

REPORT TITLE: PROPOSED REVISIONS TO COMMUNITY INFRASTRUCTURE
LEVY (CIL) REGULATION 123 LIST AND PROPOSED ALLOCATION OF CIL
FUNDS

13 FEBRUARY 2019

REPORT OF PORTFOLIO HOLDER: Portfolio Holder for Built Environment,
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WARD(S): ALL EXCEPT SOUTH DOWNS NATIONAL PARK

PURPOSE

This report follows on from CAB3071 – Community Infrastructure Levy – Operational Review – and deals with a refresh of the Council’s Regulation 123 List and recommends CIL funding for the Sport and Leisure Park at Bar End.

The Community Infrastructure Levy (CIL) is a charge levied on particular types of new development, based on the amount of new floorspace. The Levy was brought into effect in Winchester in April 2014, accompanied by the ‘Regulation 123 List’ which refers to the types of infrastructure that CIL is intended to deliver.

The CIL Regulation 123 List is generally not specific regarding particular schemes or projects, but it is quite prescriptive in relation to transport schemes. Cabinet decided in September 2018 that a revised Regulation 123 List should be produced and this report recommends revisions following consultation with the main infrastructure providers.

The revisions to the Regulation 123 List are of a limited nature, as a full review of CIL will be undertaken alongside the Local Plan 2036, which is the appropriate vehicle for more major changes to be considered. The proposed changes involve additions to the list of transport projects on which Hampshire County Council can spend CIL funding and allow contributions for educational provision to be taken from ‘unallocated’ schemes through S106 obligations. It is recommended that the proposed changes are agreed by Cabinet.

It is also recommended that £1.8 million of CIL funds are allocated to the Sports and Leisure Park at Bar End.

RECOMMENDATIONS:

1. That the revised Regulation 123 List attached at Appendix 1 be agreed and published.
2. That £1.8m of CIL funding be allocated to the Sport and Leisure Park at Bar End given its compliance with several criteria for allocating CIL funding.

IMPLICATIONS:1 COUNCIL STRATEGY OUTCOME

- 1.1 The collection and use of funding through the Community Infrastructure Levy can contribute to all of the Council Strategy's four aims.

2 FINANCIAL IMPLICATIONS

- 2.1 This limited review of the CIL Regulation 123 List can be carried out within existing staff resources and will not have significant cost implications. It aims to ensure that CIL funds are spent on the most beneficial projects, ensuring prudent use of resources.
- 2.2 The Council currently has over £4m of "District" CIL receipts. A further c£2.5m is due to be received by March 2020. To date, £1.6m has been committed to schemes that have been completed or formally committed across the District and additional proposed allocations amounting to £1.8m are also recommended in this report. The Council has also agreed to make £1m available between 2019 and 2022 for community led schemes

	£m	£m
WCC District CIL element - billed and due to be received by 31.3.2020		6.5
Committed/Spent Schemes (CAB3071)		-1.1
Supplementary: Durngate flood alleviation (total allocation £0.8m)		-0.5
Allocation for bidding (CAB3071)		-1.0
<i>Proposed Schemes:</i>		
Winchester Sport & Leisure Park	-1.8	
Central Winchester - Paving	-0.5	
		-2.3
Residual CIL funds for future allocation *		1.6

* The movement strategy is expected to identify CIL eligible schemes

- 2.3 If all proposals and commitments are implemented, the Council will still have an estimated £1.6m of “District” CIL contributions available between now and March 2020 to allocate to other projects.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 None directly.

4 WORKFORCE IMPLICATIONS

- 4.1 None.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None directly, but CIL funding may be used to help deliver major infrastructure projects on Council-owned land. The report recommends the allocation of funds to the Sports and Leisure Park at Bar End.

