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HAVANT BOROUGH COUNCIL

CABINET

25 June 2014

COMMUNITY INFRASTRUCTURE LEVY: FUNDING DECISION PROTOCOL

Report of Shared Service Manager (Planning Policy)

FOR DECISION

Portfolio: Planning & Built Environment

Key Decision: Yes

1.0 Purpose of Report

- 1.1 To set out the process by which income derived from the Community Infrastructure Levy (CIL) can be distributed, including criteria to guide the prioritisation of spending and aid the assessment of requests for CIL funding, to ensure that CIL and remaining S106 funds are used effectively and for the benefit of the community.

2.0 Recommendation

- 2.1 That the Regulation 123 List be reviewed alongside the process of prioritising the distribution of CIL funding
- 2.2 That the key principles of the Funding Decision Protocol, as set out in paragraph 4.43 of this report, are agreed.
- 2.3 All of the CIL collected will be used to support infrastructure for the communities within the Borough. Of this:
 - i. Up to 5% of CIL receipts will be used within the Planning budget to provide a dedicated resource for the annual monitoring and management required by the CIL regulations; and
 - ii. The remainder of CIL receipts (95%) will be allocated by the Council on behalf of the community for investment in infrastructure for the Borough, in accordance with the Community Infrastructure Levy Funding Decision Protocol (attached at Appendix 1).

3.0 Summary

- 3.1 The Council on 24 July 2013 adopted the Cabinet recommendation (26 June 2013) that CIL money collected from 1 August 2013 to April 2014

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should not be spent until the Council has agreed the spending priorities, spending proportions and the appropriate decision making body for spending. Further consideration is therefore needed to determine how CIL funds should be used and this report sets out the basis for doing so.

- 3.2 Whilst funds collected towards transport and education under S106 were previously passed to Hampshire County Council (HCC) to deliver the infrastructure, there is no obligation for the Borough Council to provide funds to HCC from the CIL. Therefore the Council needs to better define its working relationship with Hampshire County Council especially in the delivery of infrastructure that is the responsibility of the County Council as the highway and education authority.
- 3.3 The Infrastructure Delivery Plan and the Regulation 123 List provide a starting point for the consideration and prioritisation of projects using the methodology set out in the Protocol. The Protocol sets out an annual timetable that is aligned to the Council's Capital Programme process and allows for consultation with infrastructure and service providers as well as the community.
- 3.4 The Protocol aims to make the process of allocating CIL funds more transparent. At this inception stage it is intended that decision making be divided into two distinct phases:
 - i. to agree the Protocol, including the basis for the general distribution of CIL funds – the subject of this report, and
 - ii. to consider and agree how the funds collected will be allocated to specific projects and items of infrastructure over the coming months.
- 3.5 A robust monitoring and reporting mechanism is needed to ensure that the legal requirement for the Council to report on the amount of funds collected through the CIL, and how they are being used, can be met.

4.0 CIL Funding Decision Protocol

Introduction and Background

- 4.1 Following the decision by the Council on 20 February 2013 to adopt the CIL, the Charging Schedule came into effect on 1 August 2013.
- 4.2 The Borough Council is responsible for making the final decisions on the allocation of funding raised through the CIL. While it will take several years to build up significant CIL funds, requests and suggestions are already being made by councillors, service and infrastructure providers regarding how the funds could be used.
- 4.3 Prior to the introduction of the CIL, planning obligations¹ were used to obtain developers' contributions towards infrastructure including public open space, transport schemes and education facilities. Funds collected

¹ under S106 of the Town and Country Planning Act 1990 as amended

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towards transport and education were passed to Hampshire County Council, as the highway and education authority, to deliver the infrastructure. Amounts collected towards public open space are being used by the borough council to refurbish council equipped play areas and towards projects such as the cost of an artificial turf pitch at Park Community School. Funds are also being allocated through the Council's 2014/15 to 2016/17 Capital Programme towards new allotment sites and to provide a new cemetery within the new development to the west of Waterlooville.

