



## AGENDA ITEM:

### SUMMARY

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| Report for:         | <b>Strategic Planning and Environment Overview &amp; Scrutiny</b> |
| Date of meeting:    | <b>11 November 2014</b>   |
| PART:               | <b>1</b>  |
| If Part II, reason: |   |

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| Title of report:      | <b>Governance Arrangements for the Community Infrastructure Levy (CIL)</b>   |
| Contact:              | <p>Cllr Andrew Williams, Leader of the Council and Portfolio Holder for Planning and Regeneration</p> <p>Heather Overhead – Assistant Team Leader, Strategic Planning and Regeneration Officer (ext 2083)</p> <p>James Doe – Assistant Director, Planning, Development and Regeneration (ext 2583)</p>   |
| Purpose of report:    | To provide Members with an update on progress towards CIL Governance and arrangements for S106 following implementation of CIL.  |
| Recommendations       | That the Committee notes and comments on the principles and proposals for CIL Governance as set out in the report for feedback to Cabinet.   |
| Corporate objectives: | <p>Preparation and implementation of a CIL contributes to all of the corporate objectives.</p> <p><u>Affordable Housing</u><br/> Affordable housing will be exempt from paying CIL and the CIL revenues cannot currently be used for provision of Affordable Housing. We will continue to secure Affordable Housing through the completion of planning obligations under S106 of the Town and Country Planning Act 1990 (as amended). Officers from the Strategic Housing service are involved in developing the CIL charging schedule, for which affordable housing requirements will be a key consideration. If CIL is set too high then developers may not be able to meet the affordable housing policy requirements identified in the Core strategy. A number of CIL Charging Schedules have been either amended or rejected for not adequately considering the</p> |

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|   | <p>implications of the Charging Schedule on delivery of Affordable Homes.</p> <p><u>Safe and Clean Environment</u><br/>Open space and green infrastructure improvements have been identified as possible recipients of CIL funding within the Councils Draft Regulation 123 List Such works would contribute to a safe and clean environment.</p> <p><u>Building Community Capacity</u><br/>CIL revenues may be used to social enterprise and local community infrastructure which supports those in the most deprived areas Local communities should feel empowered to carry out improvements within their neighbourhood by the delegated of a proportion of CIL funding to them under Regulation 59 of the CIL Regulations</p> <p><u>Regeneration</u><br/>CIL will be used in combination with S106 to support the delivery of the key regeneration priorities for the Council.</p> <p><u>Dacorum Delivers</u><br/>Developing the CIL represents Value for Money as it will become cost-neutral once it is up and running as explained below. It will lead to the delivery of infrastructure required to support new development so will improve the reputation of the Council.</p> |
| <p>Implications:</p> <p><u>Financial</u><br/>The cost of developing and implementing the Council's CIL Policies and Procedures is being borne by the Local Development Framework (LDF) budget, and may be repaid from future CIL receipts. Once implemented, up to 5% of CIL receipts may be used for its ongoing administration. The Council will not be able to charge for the monitoring of S.106 agreements with an associated loss in income. The project is expected to be cost-neutral in the long term.</p> <p>Once CIL is in place the Council will be responsible for collecting and allocating significant sums of money to the delivery of infrastructure.</p> <p><u>Value for money</u><br/>Where possible, technical work that supports the CIL has been jointly commissioned with adjoining authorities to ensure value for money. The Council will be responsible for allocating CIL money for spend, and thus will have a responsibility to ensure efficient use of funds.</p> |   |
| Risk Implications   | <p>The Project Initiation Document (PID) was updated in February 2013 and sets out full details of the risks associated with the introduction of a CIL. They include insufficient buy-in from infrastructure providers and key stakeholders, changes in Government policy and team capacity.</p>  |

