

Agenda Item No:

Report No:

Report Title: Community Infrastructure Levy Governance

Report To: Cabinet

Date: 20th November 2014

Cabinet Member: Cllr Tom Jones – Lead Member for Strategy and Development

Ward(s) Affected: All areas of the District not lying within the South Downs National Park boundary

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Purpose of Report: To seek agreement for the Community Infrastructure Levy (CIL) governance framework that will inform the delivery of district-wide strategic infrastructure and the distribution of a 'meaningful proportion' of the CIL income to communities to fund localised improvements within the district.

Officers Recommendations

- 1. To agree that the CIL governance framework set out in this report be taken forward and form the basis upon which the Council will manage the spending of CIL receipts.**
- 2. To agree the appointment of the CIL Executive Board.**

Reasons for Recommendations

- A) To ensure that the use of CIL monies is appropriately managed in accordance with the requirements placed on Lewes District Council as the CIL Charging Authority through the CIL Regulations and to support the delivery of Lewes' Core Strategy.

B) To enable Officers to prepare detailed guidance; 1) for infrastructure providers on applying for CIL funding for infrastructure projects; and 2) for the Infrastructure Delivery Officer and Executive Board when reviewing bids from infrastructure providers.
2. The CIL Executive Board would ensure that elected Members play a central role in shaping priorities and delivering improvements in the district.

Report

1 Background

- 1.1 The Community Infrastructure Levy (CIL) is a mechanism, introduced by Government in 2010, to allow local planning authorities to raise funds from some forms of development in order to pay for the infrastructure that is, or will be, needed as a result of that new development.
- 1.2 The levy is applied on a £'s per square metre basis. It replaces the existing tariff-based approach for collecting planning infrastructure contributions¹. From April 2015, CIL will be the only significant means by which local authorities will be able to collect and 'pool' developer contributions to deliver infrastructure improvements². Alongside CIL, S106 obligations will still exist, but generally as one-off agreements to mitigate the impacts of larger developments and to secure on-site developer requirements, such as the provision of affordable housing.
- 1.3 It is estimated that total CIL receipts for Lewes District Council for CIL liable planned residential development within the Local Plan Part 1 Core Strategy (up to 2030) is in the region of £15m. CIL is just one funding stream that can be used in conjunction with others to fund infrastructure projects.

2 Transition to CIL

- 2.1 The Council submitted its Draft Charging Schedule to the Planning Inspectorate for independent examination on 16th September 2014. Following the successful negotiation of the examination into the Charging Schedule, its adoption by the Council will be recommended to Cabinet and Full Council for implementation in April 2015 or soonest thereafter.
- 2.2 Leading up to the anticipated adoption of the Charging Schedule, work will be progressed in relation to the roll out of the levy. This work relates to two broad areas, namely, the introduction of appropriate procedural measures for the day-to-day operation of the levy, and the establishment of new governance arrangements for the subsequent spend of monies collected. This paper is concerned with the second of the two areas, the governance arrangements.

3 Governance Arrangements

- 3.1 The introduction of CIL necessitates the development of new governance arrangements for spending the monies collected. There are a number of key reasons for this:

¹ Affordable housing will continue to be collected separately through Section 106 provisions

² It will still be legally possible to pool up to 5 S106 agreements for any 1 item of infrastructure

- a) Under CIL, Lewes District Council will act as the designated 'Charging Authority'. This confers new responsibilities on the Council. The Council has an obligation to:
- Prepare and publish the CIL Charging Schedule
 - Apply the levy revenue it receives to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support development of its area and:
 - Report to the local community on the amount of levy revenue collected, spent and retained each year.

Where the levy is collected a close working relationship with partners will be required, but these responsibilities ultimately make the Council accountable for delivering infrastructure improvements in the district.

