

ADUR & WORTHING  
COUNCILS

Joint Strategic Committee  
1 February 2018  
Agenda Item 7

Key Decision - No

Ward(s) Affected: Worthing All

## **Community Infrastructure Levy - Governance Arrangements**

### **Report by the Director for the Economy**

#### **Executive Summary**

##### **1. Purpose**

- Worthing Borough Council has introduced a Community Infrastructure Levy (CIL) to allow funds to be raised from developers to pay for infrastructure that is needed to support growth. The Council adopted its Charging Schedule for CIL in February 2015 and implementation of the levy commenced in October 2015. The Council now has overarching responsibility for the allocation of CIL monies and reporting the amount of money collected and spent.
- Although the issue of CIL governance has been considered at a high level in previous reports it is now the right time for the Council to establish a clear CIL Governance structure to oversee the collection, auditing and spending of CIL monies. This report proposes the key governance arrangements for the delivery of infrastructure through CIL. It then summarises some of the additional issues that will be resolved once these mechanisms are in place. The protocols proposed will ensure that CIL is managed in an open way and in accordance with the CIL regulations.

## **2. Recommendations**

**That the Committee:**

- 1. Agrees to the broad principles set out in the report for future CIL governance arrangements,**
- 2. Agrees to establish a Joint Officer Member Board as set out in paragraph 2.6.**
- 3. Agrees the timeline and process of the preparation of the Infrastructure Business Plan as set out in Appendix 2**
- 4. Agrees that 5% of CIL collected should be ring fenced to pay for administering the collection and monitoring of CIL spend.**

### **1. Background**

- 1.1. The Community Infrastructure Levy (CIL) is a mechanism, introduced by Government in 2010, to allow local planning authorities to raise funds from some forms of development in order to pay for the infrastructure that will be needed as a result of that new development. Worthing Borough Council adopted its Charging Schedule for CIL in February 2015 and implementation of the levy commenced in October 2015.
- 1.2. CIL is the main way in which the Council now collects contributions from developers for infrastructure provision to support development. It largely replaces the use of Section 106 planning obligations with the exception of affordable housing provision and some site specific matters (usually in relation to the more significant developments in the Borough).
- 1.3. As expected, due to the time lag in implementing development that has been granted permission since October 2015, the level of money collected through CIL has, up to now, been relatively small (CIL is only paid once development commences). This is set to change and significant sums are expected to be collected through the levy in the coming years. To date, approximately £125,000 has been collected in the Borough from CIL. However, the value of the liability notices issued (but yet to commence) is significant, although it should be noted that this does not mean that all the permitted schemes will be built out.
- 1.4. As the money collected through the levy is starting to build it is the right time to consider the management of CIL funding. As such, this report recommends

an approach that would see clear and robust governance arrangements agreed and established during 2018/2019. This will ensure that the Council is then in a position to prioritise projects and allocate CIL money from the start of the financial year 2019/2020.

- 1.5. Worthing Borough Council has the responsibility for prioritising the spend of CIL. The overarching rule is that CIL must be spent on infrastructure to support the overall development of the area. Infrastructure includes things such as transport improvements, roads, pedestrian and cycle routes, sports and community facilities, libraries, schools and flood defences. CIL can be spent on both capital projects and revenue projects such as the maintenance of infrastructure. CIL can also be spent outside the Borough if it benefits development within the Borough. CIL cannot be spent on addressing current deficits in infrastructure provision unless those deficits are made worse by new development in the area.
- 1.6. Unlike S106 contributions, CIL does not have to directly relate to off-setting the implications of an individual development, but instead relates to the overall cumulative effect of development in the Borough. Whilst CIL funding is 'ring-fenced' to be used on infrastructure to support development, there is, in reality, a greater degree of flexibility for the spending of CIL, providing the infrastructure project is included on the Council's Regulation 123 list (see Appendix 1). Furthermore, there is no time limit for spending CIL so, if desired, funds may be pooled until there is enough 'in the pot' to deliver a priority item of infrastructure.
- 1.7. Under the S106 regime contributions towards certain infrastructure types, such as education and transport, were paid directly to the County Council and/or the provider of the relevant services. This is not the case with CIL, as funds will be distributed from a centralised pot held by the Borough Council. This arrangement will therefore require closer working relationships with partners, and in particular, with West Sussex County Council to agree the prioritisation and delivery of infrastructure improvements.
- 1.8. CIL will not generate enough funds to completely cover the cost of new infrastructure needed to fully support planned development. As such, the Council will continue to request and apply for funding from other sources to help ensure that infrastructure in the Borough can support growth.
- 1.9. There will be competing demands on funding from CIL from a variety of service providers. With this in mind, it is important to ensure there are robust, accountable and democratic structures in place to ensure the spending of CIL

