

# Climate Emergency Advisory Committee Paper

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Paper for Climate Emergency Advisory Committee on 28 October 2020

## Review of Community Infrastructure Levy (CIL) Spending Strategy

### Purpose of briefing paper

1. The purpose of this report is to seek comments on the proposed amendments to the CIL Spending Strategy (appendix A), approved in November 2018, for income generated by CIL.

### Corporate Objectives

2. The proposed changes to the CIL spending strategy will help to support the new emerging corporate plan themes:
  - Homes and infrastructure that meet local needs;
  - Improved economic and community wellbeing;
  - Action on the Climate Emergency;
  - Protect and restore our natural world;
  - Investment and innovation that rebuilds our financial viability;
  - Openness and accountability.

### Background

3. To enable sustainable housing growth in South Oxfordshire, the district needs to ensure that supporting infrastructure is planned for and secured. Developers are obliged to contribute to new infrastructure investment through the Community Infrastructure Levy (CIL) system.

4. The council started charging CIL in April 2016. Following a period of public consultation, the spending strategy was adopted in November 2018 to be piloted for a period one year to be followed by a review at Scrutiny and Cabinet in 2020, to ensure compliance in terms of meeting the desired objectives and to review its effectiveness.
5. CIL has not replaced Section 106 (S106) planning obligations. S106 obligations will continue to be used for:
  - a) On-site infrastructure such as open space, play areas, household waste bins, street naming, public art and securing affordable housing on developments within the CIL charging zones.
  - b) Financial and non-financial obligations on district development sites, which are exempt from CIL. These are sites which require developer contributions to make these sites acceptable in planning terms. These developments are identified within the council's Local Plan.
6. The CIL Regulations do not establish governance arrangements for the council, however they are clear that we have a duty to:
  - a) Pass to any town and parish 25% of the CIL revenues raised in those towns/parishes (the neighbourhood proportion) where there is an adopted neighbourhood plan, or 15%, subject to a cap of £100 per existing council tax dwelling, where there is no neighbourhood plan; <sup>1</sup>
  - b) Transfer the CIL income to the relevant town or parish council by 28 April and 28 October in any financial year (unless an alternative schedule is agreed);
  - c) Recover administrative expenses (the admin proportion) incurred in connection with CIL of up to 5% of income generated; <sup>2</sup>
  - d) Spend the levy on infrastructure (see point 8), and
  - e) Report on CIL income generated and how it is spent.<sup>3</sup>
7. Following the allocation of the neighbourhood and admin proportions, the approved CIL spending strategy distributes the remaining amount (the district proportion) on a percentage-based system. This enables the allocation of funding to external partners and internal council departments, based on actual funds received, as follows:

Infrastructure type	Percentage of CIL to be allocated
<b>Oxfordshire County Council (OCC):</b>	
Education and transport infrastructure	50%

<sup>1</sup> Funds paid to and not spent by town and parish councils within five years may be claimed back by the district council.

<sup>2</sup> The admin proportion can be rolled over for the first three years following the adoption of CIL. Following this and on an annual basis, any underspend is to be added to the district proportion at the end of the reporting year.

<sup>3</sup> As a requirement of CIL regulation amendments in September 2019, an annual Infrastructure Funding Statement covering both CIL and S106 income and expenditure is to be published by the charging authority by December of each year, covering the previous financial year, from 2020 onwards.

<b>Oxfordshire Clinical Commissioning Group (OCCG)</b>	
Community health care	20%
<b>South Oxfordshire District Council:</b>	
Sports and Leisure facilities (incl. improved disabled access)	20%
Green Infrastructure/Biodiversity provision	5%
Public art and cultural heritage/Public realm (including improved disabled access)	5%
TOTAL	100%

8. The district proportion must be spent in accordance with the following guidance:

*The levy can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see [section 216\(2\) of the Planning Act 2008](#), and [regulation 59](#), as amended by the [2012](#) and [2013 Regulations](#)). 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. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant plan (the Development Plan and the London Plan in London). Charging authorities may not use the levy to fund affordable housing.*

*Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed.*

*The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development <sup>4</sup>*

