

CABINET

19 March 2014

COMMUNITY INFRASTRUCTURE LEVY – APPROVAL OF REGULATION 123  
LIST, INSTALMENTS POLICY AND CIL ALLOCATIONS

REPORT OF CORPORATE DIRECTOR

Contact Officer: Steve Tilbury Tel No: 01962 848256

RECENT REFERENCES:

[CAB2466](#) Community Infrastructure Levy: Draft Charging Schedule – Cabinet 13 March 2013

[CAB2489](#) Community Infrastructure Levy: Submission Of Draft Charging Schedule – Cabinet 26 June 2013

CAB2929(LDF) Community Infrastructure Levy: Adoption of Draft Charging Schedule & Introduction of CIL Charge – 27 November 2013

EXECUTIVE SUMMARY:

The report seeks approval for the Council's Regulation 123 list which describes the range of infrastructure projects which the Council intends will or may be funded from the Community Infrastructure Levy (CIL). It also recommends an instalments policy for CIL payments and suggests a mechanism for the distribution of funds collected from CIL and seeks approval for this. As part of the process of collecting CIL funds, it is also proposed that the Council seeks surcharges where appropriate, in line with the CIL regulations.

## RECOMMENDATIONS:

- 1 That the Regulation 123 list attached as Appendix 1 to the report be approved.
- 2 That the recommended policy on payment instalments attached as Appendix 2 to the report be approved.
- 3 That the Council seeks surcharges where appropriate, in line with the CIL regulations (as summarised in Appendix 3).
- 4 That delegated authority be given to the Corporate Director, in consultation with the Portfolio Holder for Built Environment, to review the R123 list from time to time and to make any necessary amendments (following the statutory process required), as may be appropriate to ensure that it is up to date and operates effectively to secure infrastructure delivery.
- 5 That income received from CIL be appropriated as follows:
  - (i) Up to 5% of CIL receipts can be used to cover administrative costs.
  - (ii) 15% (or 25% where a neighbourhood plan is approved) of CIL from qualifying development to the relevant parish council in accordance with CIL regulations;
  - (iii) 15% of CIL from qualifying development to the Winchester Town Account for expenditure on infrastructure projects in the Winchester Town area which are consistent with the Council's Regulation 123 list;
  - (iv) 25% of the remaining, not gross, annual CIL receipts (after the administrative contribution and allocation to parish councils or the Winchester Town Forum) to Hampshire County Council for the delivery of infrastructure projects which are the responsibility of the County Council from the Regulation 123 list;
  - (v) All other CIL receipts to a programme to be developed alongside the City Council's capital or revenue expenditure programmes for the delivery of priority infrastructure projects by the City Council or other key providers.
- 6 That delegated authority be given to the Assistant Director (Built Environment) to take all necessary action to administer the CIL scheme.

