

**STRATEGIC PLANNING
SUSTAINABILITY &
TRANSPORTATION COMMITTEE**

**11 SEPTEMBER
2018**

**Maidstone Community Infrastructure Levy Administration
and Governance**

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| Final Decision-Maker | Strategic Planning, Sustainability & Transportation Committee |
| Lead Head of Service/Lead Director | Rob Jarman, Head of Planning & Development |
| Lead Officer and Report Author | Tay Arnold, Planning Projects and Delivery Manager and Isabel Elder Principal Planning Officer |
| Classification | Public |
| Wards affected | All |

Executive Summary

Since the Community Infrastructure Levy (CIL) was approved by Full Council in October 2017 officers have brought two reports to this Committee (on 7th November 2017 and 13th March 2018) outlining approaches to administration and governance. In alignment with the March report and its recommendations, officers have implemented the administrative arrangements and carried out engagement with stakeholders. This report updates the committee on progress to date and outlines the next steps. It also includes details of the reporting requirements for spending of all CIL receipts and the Councils obligation to produce an annual report. This report will include full details of the Council's strategic spend; money spent on behalf of non Parish Council areas as well as any Parishes who choose not to draw down funds, and a summary of the Parish Council reports.

This report makes the following recommendations to this Committee:

1. That the committee notes the administrative and engagement progress to date.
2. That the committee agrees the proposed annual reporting processes as proposed in paragraphs 1.34 to 1.40.

Timetable

| Meeting | Date |
|---|-------------------|
| Strategic Planning, Sustainability and Transportation Committee | 11 September 2018 |

Maidstone Community Infrastructure Levy Administration and Governance

1. INTRODUCTION AND BACKGROUND

1.1 Since approval by Full Council, to adopt a CIL in Maidstone, there have been two reports to this Committee, on 7th November 2017 and 13th March 2018. These have identified the proposed approach for implementing the CIL in Maidstone and the appropriate timescales. The reports have looked at the two key areas of administration and governance. Whilst there is some overlap between the two elements, the functions are clearly distinct. Administration relates to the collection of CIL receipts whilst governance relates to the spending of monies. There are two main pots of CIL money. A non strategic portion which is allocated to local communities to spend in the local area and a larger pot, to be spent on strategic infrastructure borough wide, to be administered by Maidstone Borough Council.

1.2 The report in November 2017 set out initial thoughts on both administration and governance and set out that the administrative arrangements would be looked at in detail first. These needed to be in place significantly before the 1st October as CIL is liable from the date permission is granted. Applications submitted prior to this date, after their statutory timescale for assessment, would become liable. As previously noted the administrative arrangements for CIL are both complex and bureaucratic as they are heavily legislated in regulations that have been amended numerous times.

1.3 In March 2018 this Committee received an update on progress on the administrative arrangements and governance in relation to the non strategic portion. The Committee agreed to:

- Continue to develop administrative arrangements for the CIL;
- Engage with all interested parties, internal Council departments, Parishes and the public where relevant prior to the agreed implementation date; and
- Ensure that infrastructure providers are aware of the CIL and the impact it will have on infrastructure requests under s106.

Update on Completed Administration Arrangements

1.4 Since the March report, there has been significant achievement made on implementing the administrative processes required in order for the Council to be ready to start receiving CIL liable applications and being able to issue CIL liability notices from 1st October. All relevant internal departments have been consulted, advised and worked with as appropriate to ensure that the Council is able to carry out its legal responsibility as the collecting authority.

1.5 To optimise the outputs a project plan for implementation of the administrative arrangements was produced. This focused on embedding a streamlined and transparent process for CIL, which would complement and interrelate with existing processes. To achieve this, officers undertook an extensive stakeholder mapping exercise. Existing resources and online systems were analysed as to what could be accommodated within current operations and

identify where changes would be required. An action plan was devised which identified the following main areas of work which have subsequently been achieved:

1.5.1 The establishment of a Council Wrike project, working with IT to oversee the software changes required to a number of the Councils systems, to implement the CIL. Where possible the objective was to create an as automated process as possible. CIL forms are submitted via the planning portal and these are then internally diverted to the planning technical team to action. When approval is given to permissions, notifications are automatically sent to the CIL team for them to issue liability notices. The Council has previously purchased a bespoke CIL monitoring program called Exacom; this is also used to monitor S106 agreements. It is a stand alone software package so it has been important that systems have been devised to keep relevant Council documents in the Exacom system and also in the Councils document management system.

