

Cheltenham Borough Council
Cabinet – 5th April 2022 Community Infrastructure Levy
Governance & Section 106 engagement
Council – 20th June 2022 Community Infrastructure Levy
Governance & Section 106 engagement

Accountable members	<p>Leader – Cllr Hay</p> <p>Cabinet Member Customer & Regulatory Services – Cllr Horwood</p>
Accountable officer	Tracey Birkinshaw – Director of Planning
Ward(s) affected	All
Key/Significant Decision	Yes
Executive summary	<p>The Council needs to establish a clear CIL Governance Structure to oversee the council's approach to the investment of both legacy and future CIL monies. The report proposes the key governance arrangements for the delivery of infrastructure through CIL to ensure CIL serves its purpose of contributing to the delivery of the infrastructure necessary to support development in Cheltenham.</p> <p>In December 2021, Cabinet received a report on the annual Infrastructure Funding Statement (IFS), as part of this report the need to put in place CIL governance was highlighted. This report takes forward the detail.</p> <p>Cabinet are asked to consider the Community Infrastructure Levy (CIL) governance arrangements laid out in this report. This sets out:</p> <ol style="list-style-type: none"> 1. Governance proposal for the strategic allocation of non-neighbourhood CIL monies including the process for agreeing the required Infrastructure List, 2. Governance proposal in relation to the neighbourhood allocation of CIL monies, and 3. Governance proposal for the administrative element of CIL <p>In addition, this report also includes:</p> <ol style="list-style-type: none"> 4. Proposals to increase member engagement as part of S106 negotiations and greater transparency via officer reporting. <p>It is noted that regulations around CIL have been subject to a number of changes, we must therefore not see our processes as static. Should regulations change and/or best practice emerge then a further report may be brought back to Cabinet.</p>

Recommendations

To agree the following governance recommendations:

- 1. To note the percentage split of CIL, in accordance with the CIL Regulations as set out in Fig 1.**
- 2. To agree the governance approach for the strategic (non-neighbourhood) CIL monies, including the preparation of the Infrastructure List as set out at section 2 of this report, and engagement with Gloucester City Council and Tewkesbury Borough Council on any shared infrastructure spending, which ensures that the Cheltenham Cabinet and Council has final approval.**
- 3. To work collaboratively with Gloucester and Tewkesbury Councils on developing a spending mechanism for any shared CIL spending to be agreed by Cheltenham Cabinet and Council.**
- 4. To agree the governance approach as set out at section 4 of this report in regard to the unparished neighbourhood element of CIL**
- 5. The Head of Planning, in consultation with the Cabinet portfolio holder and Head of Finance to undertake an annual review of the CIL administration element and for this spending to be agreed annually by Cabinet as part of the Infrastructure Statement Annual Report.**

Cabinet are also asked to agree the following recommendation in respect of the process related to S106 obligations

- 6. To agree the proposal as set out in section 6 of this report to build enhanced transparency and engagement with ward members on S106.**

