

Report to Cabinet

Subject: Allocation of Community Infrastructure Levy Receipts from the Gedling Colliery Development

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Wards Affected

Gedling Ward

Purpose of the Report

To seek Cabinet's approval and recommendation to Council that Council:

- (a) commits up to a maximum of £4,488,120 as a contribution to the Gedling Access Road ("GAR") to be financed by Community Infrastructure Levy ("CIL") receipts, predominantly from the Gedling Colliery development, and that the final contribution to the GAR from CIL receipts be the equivalent value of the actual amount of CIL received from the Gedling Colliery that is required to construct/reimburse construction of the GAR if less than £4,488,120.
- (b) approves the establishment of the budget for the contribution to the GAR subject to the CIL actually being received and profiled in accordance with the timescale of receipt.

To seek, subject to budget approval, authorisation from Cabinet to enable the Director of Organisational Development and Democratic Services to enter into an agreement with Nottinghamshire County Council facilitating the transfer of CIL receipts to Nottinghamshire County Council to fund and/or reimburse funding for the GAR.

Key Decision

This is a Key Decision because it is likely to result in the Council incurring expenditure which is significant having regard to the budget required for the function concerned.

Background

- 1.1 On 15th July 2015, Council adopted the CIL charging schedule for Gedling Borough. The charging schedule came into effect on 16th October 2015. The CIL is a charge levied on new buildings and extensions to buildings according to their floor area, and the money raised from the levy helps to pay for infrastructure to ensure the Borough grows sustainably.
- 1.2 The adopted charging schedule for CIL includes a Regulation 123 list, this is a list of four projects which the Council proposes to fund partly or wholly through CIL receipts. The first project on this list is the construction of the GAR, demonstrating the Council's intention that CIL receipts are used to assist in the funding of this project.
- 1.3 In addition to utilising CIL receipts for projects on the 123 list, there is a requirement in the Community Infrastructure Levy Regulations 2010 ("the Regulations"), Regulation 59A, that where development falls within the area of a Parish or Town Council, a proportion of of the CIL receipts from the development be passed to the Parish Council. The amount passed to the Parish Council is capped at £100 per council tax dwelling per year, or 15% of the total CIL whichever is the lesser. Similarly, where there is a neighbourhood plan in place for an area where the development falls, 25% of the CIL receipts from the development must be passed to the Parish Council to be spent in the locality, there is no annual limit applied to the 25% contribution. Where there is no Parish Council or neighbourhood plan for the area in which development falls, the charging authority can still utilise 15% of the CIL receipts (subject to the annual limit) from a development for the provision, replacement, operation or maintenance of infrastructure or anything else that is concerned with addressing the demands the development places on the area (Regulation 59F). Whilst this is at the charging authorities' discretion, there is an expectation set out in statutory guidance, to which the Council must have regard, that the authority will consult with local communities as to how the 15% of the contribution should be spent. This is known as the "neighbourhood funding element."
- 1.4 Planning permission for the GAR was given initially in December 2014. The development has not yet commenced, and NCC, who are constructing the GAR are in the process of securing funding for the construction and securing the land necessary for the development. The GAR should be completed by the end of December 2019. The GAR is being funded by contributions from NCC, the Homes and Communities Agency, the LEP and Keepmoat, who are the developers of the Gedling Colliery site.

