

Community Infrastructure Levy

Expenditure Framework

Cabinet Version

October 2023

New Forest District (outside the National Park)



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1. Background

- 1.1. The development of a detailed framework for Community Infrastructure Levy (CIL) expenditure for consideration and adoption is required as there is no set approach for CIL expenditure prescribed either by Central Government or through the CIL Regulations 2010 (as amended).
- 1.2. As such all Councils across the country where a CIL charging regime has been adopted and is being implemented have brought in their own schemes for how CIL monies are spent.
- 1.3. The CIL Regulations stipulate that CIL monies which are collected must be spent on infrastructure. Each Council is required to publish a list of infrastructure that they will put the CIL towards in an Infrastructure Funding Statement
- 1.4. This Framework should be read alongside the CIL Expenditure Framework Communication Strategy.
- 1.5. This CIL Expenditure Framework will be kept under periodic review with details of any forthcoming review to be set out in the yearly CIL Key dates calendar which will be published on the Web site.
- 1.6. This document sets out the key elements and information relating to the CIL Expenditure Framework under the following headings: -
 - Key principles of the CIL Expenditure Framework
 - Processes of the CIL Expenditure Framework
 - Validation and screening of bids and prioritisation criteria of bids under the CIL Expenditure Framework (to allow bids to be considered and determined)
 - Governance of the CIL Expenditure Framework

2. Key principles of the CIL Expenditure Framework

- 2.1 These are: -
 - The process should encourage openness and transparency of decision taking.
 - CIL data must be 100% accurate and software database must have integrity and be trusted.
 - Decisions must be compliant with the CIL Regulations.
 - The expenditure approach must be legally sound.
 - Deliverability and Timeliness must be demonstrated.
 - CIL expenditure should support The Local Plan 2016-2036 Part 1: Planning Strategy and the Infrastructure Delivery Plan as well as contribute positively towards climate change.



- The apportionment of CIL monies into three separate funds:
 - The Strategic Infrastructure Fund occurs after
 - the 5% administrative costs are removed; and
 - the Neighbourhood CIL portion (either 15% for Parishes (subject to a cap) with no made Neighbourhood Plan or 25% for Parishes (without a cap) where a Neighbourhood Plan is made).
- Publication of all expenditure through the Infrastructure Funding Statement.
- CIL expenditure will be regularly audited, including The CIL Expenditure Framework Review process.
- A Communications Strategy for the CIL Expenditure Framework is necessary and constitutes an appendix to this document.
- Infrastructure projects that are funded by using CIL funds shall be carried out on publicly owned or controlled land/buildings or where public access is guaranteed (unless exceptional circumstances apply). However where leased buildings or land is involved and a CIL Bid is made for infrastructure the lease must be long (i.e. no shorter than 25 years with a break clause no sooner than 15 years. Shorter leases will normally be regarded as unacceptable.
- Spending outside the geographical boundary of the District Council is acceptable where appropriate to the circumstances of the infrastructure to be provided and where there is clear benefit to the residents.
- Where offers of CIL funds are made to authors of Bids the monies will be allocated to the infrastructure project for a period of no longer than 2 years whereupon the allocation of funds would be withdrawn and it would be necessary to reapply through the Bid process to secure CIL funds for that project.
- CIL funds can be used for an infrastructure project to make it Disability Discrimination Act compliant.
- Evidence of need for the proposed Infrastructure project must be submitted with all CIL Bids.
- Parish/Town Councils should show at the time of the submission of any CIL Bids whether they have any of their own funds (including Neighbourhood CIL) that could be used
- Maximum limit of £75,000 or 75% (of the total costs) for CIL Bids (per project/CIL Bid) for infrastructure submitted by Parishes or Community groups
- Quarterly meetings between the Council officers and Infrastructure providers will take place to develop an Infrastructure delivery programme (e.g. for Rail, Health and Hampshire County Council – Education and Bus Passenger transport).
- Those CIL Bids that are within the Infrastructure Delivery Plan (IDP) will have greater weight when prioritisation criteria are used in the technical assessments of each CIL Bid



