

Council		
Report Title	Community Infrastructure Levy neighbourhood CIL strategy (NCIL strategy)	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director Resource and Regeneration	
Class	Part 1	Date: 24 July 2019

1. Summary

- 1.1 The Community Infrastructure Levy (CIL) is a levy that local authorities can choose to charge on new development in their area, enacted through the Community Infrastructure Levy Regulations 2010 (as amended) ('the Regs').
- 1.2 The council adopted its current CIL Charging Schedule in 2015, and has so far collected each financial year:
 - 2015/16: £1,440,463.66
 - 2016/17: £4,487,774.86
 - 2017/18: £3,359,091.04
- 1.3 R59F of the Regs enables the council to set aside 15% of CIL receipts to spend on priorities that should be agreed with the local community in areas where development is taking place (rising to 25% in areas where a neighbourhood plan has been adopted).
- 1.4 Details of how priorities should be identified and CIL spent are not outlined in the CIL Regs, however Planning Practice Guidance ('the PPG') has been published which accompanies the Regs and provides further guidance on the Government's expectations.
- 1.5 This report provides Full council with recommendations on how the neighbourhood CIL ('NCIL') process is proposed to function in Lewisham. In line with the Regs and the PPG it is proposed that the council uses the structures, processes and capacities that exist within the current local assemblies and member structure, with a process for identifying local priorities with communities that occurs every four years, a project bank of suitable projects identified every one/two years, with allocations to individual projects occurring on an annual basis.
- 1.6 In addition it is proposed that the distribution of NCIL funds is based on ward boundaries; with a portion of receipts retained in each ward where they were generated, a portion redistributed across wards, and a portion set

aside for projects across the whole borough. It is proposed that the council allocate 25% of CIL receipts towards the NCIL process regardless of the adoption or not, of a neighbourhood plan.

2. Purpose

- 2.1 To provide Full council with the information needed to approve the NCIL process, and to begin the proposed NCIL process across all wards.

3. Recommendations

- 3.1 Council is recommended to:

1. To the extent that it is a non-executive function approve the proposed NCIL Strategy.
2. To the extent that it is a non-executive function approve the allocation of 25% of CIL to the NCIL process.

4. Policy context

- 4.1 The contents of this report are consistent with the council's policy framework.
- 4.2 The NCIL strategy will contribute to the implementation of the council's seven corporate priorities from the Corporate Strategy 2018-2022 through supporting local projects that are aligned with those objectives.
- 4.3 The NCIL strategy will provide funding and a system to help support the implementation of the Corporate Strategy, and this report is consistent with the seven priorities identified:
 1. Open Lewisham - Lewisham is a welcoming place of safety for all where we celebrate the diversity that strengthens us.
 2. Tackling the housing crisis - Everyone has a decent home that is secure and affordable.
 3. Giving children and young people the best start in life - Every child has access to an outstanding and inspiring education and is given the support they need to keep them safe, well and able to achieve their full potential.
 4. Building an inclusive local economy - Everyone can access high quality job opportunities, with decent pay and security in our thriving and inclusive local economy.
 5. Delivering & defending: Health, Social Care and Support - Ensuring everyone receives the health, mental health, social care and support services they need.

6. Making Lewisham greener - Everyone enjoys our green spaces and benefits from a healthy environment as we work to protect and improve our local environment.

7. Building safer communities - Every resident feels safe and secure living here as we work together towards a borough free from the fear of crime.

5. Background

- 5.1 CIL is a levy that local authorities can choose to charge on new development in their area. Local authorities must spend the levy on infrastructure needed to support the development of their area, which can include a wide range of infrastructure such as schools, hospitals, roads, open space, and leisure facilities.