- b) Compared to the legislation governing the spending of S106 contributions, CIL does not directly relate to offsetting the implications of an individual development, but relates to the overall cumulative effect of development in general. At present contributions are collected in line with pre-defined terms for transport, education, recreation and play space improvements and kerbside recycling and are distributed to the County or retained by the Council as necessary. This will no longer be the case with CIL, with funds distributed from a single centralised pot held by the District Council. This arrangement will require closer working relationships with partners, and in particular, require the Council to better define its relationship with East Sussex County Council in the delivery of infrastructure improvements.
- c) One of the purposes of CIL, particularly related to the neighbourhood proportion, is to incentivise communities to accept growth – to create a virtuous circle where development brings clear and identifiable benefits in areas. The levy places a responsibility on the Council to pass a 'meaningful proportion' of CIL receipts to Parish/Town Councils. Government Regulations enacted on 25th April 2013 require that the meaningful proportion should be 25% of CIL receipts where a Neighbourhood Plan is in place and 15% in other areas³.
- d) As the charging authority, it will be in the Council's interest to make CIL monies collected go further by availing of opportunities such as 'match funding'. Any new governance arrangements should explore such possibilities and examine the potential to 'dovetail' protocol for CIL prioritisation and spend with other funding sources. At the strategic level, it is likely that future arrangements will need to explore the relationship between CIL and potential funding

³ The Government has indicated a cap of £100 per council tax dwelling will also apply in areas which have not been subject to neighbourhood plans

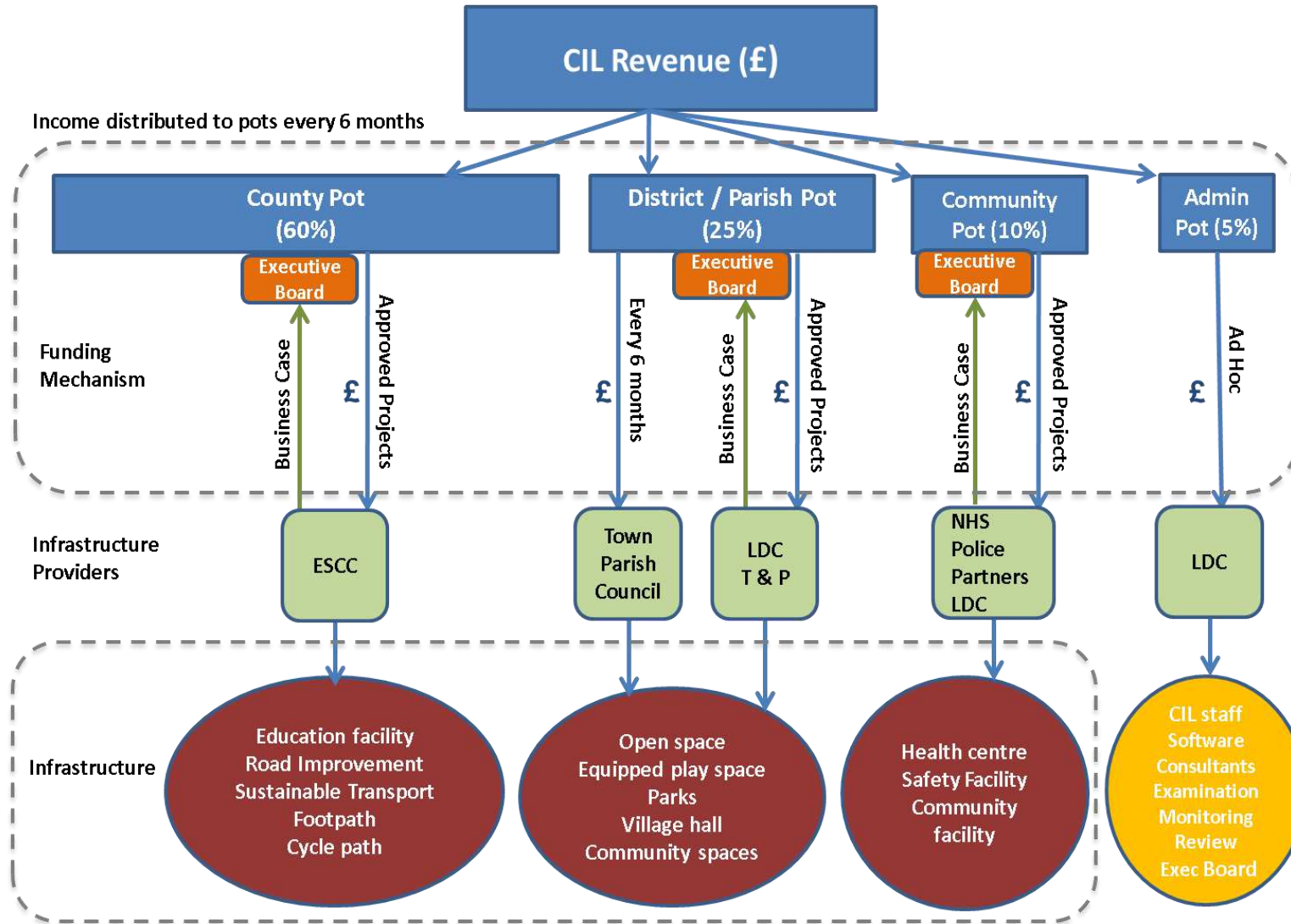
sources brought forward by the County Council and the Local Enterprise Partnerships (LEPs).

