

**NON EXEMPT**

## **HAVANT BOROUGH COUNCIL**

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**CABINET**

**1 July 2020**

### **COMMUNITY INFRASTRUCTURE LEVY: CIL FUNDING 2020-22**

**Report on behalf of Head of Planning**

**FOR DECISION**

**Report No. HBC/008/2020**

**Cabinet Lead: Planning, Regeneration and Communities**

**Key Decision: No**

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#### **1.0 Purpose of Report**

- 1.1. The Council has been collecting the Community Infrastructure Levy (CIL) since CIL was implemented on 1 August 2013. A CIL Funding Decision Protocol was agreed 23 July 2014 to govern CIL Spending in Havant Borough. The Protocol has had regular minor updates, the most recent being at council on 26 February 2020. The Protocol is now in need of revision.
- 1.2. To make Cabinet aware of the potential effect of COVID-19 on future CIL Spending and seek views on the proposed way forward.

#### **2.0 Recommendations**

2.1 That:

- (a) Cabinet agree that there should be a delay in this year's round of Strategic CIL Pot spending until there is more certainty surrounding CIL income for period ending 31 March 2021.
- (b) If there are insufficient funds, that there is no 'annual CIL Strategic Fund bidding process' this year and further spending from the Strategic CIL Pot (due for decision February 2021) is postponed until February 2022. This would not include funds previously committed through annual or interim decisions. Decision on funding new interim projects would be subject to an appropriate review of predicted 2021 income at 30 September 2020.
- (c) That work should continue on the Revised Funding Decision Protocol to ensure this document is compliant with the CIL Regulations, Planning Practice Guidance and the Constitution; to ensure we have a robust set of rules ready for future funding requests. After Cabinet, the Governance and Finance Board will consider the matter on 29 July 2020 inputting to the process that will lead to consideration of the

revised protocol at Cabinet on 2 September 2020 before it is then considered by the Full Council.

- (d) That the bidding process for the Neighbourhood Portion continues under the existing CIL Funding Decision Protocol and that the bidding dates are announced as being 19 August to 30 September 2020. Projects that provide infrastructure supporting recovery from the impacts of COVID-19 will be given priority, providing they meet other relevant criteria.

### **3.0 Executive Summary**

#### **Revised CIL Funding Decision Protocol**

- 3.1 The protocol agreed on 23 July 2014 has subsequently been updated 18 February 2015, 22 February 2017, 27 February 2019 and 26 February 2020. The most recent version can be viewed at Appendix A. Any changes carried out in these updates have been minimal and the Funding Decision Protocol has not been 'overhauled' since it was originally drafted. The Draft Version of the Revised Funding Decision Protocol will be designed to be useable, align with the corporate priorities of the Council, include changes suggested by councillors and those resulting from lessons learned.

#### **Potential effect of COVID-19 on CIL Income**

- 3.2 On top of the nutrients issue over the past 12 months, COVID-19 has had a marked impact on the collection of CIL. This has resulted in both a delay in collection of CIL payments and recessionary influences on the housing market (which in turn is likely to affect housing delivery). At this stage in the year we are unable to confirm if the CIL income for 2021 will cover those funds already committed to expenditure for 2022/23 by previous CIL spending decisions. It is considered unlikely at present that there will be sufficient CIL to provide for additional spending over and above existing commitments.

### **4.0 Additional Budgetary Implications – Spending the Community Infrastructure Levy**

#### **Revised CIL Funding Decision Protocol**

- 4.1 The Protocol sets out a process for assessing projects that are eligible for CIL funding and to decide the best way of investing this money for the greatest benefit of the borough. It enables decisions on spending to be clear, transparent and fair. It also allows officers, members, residents and the development industry to understand which schemes are critical, essential and desirable to the delivery of the local plan, with additional categories for unsuccessful bids.
- 4.2 There are two key aspects to the spending of CIL funds: The Strategic CIL Pot and the Neighbourhood Portion and these are discussed further below under their separate headings.

