



## Mayor and Cabinet

### Report title: CIL Governance

**Date:** 19 July 2023

**Key decision:** Yes

**Class:** Part 1

**Ward(s) affected:** All wards

**Contributors:** Director of Planning and Developer Contributions Manager

### Outline and recommendations

The purpose of this report is to inform Mayor and Cabinet about the process which has been developed for Strategic CIL Governance and to seek their agreement to formalisation of this process.

It is recommended that Mayor and Cabinet:

- Approves the SCIL Governance procedures which are set out in the report.
- Approves the allocation of SCIL to three projects, subject to detailed PIDS being submitted in regard to each;
  - Movement of the South Circular - £3,694,782
  - Works at Lewisham Play Tower - £265,600
  - Levelling up Fund (LUF) projects match fund requirement plus funding to enable additional elements to be delivered - £4,000,000
- Authorise Officers to review the prioritisation process after a year of implementation to ensure and make any necessary changes to the Project Prioritisation Forms.
- Note the legal and financial implications set out in Section 6 and 7.

## Timeline of engagement and decision-making

21 <sup>st</sup> October 2003	Procedures for allocating S106 funding were approved by Mayor and Cabinet
1 <sup>st</sup> April 2015	Lewisham starts collecting Borough CIL
8 <sup>th</sup> February 2023	Mayor and Cabinet agreed that officers prepare a CIL governance and a prioritisation process, based on the adaptation of existing arrangements
19 <sup>th</sup> June 2023	CIL Governance heard at SDSC

## 1. Summary

- 1.1 This paper seeks to approval for the CIL Governance set out in this paper and the approval of three Strategic CIL allocations for this financial year (2023-24).
- 1.2 On 8th February 2023, Mayor and Cabinet agreed that officers prepare governance and a prioritisation process, based on the adaptation of existing arrangements, with a recommendation to:
- Vary the existing governance process for s106 monies agreed by Mayor and Cabinet to accommodate CIL and make any necessary updates to reflect the current Constitution
  - Explore an annual Strategic CIL budget for infrastructure project allocation
  - Develop an annual process for the allocation of Strategic CIL as part of the budget-setting process
  - Develop a prioritisation process for Strategic CIL projects, to be reviewed after its first year of implementation
- 1.3 In response to the Mayor and Cabinet decision in February 2023, officers have developed a series of approaches to CIL to use the existing governance structures in place for s106 as a starting point; varying them to primarily include the spend of Strategic CIL (SCIL) and to increase existing approval thresholds to align with the constitution.

## 2. Recommendations

- 2.1 It is recommended that Mayor and Cabinet:
- Approves the SCIL Governance procedures which are set out in the report.
  - Approves the allocation of SCIL to three projects, subject to detailed PIDS being submitted in regard to each;
    - Movement of the South Circular - £3,694,782
    - Works at Lewisham Play Tower - £265,600
    - Levelling up Fund (LUF) projects match fund requirement plus funding to enable additional elements to be delivered - £4,000,000

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- Authorise Officers to review the prioritisation process after a year of implementation to ensure and make any necessary changes to the Project Prioritisation Forms.
- Note the legal and financial implications set out in Section 6 and 7.

### 3. Policy Context

3.1 Lewisham's Infrastructure Planning Documents consist of:

- Lewisham Local Plan;
- Infrastructure Delivery Plan and
- CIL Infrastructure Priorities list.

#### *Lewisham Local Plan*

3.2 The emerging, new Lewisham Local Plan has just completed the Regulation 19 stage consultation. The document was revised prior to consultation following public consultation at Regulation 18 stage and has drawn on a huge number of evidence based documents.

3.3 The draft plan sets out a spatial strategy and Development Management policies to accommodate the required growth in the borough including the London Plan housing target of 1,667 new homes per annum, new employment floorspace and new town centre floorspace.

3.4 The new plan identifies the necessary infrastructure to accommodate this growth ranging from London wide strategic transport projects such as the BLE, or Lewisham based strategies including reducing and sustainably managing waste (policy SD12), Energy infrastructure (SD 4) and Safeguarding and securing community infrastructure (CI 1). It also set outs more localised infrastructure needs; for example, the need to support, enhance and protect a linear network of green infrastructure (LEA 4) in the East Area part of the Borough.

