

North Yorkshire Council

Executive

6 February 2024

**Community Infrastructure Levy Spending Protocol and Infrastructure Funding Statement
2022/23**

Report of the Corporate Director of Community Development

1.0 PURPOSE OF REPORT

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| 1.1 | To approve the Community Infrastructure Levy (CIL) Spending Protocol which oversees the convergence of legacy council's CIL receipts and collection, auditing and spending of future CIL monies. This ensures that CIL serves its purpose of contributing to the delivery of the infrastructure necessary to support development in North Yorkshire (set out in Section 4 of this report). |
| 1.2 | To approve the 2022/23 North Yorkshire Annual Infrastructure Funding Statement and publish on the North Yorkshire Council website |

2.0 BACKGROUND

What is the Community Infrastructure Levy (CIL)?

- 2.1 Community Infrastructure Levy (CIL) was introduced in 2010 through the Community Infrastructure Levy Regulations 2010, which were updated in 2019. CIL is one of three distinct mechanisms by which new development can contribute funding for the infrastructure needed to support it. Others being S106 Planning Obligations and s278 highway pre-requisites.
- 2.2 CIL takes the form of a tariff per square metres of additional floorspace and is only payable for certain types of development in certain locations also known as zones. The specific CIL charging rates, types of development and charging zones are identified in a local authority specific Charging Schedule and the rates are based on viability testing and identified funding gaps for infrastructure necessary to support future development. The CIL Charging Schedule is subject to public consultation and independent Examination. The implementation of CIL by a local authority is not mandatory and there are some areas where after viability testing, it is concluded that development could not bear the additional costs of CIL.
- 2.3 CIL differs fundamentally from S106 in that the funds collected are not tied to a specific development or the provision of specific infrastructure. Unlike infrastructure provided through S106 planning obligations, which must be necessary to mitigate the impact of a particular development and used only for that specific purpose, CIL funds can be used flexibly to fund any infrastructure as defined within the regulations.
- 2.4 On receipt, CIL payments are divided into three parts in line with the CIL regulations as follows:
- **Neighbourhood Portion:** For communities without a 'made' Neighbourhood Plan 15% of CIL receipts are passed twice a year to those Parish Councils where

development has taken place to be spent on local priorities (capped to a maximum of £100 (index linked) per existing council tax dwelling). Communities with a 'made' Neighbourhood Plan (or in areas where there is a Neighbourhood Development Order) will receive 25% of the levy revenues arising from the development that takes place in their area. This amount will not be subject to a maximum limit. Unparished areas will still benefit from the relevant neighbourhood portion however, in line with Government guidance, the charging authority will retain the CIL receipts and consult and engage with the community where development has taken place to establish how to spend the Neighbourhood funding.

- **Administration** 5% of the total amount of CIL collected in that year will be applied to administrative expenses incurred in that year. In line with government guidance, any unspent funds at the end of a year from the administrative portion will be treated as general funds.
- **Strategic Funding Pot** The remaining funds (70% or 80% of the levy) will be retained by the charging authority to be spent on infrastructure that supports growth within the area. This 'pot' should be spent on a prioritised list of infrastructure projects.

Spending of CIL

- 2.5 The CIL Regulations, whilst being very clear about the 'rules' for collecting CIL, does not prescribe the process for spending. It is expected that individual charging authorities develop their own process for determining spending priorities with the only requirement being that CIL is used to fund infrastructure. The National Planning Policy Guidance states that 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. This definition therefore allows the levy to be spent on a very broad range of facilities and gives local areas the opportunity to choose what infrastructure is needed to deliver the Local Plan. In essence, the only government guidance is that it must be spent on infrastructure needed to support the development of the area and the charging authority must decide what infrastructure is needed.
- 2.6 Whilst the CIL regulations are not specific about the decision-making process for prioritising the spending of CIL, they do set out requirements on local authorities to monitor, report and publish annually, details of all funding received and all expenditure of CIL funding for the previous financial year. This has to be completed through the annual Infrastructure Funding Statement (IFS) which the Council is required to produce and publish each year. The IFS also has to include a list of agreed spending priorities and/or individual projects which CIL is expected to be spent on for the forthcoming year. This is known as the Infrastructure List. The regulations also allow CIL and S106 monies to be spent on the same infrastructure.
- 2.7 The 2023 IFS will be based on information for the financial year 2022/23 so whilst being one document for North Yorkshire, it will be split to report on the individual financial information for each legacy district council. This report will not include the infrastructure list identifying the future spending priorities as these have not yet been established. The 2024

IFS will report on the financial details for the first financial year of the new authority and will include an Infrastructure List.

