

## POLICY & FINANCE COMMITTEE

25 JUNE 2020

### FUNDING NEW INFRASTRUCTURE

#### **1.0 Purpose of Report**

1.1 To set before Committee a proposed approach for the implementation of government directed changes to the reporting of the Council's developer contributions (both Section 106 contributions and Community Infrastructure Levy receipts) collection, allocation and spending on new infrastructure associated with new development.

#### **2.0 Background**

##### *District Context*

2.1 Across the current Local Plan period to 2033 the population of the District is expected to grow by as much as 14,359. Monitoring data from 2019<sup>1</sup> show the following figures relating to the development in the District:

- 8033 residential dwellings with planning permission
- 2832 residential dwellings completed 2013-2019
- 69.04ha of employment land with planning permission
- 31.85ha of employment land development completed 2013-2019
- Sites allocated for residential and commercial development in the Allocation & Development Management Policies DPD and without extant planning permission are currently under review
- Between 2013-2019 there has been an average of 298 residential completions each year that are considered windfall development.

2.2 Newark & Sherwood's anticipated infrastructure needs associated with this level of growth are set out in the Infrastructure Delivery Plan<sup>2</sup> (IDP) produced in support of the Local Plan review. The IDP defines infrastructure in the following categories:

- **Social:** healthcare, education, libraries, leisure, town halls and cultural facilities;
- **Waste Management:** waste collection, processing and disposal/recycling;
- **Utilities:** gas, electricity, water, wastewater, telecommunications;
- **Flood Risk:** flood prevention/protection/alleviation;
- **Green Infrastructure:** open spaces, recreational spaces, allotments, cemeteries and playing fields; and
- **Transport:** public transport, walking, cycling and highways.

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<sup>1</sup> 2019 Housing Monitoring and 5 Year Land Supply Report: <https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/pdfs/monitoringreports/2019/2019HMR.pdf> and 2019 Employment Land Availability Study: [https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/pdfs/monitoringreports/employmentlandavailabilitystudy/ELAS18\\_19.pdf](https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/pdfs/monitoringreports/employmentlandavailabilitystudy/ELAS18_19.pdf)

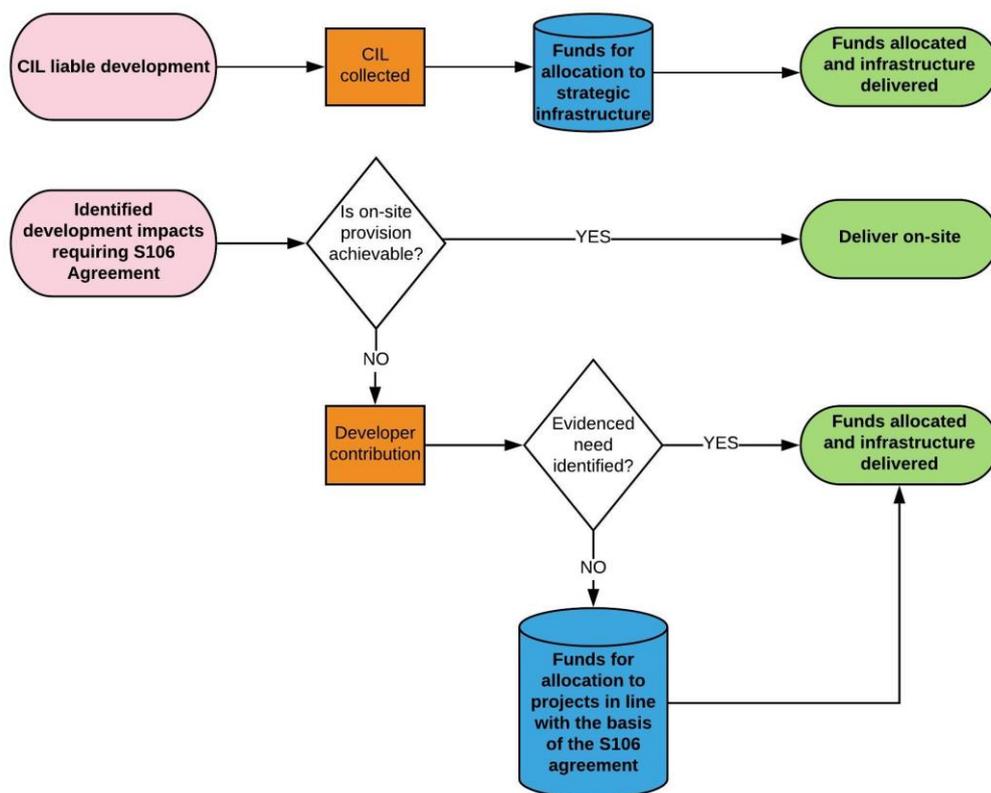
<sup>2</sup> Newark & Sherwood Infrastructure Delivery Plan, WYG (2017): <G:\planshare\POLICY\Infrastructure\IDP\NSDC IDP - Final - Feb 2017 Rev 7 Complete.pdf>