#### *The Infrastructure Delivery Plan (IDP)*

3.5 The IDP seeks to identify the physical, social, and green infrastructure that may be needed over the local plan period. It seeks to ensure that the borough has sufficient schools, health centres and quality open space; the transport and physical infrastructure (e.g. utilities) it needs; and supports the borough's environmental objectives such as seeking to become a carbon neutral borough, tackling poor air quality, and greening the borough. It may not capture all the Borough's infrastructure requirement over the plan period; but focuses on strategic matters that underpin the delivery of the plan.

3.6 It is prepared by the planning team to support the Local Plan with input from all infrastructure providers including internal departments and external stakeholders such as TFL, Thames Water, Lewisham, and Greenwich NHS trust etc. The IDP has also been reviewed by the Sustainable Development Select Committee during its preparation.

#### *CIL Infrastructure Priorities list*

3.7 The Council has a CIL Infrastructure Priorities list (formally known as the Regulation 123 List) which lists infrastructure which it intends will be, or may be, wholly or partly funded by CIL. This includes:

- State education facilities.
- Public health care facilities.

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- Strategic transport enhancements (excluding site-specific, highways and public transport matters needed to make developments acceptable in planning terms).
- Publicly accessible open space, allotments, and biodiversity.
- Strategic flood management infrastructure.
- Publicly owned leisure facilities.
- Local community facilities (including (but not limited to) community centres and halls and libraries, but excluding places of worship); and
- Public Emergency Services (this is intended to apply to physical projects by the police, fire, or ambulance services).

### **Community Infrastructure Levy**

- 3.8 Section 216 of the Planning Act 2008, (“the Act”) and Regulation 59 CIL Regulations 2010 (as amended) made pursuant to the Act requires that CIL must be spent by the Council on the ‘provision, improvement, replacement, operation, or maintenance of infrastructure to support the development of its area.’ Section 216(2) of the Act defines “infrastructure” as including: (a)roads and other transport facilities, (b)flood defences, (c)schools and other educational facilities, (d)medical facilities, (e)sporting and recreational facilities, and (f)open spaces. The infrastructure itself may be in or outside the borough as long as it supports its development
- 3.9 This definition allows the levy to be used to fund a very broad range of facilities such as play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. As such local authorities can choose what infrastructure they need to deliver Lewisham’s Local Plan and the London Plan in London. It cannot be used to fund affordable housing..
- 3.10 The borough’s strategic infrastructure needs are listed in the Council’s Infrastructure Delivery Plan (IDP) which is a living document, updated regularly. The last version was published in 2022. The IDP recognises that all strategic infrastructure needs in the Borough cannot be fully met by CIL, meaning that projects which are eligible for CIL funding need to be prioritised.

### **S106**

- 3.11 In February 2015, the Council published the Lewisham Planning Obligations SPD. This document provides detailed guidance on the likely type and scale of planning obligations for development proposals to ensure that the impact of development on infrastructure and services can be adequately mitigated. The intention is to commence a review of this document during 2023.
- 3.12 Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and they must meet the three tests (paragraph 204, NPPF, S122 CIL Regulations 2010) to ensure that they are:
- (i) necessary to make the development acceptable in planning terms;
  - (ii) directly related to the development; and,
  - (iii) fairly and reasonably related in scale and kind to the development.

### **New Infrastructure Levy**

- 3.13 The Levelling Up and Regeneration Bill (introduced in House of Commons May 2022), proposes an Infrastructure Levy (IL) which would replace CIL and limit s106s. Local authorities would impose this levy to fund infrastructure such as roads, transport

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facilities and open spaces, and things such as childcare provision and affordable housing.

- 3.14 Whilst it is not clear yet how IL might operate if the measure is taken forward. If this is implemented, it is understood that a lengthy period of pilots would be undertaken to test the measures meaning that there would be time to undertake a review of Lewisham's arrangements to fund infrastructure.