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| Equalities Implications   | An Equality Impact Assessment has been carried out for CIL in support of the PID. No significant issues have arisen, largely as any expenditure from CIL monies will need to be reflective of the need to develop infrastructure in the Borough, as set out in the Borough's Infrastructure Delivery Plan.   |
| Health And Safety Implications  | None   |
| Consultees:   | <p>The CIL Task and Finish Group have discussed the programme for the introduction of CIL and draft versions of the Regulation 123 List. They also discussed the CIL Governance proposals in July 2013.</p> <p>CIL Governance proposals have been developed by members of the CIL Working Group in liaison with officers at Hertfordshire County Council. The draft Memorandum of Understanding, CIL Governance Structure Diagram and Infrastructure Advisory Group Terms of Reference have been circulated to HCC for comment. Feedback from HCC is still awaited.</p> <p>Officers discussed the management and use of CIL funds with the Town and Parish Clerks at their meeting of the 26<sup>th</sup> February 2014. Initial views have been incorporated within the report.</p>   |
| Background papers:  | <ul style="list-style-type: none"> <li>• Inspector's Report on CIL – October 2014</li> <li>• Cabinet Report – 25<sup>th</sup> March 2014</li> <li>• Cabinet Report – 26<sup>th</sup> November 2013</li> <li>• CIL Guidance Notes June 2014 (Department for Communities and Local Government)</li> <li>• CIL Regulations 2010 (amended 2011, 2012 and 2013, 2014)</li> <li>• Full Council – 15<sup>th</sup> January 2014</li> <li>• Core Strategy 2006-2031</li> <li>• Dacorum Infrastructure Delivery Plan (June 2012)</li> <li>• Dacorum Infrastructure Delivery Plan Update (January 2014)</li> <li>• Infrastructure Funding Gap Assessment (December 2012)</li> <li>• Infrastructure Funding Gap Assessment Update (January 2014)</li> <li>• Draft Charging Schedule (May 2014)</li> <li>• Project Initiation Document</li> </ul> <p>Key documents can be located on the Council's CIL web pages.</p> |
| Glossary of acronyms and any other abbreviations used in this report: | <p>BCIS – Building Cost Information Service<br/> CIL – Community Infrastructure Levy<br/> CSSG – Capital Strategy Steering Group<br/> DCLG – Department for Communities and Local Government<br/> DCS – Draft Charging Schedule<br/> HCC – Hertfordshire County Council</p>  |

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|  | IAG – Infrastructure Advisory Group<br>IBP – Infrastructure Business Plan<br>IFGA – Infrastructure Funding Gap Assessment<br>InDP – Infrastructure Delivery Plan<br>LEP – Local Enterprise Partnership<br>NPPF – National Planning Policy Framework<br>PDCS – Preliminary Draft Charging Schedule |
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## **BACKGROUND**

### **1.0 Introduction:**

- 1.1 The Community Infrastructure Levy (CIL) is a new way of collecting financial contributions from new developments to help fund the provision of infrastructure required to support growth in the Borough. It is a tariff style system applied to the area of the development as a cost per square metre and may vary by both use and location.
- 1.2 The Borough Council is the Charging Authority for CIL. It is responsible for setting the proposed CIL rate, collecting the charges and spending the CIL income. The level of charge must be informed by evidence of infrastructure need and scheme viability, and once set will be mandatory for developers to pay.
- 1.3 The Draft Charging Schedule (DCS) was submitted to the Planning Inspectorate in July 2014 and underwent an independent examination on 26 September 2014. On 21 October 2014 the Council received the Inspector's Report on the Council's Draft CIL Charging Schedule, which recommended its approval. The DCS and associated documents will be presented for adoption to the Cabinet and then Full Council either in December/January or February 2015, depending on the Cabinet work programme. Under the current timetable it is intended to start charging CIL from the 1<sup>st</sup> April 2015.
- 1.4 The Council has set out broad initial proposals for the spending of CIL through the publication of a draft Regulation 123 list and must set out this spending plan on its website prior to implementing the charge.
- 1.5 CIL will not be sufficient to bridge the majority of the identified infrastructure funding gap within the Borough and as such difficult decisions will need to be made in order to maximise the benefits of CIL towards the provision of key items of infrastructure. The proposed decision making process and importance of relevant documents to this process are set out below.
- 1.6 The rates at which CIL will be charged have been accepted by the Planning Inspector and cannot be changed. The associated policies and the Regulation 123 list (see section 2) have been approved in draft by cabinet, and have been subject to public consultation. Whilst it is possible to make minor tweaks to these, it is not considered appropriate to make any significant changes. At its meeting on 25 March 2014 Cabinet agreed the broad principles and proposals for the governance of CIL as reflected in this report.