1.5.2 Active engagement has taken place with land charges as all CIL liable permissions must be registered as a land charge until the payment is made. This is similar to S106 and is a key part of the process as it enables the Council to be sure that all payments are made and nothing is sold to a third party without it coming to the Councils attention. Standard land charge enquiries now have specific CIL questions which need to be answered, devising automated systems within the Wrike project has assisted in minimising staff resources to answer these.

1.5.3 Meetings have been held with digital services and a fully comprehensive set of webpages have been designed which cover all the aspects of CIL. These have been written by the CIL team and uploaded by digital services who have worked with the team to create a layout which best meets the needs of the user. The webpage is now live and can be viewed: <https://www.maidstone.gov.uk/community-infrastructure-levy>

1.5.4 The Council currently has an online payment system for the public to use, which has been adapted to receive CIL payments. This reduces officer involvement as payments can be made at the convenience of the customer which will be more convenient for them and more efficient for the Council. A CIL payment can only be made if their unique reference code is quoted.

1.5.5 Early engagement took place with the MKPS planning validation team, to discuss and successfully negotiate their role in the CIL process. A process paper has been prepared for the team and a frequently asked question sheet to assist them, as they are the front line team dealing with external enquiries.

1.5.6 Two training sessions were organised for all development management officers and the planning technical team to inform them both of what CIL is, the background to it, what is liable, the impact on them and their role in the CIL process. The first training session on 17th May was an introduction to CIL and the second on 5th June was more detailed, looking at how it is calculated and providing information on the types of questions they will be asked, in order that the Council is seen as providing a streamlined service. Both these training sessions were well received and officers felt more informed by attending.

1.5.7 The planning technical team were given a further training session on 5th June on how to process the Form 0 Additional Information Form, which is submitted with applications. This guided them through step by step, what they needed to do with the form. After the meeting they were given a written process paper to follow to complement the training session.

1.5.8 Discussions have taken place with the key officer in finance regarding CIL receipts and financial monitoring which will assist with the Councils legal responsibility to prepare an annual report on income and expenditure. Systems are now in place to ensure all CIL money received is spent and recorded accurately. New coding has been established and the finance team will work closely with the CIL team regarding project spend accountability. Specific training for the rest of the finance team has been arranged for 27th September.

1.5.9 On going engagement has taken place with the Revenue and Benefits team to discuss their involvement and to inform them of CIL.

1.5.10 Discussions around planning enforcement have taken place with relevant officers, a flow diagram has been produced, a process paper written and a designated lead assigned. The paper also covers issues such as surcharges and penalties. This has also been put on the Councils CIL webpages so that applicants are aware of the consequences of not following the CIL process.

1.5.11 Significant engagement has taken place with legal, to ensure that applications which are currently in the system requiring developer contributions can be actioned accordingly. Legal have been asked to bring to the attention of applicants that their application may become CIL liable if the agreement is not signed before 1st October 2018.

1.6 From 11th June, which is 16 weeks before the 1st October, which would be the statutory timescale in which to assess a major application with an Environmental Impact Assessment, the Council has been asking for a CIL Additional Information Form (Form 0) to be submitted with all relevant planning applications. Submission of this form is now a validation requirement for all relevant applications. These are submissions for full planning permission, including householder applications and reserved matters (following an outline planning permission) and applications for lawful development certificates.

1.7 In addition to the work with other internal Council departments, two new members of staff have been recruited and are now in post. A CIL monitoring officer and a CIL project officer. CIL additional information forms are now being received and processed by the team in the lead up to 1st October to ensure that the transition into CIL is seamless. Assumption of liability notices (i.e. who will be paying) are being requested by the CIL team. Without this, a liability notice can not be issued. If no one assumes liability the charge by default is levied on the land owner/s.

1.8 As highlighted earlier there are strict processes which must be followed for issuing CIL notices and receipts. Once the Council has approved a CIL liable planning application, it will issue a planning certificate with an informative that it is CIL liable. The CIL team will then issue a liability notice indicating the amount of CIL due and inform land charges that there is a CIL to be paid. The CIL liability will also include indexation from 1st January 2019. This will be calculated by CIL

officers and reflects the changes in building costs since the charge was adopted. Should the applicant feel that they could be eligible for relief or an exemption they must complete the appropriate forms and submit them to the Council and await the Council's confirmation that the development is exempt from CIL before commencing work. The CIL team will then assess the application against the legislative requirements of what constitutes relief and will inform the applicant, in writing, of the outcome.

