

## MID SUFFOLK DISTRICT COUNCIL

<b>Cabinet</b>	<b>REPORT NUMBER: MCa/19/17</b>
<b>FROM: David Burn- Cabinet Member for Planning</b>	<b>DATE OF MEETING: 28<sup>th</sup> August 2019</b>
<b>OFFICER: Christine Thurlow Professional Lead Key Sites and Infrastructure</b>	<b>KEY DECISION REF NO. CAB159</b>

### COMMUNITY INFRASTRUCTURE LEVY (CIL) - CIL EXPENDITURE BUSINESS PLAN AUGUST 2019

#### 1. PURPOSE OF REPORT

- 1.1 The CIL Expenditure Framework, the CIL Expenditure Framework Communications Strategy and the Timeline for Implementation following the CIL Framework Review were all adopted by both Councils on the 19<sup>th</sup> March 2019 (Babergh) and 18<sup>th</sup> March 2019 (Mid Suffolk). (Background Documents refer).
- 1.2 The processes and governance around CIL expenditure is set out in these documents and the type of infrastructure that CIL 123 monies can be spent on is set out in each Councils Regulation 123 list /CIL Position Statement. (Background Documents refer).
- 1.3 CIL expenditure operates using a process of twice-yearly bid rounds which occur on the 1<sup>st</sup> - 31<sup>st</sup> May and 1<sup>st</sup> - 31<sup>st</sup> October each year. Once all the Bids have been validated, all valid Bids are then screened for the availability of s106 funds and other funding streams. Following this all valid Bids are prioritised using criteria set out in the CIL Expenditure Framework and recommendations on Valid Bids are included within a CIL Business Plan for each District. The CIL Business Plan for that District will be considered by that Councils Cabinet with decisions on all valid Bids either for Cabinet to make or for Cabinet to note (if the valid Bid has been determined using delegated powers).
- 1.4 This report seeks to obtain approval by Cabinet for Mid Suffolk' s CIL Business Plan - August 2019 which forms Appendix A to this report. This report also contains the assessment of the Bids including the judgements around the prioritisation criteria. (Appendix B)

#### 2. OPTIONS CONSIDERED

- 2.1 There is a diverse spectrum of approaches to CIL expenditure across the country from Unitary Authorities who have absorbed CIL into their individual Capital Programmes to others who ringfence all funds to be spent locally. A range of different approaches was identified in Appendix A of the Framework for CIL Expenditure report provided to Cabinet's on the 5<sup>th</sup> and 8<sup>th</sup> of February 2018 and discussed in full during the workshops with the Joint Member advisory panel. Members adopted the documents set out in paragraph 1.1 above by Council decision in April 2018 which

were subsequently reviewed and adopted on the 19<sup>th</sup> March 2019 (Babergh) and 18<sup>th</sup> March 2019 (Mid Suffolk).

### 3. RECOMMENDATIONS

That the CIL Expenditure Business Plan (September 2019) and accompanying technical assessments of the CIL Bids forming Appendices A and B and which include decisions on valid Bids for Cabinet to make and those for Cabinet to note be approved as follows: -

#### Decisions for Cabinet to note: Local Infrastructure Fund

CIL Bid, Location and Infrastructure Proposed	Amount of CIL Bid and total cost of the Infrastructure	Delegated Decision
M19-01 Stowupland Trinity Meadows Development Church Road  New Parish Notice Board (revised specification to CIL Bid M10-18 (so as to match other Notice Boards in the village))	Amount of CIL Bid £396.26  Total cost £692.52	Cabinet to note  Delegated decision taken on 6 <sup>th</sup> August 2019 (on the proviso that CIL Bid M10-18 is not proceeded with)
M19-02 Thurston Sandy Lane  New Bus Shelters for Sandpit lane North and South Bus Stops	Amount of CIL Bid £9600.00  Total cost £9600.00	Cabinet to note: -  Delegated decision taken on 6 <sup>th</sup> August 2019

3.2 Cabinet are also asked to note and endorse this CIL Business Plan which includes the position reached on all undetermined/outstanding Bids together with the up to date position in respect of approved CIL Bids from Rounds 1 and 2.

#### REASON FOR DECISION

Community Infrastructure Levy (CIL) monies have been collected since the implementation of CIL on the 11<sup>th</sup> April 2016. The CIL Expenditure Framework originally adopted in April 2018 and reviewed with amendments adopted on the 18<sup>th</sup> March 2019 requires the production of a CIL Business Plan for each District which contains decisions for Cabinet to make or note on CIL Bids for CIL expenditure. These decisions relating to the expenditure of CIL monies form one of the ways in which necessary infrastructure supporting growth is delivered.