- No monies will be awarded through a CIL Bid towards costs which have already been paid for a project (i.e. no claiming retrospectively)
- Churches are not excluded from CIL funding but proposed projects must be for infrastructure and the proposal must benefit the community in the widest sense by offering wide community benefits and be capable of being used by the whole community. Any Bids must also address additionality and not include maintenance or church restoration costs
- Greater weighting towards Bids that align with spend priorities designated in Local Plan and IDP. Agreed critical/ essential infrastructure will carry more weight than desirable infrastructure
- Clarification - public electric charging points will be classed as community facility infrastructure. However, they are seen as a District wide benefit and will therefore be treated as an exception to the maximum limit on community facility infrastructure.
- Best value criteria should include land values where CIL Bids involve purchase of land for infrastructure
- Agreed that CIL Bids that demonstrate positive impacts on climate change and show sustainability characteristics shall carry greater weight in determination terms than those CIL Bids which do not.
- If a CIL Bid is invalid upon submission opportunity will be given for the next 12-month period (from the date of its submission) to be made valid. If it is still invalid after the expiry of the 12-month period, the CIL Bid will be treated as withdrawn and no formal decision (Cabinet or delegated) will be made on it.

3. Processes of the CIL Expenditure Framework

3.1 The CIL Expenditure Framework will operate with the following approach:

- Use of the Councils' existing software
- The process is centred upon a bidding round with consideration on yearly basis, with email submission of bids by Infrastructure Providers and all towns/parishes
- The yearly bid round cycle will be as follows:

Bid Round for the year	
October	Open 1st – 31st October
November/December/January	Bids validated screened and assessed against prioritisation criteria
January / February	Information collated for production of CIL Expenditure Programme ready for presentation to Task and Finish group
February / March	Consideration of CIL Expenditure Programme by Portfolio Holder. Letters issued confirming outcome of bids to applicants



- Full documentation of the process for lodging, consideration, and determination of the bids with supporting guidance documents for bid submission, bid application forms and prioritisation criteria to be used for assessment of the bids will be made available on the websites.
- The timetable for the bid process will be clearly documented on the websites. Three months of early advance notification of bid submission timescales (to facilitate bid submission) to all Infrastructure Providers and all Parish/Town Councils. Bids from Community Groups can also be submitted.
- Distribution of CIL income - The Council will retain up to 5% of the CIL income received within each District (for administrative costs). The Neighbourhood CIL allocation to Parish/Town councils (either 15% or 25% subject to a cap*) occurs in April and October each year. On the same 6 monthly basis, the CIL funds will be saved into three separate funding streams with the following definitions:-
 - Recreational Mitigation Programme Delivery – to support the implementation of the Council’s adopted Mitigation Strategy and ensure compliance with the Habitat Regulations (approx. £800k per annum)
 - Strategic Infrastructure Fund
 - Local Infrastructure Fund

3.2 Definitions of Strategic and Local Infrastructure:

3.2.1 One or more of these elements constitute Strategic infrastructure:

- is of strategic economic or social importance to the Council
- would contribute substantially to the fulfilment of any of the objectives of the Community Matters Corporate Plan 2020 to 2024, The Local Plan 2016-2036 Part 1: Planning Strategy or in any regional spatial and economic strategy in respect of the area;
- would have a significant effect on the area of more than one planning authority.
- will routinely be the subject of collaborative spend
- Illustrated Examples include strategic flood defence, hospitals and new rail infrastructure

3.2.2 One or more of these elements constitute Local infrastructure:

- meeting need at a local level,
- projects which support the expansion, improvement, provision of local services for the people living or visiting within the local area
- Illustrated examples include: extensions to early years, primary, secondary, or further education; bus stops and Real Time Passenger Information notice boards (RTPI); provision of leisure and community facilities, such as extensions to



community buildings and leisure centres, provision of play equipment and areas, sports facilities and open space; and waste recycling facilities.

3.3 Apportionment of CIL Funds

- 3.3.1 The apportionment of CIL monies into three funds; recreational habitat mitigation, Strategic Infrastructure Fund and Local Infrastructure Fund will occur twice yearly. This apportionment in particular allows saving of monies towards strategic infrastructure projects for the betterment of the Council and the prospect of collaborative spend with other funding organisations and or funding streams to achieve strategic infrastructure.
- 3.3.2 The division of monies between the three funds occurs in April and October each year immediately after the apportionment of/ payment of Neighbourhood CIL. There would be no set limit to the amount of funds allocated during each funding cycle but the amount allocated will never exceed the amount held by the Council.
- 3.3.3 Whilst CIL is identified as the source of funding for the recreational mitigation programme, the Council also collects S106 from developments that do not pay CIL (e.g. social housing or self builders). As this money is specifically ringfenced in a legal agreement towards the recreational mitigation programme this 'pot' will always be used first ahead of CIL.