## Paying for Infrastructure

2.3 Infrastructure is typically paid for in a number of ways, via:

- Service providers such as utilities companies (electricity, gas, water, waste water, communications) underpinned by income from customer bills and government grant/support;
- Direct or indirect government grants to Local Authorities or via Local Enterprise Partnerships;
- Developers responding to site specific requirements through legal agreements<sup>3</sup> (Section 106 or Section 278 agreements);
- Local Planning Authorities (LPA) collecting Community Infrastructure Levy (CIL) on certain types of new development;
- Town/Parish Council funds secured through Parish precepts, CIL or use of other monies or grants; and
- Trusts or charitable organisations providing funding, often for local community-led projects.

**Figure 1 - Process of allocating developer contributions**



2.4 Amended Core Strategy Spatial Policy 6: Infrastructure for Growth sets out the Council's approach to ensuring the delivery of infrastructure to support growth. This policy gives specific emphasis to the Community Infrastructure Levy as the vehicle for funding 'Strategic Infrastructure'. The policy defines 'Strategic Infrastructure' as improvements to

<sup>3</sup> The NPPF (paras. 54-56) state that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and must only be sought where they are a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

the strategic highway network and other highway infrastructure as identified within the IDP, along with secondary education provision across the District.

- 2.5 Spatial Policy 6 identifies developer contributions and planning obligations as the primary means of securing local Infrastructure, including facilities and services that are essential for development to take place on individual sites, or which are needed to mitigate the impact of development at the site or neighbourhood level. The process of collecting and spending developer contributions is illustrated in Figure 1 (above).
- 2.6 Different combinations of the aforementioned sources of funding may be pooled to pay for new infrastructure.

#### *Developer Contributions – 2019/2020*

- 2.7 The current position with regard to Section 106 contributions as at the end of the 31 March 2020 (the end of the financial year) is attached at **Appendix A**. This table sets out all the details of current section 106 contributions, including those fully spent during the year and any outstanding invoices. The Council has a balance to be spent of **£7,175,053.48** in line with the parameters set out in the Section 106 Agreements. These restrictions are set out in the table along with any commitments that have been made by the Council. Attached at **Appendix B** is a table of Section 106 agreements where triggers have not yet been hit.
- 2.8 Given the amount of information displayed in the Appendices if Members do have any questions could be summited ahead of the committee meeting so that Officers can provide meaningful answers.

### **CIL at Newark & Sherwood**

#### *CIL Adoption*

- 3.1 The Council was the first Local Authority in the country to adopt CIL; the Charging Schedule and Regulation 123 List was approved by Council on the 20 September 2011 and came into force on 1 December 2011. As part of a wider review of the Local Plan a full review of the CIL Charging Schedule and Regulation 123 List has also undertaken. Following an independent examination in August 2017 and approval at full council on 12 December 2017, the Newark & Sherwood CIL Charging Schedule, including the associated instalment policy and Regulation 123 List<sup>4</sup> came into force on 1 January 2018. Of significance in the context of the list, the proposed A1 overbridge between Balderton and Fernwood was specified as the Council's priority by Full Council on the 12 July 2016, when it was first introduced onto the list.
- 3.2 Given the large costs associated with delivering priority projects on the CIL 123 List we are yet to spend any CIL income collected since adoption. Receipts for the financial year to 31 March 2020 amount to **£2,018,648.04** (along with £2,973.41 of surcharges) the detail of which is set out in **Appendix C**. In terms of total contributions received since the CIL has been put in place Table 1 below sets out the amounts collected and the meaningful

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<sup>4</sup> <https://www.newark-sherwooddc.gov.uk/media/newarkandsherwood/imagesandfiles/planningpolicy/Community%20Infrastructure%20Levy%20Charging%20Schedule%202018.pdf>

proportion set aside for Town and Parish Councils and the funds held for Parish Meetings. It also details the administrative costs which is equivalent to £20,655 per annum.

