

This Report will be made public on 19 February 2024



Report Number: **OS/23/07**

To: Overview & Scrutiny
Date: February 2024
Status: Key Decision
Responsible Officer: James Hammond, Strategy & Policy Senior Specialist

Cabinet Member: Cllr Jim Martin, Leader and Cabinet Member for Otterpool Park and Planning Policy

SUBJECT: COMMUNITY INFRASTRUCTURE LEVY

SUMMARY:

This report outlines the background to the Community Infrastructure Levy, which came into effect in August 2016 and the Governance Arrangements that were adopted by Cabinet in June 2020. It also explains what projects the district council will seek to deliver using CIL receipts it controls, as well as summarising those projects that Kent County Council (KCC) will deliver using their proportionate share of CIL receipts as set out in the approved Governance Framework.

REASONS FOR RECOMMENDATIONS:

The matter has been referred to this committee following discussions at the meeting of Cabinet in February 2023 (C/22/87) that considered the Infrastructure Funding Statement 2022, and to provide the administration elected in May 2023 with an overview of those Community Infrastructure Levy (CIL) procedural matters that have previously been adopted by the Council.

RECOMMENDATIONS:

1. To receive and note report OS/23/07
2. To offer reflections on the future allocation of CIL receipts related to the Infrastructure Funding Statement and supporting Infrastructure Schedule.

1. BACKGROUND

- 1.1 Following the Local Elections in May 2023 officers are aware there are a number of members of O&S who may not be totally familiar with the Community Infrastructure Levy (CIL). As a result, this report seeks to provide a brief precis of the Council's approach to inform what would be the normal contents of this report.
- 1.2 The Community Infrastructure Levy (the levy) came into force in April 2010. It allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area. Legislation designates lower-tier and unitary authorities as charging authorities for CIL (see Appendix 1 for more detail).
- 1.3 The money can be used to help fund a wide range of infrastructure that is needed as a result of development. Accordingly, CIL allows local authorities to secure contributions from new development that can be used to fund a proportion of the strategic infrastructure costs needed by communities - such as transport schemes, schools, community facilities, health and social care facilities, parks, green spaces and leisure facilities.
- 1.4 The Council's first CIL Charging Schedule came into effect in August 2016. Following adoption of the Core Strategy Review in March 2022, the District Council undertook a review of the CIL Charging Schedule in 2022 to update it following amendments to the Community Infrastructure Levy Regulations 2010 in September 2019 and to bring it 'in step' with the District's Core Strategy Review.
- 1.5 The revised CIL Charging Schedule was reported to Cabinet on 22nd March 2023 (report C/22/106) and taken to full Council on 29th March 2023 (A/22/38), where Council resolved to adopt the Council's Modified CIL Charging Schedule and set a commencement date for the continued collection of CIL under the new regime applicable from the 1st April 2023.

2. CIL AS AN EVIDENCE-LED PROCESS

Demonstrating that a funding gap exists

- 2.1 The starting point for preparing a CIL Charging Schedule is for local authorities to demonstrate that there is a funding gap in the provision of infrastructure required to support new development. The National Planning Practice Guidance (NPPG) recognises that there will be uncertainty in pinpointing other infrastructure funding sources, particularly beyond the short-term. The focus should be on providing evidence of an aggregate funding gap that demonstrates the need to levy CIL.
- 2.2 Preparation of the revised Charging Schedule undertaken in 2022 was supported by the following evidence documents:
 - An Infrastructure Funding Gap Statement, which compares the likely CIL income from anticipated new developments with the cost of infrastructure identified in the Infrastructure Delivery Plans;
 - The Infrastructure Schedule which sets out infrastructure requirements to support the delivery of planned development within the adopted Places and Policies Local Plan (adopted 2020) and the Core Strategy
 - Review (adopted 2022) at the time each was compiled;
 - CIL Charging Maps;

- A CIL viability assessment which has been undertaken by consultants, Gerald Eve, on behalf of the council; and
- A background summary note relating to Nickolls Quarry (Martello Lakes) strategic allocation.

