

Appendix 1

Joint Representation of Cambridge City Council and South Cambridgeshire District Council

Draft Response to Infrastructure Levy technical consultation - Technical consultation on the Infrastructure Levy - GOV.UK (www.gov.uk)

Chapter 1 – Fundamental design choices

Question 1: Do you agree that the existing CIL definition of 'development' should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – **Yes**
- Buildings which people do not normally go into - **Yes**
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - **Yes**
- Structures which are not buildings, such as pylons and wind turbines. **Yes**

Response: The starting point for any new Infrastructure Levy scheme is that it should help to bring about mutual benefits for both developers and local authorities. This should recognise what both developers and councils need for developments to be deliverable and effective, not just for construction and completion but once they are occupied. In this context, whilst we accept that the national guidance for the Infrastructure Levy needs to set some definitions and core ground rules, it should not be too prescriptive. There needs to be enough room for local discretion in order for councils to work in concert with developers and other partners to address specific local circumstances.

The existing CIL definitions of 'development' and its existing exclusion should be maintained under the Infrastructure Levy – this would provide consistency, continuity and a smoother transition particularly when it is likely the roll out of the Infrastructure Levy would be over a period where the existing CIL charging regime would still be in operation.

Cambridge City Council and South Cambridgeshire District Council (referred to hereafter as 'the Councils') support the extension of the definition of development to include "any change in the use of an existing building or part of a building" as provided for by Section 204E(1)(c), which overcomes the shortcomings of the existing S106 and CIL regimes to adequately address the infrastructure needs arising from changes of use through Permitted Development.

Question 2: Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? **Yes.**

Response: The Councils agree that there needs to be a clear distinction between 'integral' and 'Levy-funded' infrastructure. Developers, under the current system, are required to provide necessary and appropriate infrastructure incorporated into the design of a development, for example road layouts under Section 278, and this should continue outside of the Levy to make sure that a site can work, is accessible and has functionality and that the necessary infrastructure is provided in a timely manner.

The Councils also agree that 'integral' infrastructure should be treated as a 'build' cost of development delivery. As 'integral' infrastructure is essential to the proper functioning of the development, the expectation must be that this infrastructure be delivered on-site by the developer (or by the Highways Authority for S278 works) and to the standards and level of quality set by the local authority or by the Government in respect of national requirements. For example, waste minimisation and recycling/waste collection infrastructure would be considered as integral infrastructure to be delivered on-site. However, councils often have different methods of waste collection (black bags, wheelie bins, communal bins, vacs systems etc) that will differ significantly regarding waste storage and servicing requirements.

However, the Councils are concerned that there are a number of infrastructure items, depending on scheme size or the achievement of comprehensive development over

multiple sites (such as regeneration areas), that could potentially fall in both 'integral' and IL funded. Open space and SUDs for example should be provided on-site for the liveability and functioning of the development but may also benefit from being delivered as a larger cumulative offer. The ideal is likely a combination of the two, as green networks aid in many other aspects of both development design and neighbourhood character, including BNG and sustainable transport links. Whether an infrastructure item is to be treated as 'integral' or IL Funded will therefore likely depend on the specific local circumstances. Councils should have the ability to make this distinction based on the individual and specific circumstances but should be required to set this out clearly in the Infrastructure Delivery Strategy. These could be treated as a departure from any list of 'integral' or IL Funded infrastructure provided in regulations or national policy or guidance.

The Councils are also supportive of the ability to require land to be set aside on strategic sites on which to site 'Levy-funded' infrastructure and to require a certain amount of floorspace is given over to local infrastructure priorities. This will provide the certainty required for long-term place planning of strategic infrastructure and is welcomed.

ADDITIONAL POINT – not covered by the consultation questions:

We would also suggest that the examples of Levy-funded infrastructure, featured in paragraph 1.22 of the consultation paper, should be widened to include community meeting spaces & halls and cultural facilities.

Question 3: What should be the approach for setting the distinction between 'integral' and 'Levy-funded' infrastructure? **Option C – local authorities should be able to set out any specific items that they will be seeking as integral contributions, through their infrastructure delivery strategy**

Response: The principles set out in 1.28a are useful but should be applied locally in line with Option C through the Council's Infrastructure Delivery Strategy.

As stated above in our response to question 2, and acknowledged throughout the technical consultation, what falls to 'Integral' and what falls to 'Levy-funded' infrastructure will likely depend on the area and scale of the development being proposed, whether it is single or multiple ownership, its phasing, and site circumstances (i.e., whether it is a new town, an urban extension, a village extension, a regen area, strategic site within an existing urban area, or an infill site).

In an area like Greater Cambridge, all of these site circumstances are being planned for, and what is 'Integral' or Levy-funded' will differ between them. As such, the Councils consider that the only means by which to provide the clarity and certainty sought will be if the principles and typologies are set locally within the Infrastructure Delivery Strategy.

Question 4: Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision? **Yes**

Response: The Councils consider that funding on-going/recurring revenue costs through the Infrastructure Levy is not sustainable and would reduce the funding available for new infrastructure and affordable housing. Nevertheless, the Councils welcome the flexibility in the Bill to allow local authorities to determine whether an element of their levy funding might be put towards non-infrastructure matters, such as to cover staffing costs through the initial start-up period, or task-specific revenue costs related to mitigating the impact of development in the Council's area. This is considered appropriate as a facility will likely be designed to meet the needs of the entire development which may take years to build out but require the facility to be fully operational from first occupation. A revenue contribution would address the time lag between the initial cost of setting up and running the facility until the full amount of council tax to be realised from the development can be relied upon.