CIL Regulation 2010 (as amended)

- 5.2 R59 of the Regs restricts CIL spending to “*A charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.*” S216 of the Planning Act 2008 identifies ‘infrastructure’ by way of broad categories, which as amended excludes affordable housing. The PPG clarifies that whilst CIL can fund increases to the capacity of existing infrastructure or to repair failing existing infrastructure if that is necessary to support development, it is primarily intended to fund new infrastructure and not to remedy pre-existing deficiencies.
- 5.3 R123 of the Regs provides that a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure. ‘Relevant infrastructure’ means “*a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL*”, or in the case of an absence of such a list, any infrastructure. The council has a published R123 list, which can be updated at any time. R123 and para 56 of the NPPF also outline limits to the wider use of planning obligations and spending. Draft regulations provide for the revocation of the R123 provision later in the year, but currently the council is bound by its provisions. In addition these draft regulations will require the council (under new regulation 121A and Schedule 2), will require the council to publish an annual infrastructure funding statement related to CIL and S106.
- 5.4 R59F of the Regs enables the council to allocate a portion of CIL receipts to be spent on local priorities, with spending of this portion subject to a wider definition of “*The charging authority may use the CIL to which this regulation applies, or cause it to be used, to support the development of the relevant area by funding—*
(a) the provision, improvement, replacement, operation or maintenance of infrastructure; or

(b) anything else that is concerned with addressing the demands that development places on an area.”

- 5.5 Following the Regs and PPG, the council will engage with communities on spending:
- Setting out clearly and transparently an approach to engaging with neighbourhoods using their regular communication tools
 - Using existing community consultation and engagement processes
 - Be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates
 - Ensure that the use of neighbourhood funds should match priorities expressed by local communities, including priorities set out formally in neighbourhood plans
- 5.6 The neighbourhood portion is 15% (capped at £100/council tax dwelling in the area), increasing to 25% (uncapped) where a neighbourhood plan has been adopted (the increase only applies to developments granted after adoption of the relevant plan). The council is able to allocate greater amounts, however these would not benefit from the wider definition for spending.

Principles Presented to Sustainable Development Select Committee (2016)

- 5.7 Initial recommendations regarding NCIL were made to SDSC in November 2016. The report and minutes of this meeting are in Appendix A. In summary, the following principles were presented:
- To use existing structures and processes, rather than introduce new decision making processes
 - Neighbourhood for CIL purposes to be defined as wards
 - Process guided by ward assemblies and identified local priorities (and neighbourhood plan if relevant)
 - Where neighbourhood plans exist, forum representatives to participate in the ward assembly
 - Process to explore joined up allocation across wards, where agreed by stakeholders
 - Process to explore distribution from areas with high levels of funding to those with less
 - Look to publish easy to understand decision making and funding process with available CIL amounts to ensure transparency
 - Look at improved usage of the council's website
 - Expectation of community and member involvement in developing local infrastructure priorities
 - Explore opportunities to develop schemes more holistically around local priorities
 - Explore annually 'project bank' process as means to ensure genuine engagement
 - Project bank subject to set criteria; meet legal limitations for CIL spend, member engagement

- Explore opportunities to incorporate elements of participatory budgeting; community propose schemes and make decisions on what to fund
- Short list put forward for public consultation via the ward assemblies
- Short list published on council's website; updated if and when funding becomes available
- Need to manage expectations about what is achievable with limited NCIL funding
- Need to increase transparency to enable communities to understand prioritisation and delivery, potentially for communities to assist with making proposals more viable/deliverable
- Further consideration of additional dedicated resource needed to implement NCIL processes
- Pilot proposed

