

**Agenda Item No:** 9.5 **Report No:** 149/16  
**Report Title:** Community Infrastructure Levy (CIL) Governance Review  
**Report To:** Cabinet **Date:** 16<sup>th</sup> November 2016  
**Cabinet Member:** Cllr Tom Jones Lead Member for Planning  
**Ward(s) Affected:** All areas of the District not lying within the South Downs National Park boundary  
**Report By:** Nazeya Hussain Director of Regeneration and Planning  
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**Purpose of Report:** To provide a review of the Community Infrastructure Levy (CIL) Governance a year on from the implementation of the Charging Schedule. To present an update on apportionment, the process that allocates money to the Governance Pots (County, District, Community, and Admin). To propose an option that widens Member representation in the decision-making process for spending from the District and Community Pots.

**Officers Recommendation(s):**

- 1 To acknowledge the apportionment update that shows the neighbourhood portion of CIL is taken first from the revenue and subsequently passed to Towns and Parishes.**
- 2 To agree the creation of a CIL Management Board to review infrastructure bids for funding from the District and Community Pots and to agree the way in which membership of the same should be determined, as set out in section 4 of the report.**

**Reasons for Recommendations**

- 1 To demonstrate compliance with the CIL Regulations in terms of passing the neighbourhood portion to Towns and Parishes.**
- 2 To enhance representation of Members in the process that assesses infrastructure funding bids from the District and Community Pots that ring-fence funding for local (non-strategic) infrastructure projects.**