The Governance Framework to control the allocation of CIL spend

- 2.3 Having adopted a CIL Charging Schedule in August 2016 it took until August 2017 for the first CIL payment to be received. By the end of the 2019 calendar year a total of 15 CIL payments had been received by the Council totalling £471,096.22.
- 2.4 To ensure public transparency and assurance of the CIL process, officers took the step in early 2020 to formally establish Governance arrangements to set out, publicly, how the CIL receipts it collected would be spent.
- 2.5 The District Council's CIL Governance Framework was adopted by Cabinet on 24th June 2020 (Cabinet report C/20/12¹), so as to ensure the collection and allocation of CIL monies (i.e. the deployment of CIL income) follows clear and appropriate processes.
- 2.6 At the meeting of Cabinet on 24th June 2020 it was resolved that:
- “That the CIL Governance Framework be amended to state that when the IDP is updated members will be consulted along with the other stakeholders.”*
- 2.7 The requirement to consult members when the IDP is updated does not present an issue per se. The only limitation is the fact that historically an IDP is only the subject of updating as part of the Local Plan evidence base work.
- 2.8 Importantly, the Community Infrastructure Levy Regulations that came into force on 1 September 2019 introduced the requirement for the Council to publish an Infrastructure Funding Statement (IFS) annually by 31 December. The District Council published the first IFS in December 2020 relating to the 2019/2020 financial year.
- 2.9 Publication of the IFS on an annual basis includes the revision to the corresponding Infrastructure Schedule through dialogue with internal and external infrastructure providers. The Infrastructure Schedule is itself one-and-the-same as the IDP. Accordingly, members are being consulted each year on the content of the Infrastructure Schedule (IDP), and so the resolution made at Cabinet in June 2020 is being fully adhered to.
- 2.10 In accordance with the adopted CIL Governance Framework, the allocation of CIL monies held by FHDC is authorised by the two Directors, in conjunction with the S151 Officer:
- Director of Strategy and Resources
 - Director of Housing and Operations
- 2.11 The process for decisions to be taken by the District Council on spend of CIL receipts is through the involvement/discussions and agreement between senior officers at the S106 and CIL Officer Group, which meets quarterly, based upon those projects that are referenced within the IFS and corresponding Infrastructure Schedule. Both are

¹ <https://folkestone-hythe.moderngov.co.uk/documents/s33621/Cabinet%20report%20June%202020%20v3.pdf>

monitored regularly and updated annually.

Annual update and publication of the Infrastructure Funding Statement

- 2.12 Under the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019), local authorities must annually publish Infrastructure Funding Statements (IFS). The IFS provides a summary of all financial and non-financial developer contributions relating to S106s within the district.
- 2.13 The IFS is, therefore, a summary document intended to illustrate how the district council will utilise developer contributions (CIL and S106) to support infrastructure delivery in the district.

The Infrastructure Schedule as the means of maintaining an up-to-date appraisal of infrastructure needs to support growth

- 2.14 In preparing the IFS and supporting infrastructure schedule there is a discussion with the associated infrastructure providers to understand if the infrastructure requirements needed as a result of development (i.e. to support growth) has changed at since publication of the IFS and infrastructure schedule for the previously reported period. Where there are changes, be that the inclusion of new projects, the update of projects already captured (for example with updated costings and/or delivery timescales) or the removal of projects that have been implemented.
- 2.15 For internal officers the content of the infrastructure schedule is informed and updated by the content of the Corporate Plan and supplemented by information on specific projects as reported through the district council's internal processes.

The type of projects that CIL controlled by the district council will support

- 2.16 The majority of CIL funding is directed to projects which have been identified through It is important to make the distinction here that those projects that are captured within the Infrastructure Funding Statement and supporting Infrastructure Schedule that are the subject of annual publication is the output of either future investment in infrastructure that has been the subject of either:
- independent examination by an Inspector through the Local Plan process and the identified infrastructure requirements is necessary to support future growth of the district in a sustainable manner, or
 - information has been developed and assembled by internal officers in respect of those projects that meet the corporate objectives of the Council, and there is then associated reporting, scrutiny and decision making through appropriate Council processes, for example preparation of the Corporate Plan and other reporting via Overview and Scrutiny, Cabinet and Full Council
- 2.17 These types of infrastructure are considered to be of a strategic nature and scale.
- 2.18 Where CIL receipts held by FHDC are to support the delivery of strategic infrastructure, the role of CIL is typically only to provide 'gap' funding support to ensure a project can be implemented.