3.4 Apportionment of Neighbourhood CIL

- 3.4.1 Currently six monthly allocations to Parish/Town Councils (which occur in April and October) continue, and where Neighbourhood CIL is received.
- 3.4.2 The Parishes apportionment of CIL monies (set out in the CIL Regulations) will remain at 15% (where there is no Neighbourhood Plan) and 25% where a Neighbourhood Plan is made.

3.5 Infrastructure Project Decisions and Delivery

- 3.5.1 Collaborative approach towards expenditure working with Infrastructure Providers and Parishes to get projects delivered and to "add value" is important and supported
- 3.5.2 Funding bids must provide adequate evidence/information to provide necessary certainty on timely delivery
- 3.5.3 CIL monies can be spent flexibly alongside s106 monies, Community grants and Locality monies and any other external or internal funding streams but expenditure of s106 monies must be in accordance with the terms of the s106 agreement.
- 3.5.4 A tiered approach to decision-taking should be taken involving some officer delegation and larger decisions by Portfolio Holder
- All decisions to be final.
 - No appeals process
 - Only one Bid per project per bidding round
 - After a refusal – no more Bids for this project unless funding circumstances are materially different and/or a time period passes of not less than 1 year.



- Where Bids are to be submitted, evidence of Community support shall be required (From County Councillor, District Ward Member and/or Parish Council)
 - Once Bids are validated and screened (see below) Officers will direct any appropriate Bids towards other funding streams where this is considered to be more appropriate
- 3.5.5 A yearly report on CIL and s106 expenditure will be required as part of the CIL Regulations 2019. This document will be known as an Infrastructure Funding Statement (IFS) and will need to be produced by the 31st December each year in addition to the twice yearly CIL Expenditure Programme.
- 3.5.6 Payment of successful bids to be in accordance with CIL guidance to be published on the Councils' websites.
- 3.5.7 For local infrastructure bids, evidence of a competitive tender will be required in accordance with the Council's procurement standing orders. These quotes must be offered to the Bidders and then submitted as part of the Bids on the basis that the cost of the works will remain held and not vary for a 6-month basis. (so as to be sure that when CIL monies are offered the project can be completed for the cost of the works submitted).
- 3.5.8 Where infrastructure being proposed also carries a dual use (such as education provision which would also be used by the community) the completion of a Community User Contract is required so that the community use can be guaranteed. (This will be a bespoke legal Contract designed to suit the circumstances of the CIL Bid case)
- 3.5.9 Technical assessments of all CIL bids where decisions are being made will be undertaken and published as part of the CIL Expenditure Programme documentation so that decision taking is open and transparent.
- 3.6 Screening part of process**
- 3.6.1 where CIL Bid is valid, screen all other opportunities for other forms of funding (external/unspent s106/community grant/neighbourhood CIL). This will ensure that the outcomes of these other funding opportunities are known before committing to CIL expenditure. Bidders should be encouraged to explore all possible alternatives for other sources of funding alongside requests for CIL funding including using crowd funding/encouraging donations/gifts. Other sources of funding that could also be considered are loans or Public Works Loan Board funding.
- 3.6.2 Churches not excluded from CIL funding despite many other funding opportunities for Churches but proposal must be for infrastructure and the proposal must benefit the community by offering community benefit.
- 3.6.3 CIL Bids will be treated as withdrawn if no progress is made after 12 months and no further action will be taken on them. Where a Bid is refused, the Council will not reconsider an identical Bid.