- 2.8 The Community Infrastructure Levy (CIL) Regulations have been amended several times since 2010. The latest amendments came into force on 1 September 2019. These latest amendments to the Regulations make a number of significant changes to the operation of CIL and Section 106 planning obligations, specifically giving councils greater flexibility over the identification of infrastructure priorities. These changes, together with LGR, are particularly relevant to North Yorkshire Council now as a Unitary Authority.

CIL in North Yorkshire

- 2.9 The Community Infrastructure Levy is a charge which can only be implemented by a planning authority. In two tier authorities this would be a District or Borough Council – for CIL purposes these are known as ‘Charging Authorities’. Prior to LGR the following existed:
- Four charging authorities (Hambleton, Harrogate, Ryedale and Selby) with their own CIL Charging Schedules
 - No CIL in Craven, Richmondshire and Scarborough
- 2.10 Since LGR North Yorkshire Council has become the CIL Charging Authority and the implications of this are:
- there is now one Charging Authority Area, North Yorkshire Council rather than the previous four areas of Harrogate, Hambleton, Ryedale and Selby
 - there are four Charging Schedules each corresponding to the former district areas
 - CIL does not operate in the former Craven, Richmondshire and Scarborough Council areas. In these areas, S106 and S278 agreement are the sole obligation mechanisms so there are different considerations
- 2.11 Until the new Local Plan has been adopted the existing Local Plans and CIL Charging Schedule will continue to apply within those legacy District Council areas, unless viability issues indicate that it should be reviewed. It is necessary however to ensure that a consistent approach is developed to address the following:
- where CIL monies collected in legacy charging authorities should be spent
 - developing a priority spending list (or lists) to guide CIL spend
 - develop a process at officer level for creating, maintaining and reviewing the priority list of projects and recommending projects for spend
 - Set out the process for political sign off for spend
- 2.12 The majority of the legacy Councils did not have a consistent list of CIL spending priorities or governance arrangements as shown in the table overleaf. This emphasises the importance of developing a consistent approach across the new area.

Legacy Charging Authority	Existing CIL Spending Priorities	Existing CIL Spending Decision Making Process	Approx £ in CIL Pot (at 1/4/23) ¹
Selby	<p>Infrastructure Delivery Plan (IDP) for emerging Selby Local plan to set future infrastructure priorities. Current priorities are:</p> <ul style="list-style-type: none"> • Improvements to Strategic Highways Network • Strategic Flood Mitigation Measures • Healthcare provision 	No formal arrangements had been established for spending decisions, with the two committed schemes being determined by Executive.	£2m
Hambleton	Key strategic infrastructure schemes in relation to the planned growth of the district in terms of need, timing and relevance to the Development Plan and wider Council published priorities are prioritised and CIL monies allocated accordingly	Spending decision based on 'bidding' process where bids received by Planning from a variety of sources (colleagues, elected members, community groups directly), Decisions taken by Management Team, Cabinet and Council (and recently the section 24 approval process). This bidding process was only carried out once. However approx. £3.2 million was allocated to projects	£2.2m
Ryedale	No prioritised list of Infrastructure projects to inform CIL spend prior to reorganisation however it was anticipated that the infrastructure requirements listed in the development plan would have been the basis for a priority list.	In the run up to reorganisation, RDC tried to establish a 'Community Grant Scheme' process to spend the CIL money accrued. This was not approved so no process in place however an allocation of £2million funding towards improvement works at Welburn Hall School was approved by NYC Executive in June 2023. This will appear in the 2023/24 IFS.	£3.2m ²
Harrogate	<p>Harrogate District Infrastructure Delivery Plan 2018 identified infrastructure required to support delivery of the Local Plan.</p> <p>The IFS lists in broad terms the type of infrastructure that would be funded via CIL. Work on a specific CIL Expenditure Strategy was commenced and whilst agreed by Management Board was not signed off politically. This strategy involved developing a detailed list of infrastructure projects based on the IDP which would be prioritised.</p>	<p>Draft Expenditure Strategy identified the creation of an Officer group to:</p> <ul style="list-style-type: none"> • review and agree projects to go on the Infrastructure List • Agree priority projects to recommend for progression • make recommendations to Cabinet or the appropriate committee for agreement, depending on the amount required, and will then follow normal procurement and tendering process. 	£161K

¹ These figures are gained from the 2022/23 Infrastructure Funding Statement and do not take into account any CIL monies received or spending allocation decisions taken since 31/3/2023

² This figure is from 31/3/23 which is before the decision to allocate the £2million.