### **2.0 The Role of the Regulation 123 List**

- 2.1 The Council is required under Regulation 123 of the CIL Regulations to publish a list of infrastructure types or specific infrastructure schemes that will

be wholly or partially funded by CIL (the Regulation 123 List). As CIL is expected to become the primary source of infrastructure funding payable by developers, the CIL Regulations prohibit the use of CIL and S.106 monies to fund the same piece of infrastructure and seeks to limit the application of S.106 by introducing pooling restrictions upon its use.

- 2.2 The Regulation 123 list has become an important area of engagement and deliberation for external bodies and infrastructure providers alike as it establishes the agenda for the delivery of new infrastructure. The Council is expected to spend CIL on items included on its Regulation 123 list. The list is based on the Council's infrastructure evidence and there are clear links between the items on the Regulation 123 list and those identified in both the Infrastructure Delivery Plan (InDP) and Infrastructure Funding Gap Assessment (IFGA). It is expected that most CIL funding will be spent on projects that fall under the types of infrastructure specified on the Regulation 123 list.
- 2.3 The draft Regulation 123 list is set out at Appendix 1 to this report.

### **3.0 Allocation of CIL Funds**

- 3.1 The introduction of CIL necessitates the development of new governance arrangements for the allocation and spending of monies collected. Under CIL, Dacorum Borough Council will act as the designated 'Charging Authority' which confers new responsibilities on the Council as set out in the CIL Regulations and associated CIL Guidance. A close working relationship with partners will be required, but the Council is responsible for spending CIL monies on infrastructure and for deciding what infrastructure is needed (i.e. the priorities for CIL funding). The majority of such infrastructure works have historically been undertaken by Hertfordshire County Council.
- 3.2 The proposed Governance structure for CIL is attached at Appendix 2 to this report. The Governance proposals have been developed in consultation with the CIL Working Group, CIL Task and Finish Group and the Corporate Management Team.
- 3.3 The Governance diagram explains that funds will need to be allocated to three main purposes, administration (5%), local projects (15%) and Core funding (80%) and establishes that to make decisions on the use of CIL an advisory body (Infrastructure Advisory Group) and a decision making body (Council) are both required.
- 3.4 It is proposed that an Infrastructure Business Plan (IBP) will make the broad allocation of funds clear, and would be approved annually by Council and included in the Council's Capital Programme. This arrangement will mean that items of CIL expenditure do not need to be referred to the Corporate Strategy Steering Group (CSSG) as they will already have been through an extensive review process before being approved by Council.

#### **CIL Administration**

- 3.5 The introduction of CIL and the day-to-day discharge of the Council's duties as 'Charging Authority' is expected to be fairly resource intensive, particularly in the initial stages, and therefore in line with the CIL Regulations, it is advised that the Council authorises the use of the full 5% of the total CIL

receipts for each year to finance expenses incurred during the administration of CIL. Such costs will include an on-going subscription to the BCIS All-In Tender Price Index which is necessary to calculate the CIL charges. The percentage of CIL funding released for administrative purposes and the costs of administering the CIL charge should be kept under review.

#### Localised CIL

- 3.6 The Government expects CIL to incentivise communities to accept and encourage growth in their areas. The CIL Regulations thus place a duty upon the Council to pass 15% of the CIL receipts to Town and Parish Councils from developments that take place within their areas up to a cap of £100 per dwelling per year. Where there is a Neighbourhood Plan in place 25% of CIL receipts will be passed to the town or parish council, and this will not be subject to an upper cap. Members will note that there are no adopted Neighbourhood Plans in Dacorum although one is in preparation for Grovehill, Hemel Hempstead.
- 3.7 In non-parished areas, such as Hemel Hempstead, the Council are bound to use the equivalent proportion of CIL receipts (i.e. 15% where there is no neighbourhood plan in place) to support the development of the relevant area. In March 2014 Cabinet agreed that authority should be delegated to ward councillors to determine the use of the local proportion of CIL receipts in consultation with local residents. The relationship between CIL receipts and neighbourhood plans is explained further in the table below.