Spending of Ward Assembly Funds

- 5.8 Each ward assembly currently has a set of priorities/action plan (updated annually) which is identified by residents, community groups and local businesses. Priorities were developed to guide ward assembly initiatives, and in previous years, for the purpose of the ward assembly fund (£12,500), where projects had to address these priorities to receive funding. An additional fund (£2,500) known as the council discretionary fund was available for other projects that benefit or enhance the local community, managed by the ward members (some ward members decide to combine the two funds). All assemblies have their priorities published on their ward assembly webpage, and many assemblies publish further information on local surveys, charters and plan priorities. The ward assembly funding has now been changed, however the process and capacities of the assemblies remains relevant.
- 5.9 The process is broadly as follows:
- Assemblies review and update their action plans, highlighting what areas they want to focus on in the coming year, with possible projects/ideas
 - The coordinating group reviews the action plan, determining how actions can be delivered, and identify projects that best fit the funding for the year
 - Projects developed further, with the support of council officers, to include costs, delivery, timescales etc.
 - Coordinating group present project ideas back to assembly who agree what to fund
 - Projects are then refined and finalised (including who will deliver projects) by the coordinating group and council officers, and submitted for formal approval
- 5.10 The annual process is completed by December, allowing allocations within the financial year. Prior to allocating funds, projects must complete a Project Proposal Form. This includes details on: the project, the priorities it meets, the activities proposed, impact on the ward, programme and key dates, location, proposals for joint working, identification of key risks and how to minimise their impact, proposed evaluation methods and success factors,

and, detailed budget and funding spreadsheet. An additional risk assessment form must be submitted with the application form. General guidance is provided on the assembly fund, as well as detailed guidance on the risk assessment and project proposal form.

Planning Obligations Spending Pilot – Whitefoot Ward Example

- 5.11 In 2014 £77k of Section 106 funding became available to be spent on Community Facilities in Whitefoot Ward. It was decided to involve the local community through the assembly in agreeing priorities for spending the Section 106 funds. The council produced guidance around planning obligations for the Whitefoot ward assembly which included:
- Background information on planning obligations
 - General guidance on S106 spending requirements and restrictions
 - Guidance on the council's formal allocation process for planning obligations
 - Financial information on available S106
- 5.12 The first community consultation was held at the assembly in July 2014 and resulted in over a dozen potential beneficiaries being identified. Forster Memorial Park and pavilion was ranked as the top priority at the time but there were no delivery partners to oversee project delivery so the assembly agreed to allocate the monies elsewhere with the proviso that when further S106 funds became available they would be directed towards improvements to the park. In the meantime efforts would be made to establish a new Friends of Forster Memorial Park.
- 5.13 In November 2014 the assembly hosted a 'Market Place' event inviting the organisations identified at the July 2014 assembly to set up information stalls detailing how they proposed to spend the S106 funds. A shortlist of projects was subsequently drawn up and in February 2015 a ballot went out to every household within the ward (on the back of the assembly flyer) inviting residents to nominate the top three community facilities they most wanted to see improved. Goldsmiths Community Centre, St Luke's Church and St Barnabas Church Hall were identified as the top three. Draft proposals were then submitted to the council for a viability check and each organisation returned to the assembly to present their worked up proposal for final assembly approval before full bids were submitted to the council's S106 board.
- 5.14 The assembly coordinating group formed a S106 working party to work with the community organisations to support delivery of the projects. In November 2016 a further £40k of S106 money became available. The Friends of Forster Memorial Park has now been established and in collaboration with the assembly set about seeking views of the local community about improvements to the park. This included consultation at the assembly and an online survey that received over 200 responses. In early 2017 proposals for improvements to the park were presented back to the assembly and improvements were ongoing throughout the year with S106 remaining a standing item on the assembly agenda.