## **4. KEY INFORMATION**

4.1 Given the determination of “available monies” for Bid Round 3 - (paragraphs 6.7 - 6.9 inclusive) Members are advised: -

- 5 new Bids submitted in total – all acknowledged and given a reference
- Majority of Bids were initially invalid due to the need to clarify or submit information. Further information on all such Bids has been requested.
- A list of Valid Bids is published on the Web site.
- 3 out of the 5 Bids are collaborative (i.e. more than one source of anticipated income for the project.)
- The remaining 2 bids seek 100% CIL monies for funding for the project.
- All 5 Bids are from Parish Councils or Community Groups; two of the Bids are joint Bids with other parties including Suffolk County Council and Suffolk Libraries
- 1 Bid in Stowupland was submitted as an alternative to an approved CIL Bid M10-18.
- 1 Bid in Thurston was not compliant with the CIL 123 List/CIL Position Statement and could not therefore be progressed or determined
- 1 Bid at Wetherden was withdrawn at Validation stage by the applicants
- 1 Bid at Debenham could not be validated as there was insufficient information and is therefore outstanding.
- The Bids capable of determination were both below £10,000 and were determined under delegated powers on the 6<sup>th</sup> August 2019. the total value of these two Bids in Bid round 3 is £9996.26

### **Conclusions of key information**

4.2 The list of CIL Bids for the second round is contained in the CIL Business Plan and includes valid and invalid Bids. (Appendix A) The valid Bids have been the subject of Consultation, Screening (for s106 and other potential sources of funding). In addition, where appropriate, these valid Bids have been assessed using the prioritisation criteria in the CIL Expenditure Framework so that a decision can be made. This forms the technical assessment using all the criteria in the CIL Expenditure Framework and comprises Appendix B. (All valid Bids where a decision is being taken will be the subject of a technical assessment.)

4.3 Where decisions on valid Bids are delegated, they have been determined and the decision is for Members to note. There are no valid Bids in Bid round 3 for Cabinet to consider and determine.

- 4.4 All those Bids which are currently listed as invalid in Appendix A will be carried forward to the next Bid round unless otherwise stated. This will allow further discussions to take place, the submission of further information which clarifies/amends the Bid and/or confirms that all the necessary formal approvals for the project have been secured.

## **5. LINKS TO JOINT STRATEGIC PLAN**

- 5.1 The effective spending of CIL monies will contribute to all the three priority areas that Councillors identified in the Joint Strategic Plan. Economy and Environment Housing and Strong and Healthy Communities.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 The adopted CIL Expenditure Framework is critical to the funding of infrastructure to support inclusive growth and sustainable development.

- 6.2 The CIL Regulations stipulate that CIL monies which are collected must be spent on Infrastructure. Each Council is required to publish a list of infrastructure that they will put the CIL towards. These lists, known as the "Regulation 123 lists", were adopted and published in January 2016. These documents are different for both Councils; the hyperlink for the Regulation 123 List for Mid Suffolk is contained at paragraph 12.1. New CIL Regulations are expected to come into force as legislation on the 1<sup>st</sup> September 2019. These will abolish the CIL 123 Lists on that date and in accordance with the resolution of Council in March 2019 when the amended CIL Expenditure Framework was adopted, both Councils agreed:-

*"Delegated authority to be given to the Assistant Director of Planning and Communities, in consultation with the Cabinet Member for Planning and the Cabinet Member for Communities, to produce a replacement for the Regulation 123 lists if these are altered/made obsolete/substituted by the Government in any new forthcoming legislation (together with any consequent changes to the key documents comprising Appendices A (the amended CIL Expenditure Framework) and B (the CIL Expenditure Communication Strategy) to reflect any legislative change".*

- 6.3 This replacement document is known as the CIL Position Statement and makes both Councils position clear on the expenditure of CIL This is expected to remain in force until the Position Statement is formally reviewed (as part of the forthcoming Review of the CIL Expenditure Framework) and /or replaced.

- 6.4 CIL is collected and allocated in accordance with the CIL Regulations 2010 (as amended). Each Council retains up to 5% of the total CIL income for administration of CIL. From the remainder, 15% is allocated to Parish or Town Councils (subject to a cap) but where there is a Neighbourhood Plan in place this figure rises to 25% (without a cap). For those parishes where there is no Parish or Town Council in place the Council retains the monies and spends the CIL Neighbourhood funds through consultation with the Parish.