#### **Relationship between the levy and neighbourhood plans:**

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| Parish Council ✓  | Parish Council ✓   |
| Neighbourhood Plan ✓                                    | Neighbourhood Plan ×   |
| = 25% uncapped, paid to Parish                          | = 15% capped at £100/dwelling, paid to Parish                          |
| Parish Council ×  | Parish Council ×   |
| Neighbourhood Plan ✓                                    | Neighbourhood Plan ×   |
| = 25% uncapped, local authority consults with community | = 15% capped at £100/dwelling, local authority consults with community |

- 3.8 The local proportion of CIL may be spent on:
- 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.
- 3.9 Officers have drafted guidance notes for town and parish councils and ward councillors on the use and administration of CIL. Advice is included on the appropriateness of CIL spending and on maximising the benefits derived from CIL. These draft guidance notes are attached at Appendix 3, and are subject to approval by Cabinet at their meeting on 25 November. Aside from the provision of these guidance notes and the provision of further informal advice it is considered appropriate that the Borough Council should have minimal involvement in the determination of local CIL priorities. The guidance notes

will be kept under review and may be updated as necessary once CIL is in place.

#### Allocation of Core Funds

- 3.10 The remaining, or Core, CIL funds should be allocated by the Council towards the infrastructure requirements arising from the growth planned in the Council's Core Strategy. At a strategic level, these needs are identified in the Infrastructure Delivery Plan (InDP) which sets out the plans and funding arrangements of infrastructure providers and is updated annually.
- 3.11 The draft CIL governance structure diagram (Appendix 2) proposes that a new group called the Infrastructure Advisory Group (IAG) (see section 4) will be set up to make recommendations to Council on how CIL money is allocated. The recommendations will be made via a document called the Infrastructure Business Plan (IBP) which will set out the Council's priorities for allocating CIL money on a short, medium and long term basis. This document will focus on the delivery of infrastructure and making the best use of CIL funds.
- 3.12 As the demands on CIL monies will exceed the total income, it will be the responsibility of the infrastructure providers to inform the Council of their own priorities for use of CIL funds. This will be done via a process of providers submitting 'CIL project submissions' for the use of CIL funds which will initially be assessed by an officer in the Strategic Planning and Regeneration team. The submissions which meet the required criteria will be referred to the IAG for consideration, who will make recommendations to Council via the IBP about which infrastructure projects to support with CIL funds. The IBP will be published and considered by Cabinet and then Full Council annually.
- 3.13 The criteria that submissions must meet to be considered by the IAG are under development. It is likely that they will require that the proposed use of funds must:
- Meet the requirements of the CIL regulations;
  - Meet the conditions of the Council's Regulation 123 list;
  - Reflect a need identified through the InDP, or meets a need identified by a provider required to meet the needs of new development;
  - Be deliverable within a reasonable timescale.

Please note that the above criteria are under development, and are subject to change.

- 3.14 It is envisaged that CIL monies will be allocated to funding pots to be administered by DBC (through the IAG), HCC and other infrastructure providers (in the event of CIL being allocated to a third party) in accordance with the IBP. Discussions are underway with senior officers about the best way of transferring CIL monies to providers, including the need for a legal agreement, the timing of transfer and a contingency position for a change in the proposed project. The outcomes of these discussions will be reported to members at a later date once the governance proposals have been firmed up.
- 3.15 In order to optimise the use of CIL funds, it is suggested that the Council and infrastructure providers should make use of opportunities for 'match funding'. The detailed governance procedures should explore possibilities and examine

the potential to 'dovetail' the prioritisation and spend of CIL with other funding sources such as New Homes Bonus and those brought forward by the Local Enterprise Partnership (LEP).

- 3.16 To ensure that the levy is open and transparent, the Council must prepare a short annual report on the levy for the previous financial year which must explain how much CIL funding has been collected by the authority and how it has been spent. It is envisaged that such reports will be prepared alongside the Council's Annual Monitoring Report.

#### **4.0 The Infrastructure Advisory Group (IAG)**

- 4.1 It is envisaged that an IAG should be established in order to consider the application of CIL funds over the course of a financial year.