9. A summary of how some other authorities spend their CIL funds is attached as appendix B. The headlines of these are as follows:

- a) CIL regulations relate to all charging authorities (unitary, two tier and London boroughs) and arrangements tend to differ regarding type of authority.
- b) District councils usually, but not exclusively, set up member spending panels or boards to consider CIL expenditure and make recommendations to cabinet for final approval.
- c) Many authorities publish spending criteria to guide CIL spending priorities. They usually include reference to Infrastructure Delivery Plans (IDP), Local Plan priorities but sometimes are extended to include local and partnership benefits, other funding contributions, deliverability and local support.
- d) Some authorities set up panels to assess bids (internal and external) for funding, using an agreed CIL grant allocation.

10. A report detailing CIL funding received from 1 April 2016 to 31 July 2020 and spending of these funds can be found in appendix C. The headlines of these figures are as follows:

<sup>4</sup> Source: <https://www.gov.uk/guidance/community-infrastructure-levy>

- a) Total funds received = £21,129,440.74\*
  - i. 1 April 2016 to 31 March 2017 = £509,304.53
  - ii. 1 April 2017 to 31 March 2018 = £2,190,161.82
  - iii. 1 April 2018 to 31 March 2019 = £7,412,863.31
  - iv. 1 April 2019 to 31 March 2020 = £8,779,703.96
  - v. 1 April 2020 to 31 July 2020 = £2,237,407.12
- b) Total neighbourhood proportion = £3,839,001.29 (of which £2,621,312.33 has been passed to town / parish councils as of April 2020)
- c) Total admin proportion = £1,094,065.85 (of which £288,677.06 has been spent on staff costs as of April 2020)
- d) Total district proportion = £16,196,373.68
  - i. OCC (50% of district proportion) £8,098,186.84 of which £2,635,841.00 has been approved / spent
  - ii. OCCG (20% of district proportion) £3,239,274.74 of which £0.00 has been approved / spent
  - iii. Sports and leisure facilities (20% of district proportion) £3,239,274.74 of which £0.00 has been approved / spent
  - iv. Green infrastructure / biodiversity provision (5% of district proportion) £809,818.68 of which £0.00 has been approved / spent
  - v. Public art and cultural heritage (2.5% of district proportion) £404,909.34 of which £0.00 has been approved / spent
  - vi. Public Realm (2.5% of district proportion) £404,909.34 of which £45,301.18 has been approved / spent

\*Variance between total funds received (a) and total of neighbourhood proportion, admin proportion and district proportion (b, c and d) of £0.08 due to payment errors on CIL cases 4179 and 3974.

## Proposed Amendments

11. Following approval of the spending strategy, the financial climate has caused the council to review its approach in delivering new infrastructure. It is therefore proposed that the district council's allocation of funding can be directed towards existing council owned infrastructure, providing that it is spent in accordance with CIL regulations (i.e. it can be for improvement, replacement, operation or maintenance of existing infrastructure providing that this supports development) along with new infrastructure projects. For projects that meet CIL spending criteria, council departments will be directed to use these funds, wherever possible, prior to using council funds.
12. The Cabinet member for Economic Development and Regeneration has discussed the proposed amendments with officers and is supportive of a wider discussion on the direction of the strategy. This will be discussed at scrutiny committee. The proposed amendments are set out in point 13 below.
13. The table below summarises the amendments made in the reviewed spending strategy (appendix D). Where point numbers are not listed, no amendments / only minor amendments have been made.