Question 5: Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? **Yes**

Should expectations be set through regulations or policy? **No**

Response: If 'expected' means an official requirement, then 'No'. Whilst it is reasonable to assume that local authorities would allocate the bulk of Levy funding to infrastructure and affordable housing, councils should be given discretion to decide how best to allocate this funding in the context of local needs and circumstances.

Requests for funding infrastructure may exceed the amount of Levy funding available, but that should not prevent councils from investing a reasonable amount of Levy funding to support initial, task-specific revenue costs related to mitigating the impact of development.

Question 6: Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent on? **Yes**

Response: As stated in our response to question 5, this might include one-off, initial revenue funding of community facilities.

Currently the Councils seek developer contributions towards community development and sports development services, to help residents in a new community to come together and socialise. This is particularly important where the development is creating a new town settlement or new neighbourhood, and where it might take a decade for the area to become truly established. Often residents will be required to make compromises in the intervening period, such having to use non-local schools and

facilities until these can be provided and sustain locally. As such, creating an inclusive and cohesive community can be challenging. As part of this, local community groups also benefit from support in building capacity in order to collaborate effectively with the Councils and their partners in delivering services.

The Councils are therefore keen to ensure such initiatives can still be secured through any new developer obligations regime but consider these may be better secured through S106 rather than through Levy funding, as the needs are likely to be site-specific having regard to the surround local circumstances, including capacity within neighbouring areas to accommodate the demands arising.

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? **local authority discretion.**

Response: The 'infrastructure in kind' threshold should be left to local authority discretion rather than the high threshold which is favoured currently by Government. Strategic and major development sites do not necessarily always come forward as one specific site. They can be comprised of several developments, which are built out at different times/stages, different scales/sizes of development and by different developers. Councils need to be allowed to view all these individual developments together, in order to recognise their cumulative impact.

To ensure the infrastructure via the 'in-kind' route is provided in a way to mitigate the development in a comprehensive manner, it is considered that the threshold should be set at the local authority's discretion, to ensure that the infrastructure is provided at the right place and in a timely manner. A low threshold would not necessarily mean more S106 negotiation, because a majority of local authorities use planning obligations SPDs to provide guidance on the level, nature and type of infrastructure which would be expected from new development. The use of SPDs and the 'CIL tests', generally over recent years has reduced the need to always negotiate S106 planning obligations.

Question 8: Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? **Yes**

Response: The consultation proposals effectively seek to limit the use of S106 to 'catch' those matters not capable of falling to either planning conditions or Levy funding to appropriately mitigate development impacts. This is not too dissimilar to the current regime for authorities with a CIL in place. However, what is being proposed through the use of the three different S106 routeways appear complex and to some extent confusing.

The primary issue local authorities currently have is that it is very difficult to apply a standardised approach to the use of planning obligations as every site is different and every development scheme is different. What is an issue requiring mitigation on one

site is a non-issue for another. Unfortunately, the scale of the development is not the only defining consideration. However, it is typically the case that where a specific S106 requirement is sought, it will be the crucial determinant of whether a proposed development will be functional and habitable. Often this is not apparent or known at the plan making stage. Usually, such matters arise only through consultation on the detailed planning application. It is therefore essential that the use of S106 is not curtailed under any of the three routes proposed to the extent that it cannot be used where it is the only acceptable and appropriate mechanism by which to satisfactorily secure the mitigation required. Such mitigation could extend to infrastructure that should have fallen to Levy Funding and should have been accounted for in the Infrastructure Delivery Strategy when setting the levy rate. This could include circumstances where matters only arise in the detailed planning of the infrastructure requirement (e.g. when masterplanning a strategic development).

The Councils note that there is currently little said in the consultation material about the form of planning applications. With outline schemes, much of the detail is left to be addressed. On significant schemes with very long build out periods, these can alter significantly between what was originally granted and what is finally built. The current system of obligations retains flexibility to address such matters.

Lastly, the Councils welcome and support 'delivery in-kind'. This will be important to support higher density development, where community facilities are integrated components of mixed use. With respect to the in-kind delivery of Levy Funded infrastructure consideration must be given to the scenario where the facility requirement is as a result of cumulative development being brought forward by different developers, such as within regeneration area.

Chapter 2: Levy rates and minimum thresholds

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? **Yes.**

Are there some types of permitted development where no Levy should be charged? **No.**

Response: The Levy should capture the value uplift associated with the 'permitted development' that creates new dwellings. This has been a significant omission of current permitted development rights that needs to be urgently rectified. The cumulative impact of permitted developments has resulted in unacceptable burdens being placed on local facilities and services and has failed to address affordable housing needs.

With respect to whether there are some types of permitted development where no Levy should be charged, the Councils would recommend that these be treated as an exemption rather than omitted. Local authorities should be able to use their own

discretion, depending on local circumstances, to determine which permitted development rights would be exempt or should be charged the Levy. It is often the case that the unintended consequences of permitted development only emerge years after the permitted change has been implemented. Examples are where the take up of permitted development is concentrated in a specific area and results in unacceptable cumulative impacts that require mitigation to satisfactorily address. Changing these from an exemption to be liable for a Levy would not seek to curtail the PDR but simply enable the local authority to mitigate unacceptable or harmful impacts.

Question 10: Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy? **Yes**

Do you have views on an appropriate value threshold for qualifying permitted development? **Yes**

Do you have views on an appropriate Levy rate 'ceiling' for such sites, and how that might be decided? **Yes**

Response: It is essential that, where permitted development creates a need for local infrastructure and services, it should be brought within the scope of the Levy. As stated in response to question 9, this has been a significant omission of current permitted development rights that needs urgent addressing.