1.9 When development is about to commence the applicant must submit a commencement notice. (Failure to do so will mean their payment will be due immediately and the 60 day payment window for the amount/first instalment will be removed.) The Council must acknowledge the commencement notice and send a demand notice which will include a unique reference code, the amount due and the timings of such payments. On receipt of payment the CIL team must then acknowledge the payment. Where applicants fail to make a payment or make it late, surcharges and penalties will be added, again an administrative process undertaken by the CIL team. Should an applicant not agree with the amount of CIL charged they can appeal against the calculation. NB they can not appeal against the charging schedule figure as this has already been adopted. Should there be an appeal against the calculation; the CIL team will review this in the first instance. Following the CIL process outlined in legislation is an essential part of the administrative function of the Council; appeals elsewhere in the Country have been won successfully against Councils who have failed to show they have followed the legislative process.

1.10 There has also been significant progress made with informing external parties of the CIL process and the spending of the Neighbourhood portion of CIL. Progress includes:

1.10.1 A workshop was held for all Parish Council Councillors to which all Borough Councillors were also invited to attend. This took place on 20th June and provided information and background to CIL, what is liable, details of the non strategic portion of CIL, what they could spend CIL on, how to account for it, timing of payments and what it could be spent on etc. After the meeting, more pages were added to the website for this specific area so that they could see their obligations and those of the Council.

1.10.2 The North Loose residents association who have a 'made' neighbourhood plan but who are not a parish, were invited to a supplementary meeting to discuss the process that would effect them and how they could allocate CIL money to projects in their area.

1.10.3 A separate meeting also took place with Lenham Parish Council as they are a broad location which is expecting 1000 new homes post April 2021. Policy H2 (3) ensures that proposals which come forward before either a neighbourhood plan is agreed or the local plan review adopted, will be refused. Lenham are currently in the process of making a neighbourhood plan and discussions regarding neighbourhood CIL and what it can be spent on and estimates of how much they will receive were productive for attendees. Both meetings with Lenham and North Loose were positively received and resulted in stronger working relationships being developed which will assist project development and CIL spend in the future.

1.10.4 A workshop for agents and developers operating in the borough was held on 31st July which again all Borough Councillors were invited to attend. This gave an overview of CIL and the changes that would happen after 1st October, what they were required to submit with a planning application, how to fill in the forms and a detailed explanation of the CIL process, how CIL is levied and how it is calculated etc. The aim of the meeting was to ensure that they knew which forms to submit and why. It gave them a greater understanding of CIL and ensured those present understood the significance of why forms had to be completed and what the Council would do with that information. By having a greater understanding it is hoped that forms will be completed more accurately which will ensure efficiency and minimise impact on staff resources having to ask for additional information. The CIL team will continue to monitor how successful this has been and provide additional information if required.

1.10.5 All meetings have been highly successful with positive feedback received. Copies of the slides have been sent out when requested and all enquirers referred to the website in the first instance. The pre-application advice service has been highlighted to developers who wish to have site specific CIL advice.

1.11 There are a number of stages in the CIL implementation process: Identifying CIL liable applications, issuing paper work, collecting CIL, allocating CIL to Parishes and Wards, and spending money on strategic infrastructure. Officers have successfully worked on implementing the administrative arrangements to date and have kept interested parties informed for the start date of 1st October. Officers have had ongoing engagement with external partners and infrastructure providers such as KCC throughout the process in both setting the charging schedule and in delivering the Infrastructure Delivery Plan (IDP). Further, more detailed work is required as a next stage, on how the strategic portion will be spent. A report on this will be brought to SPST Committee in January 2019.

Governance

1.12 In contrast to the administrative arrangements, the CIL regulations and national guidance provide very little prescription on how decisions should be made on spending CIL. CIL is used to fund infrastructure to support development in the borough. The regulations state that 5% can be spent by the Council on administration; 15 – 25% on non strategic priorities, to be spent in the local area (those with a 'made' neighbourhood plan receive 25% others 15%) and the remainder; 70 – 80% on strategic priorities to be spent borough wide, administered by the Council.