### **(i) Strategic CIL Pot**

- 4.3 Of the CIL funds received, in the region of 80% is set aside for the 'Strategic CIL Pot'.
- 4.4 When considering availability of funds this should take into consideration any commitments for future fund expenditure taken in earlier years.
- 4.5 It is anticipated that funds will be primarily available to be spent on key infrastructure projects necessary to support delivery of the Havant Borough Local Plan and the Regeneration Strategy. However, choices will need to be made using the criteria outlined in the Protocol as CIL will not provide all the infrastructure required to support those strategies and match funding will need to play a substantial role.
- 4.6 The revised approach is for an Officer Panel to be set up, comprising key team members from CELT, Coastal, Communities, Planning Policy and Regeneration Teams. The Officer Panel will consider the pot available and spending priorities for infrastructure needed to implement key Council strategies: The Havant Borough Local Plan and the Regeneration Strategy. The panel would be able to consider what infrastructure is needed as well as lead in times, feasibility requirements and likely spending profiles of the projects. An Infrastructure Funding Plan would be produced, covering CIL spending for the coming financial year and look to the medium term too.
- 4.7 The final decision on CIL spending for the Strategic CIL Pot should be taken at Cabinet, although the relevant Cabinet lead should be involved in formulating the plan for that year.

### **(ii) Neighbourhood Portion**

- 4.8 Of the CIL funds received, 15% is set aside for the 'Neighbourhood Portion' (subject to capping as per the CIL Regulations). This will increase for Emsworth Ward to 25% on the basis that the Emsworth Neighbourhood Plan is 'made', following a referendum<sup>1</sup>.
- 4.9 Our methodology in spending the Neighbourhood Portion has evolved as well. The approach taken in the last round of CIL spending, dividing the funds available into three areas has given us a workable solution and allows officers to seek the views and opinions of the councillors at a local level. This process is considered to have gone relatively well. Only minor changes would be proposed in the new protocol around consultation with councillors. However, the use of essentially the existing protocol, slightly modified, would itself need to be authorised given that a review of the protocol was specifically authorised by the Full Council decision in February 2020. The criteria for selection would also be updated to prioritise spending on infrastructure that helps in responding to the pandemic, economic recovery or adapting to different priorities. For example, this would prioritise spending on sustainable travel infrastructure.
- 4.10 The ward groupings into three areas is viewable in the table below. These groupings will need to be reconsidered if the Emsworth Neighbourhood Plan is 'made'.

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<sup>1</sup> This was due to take place alongside local government elections in May 2020 but has been postponed due to the pandemic.

Neighbourhood Portion Area	Wards
Coastal Communities	Emsworth Hayling East Hayling West
Wider Havant	Battins Barncroft Bedhampton Bondfields St Faiths Warren Park
West of the A3(M)	Cowplain Hart Plain Purbrook Stakes Waterloo

**Table 1: Area Groups for Neighbourhood Portion Spends**

4.11 The final decision on CIL spending for the Neighbourhood Portion should be taken at Full Council, with Cabinet making a recommendation.

### **Revised Protocol and Process**

4.12 The revised Protocol, including the new spending process require scrutiny. However, this has not been possible up until now due to the COVID-19 restrictions. The Governance and Finance Board are due to meet on 29 July to scrutinise this matter. However, the next Cabinet meeting after this is not until 2 September. As such, it is necessary to put in place a series of meetings for discussion, scrutiny and decision making as identified in the table below:

Date	Meeting
01/07/2020	Cabinet (today)
29/07/2020	Scrutiny – Governance Audit and Finance Board
02/09/2020	Cabinet
23/09/2020	Council (for decision on Revised CIL Funding Decision Protocol)

**Table 2: Timetable**

### **Potential effect of COVID-19 on CIL Income**

4.13 From 1 April 2020 to 10 June 2020 we have received less than £20,000 of Strategic CIL income, compared to the same period in 2019 we had received over £700,000. This is due largely to delayed payments due to COVID-19. Assuming there is not a further lockdown and all due payments are made on time **the minimum Strategic CIL income for the year would be in the region of £850,000**. Discussions have taken place with the relevant teams due to receive committed Strategic CIL Funding. ESCP have updated us on their future funding requirements which involves a re-profile of the currently committed CIL spending for their two critical projects. This has largely been achieved by the allocation of CIL funds leveraging in third party finance and increased timescales for delivery of these projects. Overall there will be no additional cost to that already agreed for the Langstone FCERM Scheme which remains at £2,625,000

(including 60% risk). The overall costs of the Hayling FCERM Strategy have increased, but due to third party funding the future commitment can be reduced by £200,000 from £533,000 to £333,000 (this figure allows for 30% risk). Further detail of the potential impact of these updated figures are provided in Table 3B. CELT are awaiting the outcome of a report from Network Rail, after which they will be able to provide an update on the expenditure profile of the spend for Warblington Footbridge. Taking into consideration the updated figures in Table 3B 2021/22 now has a potential spending commitment of £1,424,300, 2022/23 a sum of £1,590,642 and 2023/24 £737,358.