Original Point	Revised Point	Amendment
<b>Background</b>		
1	1	Removed reference to current charging schedule being reviewed
2	2	Removal of reference to Regulation 123 List for which the requirement for was removed in the September 2019 CIL regulation changes. This removed pooling restrictions which now allows for CIL and S106 contributions to be used on the same project.  Inclusion of use to fund projects included in the IDP and for enhancing existing infrastructure providing that this supports development.
6	6	Removal of reference to spending funding in area that is was generated
<b>CIL income</b>		
8	8	Financial figures updated to reflect receipts up to 31 July 2020
9	9	Financial figures updated to reflect town and parish transfers up to 31 July 2020 and use of admin proportion up to 31 March 2020
10	10	Financial figures updated to reflect use of admin proportion up to 31 March 2020
12	12	Removal of reference to annual CIL reporting as this has been replaced by the infrastructure funding statement and is covered in greater detail later in the strategy.
<b>CIL percentage allocation</b>		
14	14	Removal of point ii and references to district council as district council funding split by percentage to internal departments to be removed
15	15	Updated funding table to remove percentage split for internal departments.  Updated funding table to identify use of the district council allocation for provision of new infrastructure as identified by the IDP and / or corporate priorities and enhancement

		<p>of existing infrastructure providing that this supports development</p> <p>Removal of historic information about other options considered for original strategy</p>
<b>Oxfordshire County Council</b>		
<b>17</b>	<b>17</b>	Amended memorandum of understanding to funding agreement. Included that annual funding agreement would set out which projects are to be funded.
<b>Oxfordshire Clinical Commissioning Group</b>		
<b>19</b>	<b>19</b>	Amended the memorandum of understanding to be a funding agreement.
<b>The council's allocation</b>		
<b>20</b>	<b>20</b>	Addition of using funding for improvement, replacement, operation or maintenance of existing infrastructure providing that this supports development as allowed by CIL regulations. Removal of reference to percentage allocation to council departments and updating of process for allocating funding through budget setting process / approving funding in line with financial procedure rules.
<b>21</b>	<b>21</b>	Removal of reference to pooling restrictions as these were removed by the September 2019 CIL regulations amendments.
<b>Town and parishes</b>		
<b>New</b>	<b>22</b>	Paragraph added to outline what the neighbourhood proportion can be spent on.
<b>22</b>	<b>23</b>	<p>Removal of reference to appendix 5 (removed), town and parish transfers.</p> <p>Inclusion of reference to IDP projects.</p>
<b>New</b>	<b>24</b>	New paragraph regarding supporting parishes to use their funds to contribute towards district, OCC and OCCG projects.
<b>23</b>	<b>25</b>	Reworded requirements of CIL reporting by town and parish councils and noted that spend of this allocation of funding is ultimately for the town / parish councils to

		decide on.
<b>24</b>	<b>Removed</b>	Removal of whole paragraph on use of admin proportion as this is covered elsewhere in the strategy
<b>CIL spending process Amended to: CIL spending cycle</b>		
<b>25</b>	<b>26</b>	Updated process to remove district council percentage allocations, give further details on transferred to OCC / OCCG and town and parish councils and include new monitoring / review arrangements.
<b>26</b>	<b>Removed</b>	Removal of timetable for implementation of original spending strategy.
<b>Linking CIL spending strategy to capital programme Amended to: Linking CIL Spending Strategy to the capital programme and use of admin allocation</b>		
<b>27</b>	<b>27</b>	Included details on how CIL funds can be allocated and spent in line with the council's financial procedure rules if they were not included in the annual budget setting process.
<b>New</b>	<b>28</b>	Added paragraph to reflect that CIL figures are reported at end of December so that they can be included in the following year's approved budget. Any funds not included in budget can be allocated and spent in line with the council's financial procedure rules during the year or if they remain unallocated, added to the approved budget the following year.
<b>New</b>	<b>29</b>	Added paragraph to cover how admin proportion is allocated and that at the end of the financial year it must be added to the district council proportion for the following year. This is set out in CIL regulations.
<b>Can the levy be spent outside South Oxfordshire?</b>		
<b>28</b>	<b>30</b>	Updated to allow use for funding across district boundary within the Didcot Garden Town area.
<b>Can the CIL funds be spent outside the development area where they were generated?</b>		
<b>29</b>	<b>31</b>	Removal of requirement to 'as far as possible, spend funding in area it was generated'. Inclusion that local CIL allocation is covered through the town and parish