4. Validation and Screening of Bids and Prioritisation Criteria

- 4.1 Each Bid will be validated, screened, and prioritised and a technical assessment will be completed (and ultimately published on the web site as part of the CIL Expenditure Programme documentation).
- 4.2 The correct CIL Bid form must be submitted and all the questions on the Bid application form must be fully completed (where information known or where additional information is required (e.g. Business Case) together with evidence of need for the infrastructure). Bids should be emailed to developer.contributions@nfdc.gov.uk
- 4.3 The bid form should include the following:
- Description of infrastructure, location, purpose
 - Need /Justification
 - Costs and funding streams for provision
 - Quotations for works
 - How much financial support is sought
 - Collaborative spend – yes/no and if yes give details
 - Who is leading on delivery
 - Delivery proposal and timescales
 - Will the Infrastructure be provided on Public or Private land – has the Bidder obtained all the necessary permissions to implement the infrastructure
 - If the infrastructure needs planning permission - has this been sought and obtained
 - has any State Aid already been received or offered from other government sources
 - Consideration of future funding/maintenance once project is complete
 - Business Plan required dependant on size of the project (see guidance documents)
- 4.4 When Bids are made valid consultation will occur with the District Ward Member the County Councillor for the Ward affected and the Parish Council for that ward (except where the Parish Council is the Bidder for the Infrastructure project). The Consultation will occur by email and 14 days will be allowed for the submission of comments. A copy of the CIL Bid application form and a location plan will be sent to the consultee.
- 4.5 The screening process is as follows: -
- Could this infrastructure bid be provided using other internal and external funding streams that the Council can either submit Bids for or support others or where the Council has access to other funding (e.g. LEP Government funding or other



external funders s106 or, Community Grants? – if so, can it be delivered using this without complete or any reliance on CIL funds)

- Any incomplete bids will be considered, and effort will be made to get the bid fully complete and capable of then being assessed against the priority criteria.
- Where appropriate, information will be checked or sought to verify the information within the bid
- Where there are CIL infrastructure asks under Development Management decisions on major projects, these will be given consideration in terms of devising the CIL Expenditure Programme and through a programme of delivery working collaboratively with the Infrastructure Providers

4.6 Prioritisation criteria is as follows: -

- Does it positively scores against provisions /objectives of the Local Plan 2016-2036 Part 1: Planning Strategy and the Infrastructure Delivery Plan?
- Does it represent key infrastructure (essential)?
- Does it offer value for money ?
- Are there Clear community benefits?
- Is there community support?
- Is it deliverable?
- Is it affordable?
- Can it be delivered in good time?
- Supports housing and employment growth
- Positively supports climate change activities
- Have a package of measures been proposed and submitted which allow for ongoing maintenance of the infrastructure such that its longevity can be assured
- Does the provision of this infrastructure address a current inadequacy in infrastructure terms?
- Will the infrastructure be capable of being used by the wider community
- How does the proposal affect green infrastructure principles
- How does the project address green/sustainability principles/infrastructure
- How does the project affect state aid implications
- How does the project affect security and safety in the community

4.7 In addition to this, any monies allocated to the recreational mitigation programme will have to meet the criteria for projects as set out in the Recreational Mitigation Strategy adopted by the Council in 2021.



5. Governance of the CIL Expenditure Framework

- 5.1 All decisions once validated screened and assessed and considered against the priority criteria will be collated and considered by an Executive advisory task and finish group. Following this, a report will be presented to the Portfolio Holder for signing.
- 5.2 There will be tiered approach to decision taking in respect of bids submitted for Recreational habitat mitigation, the Strategic Infrastructure Fund and Local Infrastructure Funds as follows: -

Delegated Decisions to Director Place, Operations, and Sustainability

- a) Decisions to approve infrastructure projects the subject of bids where the amount of monies sought from the Local Infrastructure Fund is £10,000 or less
- b) Decisions to refuse infrastructure projects the subject of bids where the amount of monies sought from the Local Infrastructure Fund is £10,000 or less
- c) Decisions to carry forward Infrastructure projects the subject of bids to the next Bid Round where the amount of monies sought from the Local Infrastructure Fund is £10,000 or less
- d) Any decision which Officers consider may be of such significance or of a controversial nature such that Cabinet should take the decision in respect of the bid

Delegated Decisions to Portfolio Holder, Planning, and Economy

- a) Decisions to approve the recreational habitat mitigation programme of works
- b) Decisions to approve or refuse all Strategic Infrastructure Fund bids
- c) All other decisions to approve or refuse all other Local Infrastructure Fund bids which are not covered by the delegated decision taking outlined above under the delegated decisions listed above

Cabinet decision

- a) Decisions to amend the CIL Expenditure Framework
- 5.3 Following the decision to grant an allocation of CIL to a project, the applicant will be sent an offer letter and terms of conditions which must be returned to the Council to confirm the allocation is in place. Templates of the offer form and terms and conditions are attached as Appendix 1 and 2 to this framework.