With respect to the value threshold for qualifying permitted development, this should be determined locally based upon the uplift in value between the existing use and the permitted use. As the application of CIL has shown, the viability of different forms of development varies significantly between different parts of England. The value of an existing use will depend on its location, condition, and local need. Conversely, residential values also vary significantly across an authority's area and have little relevance to the existing use value of the land.

The Councils therefore welcome the ability to set different levy rates for different land uses in different areas based on local circumstances. The Councils consider that the application of a blanket base rate for an authority area as a whole is appropriate with a low minimum threshold. This will ensure all new viable development makes a contribution to the provision of infrastructure. This can then be nuanced with the setting of differential rates for specific areas planned for significant growth that will have specific infrastructure needs to be met. The threshold in growth areas, including regeneration areas, needs to be maximised to deliver the required infrastructure and to ensure growth is appropriately supported. The Councils recognise that areas that have high quality infrastructure, retain development values over the long-term, and will continue to promote further growth and inward investment.

The Councils therefore disagree that the 'Regeneration rate' should be set low. Often these areas are those that require substantial structural change in the urban fabric to make functional and will be deficient in the type, scale and quality of infrastructure required to meet the regeneration ambition. The setting of a low rate would therefore

be counter-productive unless deemed that the majority of required structural change can be achieved through 'integral' delivery. As per other points we have raised in our response, we consider that there should be local discretion of any thresholds relating to the value of that development in order to reflect local market conditions.

Finally, the Councils do not think it appropriate to set a Levy rate ceiling for permitted development. Overall, the aim of the charging schedule will be to strike the right balance between developer profits and provision of necessary infrastructure and affordable housing. A range of factors will need to be taken into account in setting the appropriate Levy rates applying to different forms of development, including permitted development but as long as it is demonstrated that the development remains viable, then it is right that the wider community shares in the uplift in value created by permitted development rights.

Question 11: Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development coming forward? **No**

Response: The onus remains on the developer to undertake due diligence before determining to purchase a site for redevelopment. This especially the case with brownfield sites.

Both the Councils and Government have sought to ensure matters such as land contamination and site constraints are adequately reflected in the land value. Local authorities then work hard with developers to bring forward viable and acceptable schemes, which often involves the need for compromises from both parties. However, where developers pay 'over the odds' for sites, this creates problems from the beginning and is the predominant cause of sites become 'marginal'.

For sites that are truly marginal, market forces are usually insufficient alone to bring these forward. In such circumstances, local authorities can and do use other tools at their disposal, including CPO.

However, it remains the case that under either scenario above, such sites require investment in the right types, form and scale of infrastructure to ensure they are functional and integrate successfully with the surrounding area.

The Councils therefore strongly oppose the provision of additional nationally imposed offsets from paying the Levy in such cases and would prefer these are determined locally, based on local circumstances but with the proviso that both the development and authority share equally in the uplift in land value realised.

Question 12: The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

- Charging the Levy on final sale GDV of a scheme. **Strongly Disagree**
- The use of different Levy rates and minimum thresholds on different development uses and typologies. **Strongly Agree**
- Ability for local authorities to set ‘stepped’ Levy rates. **Strongly Disagree**
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced. **Agree**

Question 13: Please provide a free text response to explain your answers above where necessary.

Response: The Councils agree that Gross Domestic Value (GDV) represents the best approximation of land value uplift but is concerned with how this is to work in practice and, in particular, the timing of when the Levy will be paid to fund the delivery of the infrastructure required.

Of significant concern to the Councils about the use of GDV, is the incentive upon developers to exceed the cost of purchasing and developing a site. Any Levy system must work like an overage, where developers are incentivised to optimise development value generated. This ensures developers and councils will share equally in the uplift of land value. In the absence of an overage, what incentive is there upon a developer to seek to deliver a significantly positive GDV?

Further, the Councils are acutely aware that current viability assessments are open to manipulation – we remain concerned that the use of GDV will not overcome this. Independent evaluation will go part of the way to addressing this concern but standardised developer inputs into the valuation methodology would also assist. Site anomalies would also need to be independently verified and developers should demonstrate how these were taken into consideration in the land value.

With respect to the timing of the payment of the Levy liability - if the Levy is not paid until the development is complete, sales values will be significantly affected by the lack of supporting infrastructure. The Government’s assumption that the public sector will borrow to forward fund the required infrastructure may be significantly misplaced. Most authorities no longer have significant reserves and are risk adverse, even when undertaking council direct delivery development. Furthermore, prudential borrowing to pay for infrastructure required of future development is effectively asking the existing council tax payers to subsidise development to improve developer cash flow, reduce developer borrowing and liabilities, and increase developer profits. This is risks stimulating anti-development sentiment within the community. In high growth areas, the level of borrowing required by Local Authorities with a large number of

infrastructure projects/sites is also likely to be very significant. The risks and costs of this borrowing – particularly where projects slow down due to poor market conditions for example - will be carried by local councils, not developers. This risks the fundamental erosion of local councils' ability to deliver both infrastructure and to maintain services to its community.

None of these scenarios are acceptable and is the reason why residual land value has been the only workable basis to date. Any proposals therefore need to explore how payment to offset borrowing risks/costs can be made in stages to smooth the upfront funding burden on a development while ensuring the funding of the delivery of Levy funded infrastructure as the development is being built out. A mopping-up exercise should then still take place at scheme completion to ensure the full uplift of GDV is paid.