Financial implications	<p>None arising from this report.</p> <p>Contact officer: Accountant Business Partner andrew.taylor@cheltenham.gov.uk</p>
Legal implications	<p>Regulation 61 of the Community Infrastructure Levy Regulations (“the regulations”) allows charging authorities collecting CIL to spend up to 5% of their total levy receipts on administrative expenses. Depending on whether there is a relevant neighbourhood development plan either up to 15% (capped according to the formula in regulation 59A) or 25% of relevant CIL receipts are to be allocated at the neighbourhood portion, being passed to relevant Town and Parish Councils where they exist.</p> <p>If there is no parish or town council, the charging authority will retain those levy receipts, but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.</p> <p>The remaining element of CIL receipts must be spent on infrastructure. Charging authorities can choose to pool a proportion of their Community Infrastructure Levy (CIL) receipts to fund infrastructure including for out of their own area spending. Each of the charging authorities included in the pooling arrangements should be content that funding for infrastructure outside the authority’s area will support development of its own area.</p> <p>Under national Planning Policy Guidance charging authorities are encouraged to consider publishing a memorandum of understanding detailing the administration, principles, and governance that will be implemented for any pooled fund, covering, but not limited to :</p> <ul style="list-style-type: none"> • a proposed governance structure and decision-making process for agreeing how the pooled fund is implemented and spent; • the proportion or amount of levy each charging authority will contribute; • the procedure for collecting the pooled levy; • the strategic infrastructure projects the pooled fund will be spent on; • a system for returning pooled funds to an authority in the event that it is necessary to do so; • a proposed review mechanism for the memorandum. <p>It is further recommended that the memorandum of understanding is a publicly accessible document, which clearly explains how the pooled levy will be administered and spent.</p> <p>The Authority has a variety of legislative powers to set up governance arrangements, including the general power of competence set out in Section 1 of the Localism Act.</p> <p>Contact officer: One Legal, legal.services@onelegal.org.uk</p>
HR implications (including learning and organisational development)	<p>None arising from this report</p> <p>Contact officer: HR Business Partner, Publica georgie.tewdell@publicagroup.uk</p>
Key risks	<p>See Appendix 1.</p>

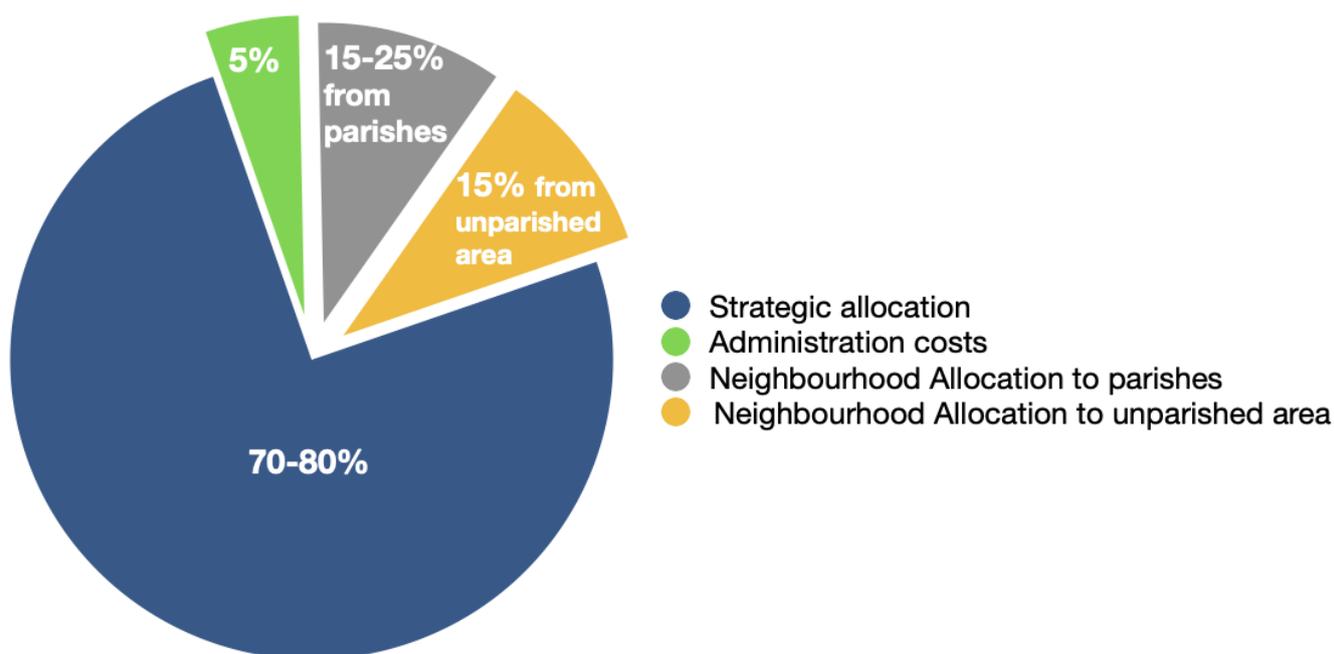
Corporate and community plan Implications	None directly
Environmental and climate change implications	None directly
Property/Asset Implications	<p>None arising from this report</p> <p>Contact officer: Head of Finance & Assets Gemma.Bell@cheltenham.gov.uk</p>