6. Neighbourhood CIL (NCIL) Recommendations

- 6.1 The amount of neighbourhood CIL collected since implementation of the CIL regime in Lewisham from 2015/16 – 2016/18 is £1,393,099 (15% of CIL for the financial years 2015/16, 2016/17, and 2017/18), as reported in the Annual Monitoring Report (AMR) each year. The council does not perform any projections of future CIL receipts since payment of the levy is made upon commencement of development, and this is not something that is monitored by the council. However, given the levels of residential growth projected in Lewisham over this coming years, coupled with the proposals to increase the rate of CIL charged, it is likely that there will continue to be a sustained level of CIL receipts over the medium-term.
- 6.2 The council is able to spend 15% of CIL in the areas in which it was collected, however the Regs allow a greater proportion to be allocated. It is recommended that 25% of CIL be allocated to neighbourhoods in Lewisham. Allocating 25% would allow for greater local involvement in a meaningful manner, as well as providing community with sufficient resources to address the local impacts of development in a more comprehensive manner. It would also make the NCIL allocation process more inclusive in allowing all communities equal access to the same proportion of NCIL funding regardless of the adoption of a neighbourhood plan. If 25% is allocated (10% more than the 15% reported in the ARM) then this would total £2,321,832 for the financial years 2015/16, 2016/17, and 2017/18.
- 6.3 It is recommended that wards be used as the neighbourhoods for the purposes of CIL. This aligns with the government's guidance to use existing community consultation and engagement processes, and enables the council to build on the existing competencies, local capacities, local assemblies' process, and the political representation that exists through elected members. It is recognised that the function of ward assemblies will need to change significantly from their current role to form part of the NCIL process. In regards to this, the council will be working with assemblies and the wider population of residents within each ward (levering the communication tools at the council's disposal) to enable the process to be suitably engaging and far reaching and accessible, and will explore more detailed options for the use of different mechanisms and platforms to achieve this.
- 6.4 It is recommended that some form of financial redistribution be undertaken, recognising that the impacts of development are not restricted to the administrative boundary of wards, that diverse communities function across ward boundaries, and that to address the local impacts of development it is often necessary to develop more comprehensive projects and programmes at a greater scale. A level of financial redistribution will enable wider geographies to be used as the basis of proposed interventions, and will promote more comprehensive and ambitious allocations. This will build on

the success of a number of cross-ward initiatives already undertaken by the local assemblies through the assembly fund.

6.5 It is recommended that a redistributions strategy be implemented (based on a 25% allocation to NCIL) with distribution of: 50% collected in ward retained by the ward, 25% allocated by reference to rankings of wards by the Indices of Multiple Deprivation, and 25% allocated to a borough wide fund. Please note that the IMD rankings may need to be reviewed in more detail before a final allocation is made.

6.6 The amounts presented in the tables below represents the amount of neighbourhood CIL collected over the 3 year period of the financial years 2015/16 – 2017/18.

At 25% of CIL for neighbourhoods	IMD Band	Ward (50%)	Ward Top Up (by group) (25%)	Ward Total	All Ward NCIL Pot (25%)
Bellingham	3	£646.11	£48,411.07	£49,057.18	£580,932.86
Blackheath	1	£60,126.53	£16,137.02	£76,263.56	
Brockley	2	£22,192.08	£32,274.05	£54,466.12	
Catford South	1	£3,796.38	£16,137.02	£19,933.40	
Crofton Park	1	£13,247.19	£16,137.02	£29,384.22	
Downham	3	£4,383.02	£48,411.07	£52,794.09	
Evelyn	3	£546,894.55	£48,411.07	£595,305.63	
Forest Hill	1	£16,786.20	£16,137.02	£32,923.23	
Grove Park	2	£-	£32,274.05	£32,274.05	
Ladywell	1	£32,927.10	£16,137.02	£49,064.13	
Lee Green	1	£58.06	£16,137.02	£16,195.08	
Lewisham Central	2	£50,127.76	£32,274.05	£82,401.81	
New Cross	3	£217,404.75	£48,411.07	£265,815.83	
Perry Vale	2	£6,563.91	£32,274.05	£38,837.95	
Rushey Green	3	£150,472.64	£48,411.07	£198,883.71	
Sydenham	2	£3,173.14	£32,274.05	£35,447.19	
Telegraph Hill	2	£33,066.31	£32,274.05	£65,340.36	
Whitefoot	3	£-	£48,411.07	£48,411.07	

6.7 The process proposed is based on the principles presented to SDSC, the existing successful local assembly process, the S106 pilot, and best practice in London, and meets the CIL Regs and guidance outlined in the PPG. It is set to a medium-term financial strategy and 4 year cycle, and considers the financial and legal constraints applied to CIL. Each financial year once CIL receipts are known for that period, the council would publish updated figures and send a briefing note to all local assemblies and

members on remaining funds, projects approved, completed, and in progress.