## CABINET

19 March 2014

### COMMUNITY INFRASTRUCTURE LEVY – APPROVAL OF REGULATION 123 LIST, INSTALMENTS POLICY AND CIL ALLOCATIONS

#### REPORT OF CORPORATE DIRECTOR

##### DETAIL:

#### 1 Introduction

- 1.1 In January 2014 Council agreed its charging schedule for the Community Infrastructure Levy (CIL) and to the introduction of CIL from 7 April 2014. Extensive work has been undertaken on the procedures for operating CIL and the Council will be ready to move to the new system on schedule. This is despite the fact that the Government continues to modify the regulations which govern how CIL operates, creating a series of new exemptions and payment mechanisms all of which have added further layers of complexity to the system.
- 1.2 CIL funds will start to accumulate slowly after April and it is not necessary at this stage to identify specific projects on which CIL will be spent. However, it is necessary for Cabinet to approve its general statement relating to the infrastructure projects on which CIL may be spent which is known as the Regulation 123 (R123) List. This list also has the very important function of effectively defining infrastructure projects which will not be the subject of Section 106 (planning) or Section 278 (transport) agreements.
- 1.3 To avoid uncertainty it would also be sensible for Cabinet to approve the general basis on which CIL receipts will be allocated between the three tiers of local government (county, district and parish) as these are the bodies which will be mainly responsible for delivering projects on the R123 list.
- 1.4 The CIL Schedule and R123 list have been developed so as not to place an undue financial burden on development. To further help the financing and viability of development, the Council can introduce an instalments policy which would allow persons liable to pay CIL to do so by instalments. In addition, the Regulations provide that where development is phased under the terms of the planning permission, each phase is treated as a separate development, with CIL being calculated by reference to each phase and payable as each phase is commenced,
- 1.5 The Council can also seek surcharges for matters such as late payment, with the reasons and amounts involved being prescribed by the CIL regulations.
- 1.6 This report relates only to the area for which the City Council is the local planning authority, and it therefore does not apply to the part of the District

within the South Downs National Park. The South Downs National Park Authority (SDNPA) will develop its own CIL for the Park, and its approach to the allocation of income, in due course. The SDNPA (and City Council on its behalf) will not be introducing CIL for at least a year and will continue to require Section 106 agreements for any development which it believes requires them.

## 2 Regulation 123 List

- 2.1 The Regulations aim to ensure that CIL contributions and 106 agreements do not overlap. Section 106 agreements and highways agreements cannot be sought to provide (or contribute to) infrastructure which is listed on the Regulation 123 list.
- 2.2 Under the CIL regulations, a planning authority can only continue to enter into Section 106 agreements for specific infrastructure projects (such as a new school classroom funded by a local housing allocation) if it has identified these as projects for which CIL will **not** be used. It does this by producing a Regulation 123 list which sets out both the projects to be covered by CIL (which are generally defined very broadly) and any specific projects to be excluded (so that they can be funded through Section 106 agreements or through S278 agreements in relation to some highway works when relevant developments come forward).
- 2.3 It is very important to note that the R123 list has a very particular technical purpose. With the one exception noted below, it is not a definitive statement of all the individual projects or schemes which might be funded by CIL. Particular projects to be funded from CIL are not mentioned because they will all fit into one or other of the broad categories listed.
- 2.4 There is one 'exception to the rule' which relates to transport projects where the County Council would normally expect specific developments to enter into S278 agreements to mitigate their impact. Because the nature of these requirements is unknown (since it is purely a product of development proposals) they have to form a more specific category within the R123 list. The R123 list therefore lists specifically those transport projects for which CIL will be used (and S106/S278 agreements will not therefore be used) because they are unlikely to be funded from individual development proposals.
- 2.5 The proposed R123 for Winchester District is attached as Appendix 1 for approval. The list of transport and education infrastructure both included and excluded from CIL has been agreed with Hampshire County Council. Specific schools are listed as 'exclusions' from CIL so as to enable contributions to be sought through Section 106 planning obligations for the sites likely to be allocated for housing development in the larger villages by Local Plan Part 2. Specific transport schemes have been included in the CIL123 list, which allows for all other transport infrastructure to be funded through S106 or S278 obligations. Parish Council projects do not need to be referenced in the R123 list because parish councils are not subject to the same restrictions in respect of the proportion of CIL funding they will receive.

- 2.6 The CIL regulations set out a mechanism by which the R123 list can be amended from time to time to maintain its relevance and ensure it is up to date and can deliver infrastructure when and where it is most needed. To avoid unnecessary delays it is suggested that delegated authority be given to the Corporate Director, in consultation with the Portfolio Holder for Built Environment, to review the R123 list from time to time and to make any necessary amendments following the statutory process required.

