

## Notice of Non-key Executive Decision

<b>Subject Heading:</b>	<b>Authorise the establishment of a Neighbourhood Community Infrastructure Levy (NCIL) Governance Process</b>
<b>Decision Maker:</b>	Helen Oakerbee – Director of Planning & Public Protection
<b>Cabinet Member:</b>	Cllr Graham Williamson, Cabinet Member for Development and Regeneration
<b>ELT Lead:</b>	Neil Stubbings – Strategic Director of Place
<b>Report Author and contact details:</b>	Ben Dixon Infrastructure Planning Team Leader <a href="mailto:ben.dixon@havering.gov.uk">ben.dixon@havering.gov.uk</a> 01708 433030
<b>Policy context:</b>	Delivering increased flexibility and scope for the spend of CIL receipts
<b>Financial summary:</b>	This will provide increased flexibility and scope for the spend of 15% of CIL receipts
<b>Relevant Overview &amp; Scrutiny Sub Committee:</b>	Place / Resources
<b>Is this decision exempt from being called-in?</b>	<i>The decision will be exempt from call in as it is a Non key Decision</i>

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**The subject matter of this report deals with the following Council Objectives**

People - Things that matter for residents - X

Place - A great place to live, work and enjoy - X

Resources - A well run Council that delivers for People and Place - X

## **Part A – Report seeking decision**

### **DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION**

The Director of Planning & Public Protection is recommended to authorise the establishment of a Neighbourhood Community Infrastructure Levy (NCIL) governance process from 1<sup>st</sup> December 2023, in accordance with the details agreed by the Infrastructure Planning & Delivery Board (IPaDB – a function of ELT) at the meeting on 17<sup>th</sup> October 2023.

### **AUTHORITY UNDER WHICH DECISION IS MADE**

Part 3.3 [Responsibility for Functions] of the Council's Constitution

3.4 Power of Second Tier Managers

General powers

- (a) To take any steps necessary for proper management and administration for their allocated portfolios.

Functions relating to the Community Infrastructure Levy

Part 11 of the Planning Act 2008 Head of Planning, except where:

- approval by Council is required to submit a draft charging schedule for examination, approve a charging schedule or withdraw a charging schedule;
- approval by the Executive is required to consult on or adopt a new or amended Regulation 123 List.

### **STATEMENT OF THE REASONS FOR THE DECISION**

The reason for the decision is:

To allow the Council to establish a Neighbourhood Community Infrastructure Levy (NCIL) governance process to provide the Council with greater flexibility and scope for the allocation and spend of 15% of Community Infrastructure Levy (CIL) receipts.

#### **Background**

The Community Infrastructure Levy (CIL) was established through the Planning Act 2008 (Part 11) and is bound by the Community Infrastructure Levy Regulations 2010 (as amended).

Havering adopted its CIL in July 2019 and it came into effect on 1st September 2019. The levy applies to all 'CIL Chargeable' developments granted planning permission on or after 1 September 2019.

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A total of £7.49m of CIL payments have been received by the Council to the end of October 2023 and the unallocated CIL balance is currently £2.86m.

When Havering set up its CIL, it adopted the most simplistic version of CIL where 95% of CIL monies received are held in a single 'Strategic' borough-wide CIL pot, with 5% paid to the CIL Admin Fund (used to fund the cost of administering the monitoring, collection and spend of CIL). With this simplistic single pot process, the 95% of CIL monies received are limited to spend on funding the delivery of a range of hard physical infrastructure needed to support the growth and development of the borough.

The types of infrastructure that can be funded from 'Strategic' CIL are set out in Section 216(2) of the Planning Act 2008 and Regulation 59 of the Community Infrastructure Levy Regulations 2010 (as amended). These include: transport, flood defences, schools and education facilities, hospitals, health and social care facilities, play areas, open spaces, parks and green spaces, cultural and sports facilities, district heating schemes, police stations and other community safety facilities.