- 1.5 In May 2016, Planning Committee resolved to grant full and outline planning permission, subject to completion of a s.106 Agreement for the Gedling Colliery development. The Gedling Colliery development is to be carried out in three phases with full permission granted for 506 dwellings and outline permission for up to a further 544 dwellings. The first phase of the Gedling Colliery development will provide 315 homes, the rest of the Gedling Colliery development cannot be constructed until the GAR is completed.
- 1.6 Based on the estimated floor space for the Gedling Colliery development, the CIL receipts generated from the Gedling Colliery development will total approximately £4,488,120. The Gedling Colliery site is not within a Parish Council or neighbourhood plan area, so the neighbourhood funding element of the CIL receipts do not pass directly to a Parish Council, however, the neighbourhood funding element of the receipts from the Colliery development may still be used on other infrastructure projects in the area following consultation with local residents.
- 1.7 The £4,488,120 estimated CIL receipt figure from the Colliery development may alter slightly depending on the actual floor space built, inflation rates and any reliefs which may apply, for example, a relief may be applied for any affordable housing provided. The developer of the Colliery site, Keepmoat, will be required to pay CIL to the Council at various stages throughout the Gedling Colliery development. Liability for CIL is dependent on reserved matters approval and development commencing on site. As the Gedling Colliery development is a phased development, CIL receipts will be staggered as each phase is progressed. In addition, the Council has adopted an instalment policy for CIL payments as part of the charging schedule and as such, as CIL is triggered on each phase of the Gedling Colliery development, the amount will be paid to the Council in instalments. CIL receipts from the Gedling Colliery development should start to become payable around April 2017 (depending when development commences) and will continue to be paid until January 2028 provided development goes ahead to the timescales as planned.
- 1.8 The progression of the Gedling Colliery development is dependent on the GAR being constructed. Whilst the Council will receive some CIL receipts from the Colliery development prior to the completion of the GAR, a large proportion of CIL receipts from the Colliery development will not be received by the Council until after the GAR has been completed.
- 1.9 Keepmoat, have committed £17 million towards the construction of the GAR which includes the £4,488,120 CIL requirement from the Colliery development, for which the developer will be liable. As outlined, the £4,488,120 required for CIL will not all be payable in time to utilise in the

actual construction phase of the GAR. NCC are likely to need the full £17 million from Keepmoat to complete the GAR construction, based on their current cost estimate for the road. NCC have sought approval from their members to use as much of the £17 million as they need to complete the GAR, then to repay the developers the CIL proportion of the £17 million used by NCC on the GAR, so that when CIL becomes due, the developers still have the funds to pay it. NCC wish to then recover, from Gedling Borough Council, CIL receipts from the Colliery development, up to a value of £4,488,120, to reimburse NCC for the costs of constructing the road. Gedling may not be able to transfer all CIL receipts from the Colliery development to NCC as there is a neighbourhood funding element which must be considered, however, if the neighbourhood funding element is spent on other infrastructure projects, the Council could utilise CIL receipts from other developments towards the GAR, to make up the shortfall.

- 1.10 In order to ensure that NCC are reimbursed for the construction of the GAR, NCC have asked that a legal agreement be entered into as assurance that when Gedling receive the CIL receipts from the Colliery development, they will be passed to NCC to reimburse for the GAR construction. Such an agreement would require the Council to pay CIL receipts from the Colliery development to NCC but only to a maximum of £4,488,120 and only where the 15% neighbourhood funding element of CIL receipts is not required for other projects in the locality following consultation with local residents. Where 15% of the CIL receipts from the Colliery have to be utilised elsewhere, the agreement will allow for the amount to be made up from CIL receipts from other developments.
- 1.11 At present, cost estimates from NCC suggest that the value of all CIL receipts for the Colliery development up to £4,488,120 would be needed to reimburse for the construction of the GAR, however, any agreement would allow for payment of a lesser amount of CIL receipts to NCC if construction of the GAR comes in under budget. Any excess CIL receipts from the Colliery development not used to fund the GAR or used as the neighbourhood funding element to fund other infrastructure projects in the locality, could then be utilised towards other infrastructure projects on the Regulation 123 list.
- 1.12 Regulation 60 of the Regulations does permit charging authorities to use CIL receipts to reimburse for infrastructure already built. This would facilitate the Council reimbursing NCC for the construction of the GAR predominantly using CIL receipts from the Colliery development as and when monies are received by Gedling.
- 1.13 Given that CIL was only adopted by Gedling relatively recently, there have not been many developments commenced which would attract significant

CIL receipts, as such, there is insufficient money collected through CIL to fund the GAR up front from CIL. One of the largest contributors to the CIL pot is the Colliery development, but this has posed timing issues as explained above. As such, securing the CIL contributions from the Colliery development to secure the GAR will facilitate the project and be in accordance with the Council's Regulation 123 list.