As stated in response to question 10, the Councils welcome and strongly support the ability to set different levy rates for different land uses in different geographical areas of the authority based on local circumstances. The application of minimum thresholds should ensure that developments that do not give rise to Levy-funded infrastructure are not required to contribute towards funding them and that developments remain viable.

The Councils strongly disagree with setting a lower Levy rate level initially and then stepping this up over time. A long-held basic principle of planning obligations has been to ensure fairness. However, this proposal clearly benefits early developments at the expense of later developments, which will be asked to contribute more towards the same level of infrastructure provision. If the Levy is to be based on a package of infrastructure required to support the planned development across an area, and is set out in an Infrastructure Delivery Strategy that is subject to consultation and independent examination, the expectation will be that all development would be required to contribute fairly and equitably towards the cost. A discount to early development would also not reflect the fact that such schemes usually benefit from any surpluses in existing capacities.

The Council's note that the technical consultation does not currently propose who would determine when it was appropriate to step the Levy up and on what basis. As the consultation stresses, the aim of the Levy system is to secure at least the same level of affordable housing and infrastructure provision as the current system. The Council's would query how this would be achieved through the stepped up approach outlined. Conversely, the Council's would query how this achieves the objective of providing developers with certainty around the rate of the Levy likely to be applicable to their development. Given the uncertainties the Councils, it remains difficult to appreciate how the application of a stepped approach could be made to be fair or workable. As such, the Councils would strongly recommend that this approach not be taken forward in the Regulations.

The Councils agree with providing separate Levy rates for change of use. Changes of use only occur where it is economically beneficial to do so. It is right that the Levy be applied in such circumstances to capture a fair proportion of the uplift in land value, especially where the resultant use will place a burden on existing infrastructure provision.

In circumstances where existing floorspace is being demolished and replaced, if the proposal is to replace the existing floorspace in the same use, then the Councils would support a low or nil Levy being applied. This would then not act as a disincentive to renewing poorer quality buildings. As per the current operation of CIL, only the additional floorspace over and above the existing should be subject to the full applicable Levy rate in recognition that it would only be this portion of the development that would place an additional demand for new infrastructure provision. However, if the existing floorspace is being demolished to replace it with a new land use, it is appropriate to apply the full Levy applicable. The cost of the demolition of the existing buildings would already be accounted for in the land value and as a build cost of the development within the GDV calculation. As such a separate Levy rate would not be necessary.

Similar to CIL, it is essential that Levy rates be indexed to ensure build cost inflation is also reflected in the infrastructure provision, including the value of affordable housing.

Lastly, the Councils would request that any standard rate setting models be the subject of consultation before being introduced.

Chapter 3 – Charging and paying the Levy

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? **No**

Response: It is vital to make sure that the Levy works to the mutual benefit of both developers and local authorities. This is about getting the balance right in order to maximise both viability & gross development value AND mitigate the impact of development through the creation of sustainable new infrastructure at the appropriate time, which helps communities to thrive.

The Government's assumption that the public sector will borrow to forward fund the required infrastructure may be significantly misplaced. Most authorities no longer have significant reserves and are risk-averse, even when undertaking council-led direct delivery development. Furthermore, prudential borrowing to pay for infrastructure required of future development is effectively asking the existing Council tax payers to subsidise development to improve developer cash flow, reduce developer borrowing and liabilities, and increase developer profits. This risks stimulating anti-development sentiment.

If local authorities are unwilling or unable to borrow to forward fund infrastructure, and the Levy is not paid until the development is complete, sales values will be significantly affected by the lack of supporting infrastructure.

One of the benefits of the current CIL system is that developers need to build out schemes quicker to recoup the CIL outlay. If substantial payment of Levy liabilities is towards the final scheme phase, on completion, or even post-completion, what incentive is there on developers to increase delivery rates? The knock-on effect would be to see build rates stagnate or even reduce. This is at odds with the Government's

objective to see greater housing numbers delivered to address the ongoing housing crisis.

None of these scenarios are acceptable and is the reason why residual land value has been the only workable basis to date. However, the Councils can see an approach where GDV is estimated at the time of grant of permission, with staged payments of Levy liabilities paid at regular development intervals to smooth the upfront funding burden on a development while ensuring the delivery of Levy funded infrastructure keeps pace with development buildout. A mopping up exercise should then still take place at scheme completion to ensure the full uplift of GDV is paid.

The introduction of the Levy could also offer the opportunity to address a persistent issue that continues to undermine confidence in the planning system. Site value engineering, where landowners or agents seek planning permission with no intention of ever undertaking the development. This has two consequential impacts. Firstly, it artificially increases land value. True developers then have to pay more for the site and need to put forward a higher density development to make the site viable. Secondly, it raises expectations within the local community of development and change taking place of a scheme they consider acceptable, only to then be faced with a more dense development proposal which they perceive as overdevelopment and the new developer just being greedy. If this practice is not addressed, it could significantly undermine the Levy funded system being based on GDV. A proportional Levy payment on grant of planning permission would significantly curb this practice.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? **Yes**

Response: The Councils would strongly advocate a phased payment of Infrastructure Levy liabilities throughout the build-out period. This overcomes the initial funding burden on developers of the CIL payment regime, would help developer cashflow while ensuring Levy-funded infrastructure is capable of being delivered at the right time to support the development, which in turn will help maintain sales values. It will be difficult for developers to sell family homes when there are no schools or health facilities planned for the area until years after the development completes. The timing of Levy payments and when infrastructure is provided needs to work for the benefit of the development, which includes the developer, the new residents moving in, and the surrounding community.