### 3 Instalments Policy

- 3.1 To help with the financing of development, the Council can introduce an instalments policy which would allow persons liable to pay CIL to do so by instalments. This would help avoid a situation where full payment of CIL at the start of development may be harmful to its viability, thereby delaying or preventing a scheme from proceeding or detrimentally affecting its ability to satisfy planning policy requirements such as affordable housing.
- 3.2 The recommended instalment policy is set out in Appendix 2. The split has been matched to the scale of developments to try and help smooth cash flow. The instalments must be set as a proportion of the CIL due, but have been calculated locally based on an average dwelling so that proposals for around 1-4 dwellings must pay the full amount within 60 days, ca. 5-24 dwellings can pay in two instalments, ca. 25 to 100 dwellings in 3 instalments, and proposals for over ca. 100 dwellings can pay in 4 instalments (although this can be negotiated on an individual basis).
- 3.3 The instalments policy allows persons liable to pay CIL to use instalments, if they have complied with the CIL regulations. The time that the first instalment payment is due is calculated from the date the development is commenced. If the person who is liable to pay CIL does not comply with the regulations, then the full payment is due 60 days after the development is commenced.

### 4 Surcharges

- 4.1 In order to encourage prompt payment and recover money spent on the additional administration of CIL, where the CIL regulations and policies have not been adhered to, it is recommended that the Council applies surcharges as permitted under Part 9 of the CIL Regulations. The Regulations specify the amount of each surcharge. The surcharges which the CIL Regulations set out are summarised in Appendix 3.

### 5 Allocation of CIL Funding

- 5.1 CIL receipts will accumulate slowly at first but will eventually form a steady income stream which has previously been estimated as averaging between £800,000 and £1,000,000 per annum, which will be collected by City Council because it is the local planning authority. CIL provides a 'pool' of funds for infrastructure expenditure rather than individual agreements tied to particular projects. A developer cannot require that their CIL contribution is spent in a particular way or at a particular place, although they can offer to meet their

CIL liability 'in kind' by way of provision of land, provision of infrastructure directly, or money (or a combination of the three).

- 5.2 The City Council must give 15% of the CIL receipt from a development in a parished area to the relevant parish council (subject to an upper monetary limit in any given year defined in the CIL regulations). If the parish council has an approved statutory neighbourhood plan then the percentage rises to 25% and there is no upper limit. This allocation is mandatory. Once parish councils are in possession of their funds, they can be used as the parish council sees fit, subject to the requirements of CIL regulations, and the City Council has no control over or responsibility for their decision making.
- 5.3 The Winchester Town Forum is not a parish council and there is no requirement under CIL regulations for any allocation to be made to the Town Forum in respect of development in the Winchester town area. However, the City Council can choose to set aside a proportion of CIL receipts from qualifying development for the Town Forum, and it is suggested that Cabinet agrees to set this at 15% so that the town area receives equal treatment to parishes. Because the Town Forum is not a parish council the Town Forum will be required to spend CIL receipts in accordance with the R123 list and Cabinet could, if it wished, place a specific restriction on the allocation to the Town Forum for expenditure in the Winchester town area.
- 5.4 Hampshire County Council is responsible for the delivery of infrastructure which supports development, in particular transport and education projects. The County Council has received the benefit of S106 and S278 contributions over the years for transport, education and other infrastructure improvements and many of these will cease with the arrival of CIL. It is therefore important that some funding continues to flow to these projects in Winchester District by way of CIL. The City Council could agree funding on a project by project basis but this would be bureaucratic and time consuming. It is therefore suggested that the County Council receive a percentage of the remaining income derived from CIL each year as a contribution towards delivering R123 infrastructure. CIL will only amount to a small element in the overall funding needed by the County Council, which will be derived from many different sources, but using CIL in this way should help to deliver projects in the City Council's area and may give some added influence over them.
- 5.5 It is suggested that 25% of the annual CIL receipts remaining after the allocation to parish councils/town forum, is paid to the County Council as a key infrastructure provider, to undertake works on infrastructure in Winchester District. This does not prevent the City Council allocating additional CIL funding to the County to deliver particular projects if the need arose. The County Council is agreeable to this proposal and will provide an annual summary on the use of CIL funds. The City Council will not, however, maintain any direct control over the County Council's decision making process other than through the normal channels of discussion over particular issues and ongoing reviews of its priorities for CIL allocation.