- 6.5 Since the implementation of CIL for both Councils on the 11<sup>th</sup> April 2016 there have been six payments to Parish Councils, in October 2016, April and October 2017, April and October 2018 and April 2019. At the time that the Neighbourhood payments are made, the 20% set aside for Strategic Infrastructure fund is also undertaken. The Strategic Infrastructure Fund money is stored separately to the Local Infrastructure Fund at this point. As this accounting requires Finance to verify the figures, daily accounting in this way would be too cumbersome and resource hungry to carry out. There is no adverse impact on the Bid Round process or cycle to this method of accounting. Indeed, these dates work well with the Bid round process. (Paragraph 1.3 refers).
- 6.6 The remaining 80% of the CIL 123 monies comprises the Local Infrastructure Fund from which the available funds for expenditure against the Bid round are calculated. Within the CIL Expenditure Framework infrastructure provision for major housing developments is prioritised and ringfenced for spend against these housing projects. In this way housing growth occurring within the Districts is supported by infrastructure provision.
- 6.7 When commencement of these major housing schemes occurs, monies are collected according to the CIL payment plan in place. If the scale of development is large the CIL payment plan could be up to 5 equal payments collected over a two-year timescale. Smaller developments are required to pay the money in less instalments and over a shorter timescale. These monies are held in a separate account from the Strategic and Local Infrastructure funds to ensure the monies are safeguarded towards infrastructure supporting these developments. The remaining unallocated monies are known as the “**available funds**” and it is these funds (together with bids for allocated funds if any are submitted) that can fund the majority of CIL bids. As stated in the CIL Business Plan, 9 developments that will deliver over 10 dwellings have commenced since the implementation of CIL; 5 of these are in the process of paying by instalment over a 2-year payment plan period. The remaining 4 sites have completed their payments in full.

#### **Available funds For Strategic and Local Infrastructure Funds – Babergh**

- 6.8 These are: -
- Available funds - Local Infrastructure Fund Balance available as at 31 March 2019 £1,023,392.72
  - Strategic Infrastructure Fund (including interest) £746,385.03
  - Total Value of Bids previously approved through Bid rounds 1 and 2 - £235,918.

6.9 These are expressed as follows: -

Expenditure	Total	2017/ 18	2018/19	2019/20
Total Expenditure in Bid Round 1		N/A	£156,240.10	N/A
Total Expenditure in Bid Round 2 (Local Infrastructure Fund only)		N/A	£78,938.50	N/A
CIL Expenditure "Available Funds" in Strategic Infrastructure Fund for Bid round 3 (as at 31/2/2019)		N/A	N/A	£746,385.50.
CIL Expenditure "Available Funds" in Local Infrastructure Fund for Bid Round 3 (as at 31/3/2019)		N/A	N/A	£1 023,392.72
Total Expenditure in Bid Round 3 (Local Infrastructure Fund)		N/A	N/A	£9996.26
Amount carried forward to Bid Round 4 (Local Infrastructure Fund)		N/A	N/A	£1 013,396.50

## 7. LEGAL IMPLICATIONS

- 7.1 The detailed framework for CIL expenditure is legally sound and robust and was designed including a legal representative from the Councils Shared Legal Service (who also attended each of the Joint Member workshop sessions) and agreed the adopted CIL Expenditure Framework documents (prior to consideration by Cabinet and Council of both Districts).
- 7.2 This report and the accompanying CIL Business Plan for Mid Suffolk District Council- August 2019 (including Appendix B) have also been endorsed as being sound and legally compliant by the Councils Shared Legal Service.
- 7.3 Governance arrangements agreed in April 2018 and remained unchanged as part of the CIL Expenditure Framework Review of 2019 are indicated for each Bid in the list of Bids. The delegation for making Delegated decisions for the Community Infrastructure Levy falls to Assistant Director Planning and Communities (under the governance arrangements in the CIL Expenditure Framework).
- 7.4 Regulation 62 of the CIL Regulations 2010 (as amended) requires CIL charging authorities to publish monitoring statistics for collection allocations and expenditure of CIL monies by the 31<sup>st</sup> of December for each year. The 2017 and 2018 Monitoring Report for both Councils are published on our websites (see below).

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Mid-Suffolk-District-Council-CIL-Monitoring-Report-2016-17.pdf>

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/FINAL-MSDC-Reg-62-Report.pdf>

7.5 A Regulation 62 Monitoring Report for 2019 will be presented to both Councils for them to note about CIL collection and expenditure in September 2019.(Babergh – 24<sup>th</sup> and Mid Suffolk - 26<sup>th</sup> September)

**8.0 RISK MANAGEMENT**

8.1 This report is most closely linked with the Strategic Risk 1d – Housing Delivery. If we do not secure satisfactory investment in infrastructure (schools, health, public transport improvements etc) then development is stifled and /or unsustainable.