Question 16: Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? **No**

Response: The local land charge should remain and not be removed until ALL outstanding Levy payments are made. This reflects current practice under the S106 and CIL regimes that have not inhibited the sale of homes. The local authority search result would be able to reassure individual house purchasers that no liabilities would be passed onto them but remain the liability of the developer.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? **Disagree**

Response: It could be a disincentive for developers to promptly pay the levy and could result potentially in the delay or avoidance of the payments of the Levy being made in a timely manner. It could also erode trust between developer and local authority, which is vital to realising mutual benefit and successful development.

Keeping the local land charge in place will provide the safeguard of a penalty for those who are late or fail to make the payments. It would be the most effective preventative measure.

Question 18: To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? **Strongly Agree**

Response: As stated in response to questions 14 & 15, the Councils would strongly advocate a phased payment of Infrastructure Levy liabilities throughout the build out period. This overcomes the initial funding burden on developers of the CIL payment regime, would help developer cashflow while ensuring Levy funded infrastructure is capable of being delivered at the right time to support the development, which in turn will help maintain sales values. It will be difficult for developers to sell family homes when there are no schools or health facilities planned for the area until years after the development completes. The timing of Levy payments and when infrastructure is provided needs to work for the benefit of the development, which includes the developer, the new residents moving in, and the surrounding community.

Question 19: Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? **Yes**

Response: The Councils strongly advocate the use of staged payments of the Infrastructure Levy liability. However, if the Government pursues payment on completion, the Councils would request the ability for local authorities to require an early payment of the Levy or a proportion of it to provide essential enabling infrastructure, such as strategic highways works or public transport interventions. Such infrastructure is often required to be delivered ahead of the development being occupied to avoid otherwise unacceptable impacts and to ensure new development is accessible and functional. This is particularly pertinent in places like Greater Cambridge where significant growth is planned to be met through provision of new towns, villages, and urban extensions to the City, which all require significant investment in sustainable transport connections to make them accessible and functional from first occupation.

Question 20: Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions **No**

Response: The proposed role for valuation of GDV at the various stages is potentially likely to be complex and open to misinterpretation between local authorities and developers. It would not necessarily be responsive towards market conditions particularly if disputes arise between local authorities and developers, particularly if it increases the use of the appeal process. It could also require local authorities requiring different professional skill sets which would need to be resourced to provide valuation expertise to be able to assess and reach negotiated agreement with the developer.

Chapter 4 – Delivering infrastructure

Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? **Strongly Disagree**

Response: If the CIL regime has demonstrated anything, it is that the infrastructure bill for an area always exceeds the ability of the development to meet it. Over the past two decades the Government has withdrawn significant mainstream funding of essential community infrastructure and affordable housing. These costs have been transferred to developers and RSLs. The expectation that local authorities will now underwrite the full cost of Levy-funded infrastructure, through borrowing is misplaced. Most councils face considerable funding pressures to maintain core services. The consequences of requiring local authorities to borrow to deliver infrastructure are that core services for existing and new communities will be placed at greater risk of non-delivery or from cost overruns/inflation and from market delays – deliberately (to avoid payment) or as a consequence of economic cycles and market performance. *Councils are also restricted in borrowing for investment by CIPFA rules, so where borrowing might be considered as a forward investment it may not be possible to raise the funds anyway.*

The Councils therefore consider borrowing against future Levy receipts would only be workable if local authorities were to be given discretion over the threshold relating to use of the 'Infrastructure in-kind' routeway for large and complex sites (secured through S106 agreements, as opposed to the Core Levy routeway). We presume that these S106 contributions could stipulate earlier trigger points for payment than envisaged under the Levy system. This has the potential to make the proposals more workable.

The proposed arrangements for borrowing cannot be too prescriptive in making a district council responsible in all cases for borrowing funds for new infrastructure (such as the provision of new schools or roads or healthcare facilities) which relate to the functions of other statutory bodies. It would not be practical for a modest scale district council to take on the total levels of borrowing that might be involved. The Government needs to clarify the Minimum Revenue Provision implications of borrowing.

The cost of borrowing must be excluded from the calculation of the Levy rates but included in Levy liabilities alongside inflation. If the cost of borrowing is included in the Levy rate, which is capped by development viability, this would only act to reduce the amount available for much-needed infrastructure to mitigate the impact of development. The effect of local authorities covering the cost of borrowing would be to ask existing communities to subsidise development costs.

Other sources of traditional mainstream funding should also be taken into account.

Finally, the Government will need to underwrite local authorities that borrow to fund the infrastructure contained within an infrastructure delivery strategy, based upon reasonable economic conditions prevailing. However, if for reasons beyond the Councils' control, development was then unable to afford to pay the expected amount towards the cost of the infrastructure, the government, and not the local authority, will need to assume liability for the gap funding.

Question 22: To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission?
Strongly Agree

Response: The Councils strongly agree that there should be the potential for upfront payments for infrastructure either as part of planning conditions, delivery agreements or S106 planning agreements. This could be a useful option in appropriate cases, which local authorities could use at their discretion. This will assist in the delivery and implementation of the right infrastructure at the right place and time, particularly for strategic and major development sites to support sustainable growth and development.

Question 23: Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy? **Yes**

Response: The suggestion of securing a financial contribution for a specific infrastructure project through a Delivery Agreement (offset against the total Levy liability) could be a useful tool.