- 4.4 The Council's Corporate Strategy 2012 – 2017 includes within its key priorities and activities, "Work with communities, Hampshire County Council and other partners to plan for the provision of appropriate community infrastructure through developers' contributions/ Community Infrastructure Levy."

What CIL Funds Can Be Spent On

- 4.5 It is important to recognise that CIL contributions are intended to fill funding gaps and are not expected to provide the costs associated with delivering and maintaining infrastructure.
- 4.6 The borough council must use the CIL funds for "the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area"². Whilst CIL should not be used to pay for what might be considered "historical deficits" of infrastructure provision, the regulations do allow for improvements to increase the capacity of existing infrastructure.
- 4.7 "Infrastructure" includes roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities, and open spaces³. This also means that the levy can be used to fund Suitable Alternative Natural Greenspace, provided in mitigation of the effects of development on the Solent Special Protection Areas.
- 4.8 The neighbourhood portion of CIL is not however subject to the same spending restrictions and limitations. The amended CIL Regulations⁴ expanded the definition of how CIL may be used to support the development of the relevant area in relation to the neighbourhood portion, which can also be applied to "anything else that is concerned with addressing the demands that development places on an area". Therefore, there is greater freedom for the Council when deciding how to allocate the "neighbourhood funding" percentage of CIL that the Council may spend on behalf of the communities.

² Regulation 59, The Community Infrastructure Levy Regulations 2010, as amended.

³ S216, Planning Act 2008, as amended by regulation 63.

⁴ Regulation 59F, The Community Infrastructure Levy Regulations 2010, as amended

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Regulation 123 List

- 4.9 In addition to the Charging Schedule the Council approved, on 24 July 2013, the CIL Regulation 123⁵ (R123) List. The purpose of the R123 List is to set out those types of infrastructure for which the council will not seek a Section 106 planning obligation or require a Section 278 highway agreement. These agreements can still be used to make the development acceptable in planning terms but their use is scaled back by the introduction of the CIL. Although the list may indicate the types of infrastructure that may be partly or wholly funded through CIL the list is not exclusive; it is required in order to avoid a developer being “double charged”.
- 4.10 The inclusion of projects in the list does not, therefore, signify a commitment by the Council to fund all the projects listed, or the entirety of any one project through CIL. Nor does the list imply any order of preference for spending. It does, however provide a starting point for considering which projects CIL funds should be directed towards.
- 4.11 In the report to Cabinet on 26 June 2013 it was noted that the R123 List can be updated on a regular basis and that an annual review would be put for Council consideration alongside the monitoring report on spending. The preparation of the Protocol also provides an opportunity to review the list. The list can be reviewed without reviewing the charging schedule, subject to appropriate consultation, provided that the changes do not have a very significant impact on the viability evidence that supported the charging schedule.

Infrastructure Delivery Plan

- 4.12 When preparing the draft Charging Schedule the Council must identify the total cost of the infrastructure that will be required to support the development proposed in the Borough. It is necessary to consider all possible sources of funding, and identify the overall funding gap (between the costs and the available funding) to demonstrate the need for the levy.
- 4.13 This infrastructure evidence is based on the assessment that is undertaken to support the preparation of the Local Plan⁶. The Infrastructure Delivery Statement table is set out by infrastructure type and includes health, education, social and community, water supply, waste water, waste management, telecommunications, sea defences and flood alleviation, green infrastructure and transport. This can provide a starting point for considering all the potential calls on the CIL funds but it should be noted that it represents an overall list of the infrastructure needs and costs identified by all the service providers and utility companies, regardless of other potential funding sources.

⁵ Community Infrastructure Levy Regulations 2010

⁶ Originally prepared to support the Core Strategy (adopted March 2011), the most recent published version is the Strategic Infrastructure Delivery Plan (October 2013), prepared in support of the Havant Borough Local Plan (Allocations) which needs to be read alongside the Strategic Transport Assessment (October 2013).

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- 4.14 It should also be noted that the list represents the understanding of requirements at the time it is prepared and will require regular updating with additional or alternative requirements as time passes and development progresses.