**Table 1 - CIL Receipts Summary 1 December 2012 to 31 March 2020**

	£
CIL received and current outstanding Invoices *	7,173,513.53
Meaningful Proportion paid to Parish/Town Council	906,455.19
Meaningful Proportions put aside for Parish Meetings **	32,415.48
Administration Fee	151,473.61
<b>Balance Available</b>	<b>6,083,169.25</b>

\* This includes invoices raised where payment has not yet been received i.e. £936,563.88 outstanding at 31 March 2020. Some of which will be received as per agreed instalment plans.

\*\* Meaningful Proportions for Parish Meetings are held by the Council until such time an appropriate scheme is proposed by the Meeting. A total £32,415.48 was put aside relating to Parish Meetings, of which £18,032.46 has been paid over and £14,383.02 was still being held as at 31 March 2020.

#### *Legislation Change*

- 3.3 Changes to CIL legislation, taking effect from 1 September 2019, were introduced as the Government recognised that the complexity and uncertainty of the CIL system was potentially forming a barrier to the delivery of housing, something that the Government was keen to remove. Amendments to the regulations included the removal of ‘pooling’ restrictions and the deletion of Regulation 123 requiring charging authorities to produce a list of the projects or types of infrastructure they intend to fund, or may fund, through CIL (the ‘Regulation 123 list’).
- 3.4 The pooling restrictions mechanism was originally introduced to encourage the adoption of CIL by local authorities, restricting the number of contributions from Section 106 agreements to just five per infrastructure project or type. However, this was seen as a barrier to development because some LPAs were refusing applications when the limit on the number of pooled contributions had already been met. With the removal of this requirement LPAs will again be permitted to collect more than five contributions to fund the same infrastructure by using Section 106 agreements where, in accordance with Regulation 122, they are:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
- 3.5 Additionally, LPAs must now produce Infrastructure Funding Statements (IFS) which will be required annually from 31 December 2020. To a certain extent these documents replace

the Regulation 123 list as they are intended to provide an audit trail of all contributions to receiving authorities and how they have been or will be spent.

3.6 The community at large, the development industry and infrastructure delivery commissioners will benefit from these changes, which should provide greater certainty about what infrastructure will be provided and its timing.

#### **4.0 Proposed Approach**

4.1 In establishing this as a national requirement MHCLG has prescribed a spreadsheet format in which the data underpinning the IFS should be published. The accompanying statement will therefore essentially provide context to the developer contributions the Council has secured, allocated and spent over the last financial year.

4.2 The IFS will therefore comprise:

- An introduction, including the legislative context;
- Context of planned growth in the District;
- A summary of CIL collected/spent and the rationale for this. In the District Council's case the CIL narrative will focus heavily on the prioritisation of delivering the A1 overbridge at Fernwood;
- A summary of S106 monies collected and spent on both committed projects (in accordance with the legal agreement) and where funds are unrestricted to a specific project or place;
- Set out our expected income from developer contributions. To some extent there may be scope to make predictions based on information from dialogue with developers that informs the five year housing land supply trajectory and other monitoring documents. Annual build-rate data can allow us to forecast when contribution triggers will be hit (however, this is likely to require a strong caveat that acknowledges the impacts of the Covid-19 pandemic and the inherent uncertainty it will put upon the development industry); and
- A review of the Council's future spending priorities. This is likely to be influenced by where we sit within the election cycle.

4.3 Our existing monitoring protocol ensures that we are well placed to publish the basic data requirements. The most significant matter for the Committee to consider is how the Council determines and presents its spending priorities.

#### *Determining Spending Priorities*

4.4 As recently adopted planning policy, it is considered that there is little scope to deviate from the approach to paying for infrastructure set out in Spatial Policy 6 until such a time that this policy is amended. Consequently, Table 2 (below) sets out a policy-compliant hierarchical approach to spending priorities, distinguishing between projects or themes that are critical, necessary, policy-priorities or those things that are 'desirable'.