1.13 As part of the preparation of the Local Plan, an Infrastructure Delivery Plan (IDP) was written which identifies the infrastructure schemes necessary to support the development proposed in the Local Plan and outlines how and when these will be delivered. As a "living document", the current iteration of the IDP, which was collated in 2016, provides only a snapshot in time. In addition to identifying the infrastructure schemes required to support development proposed in the Local Plan, another key function of the IDP is to outline how and when schemes will be delivered. In accordance with Local Plan Policy ID1, the default approach is to seek developer contributions through planning obligations under S106 of the Town and Country Planning Act 1990 for site specific infrastructure requirements, and to use the Community Infrastructure Levy (CIL) to collect contributions towards delivery of strategic infrastructure.

1.14 At the CIL examination, officers confirmed that they intended to review both the IDP and the Regulation 123 list annually. As the Regulation 123 list only comes into force on 1 October 2018 it is proposed that this first review is completed by October 2019.

1.15 The Reg 123 list identifies what both CIL and S106 can be spent on. This list ensures that the Council is transparent in its approach to spending CIL so that a developer does not pay twice for a piece of infrastructure. The process of reviewing the Reg 123 list is relatively straight forward, should the Council wish to, it would need to explain the reason for the change and then undertake appropriate consultation with stakeholders and the public.

1.16 At the examination in 2016, the Inspector confirmed that there was a funding gap in the Borough. The Council forecast that the expected costs of the required infrastructure to support growth in the plan period would be circa £100 million. The IDP further identified other funding sources such as LEP money and KCC, to assist in financing this requirement but there still remained a gap of £38 million. The adopted CIL rates in the MBC charging schedule could generate net receipts of around £19.8 million, to go towards reducing this gap. This is an estimate based on the type of size of development planned in the plan period. It has never been anticipated that CIL would fund the whole cost of the infrastructure required.

1.17 This table illustrates the infrastructure funding deficit forecast in 2016 when these figures were generated.

| Total £ needed to support development in the borough | Amount of £ identified from existing sources | Gap in finance needed to support development | Estimated income from CIL | Amount outstanding to be identified |
|--|--|--|---------------------------|-------------------------------------|
| £100M | £62M | £38M | £19.8 M | £18.2M |

1.18 The amount of CIL which will be secured from development to pay towards infrastructure, for Maidstone is about 20%. This is consistent with levels across England where the range is between 10 – 30% according to the Planning Advisory Service. This funding gap means the Council will have to make effective decisions on the allocation of the strategic portion of CIL monies. A means of prioritising these will need to be established based on the IDP, which developments come forward, what infrastructure is required and what has been provided. Alternative sources of funding will need to be looked at to further bridge this gap. Furthermore a significant amount of the infrastructure schemes identified in the IDP and the Regulation 123 list as eligible to be funded wholly or partly through CIL, already have developer contributions either secured or held through S106 agreements stemming from planning permissions granted early in the Maidstone Borough Local plan period. A detailed piece of work is currently being undertaken by the Strategic Planning team to identify where funding has been secured and where and how large the gaps are. This is often referred to as the Infrastructure Roadmap. It will assist the decision making process not only

for CIL priorities but also for other Council and external funding partners. The allocation of CIL monies will need to be carefully considered in the wider context of funds already secured, the level of 'top up' required and the relevant trigger points.

1.19 The success of the Councils charging schedule in providing the estimated income of circa £19.8 million will be monitored alongside how S106 legal agreements are being used to provide the necessary infrastructure required. The Council in setting its charging schedule set a 'buffer' so that the CIL would not affect viability and that there would be developer contributions available from development to pay for site specific mitigation.

1.20 The Councils adopted charging schedule can be reviewed at any time. Under the current legislation this would take two years, however the recent draft consultation document 'Housing and developer contributions' in March 2018 (which this committee received a summary of alongside the NPPF) proposed that this review time could be made shorter for Councils with an adopted CIL, in order to be more responsive to an areas needs. There has been no update from Government regarding any proposed changes to CIL post this consultation in March.