Acceptance of Offer Form

I/We accept the requirements of the Offer Letter, and Terms and Conditions of the Offer for CIL Funding, from New Forest District Council in relation to project:

Ref:

Project Name:

CIL Funding Awarded: £

Applicant Name.....Signature

By and on behalf of (name of organisation):

Date

2nd Signatory (required for registered company, partnership, charity body or other public body)

Name.....Signature.....

Date

Contact Address for Payment Notice :

Email address for remittance.....

Bank Details:

Bank Sort Code:

Account Number:

Account Name:

Please return this completed form to developer.contributions@nfdc.gov.uk

New Forest District Council Community Infrastructure Levy Funding

Terms and Conditions

Award of Funding

1. The offer of funding as set out in the offer letter attached to these terms and conditions ('the Offer Letter'), from the Community Infrastructure Levy (CIL) Infrastructure Fund, is subject to the applicants acceptance of the offer, these terms and conditions and the requirements set out in the Offer Letter
2. Any award must be used exclusively for the delivery of the project as set out in the application submitted, summary annexed to the Offer Letter and in the Offer Letter itself ('the Project').
3. The Project must be carried out and completed to the standard and specification stated within the attached application form.
4. If the Applicant fails to comply with any of these terms and conditions, NFDC ('the Council') may withhold, vary, terminate, or require any or all of the CIL award to be repaid.
5. The CIL funding will be conditional upon the applicant obtaining any necessary building regulations and/or planning permission and any other consents or permissions as may be required.
6. The CIL funding is a one-off payment and will not result in any future revenue commitment by the Council. The Council will not be responsible for any future maintenance, revenue liability or ongoing funding related to the application.
7. There is no right of appeal against an award, refusal or withdrawal of CIL funding.

Starting the Project

8. The Project must commence within the period stated in the Offer Letter. If this is not possible, the applicant must inform the Council, in writing, of when they will start the project and the reason for the delay for approval by the Council. For the purpose of this document, commencement is defined as when the works relating to the delivery of the Project materially begins.
9. **Works already completed or expenditure incurred prior to the Applicant's acceptance of the offer, these terms and conditions and the Offer Letter will not be funded.**

Approved Projects for CIL Funding

10. The works that are the subject of the CIL funding must be carried out strictly in accordance with the details as described in the attached application submission and in accordance with these terms and conditions and any requirements contained within the Offer Letter.
11. The Council reserves the right to carry out independent financial checks where appropriate and may withdraw the offer at its sole discretion if it considers the public funds may be put at risk
12. If during the course of the work, the applicant finds it impracticable to carry out the work in accordance with what was approved, then changes must only be made after written approval has been given by the Council. Failure to do so may result in the withdrawal or withholding of the funding or requirement to repay any sums already provided by the Council
13. Where requested by the Council the applicant must provide a written statement or an

appropriate certificate of completion and the Council must be satisfied that the work has been carried out in accordance with the attached application Form before payment of the funding.

14. On completion of the project, for publicity purposes, the applicant agrees to submit photographs (with no copyrights) of the completed project and agrees that these may be used to promote the CIL funding allocations.

Payment of funding

15. Subject to the terms of these terms and conditions the Council shall pay the funds to the Applicant only after completion of the project and the submission of verifiable invoices. The original invoices/receipts need to be submitted to the Council as proof of purchase and/or expenditure. The Applicant agrees and accepts that the payment of the funds can only be made to the extent that the Council has available funds.
16. You must have a bank account in your name or the name of your organisation into which the Council will pay the funding. As part of the acceptance of the offer of funding, you will need to provide the bank account details including the sort code, account number and name on the account.
17. The award of funding contained in the Offer Letter is the maximum CIL funding awarded to this scheme. If the Project cost is lower than the amount stated in the attached application form, unspent monies cannot be used on matters not included. If the total Project cost is lower than amount stated in the attached application form, there will be a pro rata reduction in CIL funding.
18. There will be no obligation on the Council to increase its offer in the event of cost increases on eligible work.
19. The Applicant shall promptly repay to the Council any money incorrectly paid to it either because of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where monies have been paid in error before all conditions attaching to the funds have been complied with by the Applicant