## 4. Background

- 4.1 The Council has been collecting CIL since April 2015. CIL receipts can be broken down into three portions – Strategic CIL, Neighbourhood CIL, and CIL administration. The SCIL collected to date totals circa £16m. Mayoral CIL is also collected which is passed to TfL save for an administration fee. This is a separate ringfenced fund and is not the subject of this paper.
- 4.2 At present, there are procedures in place for the spend of S106 and NCIL. The Council has focused on spending the more restricted, often time limited s106 sums and delivering NCIL processes to support communities. This has also allowed SCIL sums to accumulate.
- 4.3 Of the CIL that the Council receives, 25% is apportioned to Neighbourhood CIL with the remaining 75% allocated as Strategic CIL (SCIL). 5% of the CIL collected is used for the administration of CIL, which when apportioned, mean that 3.75% of CIL is available for the administration of SCIL.
- 4.4 CIL income fluctuates year on year, with c£3m being the average received each year over the last 7 years, with £2.3m of that yearly average being SCIL.
- 4.5 Procedures for allocating S106 funding were approved by Mayor and Cabinet in October 2003 (overview in Appendix 1). This established the S106 Overview Group for the allocation of projects up to a value of £499,999. It also established that projects seeking over £500,000 were to be a Mayor and Cabinet decision.
- 4.6 Current internal practice for approvals is:
- PIDs seeking £40,000 or less of s106 are decided by S106 Overview Group,
  - PIDs seeking between £40,000 are decided by the Regeneration and Capital Delivery Programme Board (RCPBD) and if over £500,000 are decided by Mayor and Cabinet.
- 4.7 In the last two years, due to the demands on S106 funds, prioritisation has been introduced to ensure S106 funded projects:
- are listed in the Infrastructure Delivery Plan or meet a need it identifies,
  - Contribute to delivering Lewisham's Corporate Strategy and/or align with the Corporate Priorities and a departmental or service level strategy, and
  - Offer value for money.
- 4.8 Additionally, the funding of projects should be considered alongside other funding streams where possible

## 5. New Governance Process to incorporate CIL

- 5.1 With the success of S106 spending and growing SCIL pot, the Council is now in a position to begin spending SCIL on infrastructure needs across the Borough.

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Arrangements for governance have been developed in accordance with the February 2023 Mayor and Cabinet decision, and around the following principles:

- The adaptation of existing arrangements to include CIL
- The use of an annual budget for SCIL
- Development of an annual process for the allocation of SCIL as part of the budget setting process
- Developing a prioritisation process, recognising that infrastructure needs will outstrip available funds and so a process for identifying the highest priority projects will be necessary.

5.2 The other key principle for new CIL governance is that it must be deliverable within the CIL admin fee to ensure that the process can be properly administered. No more than 3.75% of what is received per year can be spent on administering SCIL so any proposals will need to be manageable within this budget envelope.

5.3 The new process seeks to also introduce a more coordinated approach for how the Council prioritises CIL spend to support growth linked to the Local Plan and IDP, capital programme and other council strategies into the established boards.

### **The adaptation of existing arrangements to include CIL**

5.4 It is proposed that there are two approval routes - the Strategic CIL (SCIL) Process and General Approvals Process:

#### *SCIL Process*

This is a new route using an agreed amount from the Strategic CIL Budget. It is proposed that this would be an annual process involving a prioritisation process with Regeneration and Capital Programme Delivery Board (RCPDB) recommending projects for approval at Regeneration and Capital Board (RCB). Projects funded through this route would be included as part of the Council's annual budget for approval at Mayor and Cabinet and Council.

#### *General Approvals Process*

The existing process for the approval of s106 sums would be amended to include a portion of SCIL. This portion would be set aside for in year demands and known as the In-Year demand (IYD) budget. This would ensure that whilst an annual process is developed and used as the main route for the allocation of SCIL, the Council retains flexibility to address projects and opportunities that arise during the financial year.