4.14 CIL Strategic CIL Pot income for 2019/20 (to 31/3/2020) was a healthy £2,729,290, which means the revised spending commitment of £1,424,300 identified in Table 3B could be covered for 2021/22. With unspent funds recommended to be carried forward for 2022/23 to contribute to the 2022/23 committed spending requirement of £1,590,642.

Project	2021/22	2022/23
(a) Langstone FCERM	£700,000	£700,000
(b) Hayling FCERM	£262,218	£100,082
(c) Warblington Footbridge <sup>2</sup>	£800,000	£800,000
<b>TOTALS</b>	<b>£1,762,218</b>	<b>£1,600,082</b>

Table 3A: Existing Future Spending Commitments

Project	2020/21 (already allocated)	2021/22	2022/23	2023/24
(a) Langstone FCERM <sup>3</sup>	£560,000	£560,000	£692,642	£737,358
(b) Hayling FCERM <sup>4</sup>	£170,700	£64,300	£98,000	£0
(c) Warblington Footbridge <sup>5</sup>	£325,000	£800,000	£800,000	£0
<b>TOTALS</b>	<b>£1,055,700</b>	<b>£1,424,300</b>	<b>£1,590,642</b>	<b>£737,358</b>

Table 3B: Potential Revised Future Spending Commitments

4.15 It is considered that whilst the impact of COVID-19 on the housing market remains uncertain, it would be wise to postpone the Strategic CIL Pot Spending process for 2020/21 and any decision on new spends, until it is known that the income for 2021 (to 31/3/2021) will cover the future commitment for 2022/23 in the region of £1.59m. Added to this situation are the number of stalled permissions pending a satisfactory solution to the need for such developments to be nutrient neutral. Whilst this issue is very likely to be resolved in the near future, it is considered that due to COVID-19, the housing market will take some time to 'catch up'.

<sup>2</sup> This has been provisionally annualised at £800,000 per year, however the proportions are anticipated to change. Actual figures will be known when feasibility report for project has been received (due July 2020).

<sup>3</sup> This project allows a figure of 60% risk, so costs may reduce in future years

<sup>4</sup> This project allows a figure of 30% risk, so costs may reduce in future years

<sup>5</sup> This has been provisionally annualised at £800,000 per year, however the proportions are anticipated to change. Actual figures will be known when feasibility report for project has been received (due July 2020).

- 4.16 We can anticipate that a number of sites will start this year and result in CIL receipts for 2021, this is likely to include Forty Acres (APP/18/00450) which has potential CIL receipts of over £1.634m due (gross), however this sum will not be collected by the council in full until 540 days after commencement of development. Assuming we collected a minimum of one instalment this would result in additional Strategic CIL Pot income of £326,883. A number of applications are simply awaiting a solution to the need to be nutrient neutral, totalling 242 dwellings as of 10 February 2020<sup>6</sup>. The CI Team would have a firmer idea of the likelihood of Strategic CIL Pot income for 2021 at the end of Q2 and if there were any additional funds available for strategic spends.
- 4.17 As such, it is considered that there is a strong likelihood that existing spending commitments can be covered, though not a certainty. As such, it is considered that a full CIL spending run is not justified in terms of the substantial officer input that would be required. Instead, an expansion of the interim CIL spending decisions, which can be made by the Cabinet Lead is proposed. Any such spends would also be subject to a review of potential income (see also Paragraph 7.5). This would ensure that CIL which is available can be used to fund short term projects associated with the delivery of those key corporate projects whilst a full spending package is prepared for February 2022 to be decided with the Council's budget. The revised CIL Funding Decision Protocol would update the position on interim CIL spending decisions.