6.8 The proposed process is presented below:

STAGE 1: Priority Setting (four year cycle)

Ward priorities ‘themes’ set by community through the local assemblies with members

- Organised by ward, using local assembly and member structure
- council published guidance on NCIL process and expectations
- member and local assembly briefings
- Publish background/contextual information for each ward (Corporate Strategy 2018-2022, relevant evidence bases, Local Plan policies, council capital programme etc.)
- Publish financial information on available NCIL amounts per ward
- Priority ‘themes’ for each ward set at workshop with community run by local assembly and members (with council support)
- Inclusion of Neighbourhood Plan priorities within process (where applicable, including across wards if neighbourhood plans are cross boundary)
- Priorities required to be broadly consistent with Corporate Plan 2018-2022, and Local Plan

OUTCOME: Ward priorities identified, agreed and published – to cover four year period

STAGE 2: ‘Open call’ for projects (biennial or annual process – ward assembly to decide)

‘Open call’ for projects directly submitted to council’s website

- Open call for project proposals
- Submissions via online NCIL project proposal Form A (for ward fund) or Form B (for borough fund); for ward fund applicant must be resident in that ward, for borough fund applicant must be Lewisham resident
- Proposals to ‘ward fund’ to address NCIL framework criteria:
 1. Meet the CIL Regulations (Reg 59 and/or 59F) ‘to support the development’ of an area through:
 - A. the provision, improvement, replacement, operation or maintenance of infrastructure; or,
 - B. anything else that is concerned with addressing the demands that development places on an area.
 2. Provide evidence of how they address a local priority from the priority setting workshop
 3. Provide evidence of a benefit to a Lewisham community
 4. Offer value for money
- Additional information for borough fund applications submitted to cover:
 5. Reflect priorities identified in:
 - The Corporate Strategy 2018-2022

- The Local Plan
- The Infrastructure Delivery Plan (IDP)
- Capital Programme
- Other key council plans
- 6. Project funding
- 7. Project delivery
- Proposals to 'borough fund' to address NCIL framework criteria:
 1. Meet the CIL Regulations (Reg 59 and/or 59F) 'to support the development' of an area through:
 - A. the provision, improvement, replacement, operation or maintenance of infrastructure; or,
 - B. anything else that is concerned with addressing the demands that development places on an area.
 2. Align with a priority within the Corporate Strategy 2018-2022
 3. Will make a significant contribution to two or more wards and/or have significant borough wide value
 4. Will make a significant contribution to addressing issues of deprivation (where necessary taking into consideration the Indices of Multiple Deprivation)
 5. Offer value for money
- Additional information for borough fund applications submitted to cover:
 6. Project funding
 7. Project delivery
- Projects submitted direct to council via online form

OUTCOME: Potential projects identified by communities, local assemblies and members

**STAGE 3: Evaluate projects and publish long-list (biennial or annual process – ward assembly to decide)
council officers assess, filter and group projects from the open call into a long-list**

- Evaluate project proposals against published 'framework criteria' identified above
- Proposals scored 'met'/'not-met' against each criteria (scores do not assess merits of application and are only used to ensure that the council is meeting its legal obligations as set out in the CIL Regulations 2010 (as amended), and that any proposed spending of CIL meets the councils finance and accounting obligations)
- council to publish long-list of projects

OUTCOME: Long-list published by council

**STAGE 4: Develop 'project bank' (biennial or annual process – ward assembly to decide)
Prioritisation of long-list by the community via local assembly with members**

- Prioritisation of long-list projects for the ward fund via a public vote of residents in each ward, ratified by the ward assembly with member involvement at a workshop
- Projects for the borough fund prioritised by the Director of Planning

