



**Report To:** Cabinet

10 April 2014

**Lead Officer:** Director of Planning and New Communities

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## **COMMUNITY INFRASTRUCTURE LEVY DRAFT CHARGING SCHEDULE**

### **Purpose**

1. The purpose of this report is to update Cabinet on progress regarding the Community Infrastructure Levy (CIL) project and also highlight recent changes to the Regulations.
2. Cabinet are asked to approve a series of recommendations such that the Council can then progress to a consultation on the Draft Charging Schedule (DCS)
3. This a key decision because it is significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority and it was first published in the March 2013 Forward Plan.

### **Recommendations**

4. It is recommended that Cabinet;
  - (i) Note summary of representations to the Preliminary Draft Charging Schedule (PDCS) consultation
  - (ii) Approve the Draft Charging Schedule (DCS) for public consultation.
  - (iii) Approve the draft Regulation 123 list for public consultation
  - (iv) Approve the draft CIL instalment policy for public consultation.
  - (v) Give the Director of Planning and New Communities delegated authority to submit the Draft Charging Schedule and draft Regulation 123 list for examination following the public consultation

### **Reasons for Recommendations**

5. South Cambridgeshire Local Plan Proposed Submission was approved at Full Council on 13 March 2014 and is to be submitted for examination.
6. Officers have carefully considered the views submitted through the PDCS and recommend making one change to the charging schedule which is to apply a £0 psm CIL rate to retail development in strategic sites. The rationale for this is that although it might be considered that retail development (even as part of strategic sites) is viable, Officers are also expecting general viability to be an issue on all the strategic sites being allocated through the Local Plan. The existence of retail CIL rate may result in complicated s106 negotiations, and if this value were instead to be captured through the s106 agreement rather than CIL, it is thought this is likely result in a greater level of affordable housing that might otherwise be the case.
7. The draft instalment policy has been worked up with Cambridge City Council and is considered to balance (i) the needs of a developer's usual cashflow model whilst (ii)

providing funding such that the service providers are able to deliver the relevant infrastructure.

### **Background**

8. On 27 June 2013 Cabinet considered a report on the CIL PDCS and agreed:
  - A) To note the interim viability report attached as Appendix A to the report
  - B) To approve the Community Infrastructure Levy Preliminary Draft Charging Schedule (PDCS) shown in paragraph 40 of the report for consultation under the emerging Local Plan.
9. The Council consulted on the PDCS, alongside the Local Plan, between 19 August and 30 September 2013. To ensure maximum exposure in relation to the consultation, and to encourage feedback from all sectors, the Council (i) contacted statutory and non-statutory stakeholders advising them of the consultation (ii) provided an information board and staffed the Local Plan public exhibitions (iii) presented information to the Parish Planning Forum on 17 July and (iv) highlighted the consultation through a public notice.
10. As the Council's CIL approach is intrinsically linked to the new Local Plan it has been felt that the consultation on the Draft Charging Schedule was not able to take place until the Local Plan had been endorsed by the Council.

### **Preliminary Draft Charging Schedule responses**

11. Under CIL Regulation 15 (7) 'The Charging Authority must take into account any representations made to it...before it publishes a draft of the charging schedule'.
12. The Council received a total of 232 representations, from 45 parties (including 12 Parish Councils) to the PDCS consultation.
13. **Appendix A** details a summary of the representations received to the PDCS along with what is currently a draft of the Councils response to these representations. The full statement of representations will be finalised and published ahead of the DCS consultation.

### **Draft Charging Schedule**

14. The CIL Draft Charging Schedule proposed for consultation is as follows:

<b>Use</b>	<b>Charge £/sqm</b>
Residential (Area 1)	£100
All development for strategic development sites (Area 2)	£0
Residential for land at North of Teversham Drift (Area 3)	£125
Retail (up to 280 sqm)	£50
Retail (greater than 280 sqm)	£125
All other uses	£0