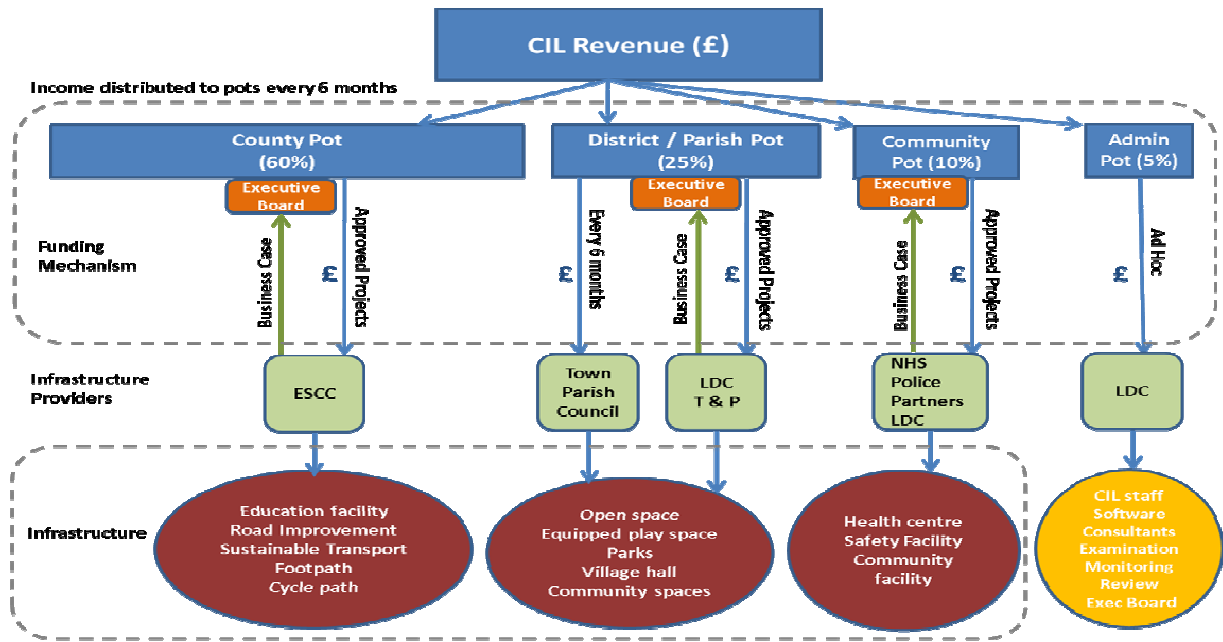
## **Report**

### **1 Introduction**

- 1.1 The Community Infrastructure Levy (CIL) is the way in which we collect contributions from new development towards infrastructure provision. The CIL Regulations came into force in 2010 and Lewes District Council adopted its Charging Schedule in November 2015. This report updates Members in light of further information we now have (post adoption and implementation) and a review of our governance.
- 1.2 CIL Governance describes the way we manage and spend the CIL income; certain elements are prescribed by the CIL Regulations others we have control over. The impact of Lewes District Council becoming a Charging Authority, from the moment we adopted and implemented CIL, is that we now have the financial responsibility for ensuring infrastructure is delivered in our district. This is a huge responsibility that must be carefully carried out in strict legal compliance with the regulations.
- 1.3 There are CIL Regulations concerning a number of governance matters: how the neighbourhood portion is calculated and when it must be passed to Towns and Parishes; the allowance a Charging Authority may take to cover its CIL costs and how it will be spent; the type of infrastructure project that can be funded and what can't; our public reporting duties and those of Town and Parish Councils for our CIL revenue and spend.
- 1.4 We, the Charging Authority, have control over the decision-making process for spending the CIL money that remains after the neighbourhood portion has been taken and passed to Towns and Parishes. We agreed in 2014 a CIL Governance Framework that describes the way this Council will manage and spend its CIL receipts. This is shown below.

#### **Lewes District Council CIL Governance Framework**

## PROPOSED CIL GOVERNANCE FRAMEWORK



- 1.5 The framework shown above represents our understanding of CIL Governance at November 2014 – 1 year prior to implementation. We implemented CIL on 1<sup>st</sup> December 2015 and officers have now been successfully processing applications for CIL for 11 months. This has required detailed scrutiny of the regulations and close working with specialist software providers to implement a legally compliant CIL regime.
- 1.6 This work has led officers to refine our Governance Framework agreed in 2014 in order to bring it into compliance, a necessary step to operate the collection process through the new software system. The next section of this report sets out the background to the creation of the existing CIL Governance Framework and the current proposal to refine the bespoke (non-Regulatory) decision-making arrangements.

## 2 Background

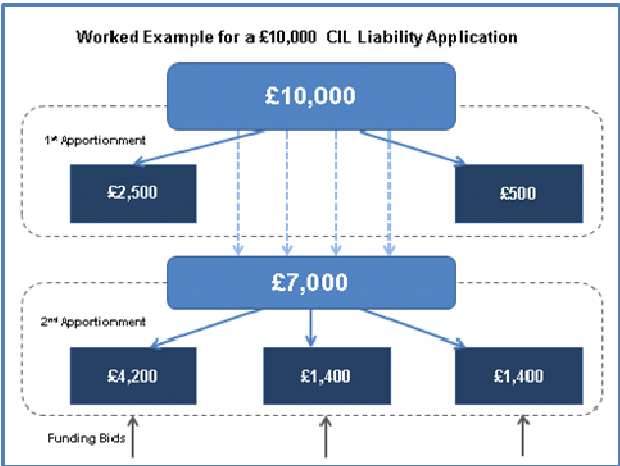
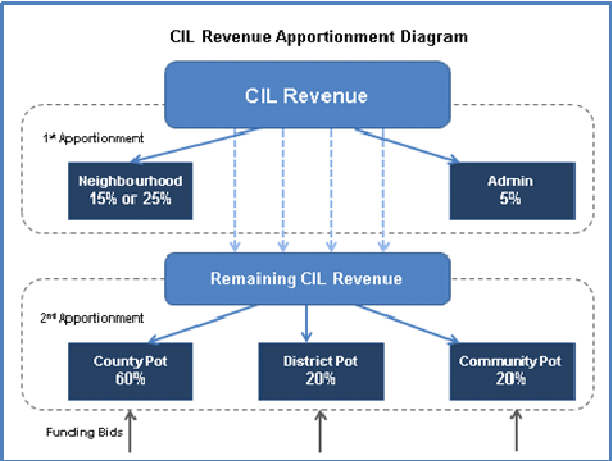
- 2.1 Prior to the implementation of CIL in our Charging Area, a CIL Governance Report was presented to Cabinet<sup>1</sup> that proposed a strategy for how this Council would deliver its obligations with regard to the neighbourhood portion, administration allowance and how we would manage the money for the delivery of infrastructure (the Regulation 123 List).

<sup>1</sup> Cabinet Report of 20<sup>th</sup> November 2014 (1 year prior to CIL implementation)  
[http://www.lewes.gov.uk/Files/plan\\_CIL\\_Governance\\_Cabinet\\_Report\\_Final.pdf](http://www.lewes.gov.uk/Files/plan_CIL_Governance_Cabinet_Report_Final.pdf)