8.2 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
<p>Failure to allocate expenditure such that if we do not secure investment in infrastructure (schools, health, public transport improvements etc.), then development is stifled and/or unsustainable.</p> <p>Current Risk Score: 6</p>	Unlikely (2)	Bad (3)	<p>Adopted Community Infrastructure Levy (CIL), secures investment on infrastructure via the planning process (which includes S106). Creating the Infrastructure Delivery Plan as part of the Strategic Plan, Joint Local Plan with associated Infrastructure Strategy and Infrastructure Delivery Plan will ensure that infrastructure across both Councils is addressed, New Anglia LEP Economic Strategy, draft created together with the Councils Open for Business Strategy.</p>
<p>Failure to produce a yearly Regulation 62 report would result in non-compliance with the CIL Regulations 2010 (as amended) and may mean that Members and the public are not aware of CIL income and expenditure activities.</p>	Highly Unlikely (1)	Noticeable /Minor (2)	<p>The Infrastructure Team produces the report which is checked and verified by Financial services/open to review by External Audit. Reminders are set to ensure the report is published by the statutory date. The format of the Regulation 62 Monitoring report is laid out in the CIL Regulations, so there is no risk in relation to the way the information is presented</p>

<p>Failure to monitor expenditure such that CIL expenditure is not effective.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The software which supports CIL collection will be used to support CIL expenditure. In addition, it is envisaged that a yearly CIL Business plan (with a 6-month update) will be produced which will include details of all allocated and proposed CIL expenditure and this together with the software will be used for effective monitoring.</p>
<p>If too high a value is allocated into the Strategic 123 CIL Fund, there is a risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The Infrastructure Team will continue to monitor all allocations of Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure the level set remains appropriate.</p>
<p>If 25% Neighbourhood CIL is automatically allocated to any Parish/Town councils where there is no Neighbourhood Plan in place, there is a risk that there would be insufficient 123 CIL Funding to allocate to the Strategic 123 CIL Fund and also the risk that there would be insufficient Local 123 CIL Funding available to deliver the infrastructure required to mitigate the harm, thereby ensuring sustainable development.</p>	<p>Unlikely (2)</p>	<p>Bad (3)</p>	<p>The Infrastructure Team will continue to monitor all allocations of Neighbourhood CIL and Regulation 123 CIL Funds and the CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.</p>
<p>If commencements of major housing developments were not correctly monitored or the incorrect apportionment of CIL 123 monies were to occur such that monies could not be allocated towards major housing developments, inadequate infrastructure provision would result.</p>	<p>Unlikely (2)</p>	<p>Disaster (4)</p>	<p>The Infrastructure Team will continue to monitor all commencements of development through the service of the required Commencement Notice by developers such that correct apportionment of 123 CIL Funds can be undertaken. The CIL Expenditure Framework review will include this risk as a key element of the review to ensure allocations of CIL remain appropriate and projects to make development sustainable are able to be delivered.</p>

## Assurances (for collection of CIL monies)

8.3 In September 2016 Internal Audit issued a report in relation to CIL governance processes. The Audit Opinion was High Standard and no recommendations for improvement to systems and processes were made. Table 5 provides a definition of this opinion:

**Table 5**

	Operation of controls	Recommended action
High standard	Systems described offer all necessary controls. Audit tests showed controls examined operating very effectively and where appropriate, in line with best practice.	Further improvement may not be cost effective.
Effective	Systems described offer most necessary controls. Audit tests showed controls examined operating effectively, with some improvements required.	Implementation of recommendations will further improve systems in line with best practice.
Ineffective	Systems described do not offer necessary controls. Audit tests showed key controls examined were operating ineffectively, with a number of improvements required.	Remedial action is required immediately to implement the recommendations made.
Poor	Systems described are largely uncontrolled, with complete absence of important controls. Most controls examined operate ineffectively with a large number of non-compliances and key improvements required.	A total review is urgently required.

8.4 On the 18<sup>th</sup> December 2017 Joint Overview and Scrutiny received a fact sheet on collection and current thinking on CIL expenditure and questions were answered in relation to it. Members of that Committee were advised of the route map towards getting a framework for CIL expenditure formally considered. Members were advised that this would be a key decision for both Councils and would need to go to Cabinet and then full Council. The resulting joint CIL Expenditure Framework, the CIL Expenditure Communications Strategy and the Timeline for the Expenditure of CIL and its Review were adopted by both Councils on the 24<sup>th</sup> April 2018 (Babergh) and 26<sup>th</sup> April 2018 (Mid Suffolk).