Question 24: To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? **Disagree**

Response: A strategic spending plan in an Infrastructure Delivery Strategy (IDS) could provide certainty for the local authority, developers and the wider community as a whole in identifying priorities for spending the Levy and the delivery of the amount of affordable housing. However, the Councils consider that there will remain a high degree of uncertainty regarding costs at the plan-making stage, and the IDS would require a very significant amount of work to identify reliable cost estimates, with the

burden of funding this work seemingly being placed upon local authorities. This uncertainty risks reducing the value of using an IDS to support delivery as development comes forward.

In addition, the Councils appreciate how difficult it is to determine priorities, especially if the Levy funded infrastructure list is long and all items within the list are considered essential to mitigate the impact of development that is often dispersed across an authority's area – for example should the provision of a new school trump provision of strategic flood defences? Typically, strategic transport interventions are prioritised but are very costly to deliver. Councils seeking to reduce borrowing risk are likely to seek to deliver just the highest priority infrastructure requirements until such time as Levy liabilities exceed borrowing. This would necessarily defer delivery of other essential infrastructure.

It will be important for the Government to manage expectations by continuing to emphasise that the extent to which local authorities will be able to deliver on these strategies depends on the amount and pace of development which comes forward and the strength of the housing market and the GDVs secured.

Beyond the above, Councils will need to have the ability to adapt their strategies to changing circumstances, so it will be important to ensure the Infrastructure Delivery Strategy can be revised/updated and priorities revisited (perhaps on an annual basis) in between major reviews in order to keep it up-to-date and relevant. This will likely be resource intensive – managing the spend profile would require significant additional resources not currently held by councils - such costs would necessarily need to be able to be recovered through the Levy.

Question 25: In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

Response: Consistent with the current approach to developing Infrastructure Delivery Plans to sit alongside Development Plans, local authorities will need to:

- understand the development needs of the area;
- prepare population projections and analyse demographics;
- engage providers and their regulators in understanding planned and committed investment;
- undertake audits of existing infrastructure capacity and condition, assess options and feasibility of mitigation measures, including the consideration of changing service delivery models;
- determine triggers for infrastructure provision having regard to development trajectories;
- and be able to design and cost individual infrastructure requirements.

Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy?

Yes

Response: The Council's consider that it would be appropriate to seek the views of the local community into the drafting of the Infrastructure Delivery Strategy, if only to confirm that there are no omissions and to illicit broad agreement to matters such as how the Levy is to be operated (Levy rates applicable to which areas and land uses; the thresholds to be applied; qualifying development; exempt development; the affordable housing to be secured, the neighbourhood share portion etc). However, given the majority of Levy-funded infrastructure is likely to be strategic in both nature and scale, it would be more appropriate for the delivery bodies to undertake more detailed consultation on their specific infrastructure items matters such as route or location selection, detailed design considerations, and operational matters should therefore be treated as being outside of the scope of consultation on the Infrastructure Delivery Strategy, or risk the strategies potentially taking years to prepare.

Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general 'integral' infrastructure requirements **Yes**
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy **Yes**
- Prioritisation of infrastructure and how the Levy will be spent **Yes to the degree it can**
- Approach to affordable housing including right to require proportion and tenure mix **Yes**
- Approach to any discretionary elements for the neighbourhood share **Yes where the approach is to be determined by the local authority**
- Proportion for administration **Yes**
- The anticipated borrowing that will be required to deliver infrastructure **Yes**
- Other – please explain your answer
- All of the above

Response: The Councils consider all categories described in question 27 should be included in the Infrastructure Delivery Strategy in principle. However, the Councils have their concerns about being forced to borrow large sums if the Levy can only be collected at the end of development repay infrastructure delivered. The Councils do not want to underwrite the full infrastructure bill for Levy-funded infrastructure without certainty that it can be repaid in full over a relatively short period (i.e. less than 10 to 15 years – the length of a local plan period).

With respect to prioritising the infrastructure within the Infrastructure Delivery Plan, this may prove extremely difficult. The Levy-funded infrastructure will all need to be essential to the mitigating the impact of development which will often be dispersed across the authority area. What Levy funded infrastructure is required first will depend on the timing of when developers intend to bring forward their sites, the development quanta proposed, build out rates, interim provisions etc. The Councils are concerned that the process of prioritisation will necessarily need to involve prioritising the delivery of one or two strategic developments over others. This could significantly impact the ability to meet housing requirements. More careful consideration is therefore urged.

Further, the Councils are concerned that prioritisation will see some of the softer measures deferred or not funded – these include supporting new communities with community support which aids in community cohesion and seeks to reduce impacts on mental health.

There should also be a section in the Infrastructure Delivery Strategy on other mainstream funding sources, towards infrastructure (e.g. education provision or highways and transportation), and how they will contribute alongside Levy funding to deliver specific items.

With respect to the discretionary element for the neighbourhood share, the approach to how this is to be governed, should be for the local authority to determine based on local circumstances. The requirement on the local authority should be to clearly set this out in the Infrastructure Delivery Strategy, which is to be the subject of public consultation and engagement.

Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other – please explain your answer

Response: The Councils would endorse support for county councils to work collaboratively with the district councils as to what can be funded through the Levy and the priority to afford to specific items. This should also extend to the consideration of

appropriate triggers for when certain infrastructure items will be required. As county councils will likely be responsible for the commissioning and delivery of a significant portion of the Levy funded infrastructure (strategic transport provision and schools), Cambridge City Council and South Cambridgeshire District Council would also support county councils' sharing in the risk of borrowing to forward fund provision. Joint funding arrangements would help alleviate the concerns district councils have will borrowing to fund high-cost infrastructure items for which it is not the responsible authority.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? **Disagree**

Response: Local Plans are important in determining the development needs of an area and planning for its provision, including trying to identify the infrastructure required to support growth and its implementation in a timely manner. However, often our delivery partners are not in a position to adequately inform the infrastructure requirements – most are concerned with meeting current needs and their funding arrangements and service delivery plans only look towards the immediate future (the next 1-3 years). The Council's therefore consider that service providers, such as the NHS, should be resourced to support the proper long-term infrastructure planning of a district. In the absence of this, there will remain uncertainties as to whether the Infrastructure Delivery Strategy is robust and a true reflect of what may be required to mitigate development impacts.

The Councils further consider that the ability of local authorities to introduce an Infrastructure Levy should not be constrained by the timing of their Local Plan. Given the on-going need to mitigate the impact of new development, it is vital that local authorities are not left without an effective means to secure developer contributions until the next Local Plan is adopted.

Chapter 5 – Delivering affordable housing

Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds? **Unsure**

Response: Without understanding how the Levy will be set at a local level and the percentage of affordable housing agreed, it is difficult to make a judgement as to whether the 'right to require' will improve the delivery of affordable housing from its current position.

Whilst having surety of the affordable housing provision from the outset would be welcomed, it is difficult to understand what happens if the infrastructure costs (both integral and Levy funded) are more on specific schemes or above that set out in the Infrastructure Delivery Strategy. This could lead to lower quality or poor provision for those living on new developments, or local authorities having to pick up the cost. Government should be looking towards increased central funding to support the provision of affordable housing, especially for social rented homes, alongside the infrastructure needed to ensure the development is fully functional.

Under the current system it encourages competition for housing providers to bid for the affordable housing, with often the highest bid being successful. It would be interesting to understand how the 'right to require' fits with the current system and whether having a monetary value attached to the affordable through the 'right to acquire' would be secured as the 'sale price' to the housing provider rather than sold to the highest bidder. This would make the process more transparent and fairer and should ensure that homes are kept at affordable levels.

Further assessment is needed to understand the implications of using a monetary value based on floorspace to determine the affordable housing provision, in terms of how this relates to actual numbers of affordable homes. Affordable dwelling floorspace should be the same proportionally as for private housing, but to understand how this works in practice we would want to see some modelling on schemes already built out and whether under the proposed levy the scheme would have received either the equivalent or more than the affordable housing previously provided. We would still need to ensure the affordable housing is of good quality, meets maximum space standards for rented units due allocating to full occupancy and provides varying property sizes and not just smaller units to meet housing needs. It should be up to the local authority to determine the property sizes and tenures for each site based on the monetary value, to ensure it meets housing need. One size fits all, will not work.

Question 31: To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? **Agree but for the local authority to determine based on local circumstances**

Response: The affordability of housing is a key concern to the Councils. It might be appropriate to discount, reduce or apply a nil rate from the proposed Levy charges on genuine affordable housing schemes given the constraints placed on the funding for RPs and to ensure that 100% affordable housing schemes are able to be brought forward. This should be at the discretion of the local authority dependent on issues such as the type and size of the development and the infrastructure required. Councils need to be able to balance competing pressures in order to both make sure affordable housing can be secured and that the demands for infrastructure arising from these developments can be mitigated.

The Councils would advocate for a nil Levy rate for rural exception site schemes to ensure they continue to be deliverable to provide affordable housing for local people. From experience we know that rural exception site schemes are not viable and will not be delivered if there are significant infrastructure costs above those that are integral to the scheme.

Question 32: How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

Response: The size, scale, location, and circumstances around an affordable housing (AH) scheme tend to determine the specific infrastructure required to be delivered. This might include, for example, on site indoor and outdoor open space and play areas, highways and education place provision and other social or health needs.

In addition, generally through, for example, rural exception sites, contributions would be sought to ensure the 'integral' infrastructure is provided. Other contributions that sit outside of the 'integral' infrastructure are kept to a minimum to ensure the scheme can be delivered. Further analysis on provider-led schemes and rural exception sites should be undertaken to understand how current contributions compare between the different scenarios.

Question 33: As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? **No**

Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? **Yes**

Response: The setting of the Levy rates will be set locally having regard to local infrastructure needs and local development viability. The Councils do not see any reason why the 'right to require' should also not be determined locally based upon local needs for affordable housing.

Chapter 6 – Other areas

Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? **Yes, but not consistent with the existing CIL requirements**

Response: The principle of providing a portion of the Levy for local community priorities is supported but not at the current CIL levels of 15% or 25%, as this would represent a significant uplift on CIL and would be to the detriment of being able to fund the Levy funded infrastructure required and to secure an appropriate provision of affordable housing. Currently it is not possible to estimate what the total Levy liabilities will be for an area and, like CIL, will likely vary significantly between areas. As such it should be for the local authority to determine what proportion of the Levy should form the Neighbourhood Share, as well as matters such as whether a fixed-annual cap should be applied. The Council's would also not want the spending of the Neighbourhood Share to be constrained to just the neighbourhood within which the development paying the Levy is located. The scope and nature of strategic infrastructure provision often results in communities outside of the development area being impacted. Local authorities should have the ability to direct some of the neighbourhood share to these communities if necessary and appropriate.