1. Background

- 1.1 The Community Infrastructure Levy (CIL) is a charge which local authorities can place on developers to help fund infrastructure needed to support new development in their areas. CIL is governed by the CIL Regulations 2010 (as amended).
- 1.2 Cheltenham Borough Council approved the introduction of CIL on 15th October 2018 with commencement of charging on planning applications granted permission on or after 1st January 2019.
- 1.3 CIL is paid to the Council by developers after their planning permissions commence, in line with the Council's adopted Instalments Policy. CIL is a significant means outside wider government funding by which the Council is able to collect and pool developer contributions to deliver infrastructure improvements.
- 1.4 In December 2021, Cabinet received a report on the annual Infrastructure Funding Statement (IFS). As part of this report, the need to put in place CIL governance was highlighted. This report takes forward the detail.
- 1.5 As per the CIL Regulations and Guidance, CIL is proportioned and allocated using the following approach:
 - A maximum of 5% is retained by Cheltenham Borough Council to cover administrative costs (this is clearly prescribed in the CIL regulations and includes charging, collecting and enforcing CIL, reviews, appeals and debt collection including legal costs. It includes distribution, monitoring, enforcement and reporting on CIL activity). Currently Cheltenham pools its 5% with Gloucester and Tewkesbury Councils and currently the amount pooled does not fully cover the joint CIL administration incurred. However, over time as the CIL pots grow, this will not be the case and Cheltenham will wish to fully recover all liable costs, both joint and those arising from Cheltenham only.
 - 15% - 25%, known as the Neighbourhood Allocation, is for spending within the neighbourhood of contributing development (up to a maximum of £100 per existing Council Tax dwelling). This allocation must be transferred to the relevant parish council or retained by the Borough Council to be spent on neighbourhood projects where the development is not in a parish. The transferred allocation rises to 25% when a parish or Neighbourhood Forum has a 'made' (adopted by Borough Council) Neighbourhood Plan in place. At the present time, no Cheltenham parish or forum has a Neighbourhood Plan in place, although plans are being developed at Hesters Way Neighbourhood Forum and Leckhampton with Warden Hill Parish Council.
 - The remainder (around 70% - 80%), known as the Strategic Allocation, is retained by Cheltenham Borough Council to allocate to infrastructure projects. This should reflect our plan making which includes the Cheltenham Plan and the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS). We have a continued commitment to prepare a new development plan for the JCS area alongside the delivery of the Cheltenham Plan. As per the legal advice above, a Memorandum of Understanding with the other authorities should specify the proportion or amount of levy each charging authority will contribute to the pooled fund.
 - This report recommends approval of a Strategic CIL Board and supporting Infrastructure List for any strategic infrastructure spending shared with the other councils, to be agreed by Cheltenham Cabinet and Council. The other JCS Councils will be making decisions as appropriate through their own constitutional processes.

This breakdown is summarised in Fig.1.

Fig 1 – Breakdown of CIL as aligned with CIL Regulations



2. Infrastructure List

2.1 An Infrastructure list has to included within the Infrastructure Funding Statement or IFS. Our first IFS was approved by Cabinet in December 2020.

2.2 As reported to Cabinet via the annual IFS in December 2021, our current Infrastructure List does not fully represent our priorities, including tackling climate change, facilitating modal shift away from the private car and changing patterns of work in the aftermath of the Covid-19 pandemic.