		proportion of funding received.
<b>Reporting of CIL</b>		
<b>30</b>	<b>32</b>	Included details about new infrastructure funding statement requirements. Removed references to previous reporting process.
<b>Conclusion Amended to: Summary</b>		
<b>31</b>	<b>33</b>	Included reference to the clarity provided to OCC and OCCG for financial planning and flexibility of the use council funds. Removed percentage allocation table as this appears earlier in the strategy.
<b>32</b>	<b>34</b>	Amended to state that strategy will be monitored alongside the approval of the annual infrastructure statement at which point amendments can be identified and a review can be triggered if required. This method would also allow the strategy to be agile enough to allow for any future changes in CIL regulations.
<b>33</b>	<b>Removed</b>	Removal of paragraph relating to using unused funds from approved allocations for other council departments
<b>New</b>	<b>35</b>	Reference added for Appendix 1, procedural overview
<b>Appendix 1 – Regulation 123 List</b>	<b>Removed</b>	Removal of reference to Regulation 123 List for which the requirement for was removed in the September 2019 CIL regulation changes. This removed pooling restrictions which now allows for CIL and S106 contributions to be used on the same project.
<b>Appendix 2 – OCC / OCCG draft form for CIL funding</b>	<b>Removed</b>	This is a procedural document and not required for inclusion in the strategy.
<b>Appendix 3 – CIL governance overview</b>	<b>Appendix 1 – CIL procedural overview</b>	Process amended to reflect proposed changes to the strategy and added reference to annual infrastructure funding statement.
<b>Appendix 4 – Annual report for CIL funded</b>	<b>Removed</b>	This is a procedural document and not required for inclusion in the strategy

<b>projects</b>		
<b>Appendix 5 – Town and Parish Transfers as at October 2017</b>	<b>Removed</b>	Information out of date and content no required for inclusion within spending strategy
<b>NEW</b>	<b>Appendix 2 – Didcot Garden Town Area</b>	Didcot Garden Town boundary map added in relation to point 29 of strategy.

14. Internal consultation has been widely carried out and the comments incorporated into the strategy where possible. Responses to the consultation are shown in appendix E.

### Climate and Biodiversity Implications

15. The new strategy will allow more flexibility for internal spending and although the 5% allocation for Biodiversity and Green Infrastructure will be removed, the requirement for funds to be spent in line with the council’s new corporate priorities will mean that it will still be possible to allocate CIL funding to these type of projects, including those supporting tree planting and climate mitigation.

16. Response to the internal consultation suggested that the CIL strategy includes an element of education and promotion of these new opportunities which could include:

- Electric vehicle charging points
- Battery storage
- Renewable energy installations such as ground mount solar
- Private wire electricity supplies.

As the strategy is proposing spending to be linked to corporate priorities, details of such opportunities need to be referenced in these emerging priorities.

17. The reviewed strategy will be considered by the council’s climate change committee on 28 October 2020.

### Financial Implications

18. Oxfordshire County Council and Oxfordshire Clinical Commission Group, and relevant internal council departments will be informed of the amount of CIL available to them in April each year. This will be based on December year end actual CIL funds received, less transfers made to parishes and a five per cent administration cost deduction.

These amounts will be included as part of our budget setting in February each year and detailed in the approved capital programme. Any amounts unspent will be returned to our CIL budget to be reallocated the following year. There will be no other additional budget requirements.

19. The potential change to the spending strategy to allow use of funds for improvement, replacement, operation or maintenance of existing infrastructure. This is on the proviso that this supports development as allowed by CIL regulations, to alleviate existing financial pressures. However, this approach may stifle the opportunity to accumulate funds to support key transformational projects.