The timing of CIL payments and relevant exemptions

- 2.19 CIL payments become due when a developer commences development on a site,

although payment by instalments may be allowed for larger developments. CIL charges differ for different areas of the district, with lower charges in areas where land values are lower and development is less viable. Certain types of development are exempt from CIL (including affordable housing, self-build homes and developments below 100sqm floor area). As payment is due on commencement of development, it was some time after the introduction of CIL that the district council began to accumulate CIL receipts.

- 2.20 For clarity, it should be noted that the strategic allocations within the Core Strategy Review, namely the North Downs Garden Settlement (SS6 to SS9) (Otterpool Park) and Sellindge Strategy Phase 2 (CSD9) that was adopted in March 2022 have also been tested against CIL as part of the Core Strategy Review viability assessments. The infrastructure requirements to bring forward these strategic sites are considerable, and these sites will deliver their infrastructure requirements fully through S106/S278 agreements. These sites were exempted from CIL upon the adoption of the revised CIL Charging Schedule in April 2023.

3. THE ROLE OF MEMBERS TO PRIORITISE SPEND OF NEIGHBOURHOOD CIL

- 3.1 District Councillors are positively engaged in and lead on the content of the Corporate Plan, and also bring forward discussion and decision making on key individual projects through Cabinet and Full Council. The IFS and supporting Infrastructure Schedule are also the subject of Member discussion and agreement on an annual basis. Any individual project is also separately approved by Cabinet.
- 3.2 Councillors have always played an important role in deciding how the Council determines where CIL receipts are allocated, particularly in respect of spend locally in the areas they represent to directly benefit local communities. In this regard, it is the CIL Neighbourhood Allocation that is passed on by FHDC to Town and Parish Councils where positive engagement and interaction with local Councillors could and should be taking place. These funds are designed to be spent at a local level on projects that are not necessarily strategically needed to support the development plan.
- 3.3 Data provided in **Table 4.1** sets out that Town and Parish Councils where CIL-liable development has taken place have been transferred not insignificant Neighbourhood CIL sums to date. It is clear from the District Council's records that not all town and parish councils have not taken forward measures to spend the Neighbourhood CIL locally. The funds remain available for local projects.
- 3.4 The District Council prepared a CIL guidance note for town and parish councils in 2018² to provide a framework for Neighbourhood spend to be taken forward through preparation of a Town or Parish Infrastructure Delivery Plan (IDP). A presentation on CIL was delivered at the Parish Forum meeting held on the 8th July 2021 by an officer of the Council (Planning Policy Senior Specialist) to provide an overview of the guidance note and the steps town and parish councils should be taking to ensure the meaningful spend of Neighbourhood CIL.

4. APPORTIONMENT OF CIL INCOME

- 4.1 The Regulations state that the CIL is to be allocated as follows:
- Administrative CIL: 5% of CIL receipts to be retained by FHDC

² <https://www.folkestone-hythe.gov.uk/downloads/file/1133/community-infrastructure-levy-cil-guidance-for-town-and-parish-councils>

- Neighbourhood CIL: 15% or 25% of CIL receipts to be paid to Town and Parish Councils where development has taking place. This is known as the 'meaningful proportion'.
- Strategic CIL: the remaining 70-80% of CIL to be allocated to infrastructure projects by FHDC to support the delivery of important infrastructure in accordance with planned growth. The District Council passes over 35% of CIL receipts from the strategic CIL pot to KCC in accordance with the approved Governance Framework. Projects supported by strategic CIL are not only to be delivered by FHDC and/or KCC, and requests for CIL funding can and will come from other agencies such as the NHS.