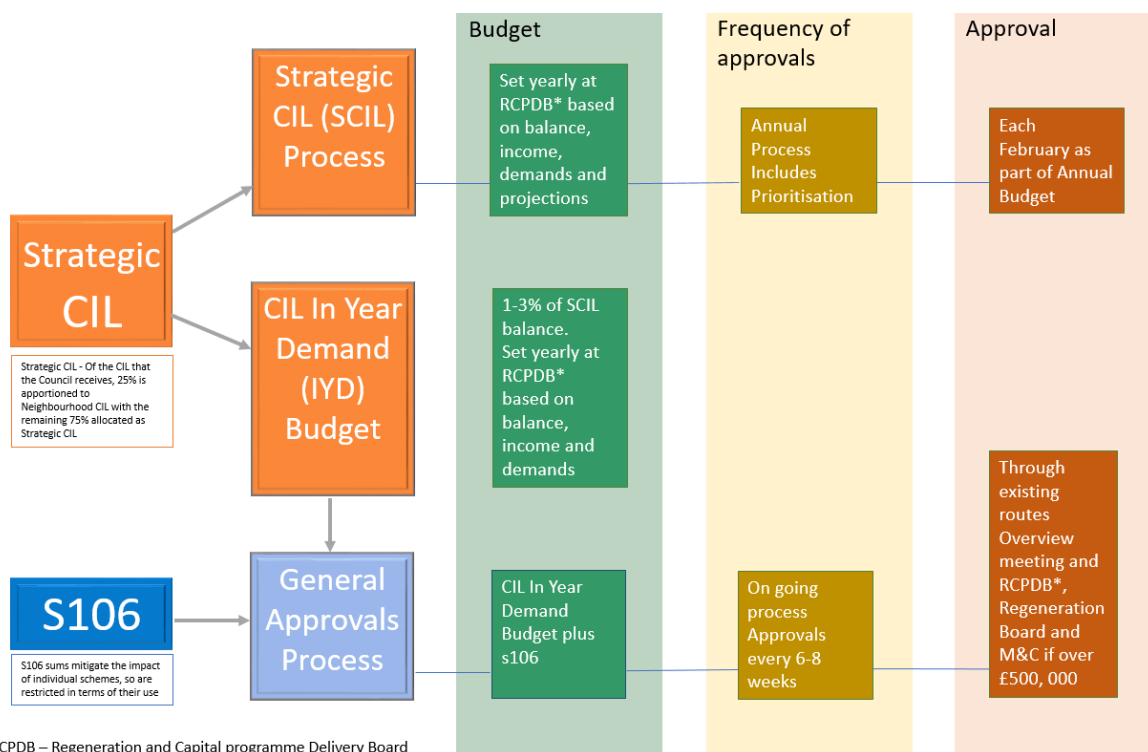
As with the existing S106 process, it is proposed that this would be ongoing throughout the year.

An overview of the new arrangements are shown (simplified) on the diagram below:

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## General approval process

- 5.5 This process is to remain unvaried from how S106 works, but alongside S106, a CIL fund for in year demands (IYD budget) is proposed to be available for projects. This amount would be set annually, based on the CIL income achieved.
- 5.6 It is also proposed that there is a slight increase in the amounts approved at the different levels. This would allow simple, fundamentally acceptable schemes to be dealt with more quickly. Additionally (and only in the case of s106) where a sum has been secured for a specific purpose via a planning permission (i.e. to undertake necessary highways improvements at the entrance to a site), that up to £250,000 can be approved at the Overview meeting where a project has been prepared to be used to deliver those specific works. The financial approval levels reflect existing delegations within the current Constitution. The proposed levels are set out below:

Boards	New Approval Levels
Overview meeting	Up to £50,000 of S106 or CIL (IYD) Up to £250,000 of s106 if funds have been secured for a specific purpose for which the project would deliver
Regeneration and Capital Programme Delivery Board	£50,000 - £500,000 of S106 or CIL (IYD) (unless the s106 funds have been secured for a specific purpose, in which case £250,000 - £500,000)
Mayor and Cabinet	Projects over £500,000

## Strategic CIL Process

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The use of an annual budget for SCIL as part of budget setting

- 5.7 Using a yearly budget from the accumulated SCIL monies to provide for strategic infrastructure needs, means that incoming CIL receipts (£2.3m on average p.a.) can replenish some of what has been spent.
- 5.8 The annual SCIL budget would be set each year, based on the overall SCIL balance, SCIL income received during the previous financial year, demands arising during the year and SCIL projections. It is proposed that this would be set by RCPDB and reported as part of the Annual Budget.
- 5.9 There are a few projects for which an in-principal commitment to use CIL has already been given at Mayor and Cabinet or have been earmarked. As such, in the first year of the new governance process, it is considered that these are the projects that should be funded. These projects amount to c£8.3m so would leave c£7.8m in the SCIL budget going forward.
- Movement of the South Circular - £3,694,782
  - Works at Lewisham Play Tower - £265,600
  - Levelling up Fund (LUF) projects match fund requirement plus funding to enable additional elements to be delivered - c£4,000,000

### **Development of an annual process for the allocation of SCIL**

5.10 This process would be undertaken annually:

By Autumn	Applications made for SCIL funding, prioritisation forms reviewed by Officers and projects are put before RCPDB to make recommendations on
By end of calendar year	Recommendations go to RCB for approval
By February	Agreed SCIL allocations are reported in Annual budget setting report

### **Development of a prioritisation process**

- 5.11 As agreed at Mayor and Cabinet in February, a process for identifying the highest priority projects will be necessary given the borough's infrastructure needs are greater than the funds available.
- 5.12 Given the need for the proper planning for future infrastructure needs, the system developed must allow for:
- Strategic planning of infrastructure – not first come first served.
  - Certainty of funding.
  - Better allocation of limited resources including leveraging match funding from other sources
- 5.13 As such any project seeking to use SCIL through the annual SCIL process will need to pass through the steps outlined below (detailed steps are set out in Appendix 2). If a project fails at any stage, it will not proceed for a SCIL funding allocation.