2.3 The Infrastructure list is essentially a statement of the infrastructure projects or types of infrastructure which the charging authority intends will be, or may be, wholly or partly funded by CIL. To distinguish this clearly from the neighbourhood allocation of CIL, the Infrastructure List could cover items such as;

- schools
- roads and transport
- healthcare and medical facilities
- open spaces and facilities for sport and recreation
- flood management

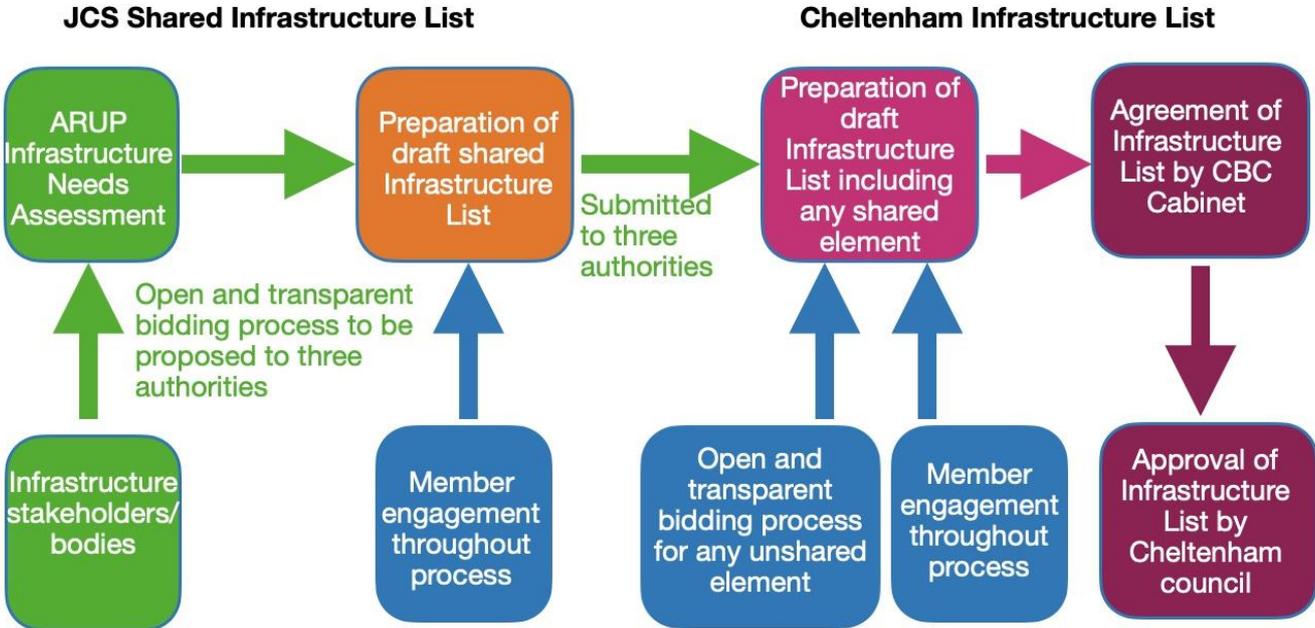
2.4 The Infrastructure List presented in December 2021 was a shared Infrastructure List with Gloucester and Tewkesbury developed through the JCS process. This report proposes a Cheltenham governance process that allows for such a shared Infrastructure List and as per National Planning Policy Guidance, this will include agreement by Cabinet and Council of a Memorandum of Understanding that will specify the proportion or amount of CIL each council will contribute and the strategic infrastructure projects the pooled fund will be spent on. A process for drawing up this Shared Infrastructure List is set out below. This report sets out Cheltenham's governance approach; the other JCS Councils will be making decisions as appropriate through their own constitutional processes.

2.5 If the agreed Memorandum of Understanding specifies that 100% of Strategic CIL is to be pooled,

then the Cheltenham Infrastructure List and the Shared Infrastructure List will be the same. If the proportion or amount is less than 100%, then the Cheltenham Infrastructure List will comprise whatever Shared Infrastructure List is agreed in addition to any proposed infrastructure spending from strategic CIL monies retained by Cheltenham.