**Table 2 - Proposed hierarchy of spending priorities**

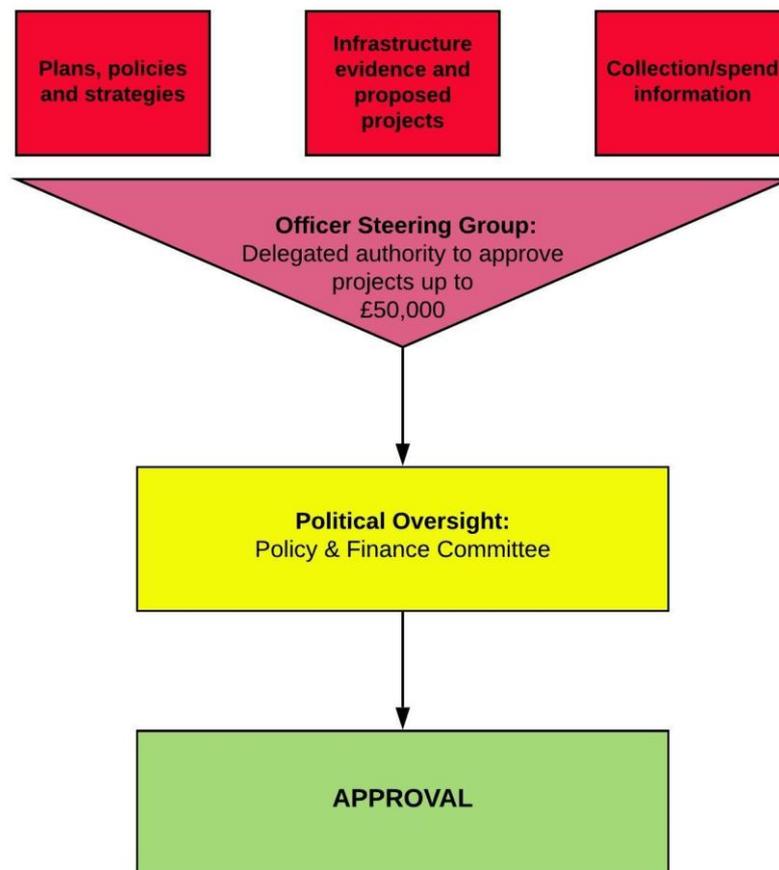
Proposal	Summary	Recommendation
<p><b>Maintain prioritisation of 123 List projects for CIL</b> (Critical)</p>	<p>Despite the CIL legislation change revoking Regulation 123, NSDC's 123 List still represents the most up-to-date published record of agreed strategic infrastructure priorities; namely the A1 overbridge, other strategic highways infrastructure and secondary education facilities.</p> <p>Although a number of the highways works have been completed through other funding available to the County Council as the Highways Authority, the remaining projects are imperative in order to accommodate the planned levels of growth across the District.</p>	<ul style="list-style-type: none"> <li>• Retain CIL solely for strategic infrastructure priorities in accordance with adopted planning policy (Spatial Policy 6).</li> <li>• Review strategic infrastructure priorities subject to delivery and in line with the anticipated trajectory of planned growth.</li> </ul>
<p><b>Local Plan-led priorities for developer contributions</b> (Necessary/ policy-priorities).</p>	<p>In accordance with planning policy, specific needs must be addressed where thresholds are hit or criteria triggered. In accordance with the legislative requirements these contributions should be necessary to make any given development acceptable in planning terms and be informed by robust evidence of need.</p> <p>In many cases contributions will be delivered on site, however, there will be instances where financial contributions are made towards off-site provision. The wording of the legal agreement through which the funds were acquired determines the manner in which they must be spent.</p>	<ul style="list-style-type: none"> <li>• In accordance with the terms of the associated legal agreement spending should meet identified needs and be informed by robust evidence (e.g. the Infrastructure Delivery Plan prepared in conjunction with the plan and the forthcoming Open Space Assessment and Strategy);</li> <li>• Assess and update annually area-based needs by infrastructure typology and explore costings for delivery.</li> </ul>
<p><b>Focusing on delivery of Community Plan objectives</b> (Policy priorities/ desirable)</p>	<p>The plan cross-cuts the corporate agenda at the strategic, neighbourhood and site level. Being derived largely from the Residents' Survey feedback, in addition to the above considerations, the Community Plan could prove useful in shaping non-strategic infrastructure spending priorities.</p>	<ul style="list-style-type: none"> <li>• Use the Community Plan to supplement evidence of local needs;</li> <li>• Work with lead officers to identify specific deliverable infrastructure themes, provide evidence and cost data. This may require some analysis of potential benefits to provide transparency in the process of ranking 'desirable' projects</li> </ul>
<p><b>Support delivery of identified projects in Neighbourhood Plans</b> (Desirable)</p>	<p>Parish/Town Councils receive a portion of CIL receipts from development occurring within their area. The basic rate of this 'meaningful proportion' is set at 15%, rising to 25% for areas with a made Neighbourhood Plan. Whilst in accordance with the limitations set out in the CIL Regulations parishes are able to spend this income as they see fit, many Neighbourhood Plans identify specific projects that underpin their overarching objectives.</p> <p>Where the meaningful proportion does not generate sufficient funds to pay for these projects in their entirety it may be deemed appropriate to supplement this with further funds to support delivery of local infrastructure.</p>	<ul style="list-style-type: none"> <li>• Engage with Neighbourhood Plan steering groups to gauge progress on delivery of local infrastructure projects</li> </ul>