funds are prioritised in the right way.

- 1.10. The key principles for governance, particularly for the period 2018/19, are set out in Section 2 below and these form the main recommendations arising from this report. In addition, there are a number of other decisions which the Council needs to make with respect to the use of CIL funds. The report provides a summary of these issues in Section 3 and recommends an approach that would see most of these addressed over the next twelve months when the main governance structures are in place.

## **2.0 Governance - Key Principles**

- 2.1 In general, local authorities have been quite slow to set up clear governance arrangements even those that have been collecting CIL for several years. However, there are now a variety of different governance models that have been established across the country and your Officers have reviewed these to consider what model will be the 'best fit' for Worthing.
- 2.2 Informed by best practice from elsewhere the next section of this report addresses the key principles that are recommended that will help to deliver a simple and transparent process for Worthing. This is then illustrated within a timeline / flowchart (Appendix 2).

### Governance Structure

- 2.3 Whilst there are different governance options that could be adopted it should be kept in mind that Worthing Borough Council, as politically accountable for CIL's effective use, will need to retain the final say on the allocation of CIL funding raised in its Charging Area. As such, elected members must play a central role in shaping priorities.
- 2.4 To ensure elected members are involved throughout the process it is proposed that a Joint Officer and Member Board (JOMB) for CIL is established. It is suggested that this group will meet quarterly over 2018/19 during which time the key governance arrangements will be put in place.
- 2.5 Initially, this group will also be used to agree some of the more detailed matters outlined in Section 3. As explained below, a key task for the group will be to take a lead role in progressing an Infrastructure Business Plan (IBP) which will include the consideration of infrastructure projects to be prioritised for CIL funding. During 2018/19 the Group will also determine the timetable

and process for the next phase of CIL Governance ('spending CIL') after April 2019.

2.6 It is proposed that this group is made up of the following Officers and Members:

- Leader of Worthing Council
- Executive Member for Regeneration
- Chair of Worthing Planning Committee
- Director for the Economy
- Head of Planning and Development
- Planning Policy Manager (Worthing)
- Investment Officer (Place and Investment)
- Capital Accountant
- Head of Legal
- WSCC Cabinet Member.
- WSCC - Senior Officer

2.7 Given that a significant proportion of development contributions previously secured through S106 relates to County infrastructure requirements, primarily education and transport, it is appropriate that a senior Member and Officer from WSCC sits on this group.

2.8 Whether the proposed JOMB is a new group or an expansion of an existing group needs to be agreed. Certainly with the exception of the County Council Member and Officer the majority of the people sit on the Major Projects Board and this Group could be expanded and hold additional meetings to address CIL issues in the future. However, it would be appropriate, in the first instance, to set up a new Board to address detailed issues of CIL Governance and agree priorities for spending CIL in the future.

#### Infrastructure Business Plan

2.9 A key role for the new JOMB will be to develop an Infrastructure Business Plan (IBP) which, when in place, will form the key document for prioritising infrastructure requiring funding through CIL. The IBP will:

- identify the projects from the Reg 123 list that will benefit from CIL over the coming year or years depending on the scale of funding required.
- set out the process and criteria for the prioritisation of infrastructure projects (short and long term).