- 2.6 Any Cheltenham Infrastructure List and/or Shared Infrastructure List will be agreed by Cabinet for proposal to Council and agreed by Council as set out in Fig 2 below. If at any stage the Infrastructure List requires amendment, the same level of approval will apply.
- 2.7 An open and transparent bidding process will be developed for any infrastructure stakeholder to propose relevant projects for the Infrastructure List that aid effective delivery of development. Should the proportion or amount to be pooled be 100% then we hereby propose this process to the three authorities. Should the proportion or amount pooled be less than 100%, we will conduct our own bidding process which will include an objective scoring process in compliance with national regulation and planning policy and local policy, conducted by the Head of Planning and based on a process approved by cabinet, who will prioritise a project or projects for inclusion in a Cheltenham Infrastructure List for approval by Council. In the event of more than one project being considered, Cabinet may take the advice of the CIL panel described in 4.4 below.

Fig 2 - Approval of Infrastructure List



Shared Infrastructure List

- 2.8 Work is underway by the JCS councils to review the Shared Infrastructure List and we are currently developing the evidence base and engaging with infrastructure bodies to inform this. We are doing this alongside partners Gloucester City Council and Tewkesbury Borough Council as the assumption to date has been that this will represent pooled spending through the JCS to facilitate its delivery. This review, in order to justify the charges levied on developers, includes an ‘Infrastructure Needs Assessment (INA)’ and this is focussing on the delivery of the development plan for our area through the remaining half of the plan period, to 2031. It is important that this assessment is evidence led and informed by engagement with infrastructure stakeholders. It is however equally important that members have clear oversight. As such, we are putting in place clear governance for this shared element of Infrastructure delivery as summarised in Fig 2. The INA is commissioned and being delivered by consultants ARUP and this will be a key part of the

evidence informing the Infrastructure List but we will also propose an open and transparent bidding process forms part of the preparation process for the shared Infrastructure List, to be agreed through a Memorandum of Understanding.

2.9 The INA is a critical part of the evidence base alongside refreshed viability evidence that forms part of our programme for updating the Cheltenham CIL charging schedule. As work on establishing this evidence base continues a detailed programme for the consultation on, examination of and adoption of a new CIL Charging Schedule is currently being developed. It is anticipated that a draft CIL charging schedule will be presented to Cabinet to enable consultation Summer 2022.

3. Governance Arrangements for shared element of the Strategic Allocation

3.1 The majority of CIL funds (the strategic allocation), are retained by Cheltenham Borough Council for spending on infrastructure in accordance with the definition in the 2008 Planning Act (section 216). The expectation to date has been that 100% of this element will be pooled through the Joint Core Strategy process with Gloucester City Council and Tewkesbury Borough Council.

3.2 CIL receipts collected relate to development brought forward via the Councils development plan, which includes the Cheltenham Plan **and** the JCS **and** development arising from unallocated development (windfall sites). The strategic allocation is therefore relevant to strategic infrastructure required arising from the Cheltenham development plan as a whole.

3.3 The Cheltenham CIL Charging policy and schedule was developed in collaboration with our partners Gloucester and Tewkesbury. This was informed by the Infrastructure Delivery Plan (IDP) prepared at that time and used to support the JCS examination and approval by the JCS Councils together with the subsequent approval of the Cheltenham Plan. The IDP is a key part of the evidence base informing the priorities and this is currently under review via the new INA, commissioned via ARUP consultancy.

3.4 Under National Planning Policy Guidance charging authorities are encouraged to consider publishing a memorandum of understanding detailing the administration, principles, and governance that will be implemented for any pooled fund, covering, but not limited to :

1. a proposed governance structure and decision-making process for agreeing how the pooled fund is implemented and spent;
2. the proportion or amount of levy each charging authority will contribute;
3. the procedure for collecting the pooled levy;
4. the strategic infrastructure projects the pooled fund will be spent on;
5. a system for returning pooled funds to an authority in the event that it is necessary to do so;
6. a proposed review mechanism for the memorandum

3.5 Cheltenham Borough Council Cabinet will agree and propose a Memorandum of Understanding to Cheltenham council reflecting this guidance. This will include a proposal on the proportion or amount of the strategic element of the levy that is to be pooled. This may be 100% but this decision will be taken at that time not as part of these governance arrangements now.