The Future of CIL

- 2.13 The Levelling Up and Regeneration Act 2023 (LURA) which came into force in October 2023 provides the legislative framework for the introduction of a new Infrastructure Levy (IL) which is intended to replace the current system of developer contributions (CIL and S106). It will only come into force on the introduction of secondary legislation which will include more details about how it will operate. The IL will be rolled out gradually through a robust test and learn process and is expected to be extended nationally by around mid 2030.
- 2.14 The intention of the Infrastructure Levy is expected to be as follows:
- will be the main means for funding affordable housing
 - can be spent on 'non-infrastructure' matters such as social care and childcare
 - will be value based (% of the value of the completed property) compared to CIL which is a fixed charge per sq m
 - will be mandatory for local authorities
 - will apply to all types of development however the % charged will be differentiated
 - will replace S106 agreements except for the largest, complex sites
 - site specific integral infrastructure such as highways, flooding, drainage etc will be delivered through planning conditions or planning obligations called delivery agreements
- 2.15 CIL and S106 will continue to be used until the IL comes into force and it is expected that details on transition arrangements will be published by the Government nearer the time.
- 2.16 Whilst the intention to bring in the IL is clear from the LURA, as noted, it does require the introduction of secondary legislation, no date has been given for this and if approved will involve a significant lead in period. Therefore, it is imperative to ensure the introduction of a spending protocol for current and future CIL money to ensure the continual funding of vital infrastructure through the use of the current CIL arrangements.
- 2.17 The current CIL charging schedules for Harrogate, Hambleton, Ryedale and Selby will continue to operate and continue to collect money until the IL comes into force, existing Charging Schedules reviewed or a new CIL charging schedule is produced for the new council geography on the back of the new local plan. If the current CIL regime is to continue, and a new CIL charging schedule is prepared for the new council geography, there is no guarantee that CIL will continue to be charged in the existing areas or will be introduced in the areas where CIL presently does not exist. This is due to the fact that the justification and evidence governing the introduction of CIL and the relevant charging zones and rates is still based on viability and the ability of the development to bear the additional costs of CIL. Put simply whilst we might choose to introduce a CIL there may be areas of North Yorkshire that attract a zero tariff.

3.0 RECOMMENDED APPROACH

Geographical Scope of CIL Spending

- 3.1 As can be seen from the table above, there are significant differences in the 'size' of the CIL pots due to the length of time CIL has been in existence in each of the charging authority areas, and individual decisions about 'pot' building and spending. Harrogate for example only implemented CIL in October 2020 so after accruing a small amount in the CIL pot decided to allow the funding to accrue before significant expenditure was incurred however for some the 'CIL pot' is now a meaningful amount.

- 3.2 As North Yorkshire is now the charging authority it is important to establish the geographical area for spending as the available spending 'pot' is the total of all the legacy Councils and therefore could be spent anywhere within the charging authority area including within those areas where CIL did not previously exist. It is important to remember however that discussion about the 'spending pot' refers to money within the Strategic CIL pot which is 75% or 80% of the total CIL received due to 15% or 25% being allocated to individual Parish/Town Councils through the Neighbourhood Fund. This enables local communities to spend money on local priorities.
- 3.3 There are two options therefore to be considered for the spending of legacy Strategic CIL as follows:
1. spent within the individual legacy authority areas of Hambleton, Harrogate, Ryedale and Selby where the CIL money was accrued and collected
 2. pooled into a 'CIL pot' to be spent throughout North Yorkshire, regardless of where the CIL was accrued
- 3.4 Whilst there is no direct link required with CIL between a specific development and mitigation as in the S106 process, nevertheless there is a presumption that it should be spent on infrastructure that is needed to support new development allocated in the adopted Local Plan of the charging authority i.e that it directly relates to the growth identified in that Local Plan and in recognition that existing infrastructure of a local area should not be expected to simply 'absorb' new growth
- 3.5 In order to adopt a CIL Charging Schedule the charging authority must evidence that the viability of development in an area is enough to be able to withstand the extra costs of CIL and that there is a sufficient funding gap to the delivery of the necessary infrastructure identified in the IDP for the local plan. Whilst CIL money can be spent across the whole North Yorkshire area, CIL money should not be used to fix existing infrastructure deficits and the significant role of CIL in delivering the infrastructure required to bring forward the individual local plan allocations in the area it was collected needs to be recognised.
- 3.6 It is recommended therefore that whilst North Yorkshire is the new charging authority, CIL money should be spent on infrastructure projects that help deliver local plan growth within the area it has been accrued and collected. These areas will correspond to the individual legacy District Council areas of Harrogate, Hambleton, Ryedale and Selby. This recommendation will also result in the 2024 North Yorkshire IFS reporting separate CIL accounts for Hambleton, Harrogate, Ryedale and Selby. CIL money will therefore not be spent in the legacy District Council areas of Craven, Richmondshire and Scarborough. These areas will however still benefit from developer contributions through S106 and S238s. The only exception to this would be if money was needed to fund infrastructure projects in adjoining areas if they are identified as being needed to support local plan growth within the legacy CIL area e.g a strategic highway improvement in an adjoining authority (North Yorkshire or otherwise) that is needed to support a local plan allocation or priority in the legacy CIL area. Whilst this exception is possible, it would be expected that the majority of the CIL money available would be spent within the relevant legacy CIL authority area.
- 3.7 As detailed above, some of the legacy districts have a significant CIL pot and therefore it could be argued that pooling them into one CIL pot to be spent across the whole of North