- 2.10 The IBP, will establish a 3 year work programme that will be reviewed every two years. It will be prepared by the JOMB with input from relevant infrastructure providers. Although a number of Councils services will be involved in this process, it is proposed that the main responsibility for co-ordinating this document will be the Place and Investment team. This team is well placed to oversee the work as it currently deals with inward investment and works closely with WSCC in connection with public realm projects and other sections of the Council securing external funding for a wide range of projects.
- 2.11 The IBP will prioritise the infrastructure identified in the Council's Infrastructure Delivery Plan (IDP) as needed to support anticipated growth in the current Core Strategy and emerging Local Plan. Prioritisation will also be informed by the Council's housing trajectory (the phasing of development and its supporting infrastructure). This is because infrastructure delivery is aligned with growth and the need to mitigate the impacts arising from both housing and economic development.
- 2.12 Prioritisation of schemes to be fully (or partly funded through CIL) will also be informed by other strategies and initiatives that have wider benefits particularly those being advanced by Worthing Borough Council and West Sussex County Council.
- 2.13 Projects may be favoured where they lever in other funds that wouldn't otherwise be available, particularly where those funds may not be available in future years. Projects may also be prioritised where it can be satisfactorily demonstrated that the particular infrastructure would otherwise not be delivered (for example, there are no other possible sources of funding or other funding sources are insufficient).
- 2.14 When funding through CIL is approved the service provider will be expected to maintain communication with Worthing Borough Council on the progress of the scheme. Where funding has been agreed 'in principle' or where staged payments are agreed, the service provider will be expected to provide information to justify funding being transferred. Service providers must continue to provide information on the progress of their project until the scheme has been completed and all the CIL funding has been spent.

#### Timeline

- 2.15 Assuming that the key principles recommended in this report are agreed it is proposed that the first meeting of the JOMB will be held in June 2018. As

illustrated on the flowchart below this will be followed by a workshop for all key stakeholders when the Council's procedures for project prioritisation and CIL spend will be outlined.

- 2.16 In autumn 2018 the Council will then use a standard template to invite service providers to promote their schemes for inclusion within the IBP. JOMB will then validate and scope the projects that have been put forward and consider how they relate to the Reg 123 list, the IDP and other relevant strategies and plans.
- 2.17 JOMB will then prepare a draft IBP that will be considered and then approved by March 2019. This in effect will be the point at which the Council has agreed its first 3 year programme (2019-2022) that will establish the projects that will be prioritised for CIL funding when sufficient sums are available. This will include a range of projects some of which could be delivered quickly at relatively low cost whilst others may require significant sums of money that would need to be built up over a number of years. A process chart for preparing the IBP is attached as Appendix 2.
- 2.18 Due to the 'lag' period when CIL money is being collected and the need to establish these governance arrangements it is proposed that the first release of funds will not take place until 2019/20 at the earliest. CIL receipts will be carried forward each financial year until this point.
- 2.19 The process set out above will be repeated in the same manner when the IBP is reviewed during which time stakeholders and service providers will again be asked to put forward projects for consideration. The first full review will be undertaken in 2021 to ensure that the new IBP is in place to provide the next three year work programme between 2022 and 2024.

### **3.0 Issues to Be Addressed Once a Governance Structure is in Place**

- 3.1 The key aim of this report is to agree the key principles outlined above that will help to establish the main governance structure for CIL. There are a number of detailed points that need to be addressed in relation to CIL but it is considered that it would appropriate to defer these to JOMB to address and recommend an approach to JSC. However, this section of the report provides a brief summary of some of these issues that will need to be resolved by JOMB before the Council is in a position to allocate CIL money to specific projects from April 2019.