Administrative CIL

- 4.2 The Regulations allow the Council to retain up to 5% of annual CIL receipts to be spent on the administrative expenses in relation to the administration and collection of the CIL. Administrative expenses have and will include: examination costs (upfront and possible future costs following review), staff, training, IT software and indexation subscriptions. This money is ring-fenced and has to be reported on annually.

Neighbourhood CIL

- 4.3 In line with the Regulations, 15% of CIL receipts (capped at £100 per Council tax dwelling per annum in the parish area) will be transferred to Town and Parish Councils twice a year, where development has occurred in their area, rising to 25% of CIL receipts (without any cap) for Town and Parish Councils that have made Neighbourhood Plans.
- 4.4 Within the district, St. Mary in the Marsh parish completed (i.e. 'made') a Neighbourhood Plan in 2019. A Neighbourhood area was designated for Lyminge on 22 September 2022 and Lyminge Parish Council is in the early stages of drafting a Neighbourhood Plan. Other parishes within the district designated neighbourhood areas, but did not proceed with producing Neighbourhood Plans.
- 4.5 The Neighbourhood CIL may be spent by Town or Parish Councils on a range of infrastructure projects, as long as it meets the requirement to support:
- the development of the area by funding the provision, improvement, replacement, operation or maintenance of infrastructure; or
 - anything else that is concerned with addressing the demands that development places on the area.
- 4.6 Town and Parish Councils are legally required to produce and publish an annual report detailing all CIL receipts, balances and spending for each financial year. The District Council provides some monitoring of the Town and Parish Council's but responsibility for production and publication for public scrutiny rests with Town and Parish.
- 4.7 To ensure transparency, each financial year the Town or Parish Councils that have received CIL must publish a summary of:
- Total CIL funds received
 - What CIL funds have been spent on each project

- Total CIL funds received at the end of the reported year and any previous years.

4.8 Officers are in the process of reminding Town and Parish Councils of their obligation to publish the requisite information.

4.9 To date FHDC has transferred £531,608.63 to Town and Parish Councils, of which £85,992.76 is the aggregated spend.

Table 4.1. CIL payments made to Town and Parish Councils

Town or Parish Council	Amount transferred	Amount spent	Retained funds
Folkestone Town Council	£186,109.10	£33,859.00	£152,250.10
Hythe Town Council	£162,812.66	£38,547.61	£124,265.05
New Romney Town Council	£56,950.30	£0	£56,950.30
Elmstead Parish Council	£28,577.35	£0	£28,577.35
Stelling Minnis Parish Council	£25,300.00	£0	£25,300.00
Brookland Parish Council	£19,218.74	£0	£19,218.74
Sandgate Parish Council	£16,484.90	£4,277.40	£12,207.50
Brenzett Parish Council	£15,215.92	£5,482.50	£9,733.42
Hawkinge Parish Council	£8,489.70	£0	£8,489.70
Saltwood Parish Council	£5,599.92	£0	£5,599.92
St Mary in the March Parish Council	£3,826.25	£3,826.25	£0
Dymchurch Parish Council	£3,023.80	£0	£3,023.80
Lydd Parish Council	£0	£0	£0
Sellindge Parish Council	£0	£0	£0
Totals	£531,608.63	£85,992.76	£445,615.87

4.10 As detailed above a significant sum of CIL funding is at the disposal of Town/Parish Councils. The spending of which can be influenced at a local level via discussions between residents and their respective Parish/Town Council.

5. ALLOCATION/TRANSFER OF CIL RECEIPTS

5.1 The FHDC's adopted CIL Governance Framework recognises the crucial role played by Kent County Council ('KCC') in the delivery of key strategic infrastructure, and under the agreed arrangements the District Council passes over 35% of CIL receipts

to KCC in order to enable KCC to spend this proportion of the receipts in accordance with agreed priorities for infrastructure delivery within Folkestone & Hythe District.