<p><b>Delegated authority on spending up to £50,000 (S106 only)</b> (Desirable)</p>	<p>The Council already allows delegated decision making on spending of contributions up to £50k for S106 monies. Funds under £15k are allocated to a service area's revenue budget and £15k - £50k monies can be spent in line with the agreement. These schemes go in the capital programme and usually gain approval through the Committee System.</p>	<ul style="list-style-type: none"> <li>• Retain current arrangements</li> </ul>
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*Governance, Member Oversight & Decision Making*

- 4.5 Notwithstanding current work environment challenges it is envisaged that a governance structure will need to be established. The current governance arrangements for dealing with developer contributions are spread amongst various elements of the Council. The chart in **Appendix D** sets out the different stages and decision making body/officer.
- 4.6 Ultimately whilst a range of committees and officers are all involved to some extent in developer contributions it is Policy & Finance Committee that are responsible for most of the important decisions on the spending of developer contributions and advising Full Council on the Capital programme and therefore it is proposed that the IFS should be approved by this committee. Figure 2 below sets out the proposed approach.

4.7 **Figure 2 - Infrastructure Funding Statement approval process**



### *Considerations for developing the IFS*

- 4.8 It is important to stress that the IFS does not provide a blank canvas for revisiting infrastructure 'wants'. As set out above the IFS will need to work within the confines of what the Amended Core Strategy envisages will be delivered over the plan period. Decisions about priorities will need to be based on robust evidence, including development trajectories.
- 4.9 Alongside defining what our priorities are from developer contributions (to inform the IFS) it would be prudent to revise the current Supplementary Planning Document on Developer Contributions and we will need to work closely with the County Council as all of the current strategic infrastructure items are within their responsibilities. As such, we will need to work out a way of involving them and getting them to provide credible justification for the contributions they require.
- 4.10 Similarly it will be necessary to work with other stakeholders on S106 contribution spend, including the NHS (CCG), and Town and Parish Councils.

### *Scheduling Spending & Emerging Requests*

- 4.11 A potential dilemma may arise in balancing short term and long term spending priorities, insofar as there is a relatively strong likelihood of the Council being asked for money towards secondary school provision ahead of being in a position to deliver the A1 Overbridge. We will need to be mindful of how this may impact upon delivery of this and other large scale highways projects.
- 4.12 Currently the Council has had an enquiry about form Joseph Whitaker School Rainworth requesting funding assistance for an expansion of the school in the form of a new science block. The level of contribution sought is £620,000 which is based on new developments in the area generating an additional 26 pupils. The District Council has raised this matter with the County Council, because whilst the Council collects CIL for secondary education it is for the County Council who provide pupil places which result from additional development pressures. Officers are sympathetic to the School's request, subject to confirmation from the County Council that the monies are required in order to cope with capacity required as a result of new development in the area. This is opposed to 'normal' investment in the schools which is separately funded by Department for Education. Effectively the District Council should not fund normal educational investment through developer contributions.
- 4.13 Subject to County Council confirmation as described above it is recommended that funding an expansion of the school be approved. Any such contribution would also need to be captured in the Council's Capital Programme.