#### Neighbourhood Funding

- 3.2 Future governance arrangements will have to provide for the delivery of both borough-wide strategic infrastructure and local area-specific improvements. In this regard, the CIL Regulations require the Council to pass a 'meaningful proportion' of the CIL receipts received in a particular area to that area. This is known as 'Neighbourhood Funding'. The meaningful proportion is defined as 15% in areas where there is no Neighbourhood Plan or 25% in areas with a Neighbourhood Plan.
- 3.3 Worthing currently has no Neighbourhood Plans. This is not unexpected as the vast majority of Neighbourhood Plans are progressed by Parish Councils, of which there are none in Worthing. Therefore, the likelihood is that Council will need to demonstrate how 15% of CIL collected in Worthing is spent in (or allocated to) the local area.
- 3.4 The JOMB will need to consider:
- how the 'local area' is defined. This is likely to be by Wards but it would be appropriate for significant developments like the Aquarena development for CIL to be also spent in adjoining Wards;
  - the role of Ward Councillors in local bids for funding coming forward;
  - how local communities are consulted / engaged in the process;
  - whether a threshold should be set whereby 'bids' for funding can only be made once the CIL 'local pot' has accrued a certain amount of money;
  - what types of projects would be eligible for neighbourhood funding;
  - how the neighboured portion is monitored and reported and how any unspent money is carried forward.

#### The 'Bidding' Process

- 3.5 As outlined in the section above, in autumn 2018 stakeholders will be invited to put forward projects for consideration for inclusion within the IBP. Before then the JOMB will need to consider:
- who to invite 'bids' from;
  - the precise timetable for the bidding and review process;
  - the drafting of standard templates to be used by service providers to set out their business case;
  - an appraisal framework to ensure that decisions are made in a clear and overt manner.

#### Infrastructure Payments In-Kind

- 3.6 CIL Regulations allow a Charging Authority to accept land payments or infrastructure instead of a financial payment from a developer. For example, where a Charging Authority has already planned to invest CIL receipts in a project there may be time, cost and efficiency benefits in accepting completed infrastructure from the party liable for payment of the levy.
- 3.7 The option to take the provision of infrastructure 'in kind' is discretionary and would require Infrastructure Agreements with developers and independent valuation of the land being offered. It would result in lower overall CIL receipts, but could help ensure timely infrastructure delivery.
- 3.8 It is proposed that the JOMB will consider a 'Payment in Kind and Infrastructure Payment Policy' to confirm that the Council would accept 'in kind' infrastructure, subject to conditions including the fact that the Council will only accept land or infrastructure as payment of a CIL liability if the offer relates to infrastructure projects or types of infrastructure included in the Council's published Regulation 123 infrastructure list.

#### Third Party Infrastructure Providers

- 3.9 If CIL funding is allocated to a third party infrastructure provider, the CIL funding can only be used to deliver the agreed infrastructure type or project. This would be enforced by appropriate infrastructure contracts. Through the JOMB a standard procedure will be created for the release and monitoring of CIL monies for projects that are identified.

#### Reviewing the Regulation 123 List

- 3.10 As part of producing the CIL Charging Schedule, there is a requirement to produce a list (Regulation 123 Infrastructure List) of infrastructure projects or types that may be funded in whole or in part by CIL. to avoid 'double dipping' the regulations dictate that any infrastructure identified on the Regulation 123 list cannot then be provided through the use of Section 106 Obligations. The current Worthing Regulation 123 list, which was adopted by Council in 2015, covers most types of infrastructure which means that Section 106 planning obligations are being used less often.
- 3.11 The Regulation 123 list can be amended at any time as circumstances change. It is proposed that the JOMB will review the Regulation 123 list alongside the IBP when it will either be endorsed or amended to reflect changed priorities.

## Summary

- 3.12 By the end of 2018/19 the JOMB will be well established, an Infrastructure Business Plan will be in place and the matters set out above will be clarified. At the same time that the IBP is approved Members will also be asked to endorse the timeline and process for the next phase of governance beyond April 2019. This will focus on the 'spending' and monitoring of CIL.