Relationship between CIL, S106 and S278

- 4.15 Infrastructure can be provided by developers in several ways: through the CIL, planning obligations⁷ or highway agreements⁸. The combined total costs of these (and any planning conditions) should not threaten the viability of the development. With CIL in place the use of planning obligations and highway agreements is limited, as noted under the section on the R123 list above.
- 4.16 Individual S106 agreements drawn up after the introduction of CIL will need to specify the projects and purposes any financial contributions will be directed towards. This is because the CIL regulations have ensured that planning obligations must be directly related to the development and prevent more than five contributions for the same infrastructure project or type of infrastructure (since April 2010), providing it is not on the R123 list.
- 4.17 Highway agreements are used to pay for the cost of highways works that are required as a result of the development, but cannot be required for works that are intended to be funded through the CIL, i.e. items that are on the R123 List. Revisions to the R123 List therefore needs to be carefully worded so that it does not inadvertently rule out the use of S278 agreements where there would be merit in retaining the ability for developers to contribute towards specific local highway works. Revisions to the R123 List concerning highway works should therefore be discussed and agreed with Hampshire County Council in advance.
- 4.18 Where pooled S106 contributions are insufficient to provide the specific infrastructure item for which funds were being collected prior to the introduction of CIL, a bid for CIL funding could be made with the amounts collected and outstanding being indicated in the spending programme.

Estimated CIL Income

- 4.19 By the end of 2013-14, a total of 27 Liability Notices to the value of £659,715 had been issued over the period since charging commenced. The Liability Notice sets out how much CIL is payable and details the payment procedure. Once development commences a Demand Notice is issued for payment, with the date(s) when payment is due in accordance with the Council's instalment policy⁹. By the end of 2013-14, 6 Demand Notices had been issued to the value of £128,818 of which £81,680 had been collected.
- 4.20 As most of the receipts from the CIL are expected to arise from housing development, crude estimates of CIL income can be derived from housing

⁷ under section 106 of the Town and Country Planning Act 1990

⁸ under section 278 of the Highways Act 1980

⁹ The Council's Instalments Policy allows persons liable to pay the levy to make staged payments at specified periods from 60 to 540 days

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projections prepared for the Local Plan housing trajectory. As much of the development expected to take place during 2014-15 will be based on planning consents granted prior to the introduction of the CIL there will be a time lag before CIL income can be realised in full. Based on projected housing developments, compared with amount collected during the first 6 weeks of 2014-15, suggests in the region of £637,800 could become available to spend during 2015-16. Looking further ahead this could rise to as much as £2,000,000 as projected housing development peaks in the next year or so.

Existing S106 Funds

- 4.21 The CIL funds outlined above will be in addition to S106 funds held by the Borough Council and by Hampshire County Council (for education and transport) secured prior to the introduction of CIL. Further S106 contributions will be due for some time to come from developments that were permitted prior to the introduction of CIL where development has yet to start. It may therefore take a number of years before all the historic pooled S106 contributions secured prior to the introduction of CIL have been collected and spent. For example over the last 5 years a total of £10,483,600 has been negotiated within the borough for transport, of which £2,268,980 has been collected; for education, a total of £907,100 was negotiated and collected.

Administrative Expenses

- 4.22 The amount of officer time associated with administering the CIL should not be underestimated and will require additional staff resources. Up to 5% of the total levy receipts can be used towards the administrative costs incurred in establishing and running the charging scheme. These administrative functions include preparing evidence on viability to support a review of the charging schedule, examination of the charging schedule, establishing and running the billing and payment systems, monitoring and reporting, including information technology systems, enforcing the levy and legal costs associated with payment in kind.
- 4.23 Without this additional support it will not be possible to maximise the amount of levy due. The regulations specify the stages in the collection process which involves the issuing of a complex series of notices. Other tasks include chasing non-payment. The monitoring of receipts and expected payments will be essential to knowing the amount that can be allocated through the spending protocol in the coming year. *With the increase in the amount of development that will be liable for the CIL, officers consider it is appropriate to utilise up to 5% of the CIL receipts for administrative and monitoring expenses in accordance with the regulations, this will require additional staff resource in the planning department to supplement the current part time (shared) post.*