1.21 As part of the introduction of the CIL regulations in 2010, the use of S106 agreements to pay for infrastructure was scaled back to just being used to mitigate site specific infrastructure requirements. The introduction of CIL means there will now be two income funding streams coming in to the Council rather than just one. S106's will still exist alongside CIL payments and since 2010 have only been used when they meet the three statutory tests in Reg. 122 of the CIL regulations, requiring the planning obligation to:

- (i) Be necessary to make the development acceptable in planning terms;
- (ii) Directly relate to the development; and
- (iii) Be fairly and reasonably related in scale and kind to the development.

1.22 This has applied since the CIL regulations were first introduced and is applicable to all authorities regardless of whether or not they have introduced CIL. It gives statutory effect to what previously was official guidance in Circular 05/05. For a while now, S106's have no longer been used to pay for infrastructure that is not directly related to the development being built. They must be site specific with no more than 5 legal agreements from 5 different planning applications being able to pay for a single piece of infrastructure for example a school. This limitation was devised in order to encourage Councils to adopt a CIL, hence why MBC made the decision, that in order to maximise funds received by the Council it should investigate whether development viability in the borough had the capacity to pay for CIL alongside S106. The work by Peter Brett Associates confirmed this in 2014 and work was undertaken towards finalising exact figures and taking them through examination and adoption by Full Council. The introduction of CIL, in Maidstone, which has such no site specific limitations, will allow the Council, to receive money from development all over the borough but will not be restricted to having to spend it in that area. CIL can pay for any borough wide infrastructure needed. A criticism of S106 in the past has been that contributions have often been received in small amounts and over long periods of time. CIL will allow the Council to be more proactive and reactive to what infrastructure is required to support that identified in the local plan.

Procedures for spending the Non Strategic / Neighbourhood Portion of CIL

1.23 The CIL regulations state that areas with a 'made' Neighbourhood plan can be allocated 25% of the CIL money received from development within their area and that areas with no neighbourhood plan can only be allocated 15% and that this is subject to a cap of £100 per dwelling per year. For example, if the Council received a CIL contribution for a ward of £500,000 and there was no neighbourhood plan in place the amount of neighbourhood CIL to be allocated in the area would be 15% i.e. £75,000. If the ward only had 200 dwellings/homes (which are defined as those households paying Council tax) then the amount of neighbourhood CIL that could be spent in the area would be capped at 200 x £100 cap which equals £20,000 per year. The ward would still receive the £75,000 but it would be over 4 years. This cap only applies to the neighbourhood portion of CIL. In line with the definition of a local council; Parish Councils will be allocated and given CIL funds (should they wish to receive them) whereas all other areas can only be allocated CIL. In these circumstances CIL will need to be spent by the Council in consultation with the local community. An area can be a Parish, a Forum or an unparished ward.

Parishes

1.24 The March report provided details on how the neighbourhood portion for Parish Council areas could be spent. This included details on their obligations, the process of how CIL would be passed to them, what it should be spent on and the procedures for failing to spend correctly etc. These were discussed with the Parishes at the workshop held in June and specific pages supporting Parish Councils to understand CIL further have been included as part of the Council's CIL webpages.

1.25 Parishes were asked at the workshop, how they wanted to be engaged with in the future and to inform the Council as to whether or not they wished to receive CIL or whether they wished the Council to spend it on their behalf. Parish Councils have been informed that they must have appropriate financial procedures in place to be able to receive and spend CIL.

1.26 All Parish Councils irrespective of whether they have a 'made' neighbourhood plan or not, have been advised that a detailed Infrastructure Spend Plan (ISP) for the CIL they receive for their area, would assist them in making decisions on allocating neighbourhood CIL. This would then identify projects and priorities to the people in the community they serve. This is a discretionary suggestion but would provide a document to consult on. It would assist in consolidating objectives for their area and identify priorities as well as identifying where possible, the total amount of money required to fund projects. In addition to this an ISP enables the community to be consulted, in a transparent way on all potential local infrastructure schemes.

Non parished areas

1.27 Where as Parish Councils can be passed CIL funds directly, subject to them confirming they wish to receive it. All other areas will be allocated funds secured from liable developments in their area but these will be spent by the Council on their behalf in consultation with the community.

1.28 Maidstone borough currently only has one Neighbourhood forum with an adopted Neighbourhood Plan, the North Loose Residents Association. The Council has met with the Forum separately and will continue to engage with them to ensure that the neighbourhood portion of CIL is spent in accordance with their Neighbourhood Plan and reflects the community's priorities.