**Area 1** being the whole of the District with the exception of the following:

**Area 2** comprising land at the following strategic development sites:

NS/3 and SS/7 Northstowe

SS/2 Darwin Green

SS/3 (2) (the parcel Land North of Newmarket Road) Cambridge East

SS/5 Waterbeach  
SS/6 Bourn airfield  
SS/8 Cambourne West

**Area 3** comprising land at SS/3 (2) (the parcel Land North of Teversham Drift) Cambridge East

15. This means that village sites as well as windfall sites, allocated through the local plan, will be subject to a CIL rate of £100 psm. All development in strategic sites will be exempt from CIL. It is suggested that one small area of land which forms part of a larger development in Cambridge should have a residential rate of £125 psm to mirror the rate proposed by Cambridge City.
16. Officers are proposing that a consultation on the Draft Charging Schedule should take place starting in April 2014, and for a period of no less than 6 weeks, such that all necessary arrangements can be made for the DCS to be submitted for examination in the Summer and as the Local Plan examination commences. The introduction of CIL is dependent on the adoption of the Local Plan and therefore at this stage officers think it unlikely for CIL to be introduced until Spring 2015.
17. For comparison purposes the current national CIL rates (adopted and consulted) are shown at **Appendix B**.

#### **Infrastructure study**

18. As part of the Local Plan evidence base, the Council commissioned an Infrastructure Delivery Study (IDS) to identify, over the life of the Plan, the infrastructure needs (i) across the District and (ii) for specific sites. This study also identified potential funding sources for these projects thereby highlighting a funding gap, which justifies the introduction of CIL in South Cambridgeshire.
19. The evidence resulting from the IDS is considered to be a 'live' document that will need to be subject to regular updates as required. It will form part of the Local Plan examination. The relevance of the IDS for CIL purposes is to simply show that a funding gap exists.
20. The IDS shows that the cost of infrastructure needs across South Cambridgeshire alone is in the region of £2.15 billion and that if the A14 upgrade (at a cost of £1.15 billion) is removed from the infrastructure list the total cost is £1 billion over the plan period.
21. A significant amount of this infrastructure arises from the new development sites that have been allocated in the draft Local Plan including some £380m and £52m towards transport and access infrastructure necessary for Waterbeach and Bourn/Cambourne developments respectively.
22. With a zero residential CIL rate for the strategic sites the Council will be able to negotiate section 106 contributions from these sites, but nevertheless it is still expected that additional funding is likely to be necessary from other sources to facilitate their delivery.
23. It is expected that a more detailed assessment of a number of particular transport infrastructure items (as identified in the Transport Strategy for Cambridge and South Cambridgeshire published April 2014) will be undertaken in the future.

24. The Transport strategy for Cambridge and South Cambridgeshire major transport programme April 2014 is shown at **Appendix C**.
25. Officers have undertaken an assessment of likely CIL revenues over the plan period (comprising both allocated sites and expected windfall sites) and this assessment currently shows an estimated total CIL revenue of £22.5m with the District Council retaining responsibility for £18m (once Parish Council contributions at 15% and an administration contribution at 5% have been deducted). The above figures are subject to change if one or more Parish Councils adopt a Neighbourhood Development Plan (where such Parishes would benefit from 25% of CIL receipts).
26. At present, and while the true extent of the funding gap is unknown, it is expected that the CIL revenue is likely to only contribute in the region of 10% of the funding gap, but this sort of figure is generally in line with national levels for expected CIL revenue.

### **Infrastructure list**

27. In April 2013 Communities and Local Government undertook a Consultation on Community Infrastructure Levy further reforms. The outcome, as reflected in the CIL Regs 2014, is that CIL charging authorities are now required to consult on a Regulation 123 list during the rate setting process to provide more transparency to the development industry. A Regulation 123 list is a list of infrastructure items the charging authority intend spending CIL monies on.
28. As part of the PDCS the Council asked for suggestions as to what items should be funded through CIL revenue. The representations are summarised in **Appendix D** along with commentary highlighting some potential sources of funding.
29. In April 2013 Communities and Local Government (CLG) undertook a Consultation on further CIL reforms. The outcome, as reflected in the CIL Regs 2014, is that CIL charging authorities are now required to consult on a Regulation 123 list during the rate setting process to provide more transparency to the development industry.
30. **Appendix E** contains a draft Regulation 123 infrastructure list but at a high level rather than a detailed list (i.e. project types that CIL may be spent on but that section 106 contributions cannot be used to fund) to be consulted on.
31. Following consultation on the draft Regulation 123 list Members will be asked to approve a final draft version to be submitted as part of the CIL examination.
32. The Regulation 123 list will be capable of change at any point in the future subject to the Council having undertaken the necessary public consultation.

