

**CIL Regulation 123 List review; 2019 IDP; and annual CIL
monitoring report**

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Helen Smith, Principal Planning Officer Tay Arnold, Planning Projects and Delivery Manager
Classification	Public
Wards affected	All

Executive Summary

At the examination of the Community Infrastructure Levy Charging Schedule, Maidstone Borough Council (MBC) committed to an annual review of both the Infrastructure Delivery Plan (IDP) and the Regulation 123 list. This report summarises the outcomes of the recent Regulation 123 List consultation, which was on the proposed amendments that were brought to this committee in July. It also includes the updated Infrastructure Delivery Plan, which was also brought to this committee in draft form in July. In total, 27 infrastructure schemes have been completed since publication of the 2016 IDP (see Appendix 3). The 129 short and medium term schemes contained in the 2019 IDP have been rated either red, amber or green, based on their considered risk of delivery. In total only 10% of schemes are categorised as 'red' or high risk; with 50% at 'amber' or moderate risk; and 40% at 'green' or low risk of delivery.

In addition, this report also includes the CIL annual monitoring report for the financial year 2018/19.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

That:

1. The outcome of the Regulation 123 List review consultation be noted.
2. The updated Regulation 123 List (Appendix 2) be agreed for publication.
3. The final 2019 Infrastructure Delivery Plan (Appendix 4) be approved for

publication.

4. The Community Infrastructure Levy monitoring report (Appendix 5) be approved for publication.

Timetable	
<i>Meeting</i>	<i>Date</i>
Strategic Planning and Infrastructure Committee	5 November 2019

CIL Regulation 123 List review; 2019 IDP; and annual CIL monitoring report

1. 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 its corporate priorities, in particular, "embracing growth and enabling infrastructure". The reasons other choices will be less effective is set out in section 2 of the report.	Rob Jarman, Head of Planning and Development
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation is Reduced and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation(s) supports the achievement(s) of the all the cross-cutting objectives by enabling the Council to have an up to date plan for infrastructure required to support the adopted Maidstone Borough Local Plan.</p>	Rob Jarman, Head of Planning and Development
Risk Management	Already covered in the risk section	Rob Jarman, Head of Planning and Development
Financial	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Senior Finance Manager (Client)
Staffing	We will deliver the recommendations with our current staffing.	Rob Jarman, Head of Planning and Development
Legal	Accepting the recommendations will fulfil the Council's duties under the Community Infrastructure Levy Regulations 2010 as amended. Failure to accept the	Senior Lawyer - Planning

	<p>recommendations without agreeing suitable alternatives may place the Council in breach of Community Infrastructure Levy Regulations 2010.</p> <p>Acting on the recommendations is within the Council's powers.</p>	
Privacy and Data Protection	Accepting the recommendations will not increase volume of personal data held by the Council.	Anna Collier Policy & Information Manager
Equalities	The recommendations do not propose a change in service therefore will not require an equalities impact assessment. Separate Equalities Impact Assessments are completed as part of individual schemes, as appropriate.	Anna Collier Policy & Information Manager
Public Health	The recommendations may have a positive impact on population health or that of individuals, through the identification of healthcare infrastructure and schemes which support healthy lifestyles e.g. improvements to footpaths and provision of open space.	Public Health Officer
Crime and Disorder	No implications identified as a result of the recommendations in this report.	Rob Jarman, Head of Planning and Development
Procurement	No implications identified as a result of the recommendations in this report.	Rob Jarman, Head of Planning and Development

2. INTRODUCTION AND BACKGROUND

Background to consultation

- 2.1 The Council adopted its Community Infrastructure Levy (CIL) Charging Schedule in October 2017, with effect from 1 October 2018. The CIL Charging Schedule was approved by Full Council, alongside the Regulation 123 List – a list of the types of infrastructure that may be funded in whole or part by CIL.
- 2.2 Maidstone's current Regulation 123 (R123) List (drawn up to support the examination of the CIL charging schedule) is published on the Council's website and can be found on the following link: https://maidstone.gov.uk/_data/assets/pdf_file/0005/158036/Approved-Regulation-123-List-October-2017.pdf The R123 List does not prioritise infrastructure funding. The final decision on allocation of the CIL strategic funds pot sits with this committee. The full governance procedures were approved in January 2019 by this committee and the related constitutional

changes were approved by Council in February 2019. The Council is empowered to provide any item of physical infrastructure that is not on the list.