- 2.2 The neighbourhood portion and administration allowance of CIL receipts are pre-determined by the CIL Regulations. A key decision for us regarding the remaining amount of CIL income was whether to and how to ring-fence an allocation for strategic infrastructure and an allocation for local level community infrastructure.
- 2.3 Our infrastructure funding gap clearly shows a strong bias towards strategic infrastructure: highway improvements, sustainable transport measures and additional education provision. In order to avoid local infrastructure requirements competing with strategic infrastructure we determined to ring-fence funds into separate pots that could be bid into by different infrastructure providers. Hence we created the County, District and Community Pots.
- 2.4 The following section of the report (Section 3) provides clarification on how we are implementing the CIL Regulation apportionment and subsequently how we arrive at our bespoke apportionment for strategic and local infrastructure. Prior to the implementation of the Charging Schedule we understood the apportionment to each Pot occurred at the same time – we now know this is not the case.
- 2.5 The remainder of the report discusses the governance arrangements for spending from the Pots and proposes a refinement to the decision-making process for local infrastructure spending (District and Community Pots).
- 2.6 The Executive Board has three Members allocated to it based on their cabinet portfolios and under the current arrangements the Executive Board reviews all the bids for spending from the three available Pots – County Pot, District pot and Community Pot.
- 2.7 Section 4 of the report reviews our approach to the assessment of infrastructure funding bids and proposes an amendment to improve Member representation in the decision-making process.

**3 CIL Apportionment Update**

3.1 We now know that the CIL Regulations require us to take the neighbourhood portion first (and pass it to Town and Parish Councils) and the administration allowance: i.e. 15 or 25% for neighbourhood and 5% for administration. The remaining amount (70 or 80% of the original whole) is then apportioned to our ring-fenced infrastructure pots as shown in the diagram below:



- 3.2 Our previous understanding of the District Pot was that this would collect the 10% accrued wherever there is no Neighbourhood Plan and be used by us to deliver recreation and community infrastructure in conjunction with local councils. As the apportionment process is automated for each planning permission liability generated, once the neighbourhood and admin apportionment is taken, the remaining money is immediately distributed to Pots according to our set percentages. Consequently when we programmed our CIL collection software we needed to allocate the District Pot an allowance that was equal to what was intended by the original governance arrangements i.e. broad parity with the Community Pot. More information on how the software calculates the apportionment can be found in Appendix 1.
- 3.3 Retaining 60% for County left an obvious 20/20 split for the local infrastructure funding pots. Therefore overall the County Pot allowance has been reduced by this process and we will need to monitor annually whether there are sufficient funds in the County Pot to support Regulation 123 List project bids coming forward and make future adjustments if the balance of locally provided to strategically provided infrastructure is proving detrimental to critical infrastructure delivery (i.e. that required to deliver the Core Strategy). No bids for funding have been received to date.
- 3.4 As previously agreed, infrastructure providers access our bespoke CIL Revenue Pots through a bidding process. LDC can bid into the District or Community Pot to help deliver locally relevant projects; Towns and Parishes can bid into the District Pot for assistance delivering projects in their area; and other infrastructure providers e.g. NHS or Sussex Police bid into the Community Pot to deliver community projects such as new health centre or policing facilities. East and West Sussex County Councils will bid into the County Pot to deliver strategic items.
- 3.5 The Bidding Form, bidding guidance and further information on the CIL spending process can be found on our CIL Spending webpage <http://www.lewes.gov.uk/planning/24002.asp>. A copy of the bidding form and how we intend to assess the bids can also be seen in Appendix 2.
- 3.6 The Neighbourhood allocation, as calculated per planning permission, is passed automatically twice a year to the Towns and Parishes: at the end of April and October each year issuing the preceding 6 months income.
- 3.7 The Admin Pot is drawn down upon when needed to support the set up and implementation of the Charging Schedule; to help with the initial set up costs of putting the Charging Schedule in place (consultation and examination costs, preparation of viability evidence etc.) the Admin Pot can roll over for the first three years. After that the money collected each year must be spent within the year it is collected with any remaining being returned to the "Remaining CIL Revenue" pool for distribution to our bespoke Governance Pots. Implementation costs include software acquisition and maintenance contracts, monitoring costs, legal cost of enforcement etc. The 2014 CIL Governance Cabinet Report provides a list of examples of ongoing CIL tasks with cost implications.