### **Relationship with Section 106 agreements**

- (i) The introduction of the CIL Regulations does not of itself necessarily preclude the Council from continuing to use section 106 agreements to secure money from some new forms of development. The Regulations have, however, made this practice harder and put into statute the requirement that 3 tests must be satisfied for a relevant planning obligation can be secured: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development.
33. The Regulations prevent a project being funded through both CIL and section 106 agreements (a practice nationally known as 'double dipping'). In these circumstances

it is important that the Council carefully considers how section 106 agreements might continue to be used once CIL is adopted.

34. The PDCS proposed a CIL rate of £0 for residential development in those strategic development sites referred to under Area 2 of the proposed DCS at para 14. As such all onsite and offsite infrastructure arising from these sites will be secured through a section 106 agreement. This approach is widely accepted by the development industry as being the most appropriate solution.
35. The investigation into site allocations as part of the Local Plan process has highlighted that there are likely to be significant capacity issues in South Cambridgeshire primary schools, including those where village development is planned. It appears likely that the primary schools within these villages will require significant capital contributions to enable extensions to be delivered to accommodate the new residents.
36. Representations made to the PDCS (including comments from the County Council) have highlighted a concern that on the face of it the very nature of CIL offers no guarantee that money will be made available to primary school places, not least because there will be substantial demand placed upon CIL revenue, to help fund strategic infrastructure (including for examples transport improvements) and which in turn will enable more development to come forward in the District. As a result it is important to consider how funding towards primary school capacity can be properly addressed, such that relevant development can be considered 'acceptable in planning terms'.
37. The current view from District Officers is that it may be appropriate for Cambridgeshire County Council to continue to secure money towards Primary School improvements through section 106 agreements, but only where the needs of the development cannot be met through existing capacity. It is also the view of District Officers that the cost of the financial contribution will need to have a direct relationship between (i) the development child yield arising from the new development and (ii) the cost of providing those school places thereby ensuring the relevant CIL tests and the National Planning Policy Framework are complied with. In order to achieve this objective it is recommended that the Regulation 123 list should exclude the provision of primary school places.
38. A District wide assessment by Officers, of recently completed section 106 agreements for various scales of development, has demonstrated that in many cases CIL will not generate the same level of funding as currently experienced through section 106 agreements. In addition the independent viability studies, which have been undertaken (to recommend the proposed CIL rates), have included a cost for section 106 contributions. The evidence available suggests this approach, of securing a primary school contribution in addition to CIL, would not have a detrimental impact to the viability of development.
39. It is thought by Officers that a further benefit to the approach being suggested is that it will help to ensure CIL revenues will not need to be used to provide for primary school places in South Cambridgeshire, thereby freeing up this money to be used on other infrastructure priorities.

#### **Instalment policy**

40. Under the CIL Regulations CIL is payable in full within 60 days from the commencement date of the development unless the charging authority has

introduced an instalment policy under Regulation 69B. Any instalment policy must relate to calendar points in time, rather than by reference to specific 'development related stages' (e.g. prior to the occupation of a certain number of dwellings) and which forms of triggers have been commonly used in s106 agreements.

41. Regulation 70 sets out the requirements that are to be complied with for a developer to benefit from an instalment policy. Failure to comply with these requirements will result in the CIL liability being paid in full.
42. An assessment of instalment policies in operation by charging authorities who have implemented CIL has highlighted that there are very different approaches being adopted. Officers consider that there are likely to be a number of benefits from adopting the same policy as a neighbouring authority, if practical.
43. Officers are of the view that it would be helpful for developers if South Cambridgeshire looked to introduce the same instalment policy as being proposed in Cambridge City, thereby creating some consistency in what will be a very complicated new tax system.
44. Officers are recommending that the District Council consult on a draft instalment policy as set out in **Appendix E**.
45. Officers will review all comments received in relation to the draft instalment policy and will bring this matter before Council for approval before the implementation of CIL.

#### **CIL Regulations and National Policy changes**

46. Since the Council consulted on the PDCS the Government has made a number of further amendments to the CIL Regulations (published February 2014) and associated guidance. Some of the changes are summarised as follows:
  - (i) Exemption for self-build developments
  - (ii) Exemption for residential extensions and annexes
  - (iii) Exemption for communal areas of buildings (i.e. hallways and lobbies) provided within affordable housing flats (which are already exempt)
  - (iv) Extending the vacancy test to cover buildings that has been used for 6 months of the previous 3 years (rather than the one year previously required)
  - (v) To allow Councils to set differential rates based on the proposed number of units or scale of development (if the viability evidence supports this)
  - (vi) To allow Councils to continue to use more than five S106 agreements to fund an item of infrastructure up to April 2015 (rather than the previous date of April 2014)
  - (vii) Relaxation of discretionary relief requirements
  - (viii) More emphasis on the draft infrastructure list during the rate setting process
  - (ix) To allow developers to provide infrastructure (as well as land as present) in lieu of CIL payments
  - (x) CIL payments linked to reserved matters phases
47. The amendments referred to above will result in a decrease in CIL receipts that the Council might otherwise have used to fund infrastructure such as school places, recreational facilities and transport improvements.