6 CONSULTATION AND COMMUNICATION

- 6.1 The providers of infrastructure listed in the Regulation 123 List have been consulted on the need for changes. Given the very limited scope of the review of the List and the consultation that has already taken place on major projects, there is no need for wider public consultation.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 None directly. CIL funding may be used to help deliver infrastructure projects which will have their own assessments of environmental impact.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None.

10 RISK MANAGEMENT

- 10.1 The recommended changes to the CIL Regulation 123 List aim to overcome the risk that CIL funding is not spent on the most suitable projects.

Risk	Mitigation	Opportunities
<i>Property - None</i>	-	-
<i>Community Support - None</i>	-	-
<i>Timescales - None</i>	-	-
<i>Project capacity - None</i>	-	Funding to deliver the Sports and Leisure Park
<i>Financial / VfM - None</i>	-	Funding to deliver the

		Sports and Leisure Park
<i>Legal – risk of challenge to proposed changes</i>	Ensure that changes to the Reg 123 List are limited and do not raise viability issues.	-
<i>Innovation - None</i>		
<i>Reputation - None</i>		There is a positive opportunity to ensure that CIL can be used for necessary projects.
<i>Other - None</i>		

11 SUPPORTING INFORMATION:

R123 List Review

- 11.1 The key purpose of the Regulation 123 List is to clarify which items of infrastructure will be funded through S106 developer contributions and which will be funded through CIL. This is to prevent developers being asked to contribute twice towards the same piece of infrastructure through S106 and CIL ('double dipping'). If an item of infrastructure is included in the list of CIL-funded schemes, it is not possible to take S106 contributions for the same piece of infrastructure. Conversely, CIL is chargeable on all qualifying developments and can be spent on any infrastructure, even if it is not included on the R123 List. Therefore, the R123 List should not be seen as a definitive list of what CIL receipts will be spent on, but it does control which infrastructure items S106 contributions can be sought for. As a result, care must be taken when drafting or amending the R123 List to ensure that infrastructure for which S106 funding is likely to be sought (in whole or part) is not included in the list of CIL-funded items.
- 11.2 Report CAB3071 (September 2018) sets out the background to CIL in Winchester and identified a need to undertake a limited review, in advance of a full review of CIL to be undertaken alongside the Local Plan 2036. Cabinet resolved that a revised Regulation 123 list should be produced in consultation with key partners and presented to Cabinet in 2019. This report proposes limited changes to the Regulation 123 List, following consultation with the main providers of the infrastructure items on the List. Since CAB3071, the Government has published draft changes to the CIL Regulations to increase flexibility in the way CIL and S106 contributions are collected and spent by removing Regulation 123. Although the timing of this change is not yet known, this is another reason for limiting changes to the R123 List.
- 11.3 The City Council has previously given a proportion of CIL receipts to Hampshire County Council for use on infrastructure provided by the County (roads, education, etc). Cabinet agreed to cease this arrangement last September. The City Council imposed an additional restriction on the use of

this funding, to the effect that it must be used for schemes on the R123 List. Other than this requirement, the County Council determines the schemes that this funding is spent on. Cabinet previously identified that the R123 List was unduly prescriptive, particularly in relation to transport schemes, and would benefit from a greater degree of flexibility. The current List for example limits the ability of the County Council to spend the CIL funding it previously received from the City Council on transport infrastructure, as these funds must be spent on schemes on the R123 List. The opportunity has also been taken to review other infrastructure items on the List.