Regulation 59F of the Community Infrastructure Levy Regulations 2010 (as amended) directs that where there is no Neighbourhood Plan in place (as is the case for Havering) up to a maximum of 15% of total borough-wide CIL receipts can be made available for spending as Neighbourhood CIL (NCIL), with 5% retained as the CIL Admin Fund, and the remaining 80% used as Strategic CIL.

As Havering has received a total of £7.49m in CIL payments to date, if NCIL had been established when CIL was adopted, there would have been £1.12m (15%) available to spend as NCIL since September 2019. Looking at the trend data for CIL receipts it appears likely that in an average year Havering will receive between £2m - £2.5m, which would equate to an NCIL pot each year of between £0.3m - £0.375m.

### National Guidance on NCIL

The Government has provided the following national guidance explaining and detailing the processes and requirements governing the spend of NCIL as directed by the CIL Regulations (underlining added for emphasis):

'If there is no parish or town council, the charging authority will retain the NCIL receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding. Charging authorities should set out clearly and transparently their approach to engaging with neighbourhoods using their regular communication tools for example, website, newsletters, etc. The use of neighbourhood funds should therefore match priorities expressed by local communities.'

'Where the charging authority retains the neighbourhood funding, they can use those funds (15% - as provided for in Regulation 59F) on the wider range of spending that are open to local councils. The neighbourhood portion of the levy can be spent on a wider range of things than the rest of the levy (strategic CIL), provided that it meets the requirement to 'support the development of the area' (as defined by Regulation 59C). The wider definition means that the neighbourhood portion can be spent on things other than infrastructure provided it is concerned with addressing the demands that development places on the area. For example, NCIL could be used to fund affordable housing.'

'The law does not prescribe a specific process for agreeing how the neighbourhood portion should be spent. Charging authorities should use existing community consultation and engagement processes. This should include working with any theme specific neighbourhood groups, local businesses and using networks that ward councillors use. Crucially this

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consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates.'

'In deciding what to spend the neighbourhood portion on, the charging authority and communities should consider such issues as the phasing of development, the costs of different projects (for example, a new road, a new school), the prioritisation, delivery and phasing of projects, the amount of the levy that is expected to be retained in this way and the importance of certain projects for delivering development that the area needs. The charging authority and communities may also wish to consider appropriate linkages to the growth plans for the area and how neighbourhood levy spending might support these objectives.'

### NCIL Governance Process Agreed by IPaDB (ELT)

An options paper was presented to the Infrastructure Planning and Delivery Board (IPaDB – a function of ELT) on 17<sup>th</sup> October 2023 setting out four potential options for a NCIL governance process which could be established. IPaDB confirmed the preferred option from the four presented and confirmed this was agreed in principle subject to further consultation with Theme Board.

An options paper was subsequently presented to Theme Board for consultation at the meeting held on 20<sup>th</sup> November, setting out the same four potential options for a NCIL governance process, which could be established, and advising of the IPaDB's decision on the preferred option. Theme Board confirmed support for the IPaDB's decision on the preferred option for a NCIL governance process to be established. Theme Board also confirmed support for Helen Oakerbee (Director of Planning & Public Protection) to establish the agreed NCIL governance process under relevant delegated powers to commence from 1<sup>st</sup> December 2023.

### Agreed Option for NCIL Governance to be Established

The option for a NCIL governance process agreed by the IPaDB (ELT) in consultation with Theme Board is described below:

- The Council would be responsible for suggesting all the options to be considered for allocation and spend of all NCIL.
- The options considered for allocation and spend of NCIL would be promoted by ELT in consultation with Theme Board.
- All decisions on the allocation and spend of NCIL would be taken directly by ELT in consultation with Theme Board at appropriate meetings and these decisions would be clearly documented.
- All decisions on the allocation and spend of NCIL would be clearly set out in the Council's published financial reporting.
- The operation of the NCIL governance process shall be reviewed once it has operated for two full financial years starting from 1<sup>st</sup> April 2024. At this time it shall be decided by IPaDB (ELT) whether to continue with the existing NCIL governance process for a further two years, or whether the NCIL governance process should be amended.