Local Funding and the Neighbourhood Portion

- 4.24 Where there are Parish Councils, there is a duty to pass 15% (or 25% if a neighbourhood plan or neighbourhood development order has been made) of the receipts received for development that is taking place in the

NON EXEMPT

parish council's area. Where there are no parishes, Government guidance states that communities can still benefit from the neighbourhood portion. The CIL regulations state that the local authority may use those receipts that would have been passed to a parish council to support the development of the relevant area¹⁰. Therefore whilst the decision lies with the Borough Council, who will retain the levy receipts and spends them on behalf of the community, this is intended to recompense communities receiving new development in their area.

- 4.25 The government guidance advises that the council should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood portion. The Government does not prescribe a specific process for agreeing how the neighbourhood portion should be spent but suggests that existing community consultation and engagement processes should be used. There are, therefore, options for councillors to consider and decide on how the neighbourhood portion should be spent, informed by consultation with the community.
- 4.26 Existing community consultation and engagement processes, such as those set out in the Statement of Community Involvement¹¹ (SCI), could be used to consult with the communities affected by development as to how the neighbourhood portion should be spent. The SCI sets out a range of community involvement methods including: "Serving You", the Council's magazine delivered to every household, the Council's website, exhibitions/displays, and community workshops.
- 4.27 The Borough Council's "Approved By You" grants scheme, administered by the Council's Community Team, uses the network of community groups to allocate the grants. Events are held where community groups can put forward proposals for using grant funding and the public can express their support.
- 4.28 Whatever consultation method is used, the consultation should be proportionate to the level of levy receipts and the scale of the proposed development in the neighbourhood.
- 4.29 The Core Strategy divides the Borough into five spatial distribution locations or local plan areas and sets out the amount of development proposed within each. The five areas, based on wards, are; Emsworth, Havant, Hayling Island, Leigh Park and Waterlooville. Officers consider these areas are the most appropriate to use for considering the spending of the neighbourhood portion. Monitoring the issue of liability to pay notices and the collection of CIL by local plan area will enable calculation of the value of the neighbourhood portion in each local plan area.
- 4.30 There are no neighbourhood plans adopted within the Borough although a community group representing the ward of Emsworth has applied to the Council to be designated a Neighbourhood Forum to prepare one for Emsworth. A decision is expected to be made by the Council at its

¹⁰ The "relevant area" is that part of the charging authority's area that is not within the area of a parish council

¹¹ Adopted by the Council in December 2013

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meeting in July 2014. If the a Neighbourhood Plan is adopted for the area, the neighbourhood portion would rise to 25%.

Allocating the Remainder

- 4.31 There are choices to be made regarding how the remainder, excluding the 5% administration costs and the 15-25% neighbourhood portion, will be spent. Whilst it may be expected that a significant proportion of available CIL funds will be allocated to a shortlist of high priority projects, the split between strategic schemes that may benefit a wider area of the borough and projects that are very local facilities to be used by a smaller group of residents may vary from year. There are a range of examples from other local authorities regarding the broad level allocated to different types of infrastructure, as opposed to specific infrastructure projects.
- 4.32 Elsewhere within Hampshire, Winchester City Council (WCC) has agreed that 25% of the net remainder (after subtracting 5% for administrative costs and 15% to the parish and town councils) annual receipts be passed to Hampshire County Council for infrastructure projects from the R123 list. It should be noted that WCC's R123 list is more detailed and lists specific transport schemes which may be funded by the CIL.
- 4.33 Discretion remains with the Borough Council regarding when and how much, if any, CIL funds are passed over to Hampshire County Council as a major provider of infrastructure. Based on advice from the District Councils' Network and County Councils Network and a study of practice adopted by councils elsewhere in the country, *the Protocol attached at Appendix 1 and recommended for adoption, sets out steps based on the submission of a completed bid for funding*. The bid should set out robust evidence of the cost and practicality of delivering the scheme or project, including an exploration of alternative sources of funding.
- 4.34 Once allocated, if passed directly to Hampshire County Council a commitment should be sought in the form of an indemnity agreement between the borough and county council to ensure that funds are spent in accordance with the terms of the R123 list. Alternatively funds could be retained by the borough council until works are carried out.
- 4.35 Some strategic projects may extend beyond the Havant borough boundary e.g. Bus Rapid Transit. The growth priorities of the Solent Local Enterprise Partnership (LEP) will also be important in determining the allocation of CIL funds. The Solent LEP has five strategic priorities, one of which is "Infrastructure Priorities". This focuses in particular on land assets, transport and housing, reducing flood risk and improving access to high speed broadband.