- 5.6 This will leave the main part of CIL receipts available for use on infrastructure projects by the City Council or other stakeholders that the Council wants to prioritise. As agreed when the CIL Charging Schedule was adopted, this should be managed by developing a 5-year programme of projects which would be updated and rolled forward annually. It is suggested that this is coordinated with the Council's capital programme or revenue budget against projects which will be identified and agreed through the current processes for budget decision making. The Council's financial procedures will provide the records necessary to demonstrate the proper use of funds, but as noted above there is no requirement to tie the expenditure of any particular CIL receipt to a particular location or development.

## 6 Conclusion

- 6.1 The R123 list is a necessary part of the architecture of CIL and is required to ensure that the relationship between CIL and Section 106 contributions/S278 agreements can continue to operate.
- 6.2 Officers consider that it would be sensible and in everyone's interests to introduce an instalments policy to ease the burden of CIL on larger schemes, where full payment of CIL at the start of development may be harmful to viability or lead to other policy requirements not being met in full or in part. The recommended instalments policy seeks to address these issues, while at the same time ensuring that CIL payments keep pace with development.
- 6.3 The proposed mechanism for the allocation of CIL receipts to parish councils/Town Forum and to the County Council is suggested as sensible mechanisms which will then allow them to make decisions on the specific priority to be attached to individual projects. The City Council will then take the same approach with the remaining income as part of its existing budget making processes which is both consistent with CIL regulations and minimises the complexity of addressing the use of CIL. The specific allocation of funds is something that the Council can revise at any time, should it be necessary, and is not subject to any statutory consultation or approval processes.

## OTHER CONSIDERATIONS:

### 7 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 7.1 CIL will provide a source of funding for infrastructure projects across the District which may be used to support community development and mitigate the impact of development.

### 8 RESOURCE IMPLICATIONS:

- 8.1 The administration of CIL will be complex and this is recognised by the Government's agreement that up to 5% of CIL receipts every year can be used to cover administrative costs. The Council has agreed to the employment of an officer to provide advice and assistance to the many

planning applicants who will be affected by the new system and to enforce payment of CIL where necessary.

- 8.2 The annual income from CIL will provide an additional source of funding for both capital and revenue infrastructure projects.

9 RISK MANAGEMENT ISSUES

- 9.1 There is some uncertainty over the impact of CIL and smooth running of the administrative processes which have become complex due to the numerous revisions and amendments made by the Government. However, none of these are likely to have any impact on the other operations or activities of the Council. The Council will wish to ensure that all CIL receipts that are due are collected and that a high quality service is provided to those affected by the regulations. This may entail a requirement for greater resources at a later date but only after due consideration and approval.

BACKGROUND DOCUMENTS:

None

APPENDICES:

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|------------|--|
| Appendix 1 | Regulation 123 List  |
| Appendix 2 | Instalments Policy   |
| Appendix 3 | Summary of surcharges which the Council may seek under Part 9 of the CIL regulations |



## Community Infrastructure Levy (CIL)

### Regulation 123 List

This document forms Winchester City Council's CIL Regulation 123 list and specifies projects or types of infrastructure which the City Council intends will be, or may be, funded fully or partly by CIL contributions. The exclusions denote infrastructure which does not form part of the Regulation 123 list, and for which S.106 contributions may be sought. The Council's Payments in Kind and Infrastructure Payments Policy can be found at the end of this document.

In accordance with CIL Regulation 122, developments will be expected to provide for, or make contributions towards, infrastructure not listed in the Regulation 123 List, to make the development acceptable in planning terms. This provision will be in addition to CIL. Further information on planning obligations that might be sought to make a development acceptable in planning terms can be found in [Winchester City Council's Guide for Developers and Land Owners](#).

Winchester City Council retains the right to determine where CIL contributions are spent and are not restricted by this list, providing the requirements of the CIL Regulations are met. CIL spending projects and priorities will be set out in a separate CIL Spending List.