1.29 For wards which have no Parishes, neither the Planning Act 2008 nor the Community Infrastructure Levy Regulations 2010 prescribe how local engagement should take place or whether neighbourhood CIL should be allocated to a particular geographic area or what projects it should be spent on within an area. The Council has the discretion as to how it allocates this money. However it must have regard to government guidance which is contained in the NPPG.

1.30 The NPPG states: *'If there is no Parish, Town or Community Council, the charging authority will retain the levy receipts but 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 using their regular communication tools e.g. website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities, including priorities set out formally in neighbourhood plans. The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. This should include working with any designated neighbourhood forums preparing neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.'*

1.31 In line with the approach for Parish Councils, which will be allocated CIL monies by Parish; it would be consistent for the Council to allocate neighbourhood CIL money, by ward in the non parished areas. Each ward will be dealt with on an individual basis and where appropriate and reflecting the community needs these could be combined, should it felt to be the best use of CIL funds, to achieve relevant infrastructure. If a ward/wards chooses to become a Forum or Parish/Town Council and develop their own plan then this will be supported by the Council.

1.32 When planning any expenditure for the year, officers will have regard to priorities and smaller non strategic schemes identified in the IDP and any other locally consulted upon and publically supported schemes. It will also consider; surveys undertaken for the area and other plans agreed by local organisations.

1.33 For expenditure in non parish council areas, parished areas which choose not to receive CIL and all other areas where the Council is responsible for spending CIL, the Council will engage with neighbourhoods and wards as appropriate for the amount of CIL to be spent in that area. The use of neighbourhood funds will be prioritised to draw up projects which match the priorities expressed by local communities and those identified in the IDP. These will then be consulted upon. The regulations state that consultation should be

proportionate with the amount of CIL received and the scale of the development to which the neighbourhood funding relates. Maidstone will achieve this by using existing consultation mechanisms already agreed within the Council, such as the Council's website, libraries etc. and liaising with neighbourhood groups and other interested parties. The Council will have a dialogue with Ward members before consulting the community on any projects over £5000. Ward members will have an important role to play with their networks and assisting the Council with the consultation process by using their usual forms of engagement with their constituents to inform a wider audience.

Reporting CIL expenditure

1.34 Proposals for any CIL expenditure not being spent directly by a Parish Council will be included within the annual report that the regulations require the Council to produce and publish on the Council's website. The annual report will include full details of the Council's strategic spend; money spent on behalf of non Parish Council areas as well as any Parishes who choose not to draw down funds, and a summary of the Parish Council reports. Regulation 62A of the CIL amendment regulations 2013 states what should be included in local council reports. All reports must include details on:

- CIL receipts.
- CIL expenditure.
- A summary of items on which CIL has been spent.
- The amount spent on each item.
- The amount of any CIL repaid following a repayment notice.
- The amount of any outstanding CIL due to the Council following a notice.
- The amount of CIL retained at the end of the year.
- The amount of CIL from previous years retained at the end of the year.

1.35 The local council must publish the report:

(a) (i) On its website;

(ii) On the website of the charging authority for the area if the local council does not have a website; or

(iii) Within its area as it considers appropriate if neither the local council nor the charging authority have a website, or the charging authority refuses to put the report on its website in accordance with paragraph (ii); and

(b) Send a copy of the report to the charging authority from which it received CIL receipts no later than 31st December following the reported year, unless the report is, or is to be, published on the charging authority's website.

1.36 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. Therefore the annual report accounting for how CIL has been spent and outlining the spend plan for all portions in MBC control for the following year will be brought to SPST for agreement to publish on the Council's website. This will include the priority projects for the strategic pot for the next financial year; this process should encourage infrastructure providers to develop

bids which support the Council's own priorities. The report will also include an account of how the strategic portion has been spent.

1.37 Any projects with an on going financial commitment requiring additional Council funds will be identified when approved. Each year, the on going commitment required to support the financial commitment will be brought to Policy and Resources committee for agreement, as part of the annual budget setting cycle. Possible scenarios could be ongoing maintenance costs, as the liability sits with the commissioning body unless otherwise agreed. Likewise Parish Councils are liable for their own projects and their own on-going costs.