- Where NCIL funds are not sufficient to deliver the top priority projects, ward assemblies to decide if they will fund lower priority projects, part of a project, or wait until further funding becomes available
- council to publish project bank with prioritised project list

OUTCOME: Project bank published by council with prioritised projects identified

STAGE 5: Allocate and delivery (annual process)

All projects allocated through PID process through Regeneration and Capital Delivery Board (RCDB) for the ward fund, and Mayor & Cabinet for the borough fund

- Allocation process to follow existing PID process for finance and legal audit
- council to assist organisations to develop projects with local assembly and members as projects and funds are available (CIL funding information updated annually)
- Allocations set through PID process to either ward fund or borough fund; when funding is available ward allocations will be made annually by RCDB, and borough allocations by Mayor & Cabinet annually
- Project delivery to follow existing finance and legal audit process

OUTCOME: PIDs submitted and allocations made aligned to available CIL receipts

STAGE 6: Monitoring, evaluation and reporting (annual)

- Project closure and reporting to follow existing PID reporting and audit process
- Reporting incorporated into existing AMR process
- Relevant reporting on NCIL/AMR to Safer Stronger Communities Select Committee and Sustainable Development Select Committee
- Review mechanism (year one only); NCIL outcomes from year one to be reported back to M&C including any recommendations for amendments to the process

OUTCOME: Yearly monitoring through AMR

Governance Arrangements

6.9 It is recommended that the council use existing governance and financial audit processes that align to the existing PID process; all PIDs for NCIL that seek ward funding will be assessed by Regeneration and Capital Delivery Board, and all PIDs for borough funding will be assessed by Mayor & Cabinet. It is recommended that existing audit and control process be applied to the allocation and spending of NCIL.

6.10 It is recommended that bids for project proposals to NCIL that occur during the 'open call' be assessed for compliance with a set of NCIL framework criteria. The council would only assess project proposals for completeness and for compliance with the framework criteria, and project proposals must meet all the criteria to be published as part of the long-list of projects. The assessment would not look at the merits of a bid, and would only be used to ensure that the council is meeting its legal obligations as set out in the CIL

Regulations 2010 (as amended), and that any subsequent spending meets the council's finance and accounting obligations.

- 6.11 Project proposals would need to identify if they were applying to the ward fund, or the borough fund, and complete a form providing basic information and demonstrating how they meet the framework criteria. Applicant would need to be a resident of the relevant ward to apply for the ward fund, and a Lewisham resident to apply for the borough fund.
- 6.12 The framework criteria and allocation process would be split for the ward fund and the borough fund as detailed below. For the ward fund it is proposed that all residents within a ward are eligible to participate in a public on-line vote on the long-list of projects to come up with a prioritised list of projects that the Director of Planning will then use to make recommendations to RCDB for allocation of funds (when funds are available, and once a year). For the borough fund it is recommended that the Director of Planning makes recommendations to Mayor & Cabinet on priorities based on the framework criteria (when funds are available, and once a year).
- 6.13 A review mechanism is provided in the year one monitoring process, whereby officers will report alongside the AMR the outcomes of the first year of the NCIL process, including any recommendations to Mayor and Cabinet on amendments to the process.
- 6.14 The draft application forms are attached in Appendix B.

Ward fund framework criteria

- 6.15 All projects must demonstrate that they:
 1. Meet the CIL Regulations (Reg 59 and/or 59F) 'to support the development' of an area through:
 - A. the provision, improvement, replacement, operation or maintenance of infrastructure; or,
 - B. anything else that is concerned with addressing the demands that development places on an area.
 2. Provide evidence of how they address a local priority from the priority setting workshop
 3. Provide evidence of a benefit to a Lewisham community
 4. Offer value for money
- 6.16 Proposals that are identified in an adopted Neighbourhood Plan will still have to complete a project proposal form, however they will not have to address criteria two on local priorities, as they will have already been subject to a referendum.

