by the Councils Shared Legal Service prior to its consideration by both Cabinets and future adoption by both Councils.
- 4.2 CIL is collected and allocated in accordance with the CIL Regulations 2010 (as amended). Each Council retains up to 5% of the total CIL income for administration of CIL. From the remainder, 15% is allocated to Parish or Town Councils but where there is a Neighbourhood Plan in place this figure rises to 25%. For those parishes where there is no Parish or Town Council in place the Council retains the monies and spends the CIL Neighbourhood funds through consultation with the Parish.
- 4.3 Since the implementation of CIL for both Councils on 11th April 2016 there have been three payments to Parish Councils, in October 2016, April 2017, and October 2017 (<http://www.babergh.gov.uk/planning/community-infrastructure-levy-and-section-106/community-infrastructure-levy-cil/cil-reporting/>)

- 4.4 Regulation 62 of the CIL Regulations 2010 (as amended) requires CIL charging authorities to publish monitoring statistics for collection allocations and expenditure of CIL monies by 31st of December for each year. The 2017 Monitoring Report for both Councils is published on our websites (see below).

<http://www.babergh.gov.uk/assets/CIL-and-S106-Documents/Babergh-District-Council-CIL-Monitoring-Report-2016-17.pdf>

<http://www.babergh.gov.uk/assets/CIL-and-S106-Documents/Mid-Suffolk-District-Council-CIL-Monitoring-Report-2016-17.pdf>

5. Risk Management

- 5.1 This report most closely links with Strategic Risk no. 1d – Housing Delivery: If we do not secure investment in infrastructure (schools, health, broadband, transport etc.), then development is stifled and/or unsustainable.

- 5.2 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
<p>Failure to allocate expenditure such that if we do not secure investment in infrastructure (schools, health, broadband, transport etc.), then development is stifled and/or unsustainable.</p> <p>CURRENT RISK SCORE: 6</p>	Unlikely (2)	Bad (3)	<p>Adopted Community Infrastructure Levy (CIL), secure investment on infrastructure via the planning process (which includes S106). Creating the Infrastructure Delivery Plan as part of the Strategic Plan, Joint Local Plan with associated Infrastructure Strategy will ensure that infrastructure across both Councils is addressed, New Anglia LEP Economic Strategy, draft created.</p>
<p>Failure to produce a yearly Regulation 62 report would result in non-compliance with the CIL Regulations 2010 (as amended) and may mean that Members and the public are not aware of CIL income and expenditure activities.</p>	Highly Unlikely (1)	Noticeable /Minor (2)	<p>The Infrastructure Team produces the report which is checked and verified by Financial services/open to review by External Audit. Reminders are set to ensure the report is published by the statutory date. The format of the Regulation 62 Monitoring report is laid out in the CIL Regulations, so there is no risk in relation to the way the information is presented</p>

Failure to monitor expenditure such that CIL expenditure is not effective.	Unlikely (2)	Bad (3)	The software which supports CIL collection will be used to support CIL expenditure. In addition, it is envisaged that a yearly CIL Business plan (with a 6 month update) will be produced which will include details of all allocated and proposed CIL expenditure and this together with the software will be used for effective monitoring.
If too high a value is allocated into the Strategic 123 CIL Fund, there is a risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.	Unlikely (2)	Bad/ Serious (3)	The Infrastructure Team will continue to monitor all allocations of Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure the level set remains appropriate.
If 25% Neighbourhood CIL is automatically allocated to any parish/town councils where there is no Neighbourhood Plan in place, there is a risk that there would be insufficient 123 CIL Funding to allocate to the Strategic 123 CIL Fund and also the risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.	Unlikely (2)	Bad/ Serious (3)	The Infrastructure Team will continue to monitor all allocations of Neighbourhood CIL and Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.

6. Consultations

- 6.1 There is no requirement upon the Council to formally consult on a detailed scheme of CIL expenditure. However, some briefings and soundings have occurred throughout the design process with key Infrastructure providers (Suffolk County Council, Officers from BMSDC and Health representatives).
- 6.2 Discussions with some Parish Councils have also occurred during the design process where questions have arisen. In addition, Parish Council briefings have also taken place (19th and 22nd February).
- 6.3 Regular Parish events will continue to be held to familiarise all with the detailed expenditure framework and how we can continue to work together to provide infrastructure for the benefit of our communities.