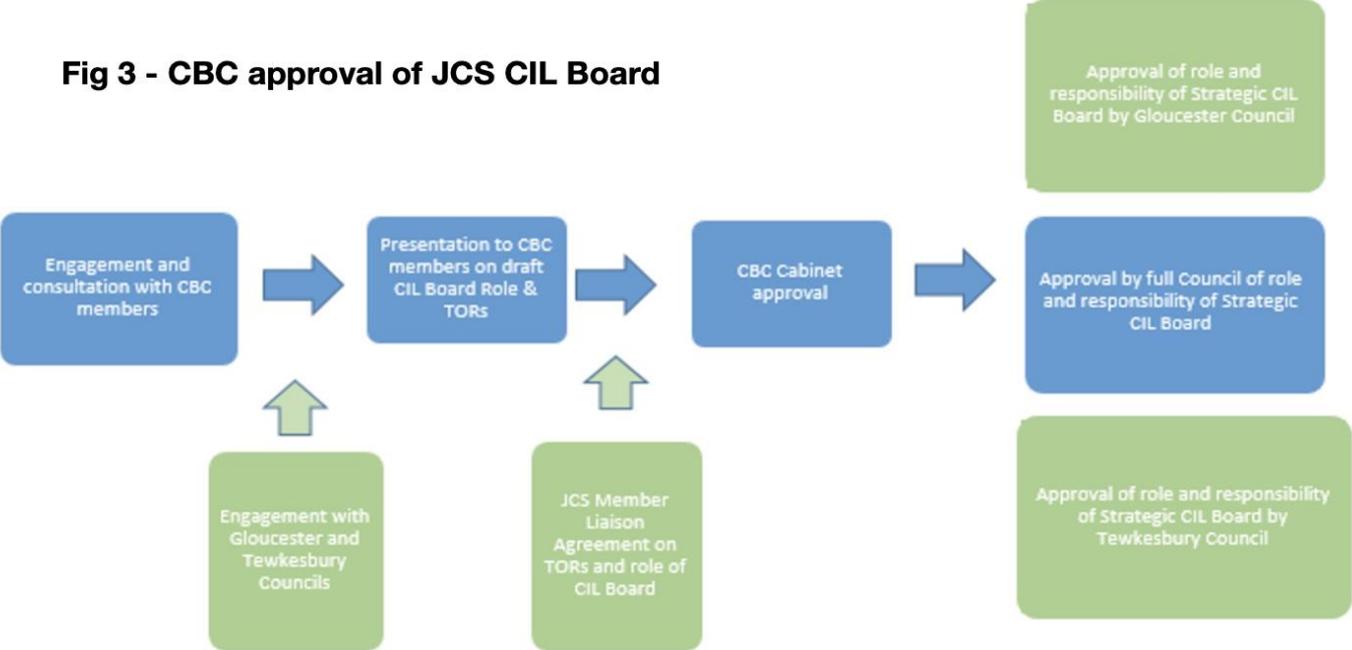
3.6 Inevitably, there will be competing interests for the use of shared CIL to fund strategic infrastructure priorities; and as set out in the recommendation of this report Cheltenham Borough will work collaboratively with Tewkesbury and Gloucester Councils on a proposed Strategic CIL Board at JCS level that will determine shared spending priorities within a framework that will prioritise CIL spend. This relates to the **strategic** element only within the definition of infrastructure as defined in the 2008 Planning Act.

3.7 Notwithstanding the importance of working collaboratively with Gloucester and Tewkesbury, as each of the councils are CIL authorities for their area, it is important that any approach to how a

future JCS CIL Board will work and agreement on priorities is agreed by the individual councils. Lead officers and members will be working on the detail and this will be presented back to Cheltenham Cabinet and Council later this year for approval. Figure 3 below aims to set out the process of how this will be developed.