- 4.2 The membership of the IAG should comprise both officers and members of Dacorum Borough Council and Hertfordshire County Council and should reflect the services that are most closely involved in the provision of infrastructure on which developments in Dacorum will most heavily depend. The precise membership of the group is yet to be finalised, but it is anticipated that it will comprise the following:

- DBC Portfolio Holder for Planning and Regeneration
- DBC Assistant Director, Planning, Development and Regeneration
- DBC Assistant Director for Chief Executive Unit
- DBC Assistant Director for Finance and Resources
- DBC Assistant Director for Neighbourhood Delivery
- DBC Strategic Planning and Regeneration Officer (Infrastructure Planning)
- HCC Executive Member for Resource, Performance and Transformation
- HCC Principal Infrastructure Officer
- Representative of other external infrastructure providers on an ad hoc basis
- Representative of the Herts LEP

- 4.3 The IAG would have the ability to invite representatives of other infrastructure providers to its meetings if it is considered that the attendance of a particular organisation or group would be beneficial to their discussions and the decision making process. The Town and Parish Councils have indicated that they would wish to be represented on this group, however, officers consider it would be more beneficial to invite a representative from a particular town or parish council where there are pertinent local issues to discuss.

- 4.4 The IAG would be tasked with assessing submissions received for CIL funding from providers, seeking additional information on the submissions and prioritising the infrastructure projects that need to be delivered during the coming financial year and over the medium (3 yr) and longer terms (5+ yr). It will make recommendations to Cabinet and Full Council via the IBP, which will be approved by Council as part of the budget setting process. It will then be the responsibility of the infrastructure provider (HCC, DBC or Others) to use the funds that have been delegated to them to deliver the IBP or seek additional approvals from the Council. In order to carry out the work required, the IAG will be expected to meet at least quarterly to discuss the application of CIL.



- 4.5 It is expected that appropriate officer sub-groups should prepare submissions on behalf of services provided by DBC and determine service priorities for consideration by the IAG.
- 4.6 A detailed report will be brought to Cabinet and then Council outlining the process and presenting the rolling programme of infrastructure works to which funds should be allocated. Cabinet and then Council will be asked to:
- Agree the content of the IBP,
  - Agree the release of funding identified for the projects specified in year one of the programme within the IBP,
  - Authorise consultation on any amendments to the Regulation 123 list that the IAG consider necessary to enable the allocation of CIL funding to worthy infrastructure projects.
- 4.7 Council may wish to pass instructions over the use of CIL funding to infrastructure providers through its approval of the IBP.

## **5.0 Partnership Working**

- 5.1 Improved partnership working with infrastructure providers is imperative to achieving greater transparency and the expedient delivery of infrastructure in the Borough. The Council has therefore tried to establish more formal and better working arrangements with infrastructure providers, particularly Hertfordshire County Council, throughout the adoption of CIL. Officers from the Council have met officers at Hertfordshire County Council and a Memorandum of Understanding has been drawn up outlining processes for working together through the IAG to ensure best use of CIL funds. The memorandum has been circulated to HCC for comments and feedback on this document is still awaited. A similar agreement may be entered into with Town and Parish Councils setting out the relevant statutory planning, accounting, auditing and other legal requirements of CIL.
- 5.2 It is likely that a legal agreement will be need to be entered into with infrastructure providers when a CIL transfer is made, which will commit them to spending and reporting on CIL in accordance with the IBP and other parameters<sup>1</sup>.

## **6.0 Monitoring**

- 6.1 The Borough Council should publish its Annual Monitoring Report during December and it is intended that this report should incorporate information on the total CIL receipts for the reporting year, the total CIL expenditure (items of infrastructure, amount of CIL expenditure, amount spent on administration) and the total amount of CIL receipts retained at the end of the reporting year. The Council is required to report on such matters in accordance with the CIL Regulations and it is logical to synchronise the publication of these reports where possible.

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<sup>1</sup> These parameters will reflect obligations under the CIL Regulations and discussions between the Council and the individual infrastructure providers (including Town and Parish Councils)

- 6.2 Town and Parish Councils must also publish each year their total CIL receipts; total expenditure; a summary of what CIL was spent on; and the total amount of receipts retained at the 31<sup>st</sup> December of the following financial year. These reports should be published on either the Town/Parish website or that of the Council and a hard copy of this information should also be forwarded to the Council.

## **7.0 Recommendations**

- 7.1 At this stage the committee are asked to note the work to date on CIL Governance arrangements in order that the detailed matters can be progressed further with the CIL Task and Finish group, and external organisations such as the County Council. Officers would welcome feedback from the Committee on the proposals for CIL governance contained within this report, which can be verbally reported to Cabinet on 25 November.
- 7.2 Critical to the progression of CIL Governance discussions is the approval of an IAG, the process of formulating an IBP and the idea that Council will approve such documents and allocate funding on this basis as part of the overall budget setting process.