Yorkshire would be a more beneficial and efficient use of them. However, whilst these appear to be significant amounts of money, it is important to understand that the costs of the infrastructure projects identified in each of the individual legacy authority Infrastructure Delivery Plans to support and deliver the local plan growth and objectives are also substantial and the funding available is not sufficient to cover them all.

CIL Infrastructure Priority List/s

- 3.8 The Council has the responsibility for prioritising the spending of CIL. The only overarching rule is that CIL must be spent on infrastructure to support the overall development of the area. Infrastructure includes transport improvements, roads, pedestrian and cycle routes, sports and community facilities, libraries, schools, flood mitigation and coast protection. CIL can be spent on both capital projects and revenue projects such as the maintenance of infrastructure.
- 3.9 The adopted Local Plans of the former charging authority areas remain in force until such time as a new Local Plan for North Yorkshire is adopted. These plans and the associated Infrastructure Delivery Plans (IDPs) should continue to be used as the basis for CIL spending priorities.
- 3.10 Whilst the Strategic CIL pot is considerable for some of the legacy authorities it is still necessary to prioritise the projects within each Local Plan and IDP as there is not sufficient money available to fund the projects in their entirety. CIL in fact is not designed to fund infrastructure projects in total and therefore the IDPs also include reference to a wide variety of funding mechanisms including S106s, LEP funding, Central Government funding and direct investment from infrastructure providers themselves.
- 3.11 As there are no legal requirements about how CIL money should be allocated, there are a wide variety of options employed by charging authorities across the country to prioritise infrastructure projects ranging from percentage allocation, community bidding processes and ring fencing for one or two large projects or council priorities e.g education. Any process approved for North Yorkshire will be a transitional arrangement whilst the new Local Plan and any associated CIL policies are established and therefore it is important that it is not overly complex and can be something that can be implemented quickly and easily.
- 3.12 It is therefore recommended that for each of the legacy charging authority areas the following process should be introduced:
- 1) list of all infrastructure projects should be identified based on the individual IDPs, IFSs or those that meet the Local Plan priorities and objectives (Cross-service Officer Working Group)
 - 2) these projects should then be prioritised using the following criteria: (Cross-service Officer Working Group)

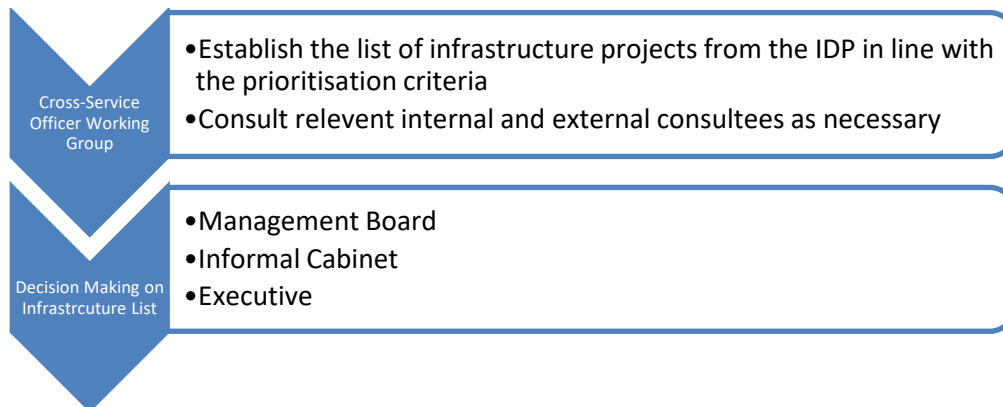
Is it presently on the Infrastructure List from the IFS or IDP?
How does it support the delivery of growth or priorities within the Council's Local Plan? <ul style="list-style-type: none"> • number and importance of the site enabled by the project • is it 'essential' infrastructure in terms of type or timing of delivery • what is the geographical area covered by the project/improvement