This option was agreed as it provides the desired flexibility and scope for the funds in the NCIL pot to be focussed on the greatest priorities in the borough associated with development.

A total of four options for NCIL governance were put forward for consideration. Details of the three discounted options are set out in the section below.

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### OTHER OPTIONS CONSIDERED AND REJECTED

A total of four options for NCIL governance were put forward for consideration. Details of the three options that were rejected are set out below.

#### Alternative Option 1

- Options to be considered for allocation of NCIL would be derived from the community outside of the Council.
- Bids would be made each year on the funding available in the NCIL pot.
- Admin and governance would be managed solely by Council officers
- Funding decisions would be made by IPaDB in consultation with Theme Board.

This option was rejected due to the Council currently having insufficient resources to support this type of governance process, and because it would not allow NCIL funds to be focussed on the greatest priorities in the borough.

#### Alternative Option 2

- Options to be considered for allocation of NCIL would be derived from the community outside of the Council.
- Outsourced crowdfunding / match-funding would be applied including use of an associated online platform.
- Bids would be made each year on the funding available in the NCIL pot, subject to securing the required crowdfunding / match-funding.
- Admin and governance would be supported by an external partner organisation
- Funding decisions would be made by IPaDB in consultation with Theme Board.

This option was rejected due to the Council currently having insufficient resources to support this type of governance process, and because it would not allow NCIL funds to be focussed on the greatest priorities in the borough.

#### Alternative Option 3

- The Council would be responsible for suggesting all the options to be considered for allocation and spend of all NCIL.
- Bids would be made each year on the funding available in the NCIL pot.
- The existing governance process for strategic CIL bids would be replicated for NCIL.
- Funding decisions would be made by IPaDB in consultation with Theme Board.

This option was rejected because it would not allow NCIL funds to be focussed on the greatest priorities in the borough as decided by ELT in consultation with Theme Board.

### PRE-DECISION CONSULTATION

Infrastructure Planning & Delivery Board (ELT) were presented a NCIL governance options paper on 17<sup>th</sup> October 2023 and the preferred option was agreed.

Theme Board were consulted on a NCIL governance options paper and the IPaDB's decision on 20<sup>th</sup> November 2023.

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NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Ben Dixon

Designation: Infrastructure Planning Team Leader

Signature:



Date: 04/01/2023

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### Part B - Assessment of implications and risks

#### **LEGAL IMPLICATIONS AND RISKS**

Under CIL Regulation 59 of the CIL Regulations 2010 (as amended) the Council is able to set up a Neighbourhood Community Infrastructure Levy (NCIL) governance process allowing more flexible spend of 15% of the Council's CIL receipt. Regulation 59 directs the NCIL (15%) portion of the Council's CIL receipt can be spent on anything which would support the development of the Council's area.

#### **FINANCIAL IMPLICATIONS AND RISKS**

Establishing a Neighbourhood Community Infrastructure Levy (NCIL) governance process would provide the Council with greater flexibility and scope for the allocation and spend of 15% of Community Infrastructure Levy (CIL) receipts on anything which would support the development of the Council's area.

#### **HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)**

The recommendations made in this report do not give rise to any identifiable HR risks or implications that would affect either the Council or its workforce.

#### **EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS**

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

It is considered that an Equality and Health Impact Assessment is not necessary in relation to this decision.

#### **ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS**

It is considered the proposed decision would not result in any negative environmental or climate change implications.

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**BACKGROUND PAPERS**

None

**APPENDICES**

None

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**Part C – Record of decision**

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

**Decision**

Proposal agreed

**Details of decision maker**

Signed: 

Name: Helen Oakerbee, Director of Planning and Public Protection

Date: 12 January 2024

**Lodging this notice**

The signed decision notice must be delivered to Committee Services, in the Town Hall.

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_