4 Proposals for New Governance Arrangements

- 4.1 Experiences from the front running authorities in implementing CIL has highlighted that one of the most challenging aspects of CIL is to set up suitable governance arrangements, to ensure that CIL funds raised are allocated and spent effectively in order to secure the timely provision of infrastructure necessary to support growth. The approach outlined in this report addresses the issues highlighted by other authorities experience and fundamentally shows that Lewes District Council, as politically accountable for CIL's effective use, retains the final say on the allocation of CIL funding raised in its Charging Area.
- 4.2 The potential of different options has been examined, guided by two key principles, namely that these arrangements must be bespoke to circumstances in Lewes District (whilst still having regard to the approach taken by neighbouring authorities) and that elected members must play a central role in shaping priorities and delivering improvements in their area. Within this it is clear that any governance arrangements will have to provide for the delivery of both district-wide strategic infrastructure and local settlement-specific improvements.
- 4.3 Whilst we have had regard to what has/has not worked well with authorities already operating CIL and to what neighbouring and nearby authorities (particularly the SDNPA) are proposing to do; aside from Worthing we are probably the authority most advanced in considering governance arrangements in Sussex – hence we have an opportunity to influence others.
- 4.4 A diagram has been prepared which outlines the proposed framework for the governance of CIL receipts. The illustration shows the funding mechanism that sits therein and provides examples of the types of infrastructure project and administration expense that might receive CIL funding. The diagram is in Figure 1 and the proposals are discussed in more detail thereafter.

Figure 1

PROPOSED CIL GOVERNANCE FRAMEWORK



4.5 The key principles that flow from this diagram:

- CIL income will be distributed into four pots on a six-monthly basis⁴
- The initial pot proportions are agreed in advance of the implementation of CIL; the distributions are guided by the CIL Regulations (for the Parish Pot and Admin Pot) and the funding gap as highlighted by analysis of the Council's Infrastructure Delivery Plan⁵ (IDP)
- Infrastructure providers will be bidding for funds from a specific pot only
- Bidding from infrastructure providers will be via a business case made to the Executive Board. (Town and Parish Councils do not need to make business cases and the meaningful proportion is passed directly)
- An Executive Board will make recommendations for spending to Cabinet
- In line with the CIL regulations, levy administration expenses will be financed as required from the Admin Pot

4.6 The advantage of using the predetermined Pot system is that it simplifies and facilitates the spending of CIL revenue. It makes clear to infrastructure providers what money may be available to contribute toward a type of infrastructure project and that the levy income is ring-fenced for the delivery of different types of infrastructure.

The Details

4.7 The Executive Board is proposed to be made up of the following officers and Members of Lewes District Council:

- The Infrastructure Delivery Officer
- Head of Strategic Policy
- Finance Officer
- Legal Adviser Officer
- Lead Member for Strategy and Development
- Lead Member for Community Improvement
- Chair of Scrutiny

4.8 It is unlikely that the Executive Board will sit during the first twelve months of CIL implementation, as the CIL revenue will need to accrue in the Pots. Nonetheless it is considered prudent to agree the Executive Board make up as part of the governance arrangements.