3.8 Recommendation 3 of this report would deliver a proposed governance structure.

Fig 3 - CBC approval of JCS CIL Board



4. Governance Arrangements – The Neighbourhood Allocation

4.1 One of the purposes of CIL is to encourage communities to support growth and recognise that development can bring clear and identifiable benefits to an area. The CIL Regulations provide that a proportion of CIL collected from areas may be spent to address “the demands that development places” on a local area. This Neighbourhood Allocation of CIL must be allocated to Parish Councils where they exist. The amount of the Neighbourhood Allocation varies depending on whether there is a Neighbourhood Development Plan (NDP) in place that has been through a successful referendum and has been agreed as part of planning policy or ‘made’ by the local authority. In areas where this has happened 25% of the levy collected from development within the Neighbourhood area is available uncapped and elsewhere it is 15% but capped.

4.2 In areas without parish or town councils, the Neighbourhood allocation is retained by the local authority. This report concerns the governance and allocation of this portion of CIL. The regulations state that this portion of the CIL should be spent to support development in unparished areas, addressing the demands that development approved places on them. This does not preclude investment from this neighbourhood allocation within a parished area, but it must bring demonstrable benefit to the unparished areas.

4.3 The neighbourhood allocation of CIL can be used much more widely than the strategic allocation, provided it supports:

- The provision, improvement, replacement, operation or maintenance of infrastructure; or
- Anything else that is concerned with addressing the demands that development places on an area.

4.4 This report proposes the following governance of this neighbourhood allocation via a Cheltenham CIL Neighbourhood Panel, the make-up and working summarised below.

Membership	<ul style="list-style-type: none"> • 7 elected members, ideally reflecting political balance and including at least some members from unparished areas. • quorate of Neighbourhood Panel being 4 with at least one cabinet member • Neighbourhood Panel Advised by Lead Leadership Team portfolio holder or delegated representative and Community Infrastructure Levy Manager
Developing CIL projects for investment	<ul style="list-style-type: none"> • Consultation and engagement process to allow ward members and community organisations to present projects to be considered/explored as part of a live list of potential CIL investment projects • CBC officer team to contribute to identification of projects to be considered/explored as part of a live list of potential CIL investment projects • Principles which underpin allocation of funds, including a fair geographical distribution of awards within the areas impacted by development and key priorities for the Council including tackling deprivation and climate change • Clear demonstration of how the benefits of the project will be sustained in the long term, including any longer term revenue implications
Operation and decision making	<ul style="list-style-type: none"> • Neighbourhood Panel on an annual basis identify a priority list of projects for investment informed by live list of potential CIL investment projects and recommend to Cabinet for approval • Neighbourhood allocation ring fenced for non parished areas. Any proposal for investment outside non parished areas will need to clearly define the demonstrable benefit to those communities. • Spending in accordance with the CIL Regulations and government guidance on CIL
Monitoring and scrutiny	<ul style="list-style-type: none"> • Neighbourhood panel meets in public to ensure all decisions are transparent and open to scrutiny • Chair of CIL Neighbourhood Panel attends Overview and Scrutiny once a year to answer questions on the decisions over allocations and to present a report evidencing the impact of allocations made with the investment. • Schemes should not have any unacceptable revenue or capital implications on the Council or any other body

4.5 The Neighbourhood Fund remains relatively modest as presented by the IFS to Cabinet in December 2021; this provides an opportunity to develop the ‘live’ CIL list, including engagement with the communities in non-parished areas over 2022 with a view to the Neighbourhood Panel reviewing this ready for allocation in the next financial year.

5. CIL Administration

5.1 Currently this is pooled with Gloucester and Tewkesbury Councils to cover core costs of delivery but as the Cheltenham CIL pot grows over the coming years and core joint costs are adequately covered, the Borough Council will review where any outstanding elements of the 5% is allocated to ensure effective delivery of CIL. This report recommends an annual review to determine the

spend of this element of CIL and links this reporting back to Cabinet via the Annual IFS. It should be noted that the CIL Regulations provide clear guidelines on how this CIL administration funding can be spent and is strictly limited to the administrative functions of CIL.