## **5.0 Equalities Implications**

- 5.1 Infrastructure delivery is fundamental to the implementation of the Amended Core Strategy which, as a whole has been subject to appraisal against the Integrated Impacts Assessment (IIA) Framework. The IIA incorporates Sustainability Appraisal, Strategic Environmental Assessment, Equalities Impact Assessment (EqIA) and Health Impact Assessment (HIA). The EqIA is a way of demonstrating the District Council is fulfilling the requirements of the Public Sector Equality Duty contained in section 149 of the Equality Act 2010.

5.2 With the focus of the IFS being on providing greater transparency to the decision making process and channelling infrastructure funding to areas of identified need as a result of development (thereby mitigating any perceived inequalities in accordance with adopted policy), at this stage, Officers consider that a separate EqIA specifically for the IFS is not required. However, should Members take a different view, a proportionate EqIA can be undertaken.

## 6.0 **Financial Implications (FIN20-21/6626)**

6.1 The report sets out the current arrangements for dealing with developer contributions including the various responsibilities for the monitoring of monies received. Financial Services work closely with colleagues on the officer steering group to ensure that contributions are appropriately managed in line with the Council's financial procedures. The proposed IFS approach will provide greater clarity for Members, service providers, developers and the community on how the Council deals with developer contributions.

6.2 The table at **Appendix A** shows a number of different spend by deadlines, from no deadline, to the latest being 2030. Whilst the total of £7.175m appears to be a significant sum of money, the values by year represent a more manageable spend.

Amount £	Spend by Year
0.623	2022
1.941	2023
0.877	2024
1.162	2025
0.718	2027
0.229	2030

£2.58m of the balance relates to contribution types that are the responsibility of the County Council and the next largest balance relates to Affordable Housing (£1.670m) this offers potential opportunity to utilise an element of these funds in relation to the Council House Development Programme.

6.3 Current commitments in **Appendix A** that are over £15,000 and are due to be spent by the Council (and not transferred to Nottinghamshire County Council, or a Town/Parish Council) are included in the Capital Programme. Any future commitments of this kind will be reported to Policy & Finance Committee for approval as per **Appendix D**. This will also apply to any spend of the £6.083m shown in the table at 3.2.

6.4 **Appendix B** details the S106 contributions due over the next 10-15 years. These contributions will mitigate the impact of the planned growth across Newark & Sherwood.

6.5 In relation to the Joseph Whitaker School proposal, subject to receipt from Nottinghamshire County Council of confirmation that the proposed funding, based on a development pressure of an additional 26 pupils as described at paragraph 4.11 and the recommendations, a Capital budget of £620,000 be set up in 2020/21 financed by CIL receipts.

## **7.0 Community Plan – Alignment to Objectives**

7.1 The IFS has potential to support the delivery of all Community Plan objectives that incorporate a need for infrastructure provision and enhancement. The proposed approach set out above highlights the importance of the Community Plan in underlining the District Council's corporate priorities alongside the strategic growth agenda directed by the Local Plan.

## **8.0 RECOMMENDATIONS that:**

- a) the proposed approach to defining spending priorities for developer contributions set out at paragraph 4.4 of the report be agreed;**
- b) the Infrastructure Funding Statement be developed in line with paragraphs 4.5 and 4.6 of the report; and**
- c) subject to confirmation of the appropriate request from Nottinghamshire County Council being received, a £620,000 Capital Budget be approved, financed by CIL receipts as set out in paragraph 4.11 of the report.**

### **Reason for Recommendations**

**So that a proposed approach for defining spending priorities for development contributions can be agreed.**

**To enable officers to prepare an Infrastructure Funding Statement to be prepared to meet the requirements of Community Infrastructure Regulations.**

**To enable officers to investigate consideration of funding additional facilities through CIL at Joseph Whitaker School.**

### **Background Papers**

[Amended Core Strategy 2019](#)

Community Infrastructure Levy Regulation [123 List](#) (Jan 2018)

For further information please contact Matt Lamb on 5462, Tim Dawson on Ext 5769 or Matthew Norton on Ext 5852.

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