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Step 1	Would the project use CIL for the provision, improvement, replacement, operation, or maintenance of infrastructure to support the development of the borough?
Step 2	Is the project listed in the Infrastructure Delivery Plan? If not, is it considered as an exception i.e. is it a match funding opportunity which has Council support?
Step 3	Has a PID and Project Prioritisation Form (PPF) been completed?
Step 4	Does the project score over 63 points on the PPF? – Considered first for funding
Step 5	Does the project score over 60 points on the PPF? Considered next for funding if funds are available.

5.14 Project Prioritisation forms (PPFs) have also been developed and refined following testing across Council departments and with service areas who deliver capital projects and infrastructure. Testing all projects against an agreed set of criteria ensures fairness in the consideration of all projects and allows for transparency around recommendations and decision making. A copy of the proposed PPF is attached in Appendix 3. It requires a project to demonstrate:

- How it aligns or responds to the Local Plan Vision and objectives and the Corporate Priorities
- It is in the Capital Programme
- Its ability to support new development
- The revenue implications for the Council and, if there are whether they are affordable
- Project funding
- Timescales for delivery
- That there are sufficient CIL funds available
- The expected Customer Impact
- The risks and opportunities
- The quality and benefit of the project to the area/community
- How it improves outcomes in health, employment and/or tackle inequalities
- It is value for money
- Innovation and improvement
- Whether the delivery of a project relies on any other legal processes

5.15 The identified criteria seek to balance matters of good financial planning with the achievement of the Council's aims and objectives, legal requirements to ensure that projects are deliverable and legally permissible to be funded via SCIL and importantly, outcomes for Lewisham's communities. Most responses would be scored against five criteria, the highest scoring being 5 and the lowest being 1. If a project does not score highly enough on any criteria it would fail and not move forward for SCIL funding

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- 5.16 It is proposed that projects must score a total score of over 60 to be considered for SCIL funding. A score of 60 has been identified as being the point at which a project would be delivering good outcomes across all categories. Projects passing the prioritisation testing would be reported to RCPDB for review. Recommended projects would then pass to approval at Regeneration and Capital Board and the final stage of approval would be that the projects would be reported in the Annual Budget. This follows the approach taken with the Capital programme and would ensure that there is a thorough review at officer level against priorities with political oversight as part of annual budget setting.
- 5.17 The three projects listed in 5.9 have been run through the prioritisation testing process and all scored over the required 60 points.

### Ensuring necessary infrastructure evidence is up to date

- 5.18 To ensure the evidence of the borough's infrastructure requirements is up to date, periodic updates of the IDP and biannual updates of the Capital Programme are necessary. Addressing the IDP and Capital Programme together would result in a more coordinated and integrated approach to planning for infrastructure would be achieved and enable an understanding of the short (1 year), medium (5 years) and long term (life of the Local Plan) requirements and delivery.

	<b>Responsibility</b>	<b>Frequency of Update</b>	<b>Reported to RCPDB</b>
IDP	Planning, service areas and external partners	Periodically	Annually
Oversight of the Capital Programme	Regeneration team, Service areas responsible for projects and Finance.	Quarterly	Quarterly

### Reporting

- 5.19 Reporting on CIL priorities, spend, allocation etc would be done through existing reporting mechanisms and documents as set out below:

<b>Dept.</b>	<b>Published reports where CIL spend etc would be reported</b>	<b>Liaison and Scrutiny</b>
Planning	Infrastructure Funding Statement (IFS) and the Authority Monitoring Report (AMR)	Liaison with Lead member and Mayor
Finance	Annual Budget	Public Accounts Select Committee
Regeneration	Capital Programme Review	Public Accounts Select Committee