## 4 Review of the Bid Assessment Process

- 4.1 Under the current framework, funding bids for all projects are assessed by an Executive Board whose membership is determined according to relevant 'job/portfolio titles'. The Board subsequently makes recommendations to Cabinet. It is however yet to convene as revenue is only just starting to come in and the Pots have not gathered meaningful amounts.
- 4.2 The CIL Executive Board considers both strategic infrastructure (County Pot) and local infrastructure (District & Community Pots) CIL spending. The make up of the Board is as follows:
- Senior Strategic Policy Officer (Infrastructure)
  - Head of Strategic Policy
  - Finance Officer
  - Legal Adviser Officer
  - Lead Member for Planning
  - Lead Member for Customers & Partnerships
  - Chair of Scrutiny
- 4.3 We propose an option for refinement of the Executive Board function to focus solely on strategic infrastructure and for the creation of a new CIL Board to assess community infrastructure bids, to ensure representation from across the Charging Area (outside the National Park). The aim is to achieve a more equitable and effective mechanism for recommendations on the funding and delivery of projects across the district.
- 4.4 The proposal now put forward is that a new CIL Management Board be created that assesses funding bids for spending from the District and Community Pots and makes recommendations to the Executive Board, which in turn presents the recommendations for spending from all our bespoke CIL Governance Pots to Cabinet for final authorisation.

### **The Proposal:**

- CIL Executive Board continues to assess funding bids from the County Pot – the Regulation 123 List projects
- CIL Executive Board retains the current Member and Officer membership
- A new CIL Management Board to assess funding bids from the District and Community Pots – Regulation 123 projects and non-specific 123 List types
- CIL Management Board to include same 4 Officer positions as the CIL Executive Board.
- CIL Management Board to also include 5 new Member positions

- 4.5 The method for identifying the Members for the CIL Management Board is to firstly relate to the broad quantum and distribution of development within the Charging Area. Using Spatial Policies 1 and 2 of the Core Strategy we can identify just over

twice the amount of development planned in the Low Zone, south of the Park as the High Zone to the north of the Park. So with a requirement for 5 Members this ratio suggests the need for 3 Members from wards in the Low Zone and 2 Members representing wards in the High Zone.

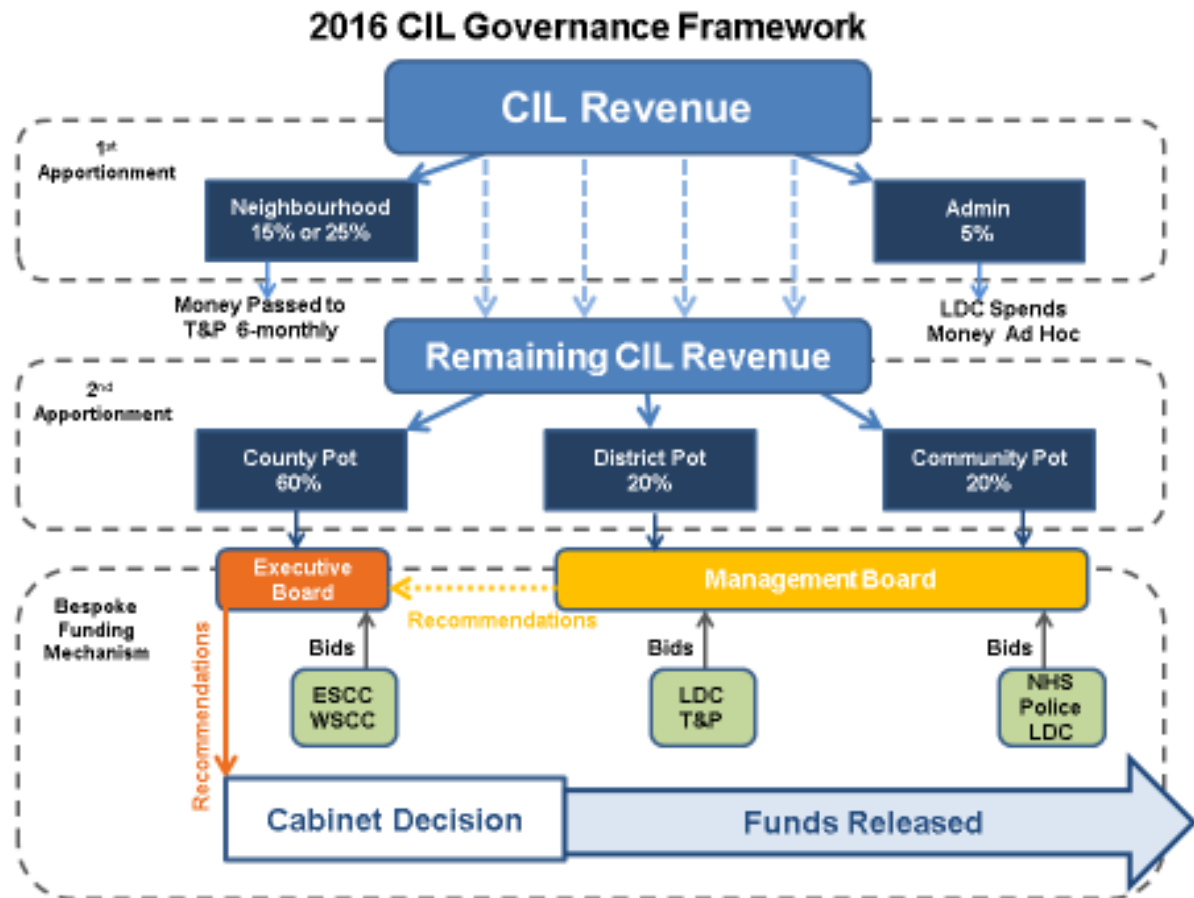
- 4.6 The process of choice is based on expressions of interest open to any Member (not on the Executive Board) whose ward is wholly or partially within the Charging Area (excludes Members whose wards are wholly within the Park). It is recommended that appointments be made by Group Leaders on the basis of the usual rules of proportionality.
- 4.7 Eligible wards for expressions of interest are given below.