**CIL contributions will be collected from eligible development towards the following items of infrastructure. Planning obligations (under S106) may also be required to make the development acceptable in planning terms.**

**In the strategic allocations at North Whiteley, North Winchester and West of Waterlooville, a zero CIL rate has been set. For the development of these strategic allocations, all infrastructure and facilities needed to serve those developments will be provided through S.106/S.278 agreements. All such infrastructure and facilities are therefore excluded from this list.**

Infrastructure Type or Project (CIL)	Exclusions (S106)
<p><b><u>Education facilities comprising</u></b></p> <p>Provision of additional primary school capacity at existing schools; or</p> <p>Provision of additional secondary school capacity at existing schools.</p>	<p>a) Provision of additional capacity at the following existing schools (where contributions will be sought through S.106 contributions from developments allocated through Local Plan Part 2 and served by the following schools):-</p> <p>Bishops Waltham Infants and Junior Schools;</p> <p>St John the Baptist Primary School, Waltham Chase;</p> <p>Sun Hill Infants and Junior Schools, New Alresford;</p> <p>Colden Common Primary School;</p> <p>Swanmore College of Technology Secondary School.</p> <p>b) Provision of new primary and secondary schools to be provided in conjunction with the</p>

Infrastructure Type or Project (CIL)	Exclusions (S106)
	development of the <b><u>North Whiteley, North Winchester and West of Waterlooville Strategic Allocations.</u></b>
<p><b><u>Open Space Provision</u></b></p> <p>Provision of facilities for addressing open space deficiencies in terms of quantity, quality or accessibility, particularly those set out in the Winchester City Council (WCC) Open Space Strategy.*</p>	Provision necessary to make the development acceptable in planning terms.
<p><b><u>Built facilities Indoor Sport and recreational facilities comprising:</u></b></p> <p>Provision of facilities to address deficiencies in indoor and built sports, recreation or leisure facilities in accordance with LPP1 Policy CP7; particularly those identified in the WCC Built Facilities Study.</p>	Provision necessary to make the development acceptable in planning terms.
<p><b><u>Green infrastructure:</u></b></p> <p>Provision and enhancement of the Green Infrastructure network as defined in Local Plan Part 1 Policy CP14, particularly through projects identified in the PUSH Green Infrastructure Strategy, WCC Green Infrastructure Study, or the Hampshire Countryside Access Plans.</p> <p>Provision of mitigation projects for infrastructure identified through the Solent Disturbance and Mitigation Project.</p>	Provision necessary to make the development acceptable in planning terms.
<p><b><u>Community and cultural facilities:</u></b></p> <p>Provision of new facilities for community use and improvements to existing facilities in deficiency areas as identified in the Cultural Strategy, Built Facilities Study or Infrastructure Delivery Plan.</p> <p>Refurbishment or replacements of libraries as set out in the Hampshire County Council Infrastructure Statement.</p>	Provision necessary to make the development acceptable in planning terms.
<p><b><u>Transport schemes:</u></b></p> <ul style="list-style-type: none"> <li>• Bishop's Waltham public realm enhancements to Town Centre.</li> <li>• Curdridge/ Bishop's Waltham: upgrade old disused railway line linking to Bishop's Waltham.</li> <li>• Cycle route between Bishops Waltham and Swanmore College of Technology.</li> <li>• Public realm and parking enhancements in Denmead Village Centre.</li> <li>• Kings Worthy to Winnall using footway alongside A33/A34 (Highways Agency) - clear existing footway</li> </ul>	