Question 35: In calculating the value of the Neighbourhood Share, do you think this should A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues), B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. **D) Other**

Response: Generally, the value of the neighbourhood share should be the equivalent in value to the existing CIL funding for Parish Councils, provided the local authorities can fund and deliver the necessary infrastructure to support sustainable growth and development and secure an appropriate provision of affordable housing. Notwithstanding, and given the proposed Levy is a new initiative, it might be appropriate to consider the Neighbourhood Share (NS) should be a matter for local decision and be set locally depending on the scale of local development. This might enable a higher share for smaller in-fill developments, which tend to increase demands on existing facilities within the local vicinity. It would also be appropriate to allow local councils to vary the amount of the Neighbourhood Share and to determine whether it is appropriate to set a fixed annual cap to the total Neighbourhood Share.

Question 36: The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share in such areas?

Response: The Councils consider that this should be a matter for local discretion. We support the principle of levy funding being spent in the locality of development to mitigate the impacts it creates. Equally, it is vital that the responsibility to borrow for and deliver infrastructure is undertaken by properly constituted democratically accountable bodies of standing. In Cambridge, the City Council already provides a democratically elected mechanism for making sure local developer contributions are invested in local mitigation projects. Whilst there could be occasions in which the Council might choose to fund other bodies or local projects via the Infrastructure Levy, given the varied nature of local groups this should not be determined at a national level. .

Question 37: Should the administrative portion for the new Levy A) reflect the 5% level which exists under CIL B) be higher than this equivalent amount, C) be lower than this equivalent amount D) Other (please specify) or E) unsure. **Option D Other**

Response: It is important that local authorities are capable of recovering the full costs they incur in operating the Levy through the administrative portion chargeable to the Levy. However, at this time, and in the absence of any detailed work to understand the full breath of resourcing required, it is impossible to say what this cost might be and how this might translate as a percentage of the Levy. Unlike the existing CIL

regime, the administration of the Levy would also need to include the securing of the affordable housing ask of individual schemes, independent evaluations, management of the debt portfolio, and programme management, alongside the design and delivery of Levy funded infrastructure. As it is likely that the actual costs will only be known once an authority has implemented and is operating its Levy, it may be more appropriate that the regulations place a requirement upon local authorities to publish their administrative costs annually through an annual monitoring report on the Infrastructure Delivery Strategy.

Question 38: Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countrywide exemptions. How strongly do you agree the following should be retained:

- residential annexes and extensions; **Agree**
- self-build housing; **Strongly Disagree**

Response: Agree to exemptions being retained for residential annexes and extensions, given the assertion in paragraph 6.10 that these do not generally result in new pressure on infrastructure.

Disagree to retaining a country-wide exemption for self-build housing because this should be a matter for local discretion. Where self-build housing contributes to planned growth that has a cumulative impact on an area and creates the need for new infrastructure to mitigate its impact, applying the Levy would be reasonable.

Question 39: Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? **Yes, in principle but a matter for local discretion.**

Response: In principle yes, a reduced Levy rate could be applied to support sustainable technologies, but this should be a matter for local discretion. It should not necessarily be prescribed. It would depend on the impact the development would place on local infrastructure. The technologies referred to in the question are also not specified. The document describes that this could be where they go beyond national policies. Where local plans require higher environmental standards as the norm this should not result in reduced levy requirements.

Question 40: To what extent do you agree with our proposed approach to small sites? **Disagree**

Response: All new residential development, including small sites, cumulatively, place an increased burden on local infrastructure. If such development is viable and can afford the full Levy, the Councils believe the full Levy should be sought. However, the Councils appreciate that local circumstances will vary and would strongly suggest that the decision to provide a discount be made locally.

Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

Response: Having regard to our response to question 40, the Councils believe there are little to no significant risks to SME housebuilders, especially if local authorities have the ability to vary the Levy applicable to small sites should local viability considerations warrant.

Question 42: Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

Response: Generally, the exemption of public funded infrastructure or development from the Levy would be supported. However, it should be defined clearly which types of public funded infrastructure should be exempt.

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? **Agree in principle**

Response: Agree in principle. The enforcement measures and mechanism should be put in place to make sure the Levy is paid particularly to support key major developments. However local land charge should not be removed when the provisional levy liability is paid but only once the final levy liability is paid. There should be robust enforcement mechanisms and fines for late payments of the Levy and in cases of deliberate non-payment significant penalties to act as a deterrent.

Chapter 7 – Introducing the Levy

Question 44: Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system? Agree

Response: The Councils consider that the principle of a proposed ‘test and learn’ approach to the transition to the new Levy is helpful to ensuring its effective operation when taken up national-wide. It will ensure the Levy is capable of achieving existing or better levels of infrastructure funding and affordable housing provision, and any issues arising resolved. This would assist a smoother transition to the new Levy system from the existing planning obligations regime – (S106, CIL and S278). This would save resources in relation to the previous issues which arose with the

introduction of the CIL and its subsequent amendments and reforms. Once the lessons from 'Test and Learn' are addressed it should help the roll out of the Levy.

Question 45: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010?

Yes

Response: Yes. developer contributions play an important part in the promotion of social inclusion and cohesion. It is important that the consultation of people with protected characteristics, to support their needs, for example, age, physical and mental health, disabilities and that access to local services are and continue to be available to meet their needs.

In particular the Councils note that every new strategic scale development has been evidenced to have higher levels of mental health than established communities, and this must be addressed when we consider infrastructure. Connected to this, as well as considering protected characteristics there is a need to consider the impacts on low incomes. This allows us to address potential inequalities at the outset.

As much as the Government seeks to make the Infrastructure Levy scheme as simple as possible, the process is still likely to be found quite complicated by many householders and the community, not least those affected by dyslexia. Mitigations will need to be considered to help make the new scheme easier to understand in different formats.