Assurances (for collection of CIL monies)

- 6.4 In September 2016 Internal Audit issued a report in relation to CIL governance processes. The Audit Opinion was High Standard and no recommendations for improvement to systems and processes were made. Table 5 provides a definition of this opinion:

Table 5

	Operation of controls	Recommended action
High standard	Systems described offer all necessary controls. Audit tests showed controls examined operating very effectively and where appropriate, in line with best practice.	Further improvement may not be cost effective.
Effective	Systems described offer most necessary controls. Audit tests showed controls examined operating effectively, with some improvements required.	Implementation of recommendations will further improve systems in line with best practice.
Ineffective	Systems described do not offer necessary controls. Audit tests showed key controls examined were operating ineffectively, with a number of improvements required.	Remedial action is required immediately to implement the recommendations made.
Poor	Systems described are largely uncontrolled, with complete absence of important controls. Most controls examined operate ineffectively with a large number of non-compliances and key improvements required.	A total review is urgently required .

- 6.5 On 18th December 2017 Joint Overview and Scrutiny received a fact sheet on collection and current thinking on CIL expenditure and questions were answered in relation to it. Members of that Committee were advised of the route map towards getting a framework for CIL expenditure formally considered. Members were advised that this would be a key decision for both Councils and would need to go to Cabinet and then full Council.
- 6.6 It is likely that a further internal audit of CIL collection will occur in quarter three of 2018, commencing September onwards (Audit Workplan 2018)

Assurances (for expenditure of CIL monies)

- 6.7 It is expected that internal audit will audit CIL expenditure processes and expenditure once any scheme is developed and look at it further once implemented.

7. Equality Analysis

- 7.1 There are no equality and diversity implications arising directly from the content of this report.

8. Shared Service / Partnership Implications

- 8.1 The CIL Expenditure Framework is a joint framework albeit the monies for each Council are collected and allocated according to where the development is being carried out. Expenditure of Council CIL monies would also be spent in accordance with that Councils Regulation 123 list (which are slightly different for both Councils - see Appendices C and D).

9. Links to Joint Strategic Plan

- 9.1 The effective spending of CIL monies will contribute to all the three main priority areas that Councillors identified in the Joint Strategic Plan: Economy and Environment, Housing and Strong and Healthy Communities.

10. Key Information

- 10.1 Current thinking around a joint CIL expenditure framework was shared with Members through a Member Briefing on the 31st January 2018 which was based upon a report to both Cabinets on 5th and 8th February 2018.

- 10.2 Both Cabinets agreed on 5th and 8th of February to appoint a Joint Member Panel (consisting of 6 Members – three from each Council) to shape and influence the detailed CIL Expenditure Framework. Members discussed and agreed matters relating to the following: -

- Key Principles of the CIL Expenditure Framework
- Processes for a CIL Expenditure Framework
- Assessment and Prioritisation Criteria for expenditure
- Governance of the CIL Expenditure Framework
- A CIL Expenditure Framework Communication Strategy
- Timetable for Implementation of the CIL Expenditure Framework and its Review.

Conclusions of key information

- 10.3 The outcomes from these joint Member Panel discussions have been added to the other agreed information from the Cabinet reports on the 5th and 8th February (where relevant) to comprise the CIL Expenditure Framework (Appendix A).
- 10.4 The Timetable for the implementation of the CIL Expenditure Framework and Review constitutes Appendix E to this report and includes other key related information around the CIL expenditure cycle.
- 10.5 The Joint Member Panel have suggested that the Review of the CIL Expenditure Framework starts after the first Bid round has been completed in September 2018 and occurs at the same time as the second Bid round is happening such that the Review is completed by April 2019. (Appendix E refers)
- 10.6 In addition, the Joint Member Panel have indicated that the CIL Expenditure Framework should be the subject of scrutiny by Overview and Scrutiny after the first Bid round. Dates have been included for this in the forward workplan for Overview and Scrutiny on 18th and 22nd October 2018. (Appendix E) The Joint Member Panel have also indicated they wish to inform the Review going forward before its formal consideration.

This matter forms the second recommendation to this report above. Governance arrangements agreed by the joint Member Panel are included in Appendix A and the delegation for making Delegated decisions for the Community Infrastructure Levy falls to Assistant Director Growth under the Constitution for both Councils - Part 2 – Schedule of Specific Delegation to Officers.

- 10.7 A CIL Expenditure Framework Communications Strategy has been devised by Members for consideration (Appendix B).

11. Appendices

Title	Location
A The CIL Expenditure Framework	Attached
B CIL Expenditure Framework Communications Strategy	Attached
C Regulation 123 List for Babergh District Council	Attached
D Regulation 123 List for Mid Suffolk District Council	Attached
E Timetable for the implementation of the CIL Expenditure Framework and Review	Attached

12. Background Documents

- 12.1 The Cabinet report and Appendices (MSDC) dated 5th February 2018 is a background document to this report

<http://baberghmidsuffolk.moderngov.co.uk/documents/s8726/MCa1743.pdf>

- 12.2 The Cabinet report and Appendices (BDC) dated 8th February 2018 is a background document to this report

<http://baberghmidsuffolk.moderngov.co.uk/documents/s8778/BCa1748.pdf>

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