Alternative Sources of Funding

- 4.36 In order to decide priorities and whether CIL funds should be allocated to the highest priority projects it will be important to explore alternative sources of funding further. The Infrastructure Delivery Plan refers to existing and potential funding sources for each of the items of infrastructure listed. Further work needs to be undertaken to build on the

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estimates for project costs and ensure that all potential funding sources have been fully explored.

- 4.37 Some of the money to fund the Solent LEP's infrastructure priority projects will come from the Growing Places Fund, which has already attracted a significant amount of Government funding. This will establish a revolving capital infrastructure fund operated on a loan basis, subject to a bidding process. Whilst borrowing against future CIL income is not permitted, the levy can be used to repay expenditure on infrastructure that has already been incurred. Thus it may be possible to use CIL to pay back loans from the Growing Places Fund. However, the fourth bidding round, which closed in February 2014, is anticipated to be the final investment round in the initial allocation of the fund.
- 4.38 For transport, the Solent LEP is working with the Solent Local Transport Body (LTB) and Transport for South Hampshire and Isle of Wight, now renamed "Solent Transport", to access further Department for Transport (DfT) funding through the Local Growth Deal. The Solent LEP has submitted a plan for growth¹² to the Government which aims to unlock further funding for the Solent area in addition to that already allocated by the DfT via the Solent LTB. The plan includes in its justification, the need for a new access road to enable the high quality business and technology park at Dunsbury Hill Farm.
- 4.39 A further priority action is to establish a Solent transport resilience fund (through pooled Local Transport Authority funding and the Local Growth Deal). The Solent Transport Fund is described as, "A range of sustainable transport interventions and network enhancements to support future economic growth and to retain the existing productivity of the Solent LEP area through the provision of resilient, efficient, safe, accessible and well maintained transport networks." Potential interventions include town centre accessibility improvements by all modes and access to stations.
- 4.40 The Hampshire Local Transport Plan 2011-2031 (Reviewed April 2013) draws on four centrally funded local transport grants allocated by the DfT which are:
- block funding for highways maintenance (capital);
 - block funding for small transport improvement schemes (capital);
 - major schemes (capital); and
 - Local Sustainable Transport Fund (capital and revenue).
- 4.41 Other local authority funding includes the business rates retention scheme. This allows councils to keep a share of growth in business rates in their area and reduce their dependency on central government grant funding. Tax increment financing (TIF) works by allowing local authorities to borrow money for infrastructure projects against the anticipated increase in business rates income expected as a result of the said infrastructure project.

¹² Transforming Solent – Solent Strategic Economic Plan 2014-20 (Final Submission 31/03/2014)

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Funding Decision Protocol – key principles

4.42 Taking account of the foregoing information, some suggested key principles of the Funding Decision Protocol for consideration and agreement by the Cabinet and Council are:

- *Funds to be targeted so that they address identified infrastructure priorities and address the impacts of development.*
- *Decision making and the process leading to it to be transparent.*
- *The process will tie in with an annual reporting and review of CIL and the Regulation 123 List.*
- *Procedures and timetable should run on an annual basis and be aligned with the annual budget decision making process.*
- *A three year time horizon is set for spending programmes, aligned with the capital spending programme, but with an eye on the longer term.*
- *The allocation process, including the consultation stage, to be based on estimated CIL income together with any unallocated funds from the previous financial year.*
- *A significant proportion of available CIL funds will be ring fenced towards an agreed shortlist of high priority projects, with final decisions being made by Havant Borough Council.*
- *Opportunities for joint funding of schemes will be considered where these reflect shared priorities and attract additional sources of funding e.g. through such as Flood Defence Grant in Aid or grants via the Solent LEP.*
- *Decision making, including the use of the 15% neighbourhood proportion, will be made by the Council but be informed by liaison with service and infrastructure providers and the views of stakeholders and the community through consultation and engagement towards a consensus for funding priorities.*