- 11.4 The County Council has suggested a number of additional transport schemes that should be added to the R123 List, so that it can make full use of the CIL funds allocated to it in accordance with the City Council's requirements. This has the effect of enlarging the list of schemes that CIL funding can be spent on by the County Council, which should enable it to use the funding allocated to it for transport. For clarification, it is proposed that text be added to the S106 element of the Reg 123 List relating to transport, to make clear that S106 contributions may be sought for improvements which are not listed as CIL projects and are necessary to make development acceptable in planning terms.
- 11.5 The County Council also indicated a concern that the current R123 List only allows S106 education contributions to be sought for specific school improvements / provision relating to the strategic or local allocations made in Local Plan Parts 1 and 2. This could be problematic where larger developments come forward on unallocated sites, as these could result in increased and 'unplanned' educational demand which developers cannot currently be asked to help fund. The County Council suggested that all residential development should be capable of making a contribution, where justified, but officers are concerned that this could have significant implications for development viability. Government Planning Practice Guidance suggests that where *'a change to the regulation 123 list would have a very significant impact on the viability evidence that supported examination of the charging schedule, this should be made as part of a review of the charging schedule'*. Given the intention to carry out a full review of CIL shortly, and the Government's proposals to remove S123, it is proposed that the current review is more limited.
- 11.6 However, the potential problem highlighted by the County Council is recognised and a change is proposed that would allow for contributions to be sought under S106 for educational improvements needed to support significant 'unplanned' development (of 25 dwellings or more on sites not already listed as allocations in the R123 List). The County Council already publishes a document entitled *'Developers' Contributions towards Children's Services Facilities'* which sets out the circumstances in which contributions would be expected, and the likely amounts, which forms a basis for negotiations where contributions can be sought.

- 11.7 Other than these changes, no need for further amendments or updating were identified by the infrastructure providers consulted. Providers of infrastructure that is not already on the R123 List (e.g. the water providers, NHS, etc) were not consulted given the limited nature of the review. If these providers had asked for their services to be added to the R123 List this could have a significant impact on viability, which should be considered through a full review of the CIL charging schedule, not by this limited review of the R123 List.
- 11.8 The recommended revised Regulation 123 List is attached at Appendix 1, with the additions shown underlined (in the Education and Transport sections). It is recommended that these be agreed by Cabinet.

Proposed Allocation of CIL Funds to Major Projects

- 11.9 With regard to Cabinet's request for a further report on proposals for the use of existing CIL receipts, Cabinet has previously agreed in principle to allocate £1m towards the cost of the Winchester Sport and Leisure Centre Project. In addition a further £0.8m is sought towards the cost of the access roundabout and associated facilities required to serve both the Sport and Leisure Park and a future potential development of the depot site.
- 11.10 The Sport and Leisure Park project has been assessed against the criteria for utilising CIL funds that were agreed by Cabinet in September 2018. Projects should satisfy at least one of the criteria set by Cabinet and this scheme would wholly or partially satisfy 3, as follows:
- Proposal contributes to the delivery of key development sites in the District;
 - Proposal offers wider as well as local benefits;
 - Proposal addresses a specific impact of new development beyond that which has been secured through a s106 Obligation or s278 Agreement

It is, therefore, recommended that £1.8m of CIL funding be committed for the Sport and Leisure Park project.

- 11.11 It is recognised that there are likely to be requests for CIL funding in connection with other major projects being taken forward by the Council. However, it may also be necessary to secure S106 obligations for these schemes, so they have not been added to the R123 List so as to avoid 'double dipping' (see paragraph 11.1 above). This does not prevent CIL funding being requested or used for schemes such as for public realm improvements in and around the Central Winchester Regeneration area and at Station Approach. Also, the sums involved may be more than is currently available through CIL receipts. As these projects are not so imminent as the Sport and Leisure Park, it is proposed that they be considered through the normal process and timetable for CIL bids. The timescale Cabinet agreed in September 2018 envisaged officers developing a draft rolling 3 year

programme of projects to be funded in May of each year and for bids and schemes to be approved by Cabinet in July each year.