### **4.0 Administration Costs**

- 4.1 The introduction of CIL and the day-to-day discharge of our duties as the 'Charging Authority' is resource intensive and recognised by the Government as an additional burden on local authorities. In line with the CIL Regulations, and as set out in previous committee reports, it is proposed that the Council will utilise up to 5% of total CIL receipts each year to finance levy administration expenses. If the Council were not to utilise the 'up to 5%' for administrative purposes then its ability to implement CIL effectively and ensure that the right projects receive the right money might be compromised. Ultimately, this could leave the Council open to challenge on the basis of maladministration of the CIL funds received.
- 4.2 Administrative expenses associated with the Levy include the costs of the functions required to establish and run a levy charging scheme. These functions include levy set-up costs and ongoing functions such as establishing and running billing and payment systems, enforcing the levy, the legal costs associated with payments in-kind and monitoring. Money allocated for administrative costs could also be put towards the funding of software that would help to monitor and manage the Charge. Your Officers are currently investigating software systems that would assist in this process and could possibly help to improve the monitoring of S106 agreements.
- 4.3 Although Members have previously supported the suggestion to use 5% of CIL money collected to help cover administrative expenses it is recommended that this is formalised as part of this report.

### **5.0 Monitoring and Review**

- 5.1 There is a requirement for Worthing Borough Council, as a Charging Authority, to prepare an annual report detailing CIL receipts, balances and spend for each financial year. It is proposed that the JOMB will help to prepare this information which will be reported within the Council's Annual

Monitoring Report (AMR) which is published in December each year to cover the preceding financial year.

- 5.2 When considering whether to review CIL, the Council needs to take any changes made nationally into account whilst also ensuring that the adopted Charging Schedule reflects the type of development coming forward. Members will be aware that there has been concern locally that CIL is impacting on the ability to deliver affordable housing (a view supported by a national CIL review) and with the prospect of further greenfield development coming forward in the emerging Local Plan it would be appropriate to review the current Charging Schedule. Consultants are being appointed to start this review process.
- 5.3 In the future, the JOMB will monitor regulatory and economic situation and will consider reviewing the CIL Charging Schedule if changes are made to the CIL Regulations such that it would be necessary or of benefit for the Council to review its Schedule. The JOMB will also consider the need for review if monitoring of CIL performance and/or local conditions indicates that either development is being constrained by CIL rate(s) or that development viability may have increased such that CIL receipts are being persistently constrained by the prevailing CIL rate(s).
- 5.4 A review of the Charging Schedule will require a refresh of the viability evidence and an infrastructure planning update and may lead to fresh consultation and a new independent examination; the costs of which will place additional financial burden on the Council, which can be mitigated, in part, through utilising the 5% administration allowance.

## **6. Engagement and Communication**

- 6.1 The Preliminary Draft Charging Schedule and the Draft Charging Schedule for CIL were the subject of comprehensive consultation with key stakeholders. The 'bidding' process outlined in the report will provide a clear protocol for the prioritisation of funding for projects that will, in part, be informed through consultation with interested parties.

## **7. Financial Implications**

- 7.1 There will be a cost for each Council in setting up, adopting and implementing CIL. However, as explained in the report, the regulations permit up to 5% of the revenue arising from the levy to be used on administration costs.

- 7.2 In the coming years it is expected that the total funding for infrastructure projects will increase significantly as more developments will contribute than those previously liable to pay under the S106 regime.

Finance Officer: .....

Date: .....

## **8. Legal Implications**

- 8.1 Legislation governing the administration and governance of CIL is contained in the Planning Act 2008. This came into effect with the CIL Regulations 2010 (as amended). The Department for Communities and Local Government CIL Guidance (April 2013) is statutory guidance that the authority must have regard to.
- 8.2 Governance arrangements that are consistent with the CIL Regulations must be agreed and kept under review. If they are not then the Council runs the risk of complaints from developers over the use of CIL and these could then be upheld by the Local Government Ombudsman.

Legal Officer: .....

Date: .....