## **5.0 Background and Relationship to the Corporate Strategy and Directorate Business Plan(s)**

- 5.1 The CIL helps to deliver infrastructure to support all the priority themes set out in the Corporate Strategy, it will especially support:
- Theme 2: Safer, healthier and a more active borough
  - Theme 3: A thriving borough economy
  - Theme 4: A revitalised borough with infrastructure that meets our ambitions.
- 5.2 In respect of the Business Plan for Planning and Regeneration, CIL investment contributes to the delivery of infrastructure to fulfil the aims of the local plan and enable place shaping. This directly benefits the prosperity of the borough.

## **6.0 Options Considered and Reasons for the Recommendation**

### **Revised CIL Funding Protocol**

- 6.1 The volume of bids has increased year on year, with 47 bids being received in the last round of CIL spending. There is a great deal of information to digest for each valid bid and the revised protocol needs to have increased capacity built into it. The strategic bids received are generally linked to the implementation of the Local Plan and more recently the Regeneration Strategy. This is largely due to their being submitted by internal teams, involved in the production of those strategies. However, there is no direct link between Council strategies and the CIL spending process – we are reliant on the bids we receive each year. Under the existing Protocol the timetabling is

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<sup>6</sup> This was reported to the Partnership for South Hampshire's Joint Committee on 10 February - <https://www.push.gov.uk/wp-content/uploads/2020/01/FINAL-Nutrients-Update-Joint-Committee-10-February.pdf>

simultaneous, in the revised version funding requests for the two types of 'pot' will be considered in differing fashions and have differing final decision makers, whilst sharing some commonality. As the Revised Protocol requires a decision by Council it is proposed that CIL bidding dates for the Neighbourhood Portion (with a pot in excess of £500K) are announced, commencing in August and concluding in September, using the mechanism of the existing CIL Funding Decision as this largely unchanged to the mechanism proposed under the Revised CIL Funding Protocol and that used for assessment of bids concluding at Council on 26 February 2020. The timetable mentioned in Table 2 proposes that the Revised Protocol will go to Council on 23 September, however if there was a delay this would not overly affect the allocation of Neighbourhood Portion Funds, set for decision at Council in February 2021.

- 6.2 To avoid the possibility of delaying the Neighbourhood Bidding Process we will recommend to Cabinet that the bidding dates for this year are announced as soon as possible. As previously mentioned this bidding process is not overly affected by the proposed revised CIL Funding Decision Protocol and can proceed satisfactorily under the current and new proposed set of rules. The dates for the submission of bids are anticipated to be 19/8/2020 to 30/9/2020. Nonetheless, in and of itself, asking for bids to be submitted does not commit the Council to any Neighbourhood Portion spends.

## **7 Resource Implications**

### **CIL Funding Decision Protocol**

- 7.1 The collection of CIL is bringing significant funds to the council for capital spending on infrastructure. It is ring fenced for that purpose and cannot be used for other purposes. An agreed Revised CIL Funding Protocol will enable us to spend Strategic CIL Pot and Neighbourhood Portion CIL in a resource efficient manner in the future.
- 7.2 5% of CIL is able to be used for administration of the scheme, allowing the management of CIL to be self-funding.
- 7.3 An agreed Revised CIL Funding Protocol will enable us to spend Strategic CIL Pot and Neighbourhood Portion CIL in a resource efficient manner in the future.

### **Potential delay or no additional Strategic CIL Spends this year**

- 7.4 This would leave us with funds to carry forward in excess of £1.34m if no additional funding commitments are made which would help to cover any potential shortfall in 2021 CIL Income against committed CIL expenditure.
- 7.5 No additional Strategic CIL spends this year could lead to under-investment in infrastructure necessary to the economic recovery of the borough. We are recommending a delay until early October to review the potential CIL funds available for 2021 with the Head of Planning, Director of Regeneration and Place, S151 Officer and Cabinet Lead, before deciding whether to progress with any potential interim additional spends from the Strategic CIL.