8.5 In May 2018 the results of an investigation by Internal Audit on behalf of the Assistant Director Planning and Communities were produced following complaints regarding the CIL process in place for Babergh and Mid Suffolk. The investigation concluded: -

- “The information provided to the public in relation to the CIL process is superior to that found for some other Councils and the team go over and above the requirements when supporting applicants where resources allow them to do so. It is Internal Audit’s opinion that the Infrastructure team, even though working under challenging conditions with increasing numbers of applications, are providing a good service to customers and also pro-actively looking for ways to improve where possible.”
- “The audit opinion is therefore high standard” – (paragraph 8.3 Table 5 defines high standard classification).

- 8.6. In September 2018 Internal Audit conducted a review of CIL Expenditure processes and released a written report. It contains a Substantial Assurance audit opinion (with two good practice points needing to be addressed relating to further clarification of “best value” (one of the criteria for assessing CIL Bids) and storage of all electronic communication.

### **Assurances (for collection and expenditure of CIL Monies)**

- 8.7 It is expected that Internal Audit will continue to regularly audit CIL collection allocation and expenditure processes and actual expenditure once any schemes are developed and implemented.
- 8.8 As Members will recall there is a timeline for implementation of CIL and its review which contains key dates for the remainder of the CIL expenditure year cycle (Background papers refer)
- 8.9 The first review of the CIL Expenditure Framework took place in 2018 following consideration by Joint Overview and Scrutiny in November 2018. The Joint Member Panel also informed the review and the conclusions were presented to both Councils and adopted in March 2019. This decision by both Councils planned for a further Review of the CIL Expenditure Framework to occur at the same time as the Bid round no 4 so that any revised scheme would be in place before Bid round 5. It is expected that the second review will also include

## **9.0 CONSULTATIONS**

- 9.1 The CIL Expenditure Communications Strategy contains a requirement for both Councils to consult the following bodies or organisations (for a period of 21 days) where valid Bids for their Wards or Parish have been submitted: -
- Division County Councillor
  - District Member(s)
  - Parish Council
- 9.2 Where appropriate as part of the CIL process and assessment of the Bids, Officers have also taken advice from other Officers within the Council; including the Communities team and the Strategic Leisure Advisor.
- 9.3 Regular Parish events and Member briefings will continue to be held to familiarise all with the Expenditure Framework and how we can continue to work together to provide infrastructure for the benefit of our communities.

## **10. EQUALITY ANALYSIS**

- 10.1 Please see attached Screening report.

## **11. ENVIRONMENTAL IMPLICATIONS**

- 11.1 It is important that appropriate infrastructure mitigates harm which could be caused by new development without its provision. CIL is one way in which infrastructure is provided and the CIL Expenditure Framework requires two bid rounds per year supported by the provision of a business plan for each Bid round. This CIL

Expenditure Framework contains the Bids and outcomes for Bid round 1 and 2. There is no EIA Assessment required.

## 12. APPENDICES

Title	Location
A. Appendix A The CIL Business Plan for Babergh - March 2019	ATTACHED
B Appendix B to the CIL Business Plan for Babergh -March 2019 (Technical Assessments of the CIL Bids)	ATTACHED

## 13. BACKGROUND DOCUMENTS

13.1 The CIL Expenditure Framework, the CIL Expenditure Framework Communications Strategy and the Regulation 123 List for Babergh District Council together with the Timetable for the implementation of the CIL Expenditure Framework and Review constitute background papers for this report. These were originally adopted by both Councils in April 2018. They were reviewed and adopted by both Councils in March 2019 (Babergh – 18<sup>th</sup> and Mid Suffolk - 19<sup>th</sup> March) and these amended Background documents are as follows: -

- The CIL Expenditure Framework:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/CIL-SPENDING/FINAL-CIL-Expenditure-Framework-Babergh-and-Mid-Suffolk-Final-amended-March-2019.pdf>

- The CIL Expenditure Framework Communications Strategy:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/CIL-SPENDING/FINAL-CIL-Expenditure-Framework-Communication-Strategy-final-005March-2019-005.pdf>

- Regulation 123 List for Mid Suffolk District Council:

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/Pre-Adoption-Documents-Mid-Suffolk/MSDC-123-list-.pdf>

- The Timetable for the implementation of the CIL Expenditure Framework and the second Review

<https://www.midsuffolk.gov.uk/assets/CIL-and-S106-Documents/CIL-SPENDING/FINAL-CIL-Expenditure-Calendar-2019-Key-dates.pdf>

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