Update on legislation and guidance

- 2.3 On 1 September 2019, the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019 came in to force. Alongside and in support of this, the government also published updated Planning Practice Guidance.
- 2.4 The key regulation change pertinent to this report is the deletion of 'Regulation 123' in the 2019 CIL Regulations. By December 2020, the Council must publish an Infrastructure Funding Statement (IFS) identifying infrastructure needs, the total cost of this infrastructure, anticipated funding from developer contributions, and the choices the Council has made about how these contributions will be used. Once published, the IFS will replace the Regulation 123 List.
- 2.5 However, national guidance is clear that up until December 2020 the R123 List dating from before the 1 September 2019 remains useful as important evidence to inform plan making and the preparation of future charging schedules. It is therefore important to continue to have an accurate and up to date R123 List published until the Council produces its first IFS. The List will be reflective of the content of the Infrastructure Delivery Plan, where the expected funding sources for each infrastructure scheme will be detailed.
- 2.6 A further change to the CIL regulations is the relationship between CIL and Section 106 (S106) legal agreements and their practical application in funding infrastructure. Since the introduction of the CIL Regulations in 2010, S106 has been scaled back to matters arising directly from development, affordable housing and open space. Restrictions were applied, limiting the number of S106 agreements that could be pooled to contribute to funding a single piece of infrastructure, to no more than 5. And the purpose of the Regulation 123 List was to make clear exactly how infrastructure was to be funded thereby ensuring that both S106 and CIL were not used to fund the same piece of infrastructure – often referred to as 'double dipping'.
- 2.7 Under the 2019 CIL Regulations, the S106 pooling limit has been lifted, allowing an unlimited number of S106 agreements to contribute to a single piece of infrastructure. It should be noted that this does not apply retrospectively to S106 agreements secured prior to 1 September 2019. In addition, funds from both CIL and S106 can be used to pay for the same piece of infrastructure however, the Council must still set out clearly through the IFS which infrastructure is expected to be funded through CIL and through S106.
- 2.8 A number of other amendments have been made under the new 2019 CIL regulations, including a more streamlined CIL Charging Schedule consultation process and greater autonomy over how to consult; greater

detail on indexation of charges and surcharges; as well as changes to the forms used in the administration of CIL charges.

Summary and outcome of consultation

- 2.9 As agreed by this committee in July of this year, the Council duly undertook a six-week consultation on the proposed revised wording of the R123 List (Appendix 3, Option A, in the July 2019 SPI report), from Friday 26th July to Friday 6th September 2019. Emails were sent to all contacts on the Local Plan database, including all Members, Parish Councils and Neighbourhood Forums. One letter notification was sent to Otterden Parish whom are without an email address. All material was published on the Council website and people were able to respond online through Objective or directly to the Council via email or post. Paper copies of all material could be made available upon request.
- 2.10 A total of 21 responses were received: 14 in support; 1 neutral; 2 proposing revisions beyond the scope of the consultation; and 4 had 'no comment' to make because the proposed changes fell outside the remit of their organisations. A full table of responses including the Council's comments in response is included in Appendix 1.
- 2.11 As the proposed amendments to the R123 List received support from two thirds of respondents and no objections were received, it is suggested that the revisions are taken forwards and the new R123 List is published on the Council's website following the agreement of this committee. The 2019 R123 List put forward for agreement is included as Appendix 2.

Infrastructure Delivery Plan 2019

- 2.12 Maidstone Infrastructure Delivery Plan (IDP) May 2016 accompanied the submission Maidstone Borough Local Plan (MBLP). The primary purpose of the IDP is to identify the infrastructure schemes considered necessary to support the development proposed in the adopted MBLP and to outline how and when these will be delivered. The IDP therefore plays a key role in demonstrating that planned growth can be accommodated in a sustainable manner, through the timely and coordinated delivery of critical and strategic infrastructure.
- 2.13 The IDP is also an infrastructure planning tool, which can be used as a framework to guide decision making on infrastructure delivery, including the future allocations of monies received from the Community Infrastructure Levy. It is also an important enabling tool to help the Council achieve its priorities as set out in the latest Strategic Plan 2019-2045. These priorities are: Embracing growth and enabling infrastructure; Safe, clean and green; Homes and communities; and A thriving place.
- 2.14 However, the limitation of producing an IDP is that it can only provide a snapshot in time of the infrastructure requirements as they are known at the time of production. In order to ensure the IDP continues to reflect the correct infrastructure requirements throughout the Local Plan, regular review is necessary.

2.15A reviewed and updated draft 2019 IDP was therefore presented as part of the background context to the July 2019 SPI committee report. In summary, the key revisions to the IDP include:

- Removal of all completed schemes;
- Amendment of existing schemes where the output, cost, funding arrangements or scheme status have evolved since 2016;
- Updates to the evidence/justification, for example, references made to planning applications which now have permission; and to the production of more recent evidence by infrastructure providers e.g. The CCG GP Estates Strategy 2018;
- Addition of new schemes where they are justified and required to sustainably deliver the adopted MBLP; and
- Correction of typographical errors such as site allocation references where they were revised subsequent to the production of the 2016 IDP, during the MBLP examination.

2.16 The July report also contained a list of completed schemes from the 2016 IDP as well as a list of all those contacted as part of the IDP review process. In total: 27 schemes (representing 18% of the total short and medium term infrastructure schemes from the 2016 IDP) have been completed and have therefore been removed from the IDP as part of this review and 7 new schemes were identified for inclusion into the revised IDP. For ease of reference, the completed schemes information is provided again in this report as Appendix 3, whilst a link to the July report with a list of those contacted is provided in the background documents section. All 129 short and medium term schemes contained in the 2019 IDP have been reviewed and rated either red, amber or green, based on their considered risk of delivery. An explanation as to how the schemes are categorised is provided within the introductory text of the IDP (see Appendix 2). In total only 10% of schemes are categorised as 'red' or high risk; with 50% at 'amber' or moderate risk; and 40% at 'green' or low risk of delivery.