## **8 Legal Implications**

- 8.1 Section 216(1) of the Planning Act 2008 and Regulation 59 of the Community Infrastructure Levy Regulations 2010 requires that CIL receipts are applied to supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure.
- 8.2 Although regulation 59 of the CIL Regulations 2010 requires a charging authority to apply CIL to funding infrastructure to support the development of its area there is no requirement to expend CIL within a certain time frame. The requirement is to fund infrastructure. The payment of CIL for present purposes may therefore be suspended.
- 8.3 Infrastructure is widely defined under Section 216 (2) of the Planning Act 2008 and includes roads, flood defences, schools and other educational facilities, medical facilities, sporting and recreation facilities and open spaces.
- 8.4 In developing and implementing procedures for the spending of CIL, regard has been given to ensuring that the infrastructure projects identified fall within the requirements of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 (as amended.)
- 8.5 The Head of Legal has been consulted with regards to the appropriate body to make decisions regarding CIL. It has been confirmed that:
  - (i) Full council adopted the CIL Charging Schedule and subsequently approved the strategy under which CIL money will be spent; this is known as the CIL Funding Decision Protocol. Any revision to the CIL Funding Decision Protocol must be subsequently approved by Council.
  - (ii) In any revised CIL Funding Decision Protocol, in order to be constitutionally compliant, Cabinet will be responsible for allocation of the borough-wide 'Strategic CIL Pot', which will support the provision of infrastructure necessary for delivery of the local plan.
  - (iii) With regards to the 'Neighbourhood Portion', all Councillors in consultation with Officers will remain responsible in any revised CIL Funding Decision Protocol for making decisions on such spending at Full Council. Councillor input in this process provides invaluable local knowledge and assists with the prioritisation of the neighbourhood projects presented.

## **9 Risks**

- 9.1 The protocol sets the framework for ensuring that the CIL is spent effectively and provides or enables the most necessary infrastructure support the local plan and to ensure a prosperous borough. The Protocol needs to be robust to fulfil this role and may need revision at a future date.

## **10 Consultation**

10.1 Feedback from 'Scrutiny' will be taken into account in respect of the Revised CIL Funding Decision Protocol in the draft version presented to Councillors and in turn Cabinet for recommendation to Council.

## **11 Communication**

11.1 Once approved the website will be updated with the dates of the forthcoming Neighbourhood Portion bidding period. Councillors and Community Groups will be notified of the new Protocol to assist in this year's bidding process (if applicable).

11.2 The expenditure of CIL, especially the Neighbourhood Portion, provides immediate and positive 'good news' stories, these will be capitalised on with a succession of press releases with the assistance of the Communications Team. Strategic CIL expenditure is often more long term but it is nevertheless important to promote the council's involvement and commitment to infrastructure necessary to deliver the local plan.

11.3 Once the Revised Funding Decision Protocol has been approved at Council it will be uploaded to the Council website.

## **Appendices**

Appendix A: Community Infrastructure Levy (CIL) Funding Decision Protocol (Revised February 2020)

### **Background Papers:**

Community Infrastructure Levy Regulations 2010 as amended

Ministry of Housing, Communities & Local Government – Planning Practice Guidance

The Havant Borough Local Plan (Core Strategy 2011 and Allocations Plan 2014)

Pre-Submission Havant Borough Local Plan 2036: [www.havant.gov.uk/localplan](http://www.havant.gov.uk/localplan)

HBC CIL Spending Decisions: [www.havant.gov.uk/cil-spending-decisions](http://www.havant.gov.uk/cil-spending-decisions)

HBC CIL Annual Monitoring: [www.havant.gov.uk/planning-and-environment/planning-policy/community-infrastructure-levy/cil-monitoring](http://www.havant.gov.uk/planning-and-environment/planning-policy/community-infrastructure-levy/cil-monitoring)

A Regeneration Strategy for Havant Borough 2018-2036:

[www.havant.gov.uk/sites/default/files/documents/Have%20opportunity%20with%20Havant%20update%20March%202019.pdf](http://www.havant.gov.uk/sites/default/files/documents/Have%20opportunity%20with%20Havant%20update%20March%202019.pdf)

Corporate Strategy

Adopted CIL Instalment Policy

Agreed and signed off by:

For Head of Planning: David Hayward 19/6/2020

Director: Simon Jenkins 17/06/2020

S151 Officer: Lydia Morrison 18/06/2020

Monitoring Officer: David Brown 22/06/2020

For Cabinet Lead: Councillor Michael Wilson 19/06/2020

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