Proposal

- 2.1 At present, there is no budget established for specific projects that CIL receipts fund. CIL receipts essentially sit on the books until allocated as financing for an approved project. It is estimated that the first instalment of CIL from the Colliery development will be April 2017 but this could be later depending on when development on site commences. In order to use CIL from the Colliery development or any other development for the GAR, Council approval is required to commit the CIL receipts to the project and to establish a budget for the contribution to the GAR which will be made up predominantly of CIL receipts from the Colliery development as and when they fall due and are received. It is proposed that Cabinet recommend that Council approve the commitment and establish the budget.
- 2.2 Subject to Council's approval of the "in principle" budget being established for the GAR, CIL receipts from the Colliery development can be transferred to NCC as far as is necessary to reimburse the County for the construction of the GAR up to a maximum of £4,488,120. Should the neighbourhood proportion of those receipts from the Colliery development be spent on other projects in the locality following consultation with the local area, any shortfall can be met from other CIL receipts available at the time the payment is made to NCC, this can be secured through the terms of the legal agreement detailed below.
- 2.3 It is also proposed that subject to budget approval, Cabinet authorise the Director of Organisational Development and Democratic Services to enter into an agreement with NCC governing the transfer of CIL receipts as required, up to a maximum of £4,488,120 to NCC to reimburse them for the construction of the GAR. The agreement will provide clearer detail on the timings of the payments in line with the receipt of the CIL instalments. It will also ensure that CIL is only utilised for costs which can be clearly evidenced by NCC and which are or were incurred in the construction of the GAR.

Alternative Options

- 3.1 An alternative option is that Members do not approve the

recommendations at this stage. Members have agreed in principle through the Regulation 123 list that Gedling Borough Council will utilise CIL receipts for the GAR. If the Council do not commit CIL receipts to the GAR now, NCC will not be in a position to demonstrate that the GAR is fully funded and as such the GAR is unlikely to be developed. As a consequence, the Colliery site would not be viable after the first 315 houses, as there would be no GAR to access the next two phases of development.

Financial Implications

- 4.1 It has already been established through the Regulation 123 list that Gedling intends to commit funding to the GAR from CIL receipts. The Council does not have sufficient funds from CIL to contribute to the construction of the GAR until significant developments generating large CIL receipts come forward. The Colliery development is the first large development attracting substantial CIL contributions which is capable of providing significant funding towards the GAR. Whilst it is recognised that the CIL receipts will not all have been received prior to completion of the road, NCC have the funding in place in the short term, provided Gedling can reimburse NCC for the construction of the GAR from CIL receipts from the Colliery development, and, if necessary other developments in the future. By agreeing to provide up to £4,488,120 to NCC for the GAR, NCC can secure the contract for the GAR in the knowledge that it will be funded, even if the monies take time to be reimbursed. In the interim, CIL from other developments which come forward can be utilised towards other projects on the Regulation 123 list such as secondary education provision for the Colliery.
- 4.2 The legal agreement in relation to the payment of the CIL to NCC will ensure that the Council is only paying what is necessary or was necessary to build the GAR, which will be clearly evidenced by NCC under the terms of the agreement, thereby ensuring the Council is using CIL for the correct purpose.

Appendices

None

Background Papers

Gedling Borough Council Community Infrastructure Levy Charging Schedule

Recommendations

Cabinet is asked to recommend to Council THAT:

- (a) it commits up to a maximum of £4,488,120 as a contribution to the Gedling Access Road ("GAR") to be financed by Community Infrastructure Levy ("CIL") receipts predominantly from the Colliery development and that the final contribution to the GAR from CIL receipts be the equivalent value of the actual amount of CIL received from the Gedling Colliery development that is required to construct the GAR if less than £4,488,120.
- (b) it approves the establishment of the budget for the contribution to the GAR subject to the CIL actually being received and profiled in accordance with the timescale of receipt.

Cabinet is asked that:

- (c) Subject to budget approval, Cabinet authorises the Director of Organisational Development and Democratic Services to enter into an agreement with Nottinghamshire County Council facilitating the transfer of CIL receipts to Nottinghamshire County Council to fund and/or reimburse funding for the construction of the GAR.

Reasons for Recommendations

- (a) To ensure budget is established for the contribution to the GAR to be financed by CIL receipts.
- (b) To ensure the GAR can be funded and therefore completed, thereby facilitating the development.
- (c) To ensure that payments of CIL to NCC are effectively evidenced and administered.