High Zone	Low Zone
Barcombe and Hamsey Chailey and Wivelsfield Ditchling & Westmeston Newick Ouse Valley and Ringmer Plumpton, Streat, East Chiltington & St John (Without)	East Saltdean & Telscombe Cliffs Newhaven, Denton & Meeching Newhaven Valley Peacehaven East Peacehaven North Peacehaven West Seaford Central Seaford East Seaford North Seaford South Seaford West

## 5 Conclusion

- 5.1 This Governance update has clarified the mechanics of how the CIL contributions are distributed at source to the Governance Pots and should provide assurance that we are implementing the CIL Regulations appropriately in terms of calculating and distributing the Neighbourhood Portion. We will keep under review the balance of funds in the bespoke Pots and how well our governance arrangements perform in delivering critical infrastructure.
- 5.2 The diagram below is a representation of the 2016 CIL Governance Framework; it seeks to visually present an overview of our revised governance.





- 5.3 The new CIL Management Board represents a significant increase in the number of elected Members involved in local infrastructure decision-making process and the success of this new approach will be monitored for its effectiveness.
- 5.4 It is expected, whilst they are so new, that the CIL Governance arrangements are reviewed annually to ensure they remain the most appropriate for our District. It is also noteworthy to say that programming of the CIL collection software will also be updated annually to ensure indexation is applied and existing dwelling numbers are accurate and it is updated as and when new Neighbourhood Plans are adopted.

## 6 Financial Appraisal

- 6.1 The financial implications of this Review and particularly the apportionment update are beneficial for this Council. Specifically in terms of its ability to assist in financing and delivering local infrastructure projects. The District Pot will receive a guaranteed proportion of each CIL liability due to the updated apportionment process that was implemented on 1<sup>st</sup> December 2015, necessitated by the CIL collection software.
- 6.2 As our CIL collection software is pre-programmed and the apportionment process is automated and CIL Regulation-compliant for every individual CIL liability, it provides reassurance that the financial matters of CIL are being handled appropriately in a



transparent and auditable way. Overall in this revised governance structure there will be more money held for local infrastructure than under the previous arrangements, this will however be kept under to review to ensure it is the most appropriate balance for delivering critical and necessary infrastructure.

- 6.3 The ability to have direct access to our 'live' financial information allows full scrutiny for the purposes of accounts reconciliation with the Agresso Finance System. There is future potential for our CIL collection and funds management system to integrate with Agresso when we move to the most up to date Agresso version.

## 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".

## 8 Risk Management Implications

8.1 The following risks will arise if the recommendations are not implemented and the following mitigation is proposed.

<b>Risk</b>	<b>Mitigation</b>
That we will have discontent surrounding the spending of CIL money, which may detract from the benefits that CIL can bring in delivering infrastructure to support growth.	That the recommendations of this report are approved, allowing the process of allocating the CIL Management Board Members to their new positions ahead of funding bids being received.

## 9 Equality Screening

9.1 It is not considered that there will be any impacts. The CIL Governance Report 2014 underwent equalities screening and no impacts were identified.

## 10 Background Reports

**CIL Governance Cabinet Report** November 2014

[http://www.lewes.gov.uk/Files/plan\\_CIL\\_Governance\\_Cabinet\\_Report\\_Final.pdf](http://www.lewes.gov.uk/Files/plan_CIL_Governance_Cabinet_Report_Final.pdf)

## 11 Appendices

**Appendix 1            Exacom (the CIL software) & the Apportionment Process**

**Appendix 2            Bidding Forms and Assessment Proforma**