12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 This report addresses matters which Cabinet asked for reports on (see CAB3071). The option of enabling developer contributions for education provision from all developments is not recommended for the reasons set out at paragraph 11.4 above.
- 12.2 Since Cabinet asked for this report the Government has published draft changes to the CIL Regulations. If and when these are brought into effect they would remove Regulation 123 List, with the aim of increasing flexibility in the way CIL and S106 contributions are collected and spent. This raises the option of not revising the R123 List as Regulation 123 will be removed in due course. However, it is recommended that the proposed limited changes should be made as it is not certain whether or when the Government's proposed changes will be implemented and could therefore delay the provision of new infrastructure including that which can be delivered by Hampshire County Council.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:- CAB3071, Cabinet September 2018

Other Background Documents:-

None.

APPENDICES:

Appendix 1 – Recommended Revised Regulation 123 List

Appendix 1 –Revised Regulation 123 List

Infrastructure Type or Project (CIL)	Exclusions (S106)
<p><u>Education facilities comprising</u></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 development of the North Whiteley, North Winchester and West of Waterlooville Strategic Allocations.</p> <p>c) <u>Provision of additional primary or secondary school capacity which is necessary to make other substantial development (unallocated developments of 25 or more dwellings) acceptable in planning terms.</u></p>
<p><u>Open Space Provision</u></p> <p>Provision of facilities for addressing open space</p>	<p>Provision necessary to make the development acceptable in planning</p>

Infrastructure Type or Project (CIL)	Exclusions (\$106)
<p>deficiencies in terms of quantity, quality or accessibility, particularly those set out in the Winchester City Council (WCC) Open Space Strategy.*</p>	<p>terms.</p>
<p><u>Built facilities Indoor Sport and recreational facilities comprising:</u></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>	<p>Provision necessary to make the development acceptable in planning terms.</p>
<p><u>Green infrastructure:</u></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>	<p>Provision necessary to make the development acceptable in planning terms.</p>
<p><u>Community and cultural facilities:</u></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>	<p>Provision necessary to make the development acceptable in planning terms.</p>
<p><u>Transport schemes:</u></p> <ul style="list-style-type: none"> • Bishop's Waltham public realm enhancements to Town Centre. • Curdridge/ Bishop's Waltham: upgrade old disused railway line linking to Bishop's Waltham. • Cycle route between Bishops Waltham and Swanmore College of Technology. • Public realm and parking enhancements in Denmead Village Centre. • Kings Worthy to Winnall using footway alongside A33/A34 (Highways Agency) - clear existing footway and upgrade to allow cycle use; over short 	<p>Provision necessary to make the <u>development acceptable in planning terms.</u></p>

Infrastructure Type or Project (CIL)	Exclusions (S106)
<p>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"> • Creation of footway/cycle route along former railway line between Kings Worthy and Alresford (Watercress Way) possibly extending to South Wonston. • New Alresford public realm and accessibility - West Street improvements. • The Soke, New Alresford: traffic management improvements to formalise priority working to alleviate vehicle conflicts and delay, and consideration of footway provision. • Environmental enhancement to Wickham Square. • Footpath on Fontley Road, Wickham to Fareham boundary. • Park Road Rail Bridge, Winchester- improve pedestrian facilities. • Crossing of Romsey Road at Clifton Terrace, Winchester - Public Realm and Accessibility. • Hockley to Otterbourne: complete section of NCN23. • 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. • M3 Junction 9 major highway improvements. • <u>Pedestrian access improvements Main Road, Otterbourne between Coles Mede to Poles Lane.</u> • <u>Access Improvements to Kings School, Winchester</u> • <u>Andover Road, Winchester – Barton Farm Footway</u> • <u>Romsey Road / Clifton Terrace, Winchester – Pedestrian Crossing</u> 	

Infrastructure Type or Project (CIL)	Exclusions (S106)
<ul style="list-style-type: none"><li data-bbox="193 344 730 376">• <u>Sutton Scotney – Pedestrian Crossing</u><li data-bbox="193 461 799 492">• <u>Wales Street, Winchester – Zebra Crossing</u><li data-bbox="193 577 874 685">• <u>Winchester Wayfinding project (signing and accessibility improvements to benefit cyclists and pedestrians).</u>	