4.9 Business cases will be made on a standard template issued by Lewes District Council and will require the following information:

- What is the infrastructure project;
- What is the timetable for delivery of the project;

⁴ Six monthly is the regularity with which the 'meaningful proportion' payments must be passed to Town and Parish Councils

⁵ This means the County Pot and Community Pot are flexible and may change as infrastructure requirements change

- What is the overall cost and outline breakdown of costs;
 - Is the project in the Council's IDP and/or Regulation 123 List;
 - What is the relationship to development recently permitted in the area;
 - What other sources of funding are contributing to project;
 - What are the contingencies for delay/cost rise;
 - What are the arrangements for on-going maintenance; over what timescale;
 - What consultation have you undertaken; what level of stakeholder support.
- 4.10 On receipt and review of the above information on the standard template we may request further information as necessary. The Infrastructure Delivery Officer will make the initial review of the business cases submitted and prepare a report containing recommendations to the Executive Board. The Executive Board will review those bids and the Officer's recommendations and make its own recommendations to Cabinet for their final approval.
- 4.11 The Executive Board will sit twice a year and there will be a cut off point ahead of this for the consideration of cases submitted. To this end the cut-off dates will be published annually on the Council's CIL Webpages.
- 4.12 The Infrastructure Delivery Officer and the Executive Board will have in mind the following criteria when reviewing the bids submitted:
- Is the project '*infrastructure*' as defined by the CIL Regulations
 - Is the project deliverable, with or without CIL funding
 - What are the public benefits of the project
 - How does it fit with the Council's spending priorities (does it deliver what is absolutely critical to deliver Core Strategy growth)
 - Does it make use of 'match funding' or dovetailing of funding from other sources
- 4.13 We can be confident that projects demonstrating positive results against these criteria will be appropriate candidates for CIL funding and the bidding/business case approach will allow a broad spectrum of infrastructure providers a chance to influence the process of allocating CIL funding. This approach should also maximise the opportunities to coordinate CIL funding with pre-CIL Section 106 agreements and a wide variety of other funding sources, both within and beyond local government.
- 4.14 Requirements for key infrastructure provisions may overlap local authority (or National Park) boundaries, both within and beyond East Sussex. The Pot system allows infrastructure providers from outside the district charging area and county to present business cases and bid into the appropriate funding Pot. For example West Sussex County Council may bid into the County Pot for education or transport improvements triggered by development in our district on the edge of Haywards Heath.

- 4.15 The release of funds for approved infrastructure projects will need to be in line with agreed delivery milestones to safeguard the Council, as the Charging Authority, in discharging its responsibility as *ultimate and accountable infrastructure provider*.
- 4.16 It may be prudent to allow a small tolerance, up to 5%, on costs for projects as the submitted costs may succumb to price fluctuations between bidding and implementation. This should not be considered a green light for additional spending and any 'over spend' should be robustly evidenced and its authorisation will be subject to approval by the Infrastructure Delivery Officer.

Administrative Costs

- 4.17 The introduction of CIL and the day-to-day discharge of our duties as the 'Charging Authority' is resource intensive and recognised by the Government as an additional burden on local authorities. In line with the CIL Regulations⁶, we will utilise up to 5% of total CIL receipts each year to finance levy administration expenses.
- 4.18 Administrative expenses associated with the levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs, such as consultation on the levy charging schedule, preparing evidence on viability and the costs of the levy examination. They also include ongoing functions like establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring and reporting on levy activity.
- 4.19 To help us with initial set up costs, the regulations allow for a 'rolling cap' on administrative expenses (see Regulation 61). This covers the period comprising the first part year that we set the levy and the following three financial years taken as a whole. From year four onwards of the levy operation, the restriction works as a fixed in-year cap, meaning that we may spend up to five per cent of receipts received in-year by the end of that year on our administrative expenses.
- 4.20 From year four, if we spend less than the permitted 5% allowance on administrative expenses, we must transfer the remaining allowance for use on capital infrastructure projects (transfer into the District/Parish Pot).
- 4.21 Including staff costs, the need to appoint specialist viability consultants and the forthcoming cost of the CIL Examination, the total cost to the Council of setting up CIL is around £100,000.
- 4.22 The ongoing costs of running the CIL in Lewes District will need to be monitored in order to establish the baseline financial expenditure per year. Using our regulatory obligations and the governance principles outlined in

⁶ Regulation 61, as amended by the 2014 Regulations

this report as a guide, the following items (Table 1) will be ongoing cost implications for the Council.