## **Background Papers**

- Appendix 1 - Regulation 123 List - Feb 2015
- Appendix 2 - Work Programme 2018/19
  
- Report to Joint Strategic Committee – 5th Feb 2015
- Worthing BC - Charging Schedule for CIL - Feb 2015
- Worthing BC - Instalment Policy - Feb 2015
- Worthing BC - CIL Process Guide - July 2015
- Worthing BC - CIL FAQs
- Worthing BC - Developer Contributions SPD - July 2015

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## **Sustainability & Risk Assessment**

### **1. Economic**

- The efficient collection and distribution of money collected through CIL will help to ensure that infrastructure is delivered alongside development to meet the identified needs of new and existing residents / businesses.

### **2. Social**

#### **2.1 Social Value**

- The efficient governance of CIL will ensure that money collected is spent on projects that provide the greatest benefit to the community. Furthermore, ensuring that a robust process is put in place for the spending of the 'local proportion' will ensure that communities in close proximity to development are in a position to benefit from the provision of new or enhanced infrastructure.

#### **2.2 Equality Issues**

- Issues relating to race, disability, gender and equality have been considered and it is not felt that CIL will have an adverse impact on any social group. In reality, by making communities more sustainable, CIL will facilitate economic growth and help to deliver improved services. The infrastructure and services that CIL can provide (such as community facilities and transport networks) could enhance liveability for all sectors of society, and could help to deliver new infrastructure that serves different needs within the community.

#### **2.3 Community Safety Issues (Section 17)**

- Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

- Matter considered and no issues identified.

### **3. Environmental**

- Matter considered and no issues identified.

### **4. Governance**

- The Council now has overarching responsibility for the allocation of CIL monies and reporting of monies collected and spent. The protocols proposed will enhance the Council's reputation as they will ensure that CIL is managed in an open way and accordance with the CIL regulations.
- Without clear and robust governance arrangements being in place the Council could be open to challenge on the basis of maladministration of CIL funds.
- The efficient distribution of money collected through CIL will help to ensure that infrastructure is delivered alongside development to meet the identified needs. This will help to contribute towards meeting many Council priorities.