<ul style="list-style-type: none"> • what is the community benefit
Are there any alternative sources of funding that could be used to deliver the project, and if so which source(s);
Would it enable other sources of funding to be secured that would not otherwise be available (e.g. needed to match or draw down grant funding) and/or ensure timely delivery of projects partially funded through Section 106 legal agreements

3) Formal Decision making through Management Board, Cabinet and Executive

- 3.13 It is recommended that the annual infrastructure list for projects within former legacy authority charging areas will be drawn up, using the criteria above, by a cross service officer working group in consultation with relevant internal officers and external infrastructure providers where necessary. Changes made to the CIL Regulations in 2019 mean that public consultation would not be needed on the Infrastructure List,
- 3.14 The resultant list of prioritised projects will form the Infrastructure List which will be published within and will inform the preparation of the annual IFS which must be published each year. If agreed by the Executive whilst being one list, only money accrued in the respective district area can be spent on projects within that area (see Recommendation 1 of this report). It will be necessary to review the list each year through the process above.

The overall process is summarised in the flow chart below:



- 3.15 It is important to note that some infrastructure, such as utility services, will continue to be delivered by the private sector. Developers may need to contribute directly to the private sector utility companies for connections and reinforcements to the network. These form of infrastructure projects will therefore not be included in the consideration of projects for the infrastructure lists.

Spending Decision Making

- 3.16 As the annual Infrastructure List will have been formally approved by Executive, as long as there is sufficient levies accrued in the same former charging authority area, the authorisation of spend will follow the Council’s financial management permissions

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- 3.17 As noted above, The Community Infrastructure Levy (CIL) regulations and National Planning Policy Framework (NPPF) require for any local authority that has received developer contributions (section 106 planning obligations or Community Infrastructure Levy) must publish online an infrastructure funding statement every year.
- 3.18 An IFS must contain:
- Details of the income and expenditure relating to Community Infrastructure Levy (CIL) and Section 106 (S106) agreements.
 - A report on the infrastructure projects or types of infrastructure that the authority intends to fund wholly or partially with CIL (excluding the neighbourhood portion). This is to be known as the 'Infrastructure List'.
- 3.19 The 2022/23 IFS (Appendix C) covers the financial year before the formation of North Yorkshire Council and therefore the required information is split by each of the legacy District. Key headline figures from the IFS for the new North Yorkshire Council area however are:
- 614 affordable homes were delivered
 - £6,324,805.85 of S.106 contributions were received from new development
 - £2,649,580.48 of CIL money was received
 - £475,586.15 of CIL money (the local allocation) was passed to town and parish councils
 - £8,203,084.49 of S106 funding was spent on infrastructure to mitigate development impacts
 - £2,324,164.51 of CIL money was spent on infrastructure to support development of the area.

4.0 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 CIL regulations do not include anything about the process for spending CIL, only requiring that it is spent on infrastructure. It is the responsibility of individual local authorities to develop their own process for spending CIL.

Geographical Scope of CIL

- 4.2 To pool the CIL money into a 'pot' to spend anywhere in North Yorkshire regardless of which legacy District it was collected in. This was disregarded as there is a presumption that CIL should be spent on infrastructure that is needed to support the new development allocated in the Local Plan and therefore spending outside the relevant Local Plan area would not fulfil this requirement. The only exception to this would be the reasons described above in Para 3.6 where spending outside the area would still meet the objective of supporting a local plan allocation or priority in the legacy CIL area.
- 4.3 Despite the fact that pooling CIL into one 'pot' would generate a significant amount of money for North Yorkshire, the option is also disregarded because the costs of the infrastructure projects identified in each of the individual legacy authority Infrastructure Delivery Plans to support and deliver the local plan growth and objectives are also substantial. The funding available is not sufficient to cover them all and therefore the funds

would not be sufficient to also fund additional projects in the non-CIL areas of Scarborough, Richmondshire and Craven.