- 5.2 As of 31st March 2023 (the end of the reporting period for the 2023 IFS), a total of £751,979.02 had been transferred to KCC. To date the total sum is **£1,281,077.22**.
- 5.3 A requirement of the proposed governance arrangements is that the County Council's priority infrastructure schemes shall be recorded within the District's Infrastructure Funding Statement (IFS) and in the preparation of the IFS relevant information is shared between the councils' teams and reported to Members annually through F&HDC published reports made available on the website.
- 5.4 As of 31st March 2023, a total of **£531,608.63** of CIL receipts had been paid to Town and Parish Councils as the Neighbourhood CIL allocation. A breakdown of CIL receipts passed over to KCC, Town and Parish Councils is provided in appendix 3.

6. SPEND OF CIL RECEIPTS BY KENT COUNTY COUNCIL

- 6.1 Kent County Council publishes an IFS³ on an annual basis to provide a summary of all financial and non-financial developer contributions that the County Council have been involved with over the course of a given financial year. Information drawn from the 2022/23 IFS published by KCC in December 2023 is presented below. Only 5 of the 12 Kent authorities (Dartford, Canterbury, Folkestone & Hythe, Maidstone and Sevenoaks) have an adopted CIL regime in place.

Total CIL receipts

4.3. Table 6 outlines the CIL monies that KCC has received during 2022/23.

Table 6 – CIL Monies received during 2022/23

Item	Amount
Folkestone and Hythe CIL transfer	£539,054

CIL retained at end of year

4.4. Table 7 below outlines the CIL monies that KCC has retained at the end of year (31st March 2023). This relates to CIL monies received between 2021 and 2023 that are currently allocated towards Waste projects in Folkestone and Hythe.

Table 7 – CIL Monies retained at end of year

Item	Amount
Folkestone and Hythe – Waste	£609,405

CIL receipts allocated and spent in the year 2022/23

4.5. KCC has spent £318,551 of CIL received from Folkestone and Hythe on improvements to Highways.

Table 8 – CIL Monies allocated and spent during 2022/23

Item	Amount
KCC Highways - Folkestone and Hythe Scanlons Bridge traffic signal improvements, Hythe Zebra Crossing, Dymchurch	£318,551

Amount of CIL spent on administrative expenses

4.6. No CIL receipts were spent on administrative expenses by KCC in 2022/23.

- 6.2 Officer feedback received from KCC colleagues has praised the approach endorsed by FHDC, as the transfer of receipts twice yearly, alongside the forward profiling of probable future receipts year-on-year has instilled confidence in the apportionment of

³ https://www.kent.gov.uk/_data/assets/pdf_file/0019/159013/KCC-Infrastructure-Funding-Statement-2022-2023.pdf

spend by KCC, and KCC are encouraging other CIL authorities to apply the same governance approach that has been applied by FHDC since June 2020.

7. PRIORITISATION OF SPEND OF CIL RECEIPTS BY FHDC

- 7.1 To date only the sum of £20,000 has been spent on the refurbishment works at Radnor Park Lodge that were undertaken in January 2022.
- 7.2 As set out in Cabinet Report C/22/73, a total of £3.15 million of CIL receipts controlled by FHDC had been earmarked as part of the revised financial package to support the delivery of the leisure and strategic play space provision at Princes Parade.
- 7.3 Given the status of the Princes Parade proposal that was reported to Cabinet extensively in 2023, it became necessary to re-assign CIL funding controlled by FHDC to other projects to drive forward meaningful spend.
- 7.4 In accordance with the approved process for scheme prioritisation as set out in the CIL Governance Framework, the District Council has agreed a list of priority projects, as set out in Table 7.1, to represent its top priorities within the IFS 2023. The allocation of these monies was approved via the S106 and CIL Working Group in accordance with the CIL Governance Framework.
- 7.5 As of 1st February 2024, the District Council held the sum of £2,352,679 for which spend allocation falls solely to FHDC.