Infrastructure Type or Project (CIL)	Exclusions (\$106)
<p>and upgrade to allow cycle use; over short distance on A34, footway has been displaced by a lay-by and so is inadequate width. Provide link to existing sub.</p> <ul style="list-style-type: none"> <li>• Creation of footway/cycle route along former railway line between Kings Worthy and Alresford (Watercress Way) possibly extending to South Wonston.</li> <li>• New Alresford public realm and accessibility - West Street improvements.</li> <li>• The Soke, New Alresford: traffic management improvements to formalise priority working to alleviate vehicle conflicts and delay, and consideration of footway provision.</li> <li>• Environmental enhancement to Wickham Square.</li> <li>• Footpath on Fontley Road, Wickham to Fareham boundary.</li> <li>• Park Road Rail Bridge, Winchester- improve pedestrian facilities.</li> <li>• Crossing of Romsey Road at Clifton Terrace, Winchester - Public Realm and Accessibility.</li> <li>• Hockley to Otterbourne: complete section of NCN23.</li> <li>• Shared space improvements to Stoney Lane, Winchester in the vicinity of the Waitrose supermarket to improve the public realm, traffic calm and improve the pedestrian and cycle accessibility.</li> <li>• M3 Junction 9 major highway improvements.</li> </ul>	

**\* Payments in Kind and Infrastructure Payments Policy under CIL Regulation 73 and 73A**

Winchester City Council may exceptionally accept 'payment in kind' or 'infrastructure payments' in lieu of the whole or part of the CIL due in respect of a chargeable development, subject to the following criteria:-

1. it meets an identified local need for open space, and
2. the provision is over and above what is required in any event, to ensure an acceptable development.

The Council will retain discretion as to whether it accepts 'payments in kind' or 'infrastructure payments'.

## CIL Regulations Instalments Policy

In accordance with Regulation 69B of the CIL Regulations 2010 (as amended), Winchester City Council has produced a CIL Instalments Policy. This policy allows persons liable to pay CIL to do so by instalments, if they have complied with the relevant regulations. The time that the first instalment payment is due is calculated from the date the development is commenced

This Instalments Policy will take effect on 7 April 2014.

### Instalment Policy:

Total Amount of CIL Liability	Number of Instalments	Payment Periods and Proportion of CIL Due.			
		1 <sup>st</sup> instalment	2 <sup>nd</sup> instalment	3 <sup>rd</sup> instalment	4 <sup>th</sup> instalment
Any amount less than £50,000	None	Total amount payable within 60 days of commencement of development.			
Amounts from £50,000 to £249,999	Two	50% payable within 60 days of commencement of development.	50% payable within 6 months of commencement of development.		
Amounts from £250,000 to £1,000,000	Three	30% payable within 60 days of commencement of development.	30% payable within 6 months of commencement of development	40% payable within 9 months of commencement of development	
Any amount greater than £1,000,000. In principal CIL can be paid in 4 instalments for any amount greater than £1,000,000, however instalments for this scale of development will be open to negotiation on an individual basis.	Four	25% payable within 60 days of commencement of development.	25% payable within 6 months of commencement of development	25% payable within 9 months of commencement of development	25% payable within 18 months of commencement of development

### Notes:

Under Regulation 74 (4) of the CIL Regulations 2010 (as amended), an instalment may be paid by way of a land payment, an infrastructure payment or in money, or a combination of the three; and more than one instalment may be paid by way of a given land or infrastructure payment.

Summary of surcharges which the Council may seek under Part 9 of the CIL regulations

- a) Surcharges for failure to assume liability: £50 on each person liable
- b) Surcharge: apportionment of liability: £500 for each material interests in the relevant land.
- c) Surcharge for failure to submit a notice for chargeable development: the lesser amount of 20% of the chargeable amount or £2,500.
- d) Surcharge for failure to submit a commencement notice: the lesser amount of 20% of the chargeable amount or £2,500.
- e) Surcharge: disqualifying events: the lesser amount of 20% of the chargeable amount or £2,500.
- f) Surcharge for late payment: the greater amount of 5% of the chargeable amount or £200.
- g) Surcharge for failure to comply with an information notice: the lesser amount of 20% of the chargeable amount or £1,000.
- h) Late payment interest: at an annual rate of 2.5 percentage points above the Bank of England base rate.