CIL Infrastructure Priority List/s

- 4.4 To establish a bidding process whereby Council departments and/or communities can bid for CIL money for projects. This option was disregarded because it would have significant resource implications in terms of establishment, administration, operation costs and officer time. It would still need to be operated on a 'legacy district' basis which would also be complex and time-consuming. The protocol for CIL spending is only intended to be in place until the new Local Plan is adopted and a new CIL Charging Schedule if necessary is established for the new County.
- 4.5 To not establish a protocol and each legacy district continue as present. This option has been rejected for the following reasons:
- would not provide any consistency across the existing CIL areas
 - would result in reduced/no spending on critical infrastructure due to the lack of priorities and process in some areas
 - could result in spending that is not in line with Local Plan growth objectives

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- 4.6 There is no alternative, as failing to publish an IFS would mean that the Council would not meet the requirements of the Community Infrastructure Levy (Amendment) (England) (No.2) Regulations 2019.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Community Infrastructure Levy (CIL) together with Planning Obligations (s106) represent sources of funding to provide additional infrastructure or services necessary to enable or support development.
- 5.2 Such funding normally only represents a proportion of the total cost of the infrastructure. Therefore, additional funding from other sources may be required to deliver the infrastructure necessary. These sources could include Department for Transport via National Highways and Network Rail, Department for Education, and specific grants including Grant in Aid from Defra and Levelling up funding.
- 5.3 CIL provides for an administration fee, as a process the administration is self-financing. There are no VAT implications (CIL is o/s for VAT)

6.0 LEGAL IMPLICATIONS

- 6.1 The Council's legal officers have been consulted during the preparation of this report and their feedback has been considered in bringing together these recommendations.

7.0 EQUALITIES IMPLICATIONS

- 7.1 This proposal ensures that CIL money already collected is spent on infrastructure within the legacy districts and that future spending priorities are identified in line with projects that support Local Plan growth within each area. These projects provide the valuable

infrastructure required to support additional growth to ensure that existing communities are not negatively impacted by insufficient or ineffective infrastructure. It is concluded therefore that the proposal would not negatively impact any of protected characteristics. In fact, the provision of essential infrastructure is likely to benefit these groups and the community as a whole.

8.0 CLIMATE CHANGE IMPLICATIONS

- 8.1 This proposal looks to develop a spending protocol for existing and future CIL monies and approve the Annual Infrastructure Funding Statement (IFS). The IFS is a factual document detailing the spend of S106 and CIL funding over the last financial year and therefore there are no climate change impacts relevant to this.
- 8.2 The use of CIL helps provide the supporting infrastructure required by the housing and employment growth identified in the relevant Local Plans. Without this necessary supporting infrastructure, development would be less sustainable thereby having a corresponding effect on Climate change.
- 8.3 As this proposal looks to establish a process, the impacts are neutral.

9.0 REASONS FOR RECOMMENDATIONS

- 9.1 The recommendations within the report will:
- provide clarity, transparency and consistency in the allocation and spending of CIL receipts
 - ensure CIL receipts are spent on infrastructure required to support development, in accordance with the CIL Regulations 2010 specifically as amended in September 2019 ('the CIL Regulations')
 - ensure CIL serves its purpose of supporting the delivery of the infrastructure necessary to support the development in North Yorkshire
 - meet regulations with regard to the approval and publication of the IFS

10.0 RECOMMENDATIONS

- 1) To spend CIL monies within the same geographical area (previous local authority boundary) from which they were levied, pre and post 1/4/2023
- 2) To agree the process for prioritisation of CIL funded infrastructure as set out in paragraphs 3.8 – 3.15 of this report
- 3) To approve the 2022/23 Annual Infrastructure Statement (Appendix C) and publish it on the Council website

APPENDICES:

Appendix A – Equality Impact Assessment
Appendix B – Climate Impact Assessment
Appendix C – 2022/23 North Yorkshire Annual Infrastructure Funding Statement

BACKGROUND DOCUMENTS:

None

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Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.

PLEASE ALSO NOTE THAT IF ANY REPORTS / APPENDICES INCLUDE SIGNATURES THESE MUST BE REMOVED / DELETED PRIOR TO SENDING REPORTS / APPENDICES TO DEMOCRATIC SERVICES. Appendices should include an Equality Impact Assessment and a Climate Impact Assessment where appropriate