Table 7.1. Priority projects for the spend of CIL receipts by FHDC

Project name	CIL funding support required	Timescale for delivery	Report reference (where applicable)	Policy requirement
Folkestone: A Brighter Future	£997,170	2025/26 financial year in line with project completion	A/22/15, recorded in the infrastructure Schedule 2023, and agreed at officer group on 10/01/2024 (with a further updated agreed at the officer group meeting on 5 th February 2024)	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Coast Drive Visitor Centre	£300,000	Complete by Spring 2025	C23/70, recorded in the infrastructure Schedule 2023, and agreed at officer group on 10/01/2024	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Landslip – engineering works	£150,000	Spring 2024	Recorded in the infrastructure Schedule 2023, and agreed at officer group on 10/01/2024	Policy SS5 District Infrastructure Planning of the adopted Core Strategy

				Review
F51 Environs and Payers Park	£75,000	Summer 2024	Recorded in the infrastructure Schedule 2023, and agreed at the officer group meeting on 5 th February 2024	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Infrastructure improvements to the Leas (paths, walls and steps)	£150,000	About to be scoped	Recorded in the infrastructure Schedule 2023, and agreed at officer group on 10/01/2024	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Strategic Play Areas as set out in the adopted Play Area Strategy (Leas Coastal Park refresh as priority)	£300,000	About to be scoped. Implementation expected in late '24 early '25	Recorded in the infrastructure Schedule 2023, and agreed at officer group on 10/01/2024	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Rationalisation and capital replacement of litter bin stock	£100,000	Scoped. Implementation expected by spring 2025	C/23/68, recorded in the infrastructure Schedule 2023	Policy SS5 District Infrastructure Planning of the adopted Core Strategy Review
Total	£2,072,170			

7.6 The projected spend and drawdown of CIL funds held by FHDC to deliver those priority projects referenced in Table 7.1 amounts to £2,072,170, which means as much of the budget held on account as of 31st March 2023 will be practically spent by spring 2025.

7.7 Based on the amount held on account as of 1st February 2024, the sum of £280,509 will remain on account when taking account of the spend allocation presented in Table 7.1. This will ensure there are sufficient funds on account to enable the associated transfers to Town and Parish Councils and KCC to proceed at the next date of payment (March 2024).

7.8 The spend of CIL funds that will build up on account from 1st February 2024 will be the subject of discussion at future meetings of the officer group so as to proactively allocate these funds as soon as practicable. It is considered that priority allocation of will be towards the Folkestone: A Brighter Future project.

8. RISK MANAGEMENT

8.1 Matters of risk and risk management are the subject of the report and reflections included in the main body of the report.

9. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

- 9.1 **Legal Officer's Comments (NM)** - There are no legal implications arising directly from this report.
- 9.2 **Finance Officer's Comments (OO)** - The financial implications have been addressed throughout the report. CIL income is not guaranteed and is subject to economic trends and fluctuations in development activity, including rates of development and the location, size and types of those developments.
- CIL money can only be spent to deliver infrastructure, in accordance with the legal restrictions on the spending of CIL receipts. The regulation allows CIL to be spent on revenue costs, i.e., staff resource associated with the administration of infrastructure and any CIL directed to revenue cannot be spent on capital costs. The regulation is financially prudent because it limits revenue allocation to specified time periods and to projects which can demonstrate future self-sufficiency or other sources of funding and sets triggers to ensure awareness of the proportion of CIL allocation dedicated to revenue spend.
- 9.3 **Diversities and Equalities Implications (GE)** - There are no equality and diversity implications directly arising from this report.
- 9.4 **Climate Change Implications (AT)** – No direct implications. As set out within the Infrastructure Schedule (Appendix 2), CIL receipts have been identified for a wide range of green infrastructure, flood mitigation, public realm improvement and waste management schemes.

10. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

James Hammond – Senior Planning Policy Specialist
Telephone: 01303 853435
Email: James.Hammond@folkestone-hythe.gov.uk

Appendices:

- Appendix 1 – Draft Infrastructure Funding Statement (IFS) 2023 (January 2024)
- Appendix 2 – Draft Infrastructure Schedule (January 2024)
- Appendix 3 – Total CIL monies allocated to KCC and Town & Parish Councils