6.17 To facilitate the process of prioritising projects applications will also have to provide additional information on the corporate priorities the project addresses, and details on project funding and project delivery. These will not be scored, however they will assist communities in better understanding proposals, and in determining priorities for NCIL spending.

6.18 All projects must provide additional information to demonstrate how they:

5. Reflect priorities identified in:
 - The Corporate Strategy 2018-2022
 - The Local Plan
 - The Infrastructure Delivery Plan (IDP)
 - Capital Programme
 - Other key council plans
6. Project funding
7. Project delivery

Borough fund framework criteria

6.19 The borough fund is a fund that the council will allocate to projects that will benefit two or more wards, or the entire borough. As such all projects must demonstrate that they:

1. Meet the CIL Regulations (Reg 59 and/or 59F) 'to support the development' of an area through:
 - A. the provision, improvement, replacement, operation or maintenance of infrastructure; or,
 - B. anything else that is concerned with addressing the demands that development places on an area.
2. Align with a priority within the Corporate Strategy 2018-2022
3. Will make a significant contribution to two or more wards and/or have significant borough wide value
4. Will make a significant contribution to addressing issues of deprivation (where necessary taking into consideration the Indices of Multiple Deprivation)
5. Offer value for money

6.20 Additional information is required for applications to the borough fund that will not be scored. This information will assist the council in better understanding proposals, and in determining priorities for NCIL spending. All projects must provide additional information to demonstrate:

6. Project funding

7. Project delivery

Member involvement and ward assemblies

6.21 The council is seeking to put communities at the centre of the NCIL process. The use of wards and ward assemblies will help to facilitate this engagement and the functioning of the NCIL process since the structure of wards aligns to the system of elected members and relates to existing political and administrative structures of the council. This approach also aligns to the CIL Regulations 2010 (as amended) and the government's Planning Practice Guidance on CIL which states that councils should:

- Set out clearly and transparently an approach to engaging with neighbourhoods using their regular communication tools
- Using existing community consultation and engagement processes
- Be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates
- Ensure that the use of neighbourhood funds should match priorities expressed by local communities, including priorities set out formally in neighbourhood plans

6.22 By developing the role of the ward assemblies to include working to facilitate the NCIL process with the council and more widely with communities, the council will build on the existing competencies and local capacities of assemblies and the assemblies team, as well as leveraging the political representation that exists through elected members. Alongside this at all stages the engagement process will be implemented so as to reach out to diverse communities and use a variety of accessible platforms.

6.23 As elected ward representatives members are central to the NCIL process and will be involved in setting local priorities and developing project proposals. The involvement of members will also be essential in assisting communities in considering how NCIL projects could support the wider work of the council in delivering on key corporate priorities. To assist members in this process the council will be producing a guide that provides information to members on the Lewisham's NCIL process. In addition to existing work, the NCIL process provides opportunity for member involvement including:

- Working with communities and ward assemblies to identify long-term strategic priorities
- Leading on the development of cross-ward priorities (where relevant)
- Working with communities and ward assemblies to developing project proposals
- Directly submitting project proposals during the open call for projects
- Liaising with Neighbourhood Forums on NCIL priorities and projects
- Working with communities and assemblies to prioritise projects and develop project banks
- Engaging with the delivery of project in their ward and across the borough
- Leading on the coordination between wards where joint projects are proposed

- Evaluating the effectiveness of delivered projects and reviewing annual monitoring

6.24 The ward assemblies and members will be provided with opportunities at each stage of the process to work collaboratively with other wards to develop shared projects. Members will be expected to facilitate cross-ward coordination during the priority setting workshop and when developing project proposals.