Table 1: Ongoing CIL Tasks with Cost Implications

Task
Planning Administration: <ul style="list-style-type: none"> • Formal exchange of notices • Calculation of charge
Infrastructure Delivery Officer: <ul style="list-style-type: none"> • Verification of calculation of charge • Verification of exemptions • CIL Policy & Guidance • Monitoring and Reporting • Review of infrastructure requirements and other funding opportunities • Point of contact for infrastructure providers • Support to Executive Board (review of bids & recommendations) • Support to Towns and Parishes (delivering local infrastructure and ensuring spend is in accordance with the prescribed regulations) • Review of Charging Schedule
Finance: <ul style="list-style-type: none"> • Set up of CIL Revenue Accounts • Transfer of monies (6 monthly) • Payments to infrastructure providers (as agreed) • Provision of accounting information to Infrastructure Delivery Officer (6 monthly)
District Valuation Services*: <ul style="list-style-type: none"> • Viability discrepancy* • Land valuation for payment in kind*
Legal Input: <ul style="list-style-type: none"> • Legal contracts for payment in kind
Appeals: <ul style="list-style-type: none"> • Re-calculation of charge by a more senior officer • Valuation Office Agency Services*
Enforcement <ul style="list-style-type: none"> • Application via the Magistrates Court* (associated costs)
Review of Charging Schedule: <ul style="list-style-type: none"> • Infrastructure Delivery Officer (project management) • Assessing viability* • Assessing infrastructure needs • Consultation • Examination*
Executive Board: <ul style="list-style-type: none"> • Review of bids (staff time: 4 officers) • Expenses (3 elected Members)

*External costs that cannot be subsumed into day-to-day officer duties

4.23 In considering the proposed governance arrangements for CIL, liaison has taken place with authorities who have already implemented CIL to gauge the relative merits of different governance arrangements and to see how those authorities have administered the charge. All authorities highlighted the significant resource implications of administering CIL and in order to address this they have utilised the 5% admin pot to ensure that CIL is managed in a robust and efficient manner. This money has generally been utilised to create a post that is specifically tasked with administering and reviewing CIL.

- 4.24 If the Council were not to utilise the 'up to 5%' admin pot then its ability to implement CIL effectively and ensure that the right projects receive the right money will be compromised. Ultimately, this could leave the Council open to challenge on the basis of maladministration of the CIL funds received.

Monitoring and Review Arrangements

- 4.25 We are committed to ensuring the use of CIL is open and transparent and will publish an annual report, which will set out clearly how much CIL money has been received and the infrastructure to which that money has been applied.
- 4.26 Regulatory and economic circumstances change and therefore we are also committed to reviewing the CIL Charging Schedule if either of the following conditions are met:
- Changes are made to the CIL Regulations such that it would be necessary or of benefit for the Council to review its Schedule
 - A period of three years has passed since the implementation of the Schedule
- 4.27 We will also consider the need for review if monitoring of CIL performance and/or local conditions indicates that either development is being constrained by CIL rate(s) or that development viability may have increased such that CIL receipts are being persistently constrained by the prevailing CIL rate(s).
- 4.28 A review of the Charging Schedule will require a refresh of the viability evidence and an infrastructure planning update and may lead to fresh consultation and a new independent examination; the costs of which will place additional financial burden on the Council, which can be mitigated through utilising the 5% administration allowance.