## Worthing Borough Council Regulation 123 List – February 2015

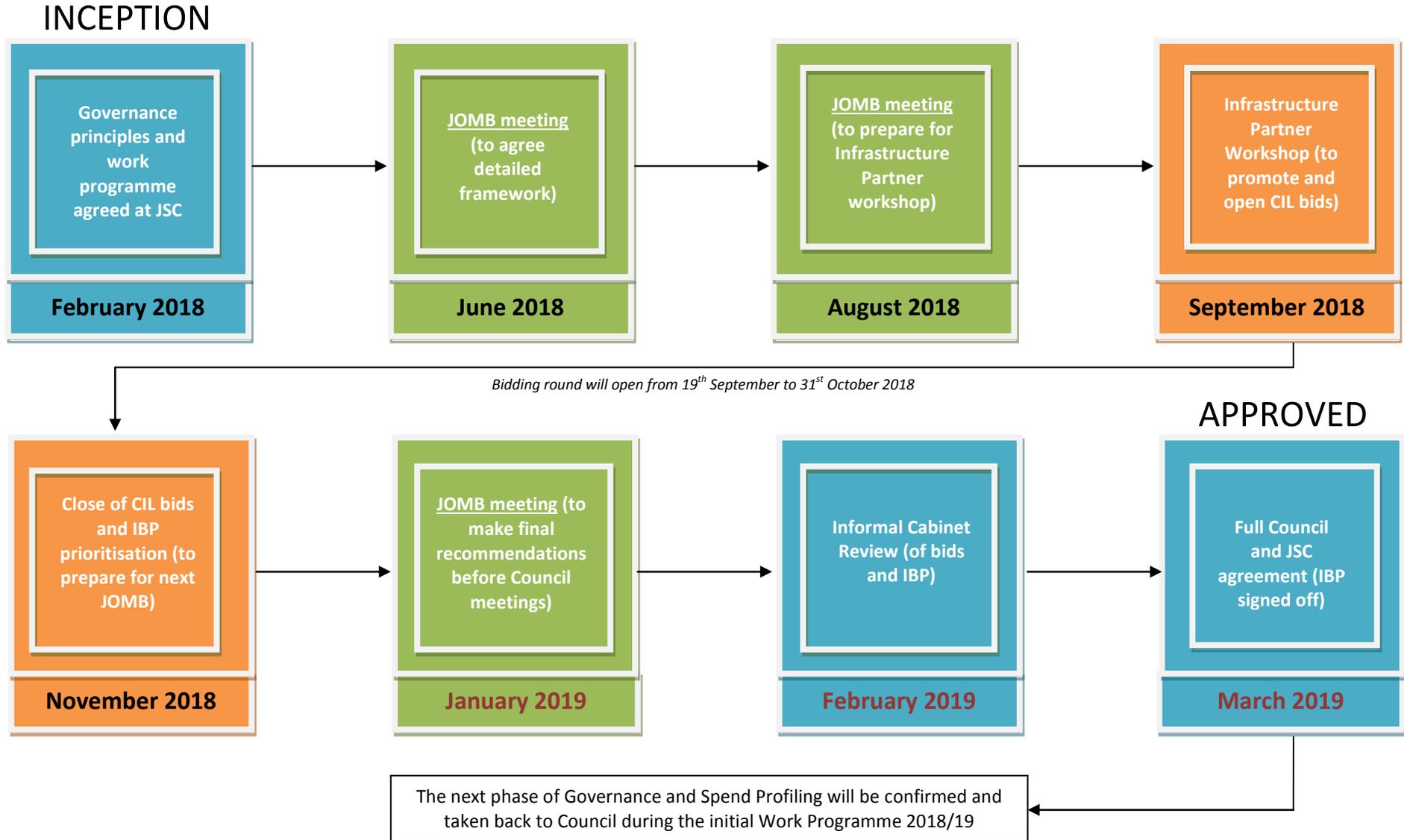
Regulation 123 of the CIL Regulations 2010 (as amended) is the requirement for a published list of infrastructure projects or types of infrastructure that the Council (as Charging Authority) intends will be, or may be, wholly or partly funded by CIL. As a result, the Council cannot spend Planning Obligations on items within the Regulation 123 list.

The table below has been informed by infrastructure planning work and the Infrastructure Funding Gap Review. It is important to note that inclusion in this list does not signify a commitment from the Council to fund the entirety (or part of) of any particular project through CIL. In addition, the order of projects in the table does not imply any preference for spend.

<b>Infrastructure types and examples of projects that may be wholly, or partly, funded by CIL</b>  (Provision, improvement, replacement, operation or maintenance of)	<b>Exclusions</b>  (to be secured through Planning Obligations - S106 / S278 Agreements)
	<b>Affordable Housing</b>
<b>State education facilities</b> <ul style="list-style-type: none"> <li>- additional school places</li> <li>- potentially helping to fund 'Age of transfer' changes</li> </ul>	N/A
<b>Flood risk management measures and beach management</b>	Site related flood defence infrastructure, such as the installation of SUDS.
<b>Environmental improvements</b> <ul style="list-style-type: none"> <li>- Teville Stream Restoration Project</li> <li>- Green infrastructure</li> </ul>	N/A
<b>Transport Improvements</b> - to include consideration of the priorities identified by the CLC and the Community Issues list. <ul style="list-style-type: none"> <li>- Traffic management schemes</li> <li>- Local and strategic transport improvements</li> <li>- Cycle network improvements</li> <li>- Public transport improvements</li> </ul>	On or off site transport and junction infrastructure required specifically to serve a new development
<b>Healthcare facilities</b>	N/A
<b>Community facilities, culture facilities / infrastructure and public art</b>	On site public art required specifically to serve a new development.
<b>Public open space, public leisure and sports facilities</b>	On site open space, play areas or leisure provision required specifically to serve a new development.

# Appendix 2

## Worthing Borough Council Community Infrastructure Levy – Work Programme 2018/19



This will enable the Infrastructure Business Plan (IBP), and proposed 3 year rolling programme, to be established