6.25 Draft member and public guidance is provided in Appendix B.

7. Legal Implications

7.1 Regulation 59 of the Community Infrastructure Levy Regulations 2010 requires that a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area. Section 216 of the Planning Act 2008 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

7.2 Regulation 59F provides that where all or part of a chargeable development is in an area which is not a parish council then a charging authority, which in this instance is the council, may use or cause to be used the CIL which would have had to have been passed to a parish council, to support the development of the area by funding:-

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.

7.3 As there is no parish council in Lewisham this applies to its entire area.

7.4 The CIL receipts that would have had to be passed to the council if there was a parish council are as set out in Regulations 59A and 59B. This amounts to 25 per cent of the relevant CIL receipts in England, either where all or part of a chargeable development is within an area that has a neighbourhood development plan in place or where all or part of a chargeable development—

- (a) is not in an area that has a neighbourhood development plan in place; and
- (b) was granted permission by a neighbourhood development order made under section 61E or 61Q (community right to build orders) of TCPA 1990, and 15 per cent elsewhere.

- 7.5 The relevant CIL receipts are the proportion of CIL received in relation to a development equal to the proportion of the gross internal area of the development that is relevant development in the area, and the total amount of CIL receipts passed shall not exceed an amount equal to £100 per dwelling in the area of the local council multiplied by IA in each financial year
- 7.6 Currently as there are no neighbourhood plans in place the broader power to apply CIL in accordance with the provisions of Reg 59F is limited to 15 per cent of receipts.
- 7.7 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.8 In summary, the council must, in the exercise of its function, have due regard to the need to:
- (a) eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) advance equality of opportunity between people who share a protected characteristic and those who do not;
 - (c) foster good relations between people who share a protected characteristic and persons who do not share it.
- 7.9 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 7.10 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:
<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

7.11 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

7.12 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>

8. Crime and disorder implications

8.1 There are no direct crime and disorder implications arising from this report.

9. Equalities implications

9.1 The council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the council's work on equalities and helps ensure compliance with the Equality Act 2010.

9.2 An equalities analysis was undertaken as part of the preparation of the council's existing CIL charging schedule. In accordance with the Equality Act 2010, the analysis considers the potential impacts of the charging schedule on those groups identified within the Act as having protected characteristics.

9.3 There are no major concerns regarding equalities. The council should be mindful however to ensure that the income from CIL is allocated and spent is fair and equal across types of infrastructure and the geography of the borough.

9.4 Ultimately, CIL is a mechanism intended to raise money to fund infrastructure that will contribute to sustainable development in the borough. In this sense, the neighbourhood CIL strategy proposed should have an overall positive impact on the various equalities groups.

10. Environmental implications

10.1 Environmental issues are at the heart both of the planning process and the delivery of supporting infrastructure. Although the proceeds from neighbourhood CIL do not have to be specifically spent on environmental

projects, it is fair to assume that over time environmentally beneficial infrastructure projects will receive funding from NCIL.

11. Financial Implications

11.1 This report recommends that Full council approves the proposed NCIL process and the allocation of 25% of CIL to that process.

11.2 The council is enabled to set aside at least 15% of CIL receipts to spend on priorities that should be agreed with the local community (the NCIL process) in areas where development is taking place (rising to 25% in areas where a neighbourhood plan has been adopted). Agreeing to allocate 25% of CIL to the NCIL process (rather than 15%) will mean a significant additional amount of CIL will be allocated to this process, however as outlined in paragraphs 5.2 - 5.5 the additional 10% allocated will still have to be spent in accordance with the council's R123 list. As the council does not perform any projections of future CIL receipts since payment of the levy is made upon commencement of development, it is not possible to quantify the value of the additional funding that will flow through the NCIL process.

12. Conclusion

12.1 Full council is recommended to approve the recommendations set out in paragraph 3 of this report:

13. Background documents and originator

If you have any queries on this report, please contact Simon Zelestis, Strategic Planning, telephone 020 8314 8701.

Appendix A: Sustainable Development Select Committee Report and Minutes, November 2016

Appendix B: Draft application forms, draft member guidance, and draft public guidance