5 Town and Parish Neighbourhood Funding Under the Levy

- 5.1 Whilst not a matter for detailed consideration here in this report, it is worth highlighting that a close working relationship with the Town and Parish Councils will be beneficial to the delivery of local infrastructure priorities. Guided by the Towns and Parishes we must work together to ensure the effective use of CIL revenue to support development within our communities.
- 5.2 Parish and Town Councils must make arrangements for the proper administration of their financial affairs (see Section 151 of the Local Government Act 1972). They must have systems in place to ensure effective financial control (see Accounts and Audit (England) Regulations 2011 and Accounts and Audit (Wales) Regulations 2005). These requirements apply when dealing with neighbourhood funding payments under the levy.

- 5.3 For each year when they have received neighbourhood funds through the levy, Parish and Town Councils must publish the information specified in Regulation 62A. If they haven't received any money they do not have to publish a report, but may want to publish some information to this effect in the interests of transparency.
- 5.4 If, at the request of a Town or Parish Council, we hold and spend the neighbourhood portion on behalf of the local community, we will report this as a separate item in our own accounts.

6 Financial Appraisal

- 6.1 The financial implications of agreeing the proposed CIL governance framework are beneficial. We can be assured we are meeting our legal obligations to pass a meaningful proportion of CIL receipts to local communities and to be transparent in our approach to spending CIL. We can also be assured that we are maximising opportunities to avail ourselves of other funding sources in delivering infrastructure in the district; therefore making effective use of our finances. Agreement of these proposals also puts us in a position to mitigate the financial burden of implementing CIL by utilising up to 5% of CIL revenue on levy administration expenses.
- 6.2 The costs associated with setting up and running the levy charging scheme have been outlined within Section 4 under the sub-heading Administrative Costs. It is clear that the process is resource intensive. It is therefore considered essential that the governance arrangements proposed herein, including the retention of 5% of the CIL revenue for administrative expenses, be agreed in order that the Council may recover some of its costs. Any surplus within the 5% allowance will be returned each year to the District/Parish Pot for spending on capital infrastructure projects.

7 Legal Implications

- 7.1 The Legal Services Department has made the following comments:

“The legislation governing the administration and governance of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations (2010 and as amended). The associated Statutory CIL Guidance (contained within the Planning Practice Guidance) is also important in guiding this process.

Governance arrangements that are consistent with the CIL regulations must be agreed. If they are not then the Council runs the risk of challenges from developers over the use of CIL to the Ombudsmen being upheld.

The CIL regime and associated guidance relating to governance is still at an early stage of development. Governance arrangements will need to be kept under review.”

8 Sustainability Implications

- 8.1 The sustainability implications of the proposed Charging Schedule have been assessed using the Sustainability Implications Questionnaire. This governance framework will set the conditions for the effective delivery of infrastructure, which should bring social benefits to communities (especially through the ‘meaningful proportion’ element, which puts communities in the driving seat for delivering social benefits locally). The assessment of the environmental impact from these proposals is not generally applicable. It cannot be known what the environmental impacts of individual infrastructure projects will be at this time. There is potential for a beneficial local economic impact when assessed against the investment indicator. This is because the proposals herein seek to maximise opportunities to coordinate funding from other sources with CIL investment. It is not considered necessary for this report to have a Sustainability Implications Statement (SIS).

9 Risk Management Implications

- 9.1 The following risks will arise if the recommendations are not implemented and the following mitigation is proposed:

Risk	Mitigation
That we will not have identified the relationship pathways and the funding and delivery mechanisms for the effective delivery of critical infrastructure required to support and enable the delivery of residential development. We have an obligation under the CIL Regulations to apply the levy revenue we receive to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support development of our area.	That the recommendations of this report are approved, allowing the governance structure to be implemented and guidance produced to assist decision makers and infrastructure providers. This will allow CIL revenue to be directed to deliverable and critical infrastructure to support the delivery of the Core Strategy.

10 Equalities Screening

An equalities screening assessment has been undertaken and no impacts identified.

11 Background Reports

- Cabinet Report 20th March 2014 - Community Infrastructure Levy Draft Charging Schedule Consultation
<http://cmispublic.lewes.gov.uk/Public/Meeting.aspx?meetingID=673>
- Cabinet Report 20th March 2013 – Community Infrastructure Levy Preliminary Draft Charging Schedule Consultation
<http://cmispublic.lewes.gov.uk/Public/Meeting.aspx?meetingID=589>