1.38 The Government guidance issued by the DCLG in June 2014 states that neighbourhood CIL can be used to pay for both the operation and the maintenance of infrastructure. It can be spent on both capital and revenue requirements for:

- (a) The provision, improvement, replacement, operation or maintenance of infrastructure; or
- (b) Anything else that is concerned with addressing the demands that development places on an area. (59C from 2013 CIL amendment)

1.39 Strategic CIL spend is more prescriptive. It can only be spent on infrastructure as identified in the 2008 Planning Act. This defines infrastructure to include:

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

1.40 Strategic CIL does not have the flexibility to pay for 'anything else' required as in 1.38 (b) above. It also has to be mindful of the agreed Regulation 123 list which states what CIL will be spent on and what S106 will be spent on. This is to ensure that the Council does not spend both CIL and S106 on the same infrastructure and get accused of 'double charging'. S106's will still be used for providing affordable housing so the strategic CIL portion cannot be spent in this way. However the non strategic portion can be spent on affordable housing, if the wishes of the local community supported it and it was felt it matched the criteria of 'anything else that addresses the demands from the development'. It can also be spent on developing neighbourhood plans.

1.41 This report has covered how the Council has implemented the administrative arrangements required for CIL to be formally collected from 1st

October 2018 and how the Council is required to account for CIL expenditure in the borough. A cumulative report will be brought to this committee in January 2019 regarding the implementation of the governance of CIL. This report will subsequently be reported to Full Council for approval. As part of this work officers will engage with relevant stakeholders including infrastructure providers. This will focus on the fact that the CIL monies must be spent on infrastructure needed to support the delivery of the Local Plan and projects identified in the IDP.

2 AVAILABLE OPTIONS

2.1 The committee chooses not to agree the annual reporting processes as proposed in paragraphs 1.34 to 1.41. The implication of this will be that the Council could risk not being in alignment with the government CIL legislation and its own constitution which could have significant consequences. These consequences are not set out in the legislation as the Government will be expecting the Council to follow what has been laid out in law. Ultimately the Council could have penalties and or sanctions imposed upon it.

2.2 The committee chooses not to agree the annual reporting processes and requests officers bring a future report to committee with alternative options. The implication of this is that the Council could risk being not in alignment with the government CIL legislation and its own constitution. This would also remove clarity on the approach which will impact both on engagement activities and resources. Alternative options may be contrary to law and put the Council in a very vulnerable position of not having followed legislation.

2.3 The committee agrees the proposed annual reporting processes. This would provide clarity for officers to engage with communities and other stakeholders regarding CIL. It will also enable resources to be concentrated on the governance arrangements.

3 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.1 The committee notes the administration and engagement progress to date and agrees the proposed annual reporting processes. This would provide clarity for officers to engage with communities and other stakeholders regarding CIL. It will also enable resources to be concentrated on the governance arrangements. Developing and implementing the governance arrangements for the strategic spend.

4 RISK

4.1 The risks associated with this proposal, including the risks that 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.

5 CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 Following on from the recommendation from this Committee, Council officers have engaged with Parishes, Councillors and other stakeholders as part of the implementation of the CIL administrative processes. There has been meetings held with both, to inform them of CIL and the implications of CIL both on the Council and the area they represent. These have been greeted favourably by the interested parties and feed back has been positive that they now have a greater understanding.

5.2 The Council as part of its adoption of the CIL charging schedule undertook significant consultation with the preliminary draft charging schedule in spring 2014, the draft charging schedule in summer 2016.

6 NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 Following agreement of the recommendations in this report, officers will update the Council's website. Officers will continue to progress the wider governance arrangements.

7 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 corporate priorities | 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. | Paul Holland, Senior Finance Manager |
| Staffing | We will deliver the recommendations with our | Rob Jarman Head of Planning and |

| | | |
|------------------------------------|--|---|
| | current staffing. | Development |
| Legal | 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) Mid Kent Legal Services |
| Privacy and Data Protection | Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with Councils Privacy Policy required under GDPR.. | Susan Mauger Senior Planning Lawyer (Locum) Mid Kent Legal Services |
| Equalities | The recommendations do not propose a change in service therefore will not require an equalities impact assessment | Anna Collier Policy & Information Manager |
| Crime and Disorder | <ul style="list-style-type: none"> N/A | Rob Jarman Head of Planning and Development |
| Procurement | <ul style="list-style-type: none"> N/A | Rob Jarman Head of Planning and Development |

8 REPORT APPENDICES

9 BACKGROUND PAPERS