### Legal Implications

20. A comprehensive response to the internal consultation has been received from the council's Interim Litigation and Planning Team Leader. The full response can be found in appendix E. The key points of this response can be found below in points 21 to 26.
21. There is an ability for a Council as Charging Authority to spend CIL on maintenance of existing infrastructure that supports the development of its area. There is a requirement that this be confined to areas within the Charging Authority's area that have clearly experienced housing growth. This may ameliorate the demands that such development has made on that specific part of the Charging Authority's area. However, the levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy known deficiencies, unless those deficiencies will be accentuated by housing development.
22. A definition of "area" could not be found in the interpretation provisions of either the CIL Regs or the Planning Act so and it is therefore reasonable to take it as the normal extent of the relevant district. In any event CIL Reg 59(3) allows expenditure out of the "area" where to do so would support the development of its area. The Council will need to be able legally justify that any existing infrastructure we sought to maintain from CIL supports development in the area on a case by case basis. While this wording leaves a lot more flexibility than in relation to the application of funds received by a planning obligation pursuant to s106, there could be a potential risk of challenge to the Council if it applied funds where it did not "support the development of its area".
23. CIL is not to be used for routine expenditure of the Charging Authority, instead directed towards supporting the development of its area by the provision of new and improved infrastructure.
24. CIL Regulations set the context for the spending of CIL funds on infrastructure. The regulations encourage the accumulation of CIL funds into a 'pot'. Unlike other obligations or charges, CIL spending does not need to be directly related to the donor development and can address infrastructure needs in general across the Councils' administrative areas.
25. CIL monies can be spent on the provision, improvement, replacement, operation or maintenance of infrastructure, or anything else that is concerned with addressing demands that development places on an area. However, CIL may only be used to fund

a project in an area that has experienced housing growth. The Levy can be used to increase the capacity of existing infrastructure or to repair failing infrastructure if that is necessary to support development.

26. CIL cannot be used to fund solutions to existing problems i.e. traffic calming/management or on repairs to existing infrastructure in an area that has not experienced housing growth. The levy is intended to focus on the provision of new or improved infrastructure and should not be used to remedy known deficiencies, unless those deficiencies will be made more severe by new development.

## Conclusion

27. The proposed amendments to the CIL spending strategy continue to allocate spending on a percentage-based system being spent in accordance with CIL regulations. To support the councils emerging corporate priorities and the amendments to the spending strategy will come into force from 1 April 2021.
28. The proposed amendments to the spending strategy remove the percentage split for the council's internal departments, thus allowing any department to apply to use CIL funds for projects. This is providing that they meet the criteria set out in the CIL regulations and in the spending strategy. Any unspent funds as of 1 April 2021 allocated by percentage to internal departments under the original strategy will be reallocated, in line with the new stipulations.
29. The percentage allocation for OCC (50%) and OCCG (20%) remain the same, as the Infrastructure Delivery Plan has not been updated since the original spending strategy was approved. Officers will continue to work with OCC and OCCG to encourage CIL funded projects to be brought forward.
30. The district proportion is not required to be used in the areas from where they were generated. Funds within the Didcot Garden Town area can be spent across the district council boundary into the Vale's area, but still within the garden town boundary.
31. The reviewed CIL spending strategy sets out an option to use CIL funding towards enhancements, increasing capacity and retention of existing infrastructure as allowed within CIL regulations as well as towards new infrastructure projects identified in the IDP.
32. The council continues to contribute towards the neighbourhood proportion to parish councils, in accordance with the schedule set out in the CIL regulations
33. The strategy will be monitored alongside the approval of the annual infrastructure funding statement. Amendments can be identified, and a review can be triggered if required. This method would also allow the strategy to be agile enough to allow for any future changes in CIL / planning regulations, such as those proposed in the [Planning for the Future](#) white paper of August 2020. This paper is currently under consultation.

## Next Steps

34. The review will be taken through the normal committee process as follows:

- 9 October 2020 – Cabinet Briefing
- 28 October 2020 – Climate Change Committee
- 9 November 2020 – Scrutiny Committee
- 3 December 2020 – Cabinet

35. Unlike the setting of CIL collection rates, public consultation on the process of spending of CIL funds is not required by these regulations. Comments from the Community Engagement team (Appendix E) on whether to consult or not comes down to what material difference will the proposed changes make and what influence, if any, a consultation may have on the outcome. A formal consultation therefore may not be needed.

### 36. List of appendices:

Appendix A – Approved CIL spending strategy, November 2018

Appendix B – CIL governance examples

Appendix C – CIL financial report 01.04.2016 to 31.07.2020

Appendix D – Reviewed CIL spending strategy

Appendix E – Internal consultation responses.