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## Monitoring

5.20 Monitoring would be undertaken using existing processes:

- Monitoring annual CIL spend and the delivery of priorities would be presented as part of the Capital Strategy to the RCPBD and Regeneration and Capital Board.
- Monitoring of projects would be through highlight reports presented to the RCPDB and Update and Closure reports submitted to Developer Contributions Team at the end of the financial year.
- Quarterly monitoring of capital programme at Mayor and Cabinet

## 6. Financial implications

- 6.1 The Council has now accumulated a Strategic CIL budget of c£16m. Whilst this is a large sum of money, the borough's infrastructure needs (which are set out in the IDP) are much greater than the SCIL funds available. As such a prioritisation process has been developed to ensure that only projects which meet agreed criteria are met and where possible other funding streams are considered.
- 6.2 Spend decisions on SCIL would be made at RCPDB and Regeneration and Capital Board and presented to Mayor and Cabinet for approval in the Annual Budget.
- 6.3 A percentage of the SCIL pot also would be used for in year demands and would follow the existing established and successful process which currently operates for s106

## 7. Legal implications

- 7.1 CIL must be used by authorities for funding infrastructure to support the development of its area as set out in Regulation 59 of The Community Infrastructure Levy Regulations 2010 (Amended) ("The CIL Regulations").
- 7.2 Infrastructure is defined in The Planning Act 2008. It has a broad definition including transport, flood defences, schools, hospitals, health, and social care facilities. As such CIL can be used to fund a wide variety of facilities such as play areas, parks, and green spaces, cultural and sports facilities and district heating.
- 7.3 Regulation 121A of the CIL Regulations require that no later than 31st December (starting from the 31st December 2020), in each calendar year a contribution receiving authority must publish a document ("the annual infrastructure funding statement") which comprises the following—
- (a) 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 (other than CIL to which regulation 59E or 59F applies) ("the infrastructure list");
  - (b) a report about CIL, in relation to the previous financial year ("the reported year"), which includes the matters specified in paragraph 1 of Schedule 2 ("CIL report");
  - (c) a report about planning obligations, in relation to the reported year, which includes the matters specified in paragraph 3 of Schedule 2 and may include the matters specified in paragraph 4 of that Schedule ("section 106 report").
- 7.4 The statement must be published on the Council's website. The Equality Act 2010 (the

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Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 7.5 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not.
- 7.6 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 7.5 above.
- 7.7 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

## **8. Equalities implications**

- 8.1 The Council's Single Equality Framework 2020-2024 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.

## **9. Climate change and environmental implications**

- 9.1 There are no direct Climate change and environmental implications arising from this report

## **10. Crime and disorder implications**

- 10.1 There are no direct implications relating to crime and disorder issues.

## **11. Health and wellbeing implications**

- 11.1 There are no direct health and wellbeing implications arising from this report. However, the spend of CIL could be used to fund projects that improve health and wellbeing outcomes.

## **12. Background papers**

The Community Infrastructure Regulations

[The Community Infrastructure Levy Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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Lewisham’s existing adopted Local Development Framework.  
<https://lewisham.gov.uk/myservices/planning/policy/adopted-local-plan>

Which includes:

Core Strategy 2011

Development Management Local Plan 2014

Site Allocations Local Plan 2013

Lewisham Town Centre Local Plan 2014

National Planning Policy Framework (NPPF) 2021.  
<https://www.gov.uk/government/publications/national-planning-policy-framework—2>

National Planning Policy Framework (NPPF) 2018  
<https://webarchive.nationalarchives.gov.uk/ukgwa/20210708211349/https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Lewisham Local Plan Regulation 18 Stage “main issues and preferred approaches” document.  
<https://lewisham.gov.uk/myservices/planning/policy/planning/about-the-lewisham-local-plan>

Lewisham Local Plan Regulation 19 Stage “Proposed Submission document” document.  
<https://lewisham.gov.uk/myservices/planning/policy/planning/current-and-future-consultations>

## 13. Glossary

Term	Definition
Development plan	The London Plan, Local Plans, other Development Plan Documents and Neighbourhood Plans.
National Planning Policy Framework	National Planning Policy Framework - Prepared by the Government to explain statutory provisions and provide guidance to local authorities and others on planning policy and the operation of the planning system.

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## 14. Appendices

- Appendix 1: s106 Procedures formalised by Mayor and Cabinet in October 2003
- Appendix 2: Overarching process for seeking CIL funding
- Appendix 3: CIL Prioritisation Form April 2023

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