2.17 At the July SPI meeting, Members were asked to review the draft IDP and provide any comments or feedback to officers by email in order that any amendments could be made. As revisions to the IDP do not require any form of public consultation, it was decided that the final 2019 IDP would be brought to this committee where agreement to publish on the Council's website would be sought. As such, the final 2019 IDP is attached as Appendix 4 to this report and it is recommended that Members agree to its publication on the Council website. This will supersede the currently published 2016 IDP.

2.18 As explained in the July 2019 report, the intention is to review the IDP on an annual basis to ensure it continues to remain up to date and reflective of the Borough's latest infrastructure requirements. It should be noted that as part of the current Local Plan Review (LPR), the intention is that in collaboration with infrastructure providers, an entirely new IDP will be produced to accompany the LPR submission in 2021. Formal work is expected to begin once the preferred spatial approach is known.

Annual CIL monitoring report

- 2.19 In accordance with the Community Infrastructure Levy Regulations (2010 as amended), any authority that receives a contribution from development through the levy must prepare an annual CIL monitoring report showing the receipts and expenditure of the CIL and publish this on the Council's website by the 31st December.
- 2.20 CIL in Maidstone is charged on liable planning decisions approved after 1st October 2018 and is payable 60 days after commencement of the development. The first reporting period is from 1st April 2018 to 31st March 2019 (**for Maidstone this is only covers the period from the 1st October 2018 to 31st March 2019**).
- 2.21 The Council will publish the annual CIL monitoring report showing we have received nil CIL monies for the period 1 April 2018-31st March 2019 (See Appendix 5).
- 2.22 Whilst we have NIL returns for the reporting period, over the last 2 quarters (April to September 2019) we have received a total of £123,514.33 in CIL receipts. These receipts and expenditure will be reported in full in the next CIL annual monitoring report to be published by 31st December 2020.
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3. AVAILABLE OPTIONS

- 3.1 Option 1: To note the outcome of Regulation 123 List review consultation and agree the updated Regulation 123 list; note the content of the final 2019 IDP and the details of the annual CIL monitoring report; and agree to publish all three documents on the Council's website. Doing this will enable us to comply with CIL legislation regarding monitoring and ensure we have the most up to date infrastructure plan to secure relevant developer contributions.
- 3.2 Option 2: Note all three as Option 1 but agree not to publish some/all of the documents. By not publishing these documents it would have a significant impact on the Council's ability to secure appropriate developer contributions for infrastructure and leave the Council at risk of appeals.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1 is the recommended option as this enables the council to be up to date regarding its infrastructure requirements to support planned growth and development as set out in the adopted Maidstone Borough Local Plan. It also ensures clarity over how we intend to secure funding for the required infrastructure to support development through the most appropriate route. Finally, it ensures that we remain compliant with CIL regulations regarding annual reporting.
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5. RISK

- 5.1 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.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 As outlined in the main body of the report A total of 21 responses were received to the Regulation 123 List review consultation: 14 in support; 1 neutral; 2 proposing revisions beyond the scope of the consultation; and 4 had 'no comment' to make because the proposed changes fell outside the remit of their organisations. A full table of responses including the Council's comments in response is included in Appendix 1.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If agreed by this committee, the 2019 IDP, the 2019 Regulation 123 List, and the annual CIL monitoring information will be published on the Council's website. The IDP and the R123 List will be used to ensure infrastructure comes forward in a timely manner alongside planned growth, as per the current MBLP.
- 7.2 It is anticipated that initial work will begin on the next annual review of the IDP towards the end of this year.
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8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Regulation 123 List consultation – table of responses
 - Appendix 2: Regulation 123 List (2019)
 - Appendix 3: Completed infrastructure schemes from the May 2016 IDP
 - Appendix 4: Infrastructure Delivery Plan 2019
 - Appendix 5: CIL annual monitoring report 2018/2019
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9. BACKGROUND PAPERS

July 2019 SPI report and associated appendices (item 41):

https://www.maidstone.gov.uk/home/primary-services/council-and-democracy/primary-areas/your-councillors?sq_content_src=%2BdXJsPWh0dHBzJTNBjTJGJTJGjWVldGluZ3MubWFpZHN0b25lLmdvdi51ayUyRmlITGlzdERvY3VtZW50cy5hc3B4JTNGQ0lkJTNEjUyJTl2TUlkJTNEZi1NCUyNIZlciUzRDQmYWxsPTE%3D

Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019
<http://www.legislation.gov.uk/uksi/2019/1103/contents/made>

National Planning Practice Guidance, Community Infrastructure Levy
<https://www.gov.uk/guidance/community-infrastructure-levy>