Timetable and Next Steps

4.43 The Cabinet and Council has to date determined the use of the S106 funds already banked as part of the annual decision making on the Capital Programme which takes place during February. The timetable set out in the CIL Funding Decision Protocol leads into that decision making and the Protocol therefore needs to be in place by this summer to enable alignment with the Capital Programme. The timetable allows for briefing and discussion with the Cabinet Lead for Planning and Built Environment, the Joint Executive Board. All Member briefings and workshops are also programmed and stakeholder consultation prior to reports on the final draft spending programme to the Cabinet and Council.

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5.0 Implications

- 5.1 **Resources:** Until now there has been adequate staff resource within the Planning Policy Team to prepare and take the CIL Charging Schedule through the required steps to adoption and implementation. This report considers the need for and provides a recommendation on the employment of a full time officer to administer the collection, monitoring and distribution of CIL funds. This would cost £20,000 to £40,000 depending on the allocation of tasks and skills required but would be offset by saving of the expenditure on the current part time officer. There are ongoing resource implications for Development Management officers in advising on the CIL requirements when a planning application is received and for the Finance Team in the collection of funds and potentially if CIL is not paid at the correct time.
- 5.2 **Legal:** In developing procedures for the spending of CIL, regard has been given to ensuring that these measures comply with all relevant legislation including the CIL regulations and guidance..
- 5.3 **Strategy:** The CIL will help to deliver across all three priority themes set out in the Corporate Strategy in respect of financial stability, economic growth and public service excellence.
- 5.4 **Risks:** The CIL has replaced S106 planning obligations as the main source of developer contributions from August 2014 for the provision of infrastructure, with the exception of affordable housing. The risk of not adopting the protocol will be the lack of a clear and fair process for the distribution of funds towards the cost of priority infrastructure to support the development of the borough for the benefit of residents and businesses. Fully resourcing the administrative and monitoring processes will minimise the risk of due receipts not being collected.
- 5.5 **Communications:** Hampshire County Council other service and infrastructure providers have been informed that the process for considering the spending priorities for CIL has begun. The Protocol process includes continued liaison with these bodies and allows for consultation with local communities.
- 5.6 **For the Community:** The spending of the CIL on infrastructure within the borough will be of benefit to the local community.
- 5.7 **The Integrated Impact Assessment (IIA) has been completed and concluded the following: N/A**

6.0 Consultation

- 6.1 Discussions on the Protocol process and Infrastructure Delivery Plan update have been undertaken with Havant Borough Council officers and leading councillors. The Protocol process allows for consultation with Hampshire County Council, other service and infrastructure providers and local communities.

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Appendix 1: Community Infrastructure Levy Funding Decision Protocol

Background Papers:

Community Infrastructure Levy Regulations 2010 as amended

Community Infrastructure Levy (Amendment) Regulations 2013

Department for Communities and Local Government - Community Infrastructure Levy Guidance – February 2014

District Councils' Network and County Councils Network Community Infrastructure Advice Note (January 2012)

Research based on published reports to cabinets and councils, and CIL monitoring reports on other authorities' websites including the following – East Cambridgeshire, Elmbridge Borough Council, London Borough of Redbridge, Huntingdonshire, Portsmouth City Council, Winchester City Council, Wycombe District Council.

Agreed and signed off by:

Legal Services: (10 June 2014)

Executive Head of Governance & Logistics: (5 June 2014)

Executive Head – Planning & Built Environment: (2 June 2014)

Cabinet Lead - : Planning & Built Environment (11 June 2014)

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