6. Section 106

6.1 Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a landowner as part of the granting of planning permission. The obligation is termed a section 106 agreement (S106), these are negotiated alongside the planning decision-taking process and should be concluded within the statutory timeframes of 8 weeks, 13 weeks for major development or a longer period agreed in writing between the applicant and local planning authority. A S106 allows negotiation of both physical on-site obligations and off-site financial contributions, when it is considered that a development will have negative impacts that cannot be dealt with through conditions in the planning permission.

6.2 Since 2010 it has been a legal requirement that that planning obligations may only constitute a reason for granting planning permission for the development if the obligation is:

1. necessary to make the development acceptable in planning terms;
2. directly related to the development; and
3. fairly and reasonably related in scale and kind to the development.

The Council generally negotiates contributions, but not limited to the following:

- Affordable housing
- Community facilities
- Education
- Healthcare
- Highways and transport
- Open space, play areas and sports facilities
- Waste and recycling

6.3 S106 agreements are designed to help make sure that new developments enhance local communities and reduce the impact of developments by, for example:

1. Easing the impact of a new development on the local community, e.g. providing adequate public open space, improving infrastructure like bus stops
2. Compensating for any impact caused by a development - for example if public open space is lost
3. Ensuring that a certain proportion of houses on the development are provided as affordable housing

6.4 Members have asked for greater clarity and engagement in understanding the negotiation of S106. This report therefore recommends the following to further improve transparency and engagement;

1. Following review of the weekly list Ward members to notify the case officer of any application of interest and identify any known demands for infrastructure in the area.
2. Where an application is expected to result in the need for S106 negotiation, the case officer to notify the relevant ward members to enable engagement early in the application process
3. Planning report templates to be updated to include a summary of S106 agreed and values negotiated.
4. Member training on S106.

5. Reasons for recommendations

5.1 To ensure transparency and member engagement in decision-making.

How this initiative contributes to the corporate plan

5.2 Having a clear governance approach in place will help the council meet its priorities where impacted by infrastructure needs.

6. Consultation and feedback

6.1 Consultation undertaken with;

- Cabinet
- Cabinet lead portfolio holders
- Leadership Team
- Planning & Liaison Member Working Group

7. Performance management – monitoring and review

7.1 The Council has a statutory requirement to produce and publish an annual IFS.

7.2 Monitoring and reporting arrangements will be agreed in respect of both the strategic and neighbourhood allocation of CIL. The Council is pursuing improved use of its current IT reporting tool to assist with this.

7.3 Since the introduction of CIL legislation we have seen numerous amendments to the CIL regulations, as such it is important that we see our processes as living breathing ones that can adapt to be as efficient as possible and be responsive to best practice. This report sets out an approach to governance, which will require further decision-making later in 2022 on some detail. However, over time, we will keep under review our processes and this may result in further consideration by Cabinet.

Report author	Tracey Birkinshaw, Director of Planning Tracey.birkinshaw@cheltenham.gov.uk
Appendices	1. Risk Assessment
Background information	1. Infrastructure Funding Statement 2021 https://democracy.cheltenham.gov.uk/documents/s38868/2021_12_21_Infrastructure%20Funding%20Statement%20IFS%20Requirements_report.pdf 2. Infrastructure Funding Statement 2020 https://democracy.cheltenham.gov.uk/documents/s34209/2020_12_01_Infrastructure%20Funding%20Statement_report.pdf

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
CIL	Not having a clear CIL prioritisation of infrastructure projects may risk receipts not being targeted towards the most critical infrastructure needed to deliver development and fulfil our requirements in the delivery of the JCS and Cheltenham Plan.	Director of Planning	12.11.21	5	2	10	Reduce	Review of Infrastructure Delivery Plan as part of JCS review. Put in place clear and transparent governance	In line with JCS programme	CIL Manager	JCS and Service risk register
CIL	Not having clear and transparent governance in place around the prioritisation and spend of CIL will risk funding not being spent on agreed infrastructure priorities	Director of Planning	03.03.22	5	2	10	Reduce	Put in place governance mechanisms	April Cabinet 2022 June Council 2022	Head of Planning	Service risk register