Withholding or Recovery of Payment

20. It is the Council's intention that the funds will be paid to the Applicant in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Funds and/or require repayment of all or part of the Funds if:
 - a) the Applicant uses the funds for purposes other than those for which they have been awarded;
 - b) the Council considers that the Applicant has not made satisfactory progress with the delivery of the Project;
 - c) the Applicant is, in the reasonable opinion of the Council, delivering the Project in a negligent manner;
 - d) the Applicant obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Project or the Council into disrepute;
 - e) the Applicant provides the Council with any materially misleading or inaccurate information
 - f) the Applicant commits or committed a prohibited act under the Bribery Act;
 - g) any member of the governing body, employee or volunteer of the Applicant has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;
 - h) the Applicant ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved

- (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- i) the Applicant becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
 - j) the Applicant fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
21. The Council may retain or set off any sums owed to it by the Applicant which have fallen due and payable against any sums due to the Applicant under this Agreement or any other agreement pursuant to which the Applicant is a party.
 22. Where the Applicant receives or intends to apply to a third party for other funding for the Project, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide the Council with details of the amount and the purpose of that funding. The Applicant agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project.
 23. If the Applicant receives funding from a third party either during the delivery or after completion of the project the Council reserves the right to recover that amount of funding from the applicant.
 24. If the Project does not comply with the delivery timetable stated within the application form and Offer Letter, the Council reserves the right to revoke or recover the amount of the funding, or such other amount as it considers reasonable.

Compliance and Insurance

25. The applicant must ensure compliance with all regulations and legislation relating to the project including equality, sustainability and health and safety.
26. The applicant must ensure appropriate and sufficient insurance cover, including public liability and employer liability applicable to the project.

Limitation of liability

27. The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Applicant running the Project the use of the funds or from withdrawal of the funds. The Applicant shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Applicant in relation to the Project, the non-fulfilment of the obligations of the Applicant or its obligations to third parties.
28. Subject to clause 27, the Council's liability under these terms and conditions is limited to the payment of the funds.

Communication & Monitoring

29. The Applicant must maintain regular communication with the Council following the acceptance of the offer, these terms and conditions and the Offer Letter. The Applicant should provide regular updates and information on the project until it has been completed.
30. In any event the Applicant shall within 7 days after written request by the Council provide the Council with such information and documents as the Council may reasonably require to enable to the Council to verify that the Applicant has complied with its obligations under these terms and conditions.

31. The applicant must provide an annual return no later than 01 May each year, with information on the progress of the Project, within the previous financial year This will ensure the Council is able to fulfil its monitoring requirements under the CIL Regulations 2010 (as amended Sept 2019).

Publicity for the Project

32. The Applicant must acknowledge the support of the Council in any materials that refer to the Project and in any written or spoken public representations about the project in a form or style agreed in advance with the Council.
33. Where the Council has provided the Applicant with any of its intellectual property rights for use in connection with the Project (including without limitation its name and logo), it shall only be used in accordance with reasonable brand guidelines.
34. The Council reserves the right to use images of the project, resulting from the award of the CIL funding, as part of any publicity material that it may wish.

Freedom of information

35. The Applicant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
36. The Applicant shall:
 - a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - b) transfer to the Council all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
 - c) provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - d) not respond directly to a request for information unless authorised in writing to do so by the Council.
37. The Applicant acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Applicant. The Council shall take reasonable steps to notify the Applicant of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

Miscellaneous

38. The Council reserves the right to vary these terms and conditions. Such a right will be exercised by the Council acting reasonably.
39. No provision of these terms and conditions shall be enforceable or intend to confer any contractual benefit on any person under the Contracts (Rights of Third Parties) Act 1999.
40. Insofar as any clause or clauses of these terms and conditions are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of these terms and conditions.
41. All notices and other communications in relation to these terms and conditions shall be in writing and shall be deemed to have been given if personally delivered, emailed or mailed (first class postage prepaid) to the address of the relevant party, as referred to

above or otherwise notified in writing. If personally delivered or if emailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working days following such mailing.

42. These terms and conditions shall not create any partnership or joint venture between the Council and the Applicant, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
43. No waiver (whether expressed or implied) by the Council or Applicant of any breach or default in performing or observing any of the covenants terms or conditions of these terms and conditions shall constitute a continuing waiver and no such waiver shall prevent the Council or Applicant from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
44. These terms and conditions are governed by and interpreted in accordance with the laws of England and Wales