#### **Considerations**

48. It is thought that the CIL project is reaching a critical stage as the consultation not least because the consultation on the Draft Charging Schedule will, in effect, cement the approach of the Council and on which the examination will be based.
49. Officers consider that the Draft Charging Schedule represents the best approach for South Cambridgeshire having particular regard to the new Local Plan and representations made on the PDCS.
50. It is intended that detailed work with Members, on infrastructure priorities, should take place ahead of the CIL examination and that such work should have close regard to the Cambridge City Deal.
51. The instalment policy being recommended has been shaped having regard to financial constraints (of development) whilst also ensuring payment of CIL monies sufficiently early on to enable infrastructure projects to be delivered.

### **Options and recommendations**

52. Each of the recommendations are made on the basis that Cabinet give delegated powers to the Planning and New Communities Director to make minor variations to the current draft documents provided that such changes are within the spirit of what is being approved.

#### **53. Recommendation 1: Preliminary Draft Charging Schedule representations**

To note the summary representations made in respect of the Preliminary Draft Charging Schedule and note the Councils response

#### **54. Recommendation 2: Draft charging schedule**

Option 1. Approve the basic form of the Draft Charging Schedule for public consultation (Recommended)

Option 2. Approve an alternative Draft Charging Schedule for public consultation

Option 3. Note the Draft Charging Schedule as currently prepared and instruct further work to be undertaken

#### **55. Recommendation 3: Draft Instalment policy**

Option 1. Approve the basic form of the draft R123 infrastructure list for public consultation (Recommended)

Option 2. Approve an alternative draft R123 infrastructure list for public consultation

Option 3. Note the draft R123 list and instruct further work to be undertaken

#### **56. Recommendation 4: Draft instalment policy**

Option 1. Approve the draft instalment policy for public consultation (Recommended)

Option 2. Approve an alternative draft instalment policy for public consultation

Option 3. Note the draft instalment policy and instruct further work to be undertaken

### **Implications**

57. In the writing of this report, taking into account financial, legal, staffing, risk management, equality and diversity, climate change, community safety and any other key issues, the following implications have been considered: / there are no significant implications.

### ***Financial***

58. Since Cabinet considered CIL on 27 June 2013 a City Deal has been announced and any likely financial implications will need to be considered going forward.

### ***Legal***

59. The Charging Schedule may only be adopted where the schedule has been through public consultation and receives a recommendation for adoption (with or without modification) from an inspector following an examination in public. The schedule must be based on relevant up to date information.
60. The implementation of CIL will require the development of a legally compliant charging system and will require monitoring and enforcement to ensure payments are made. An appeals process will need to be in place and how CIL is spent will need to be a matter of public record in order to comply with the CIL Regulations.
61. The recommendations contained within this report are the first stage of the process towards adoption of the charging schedule. The results of the consultation and further stages in moving towards adoption of a charging schedule will be the subject of further reports.

### ***Staffing***

62. No implications arising directly from this report

### ***Risk Management***

63. The CIL Regulations restrict the Council's ability to secure section 106 contributions after April 2015 which will have an adverse impact on infrastructure delivery.
64. The Council is working towards implementing CIL as a means of securing developer contributions; however, this project is closely linked with the emerging Local Plan to the extent that any issues arising from the Local Plan examination may impact on the date when the Council can have CIL in place.

### ***Equality and Diversity***

65. An Equality Impact Assessment (EQIA) screening conducted in May 2013, identified that a high priority full assessment should be undertaken before the policy was introduced. This is because the majority of impacts on people from different backgrounds was unknown during the screening exercise.

### ***Climate Change***

66. At the publication of the report no climate change implications were identified

### **Consultation responses (including from the Youth Council)**

67. The Youth Council were consulted as part of the consultation on the Preliminary Draft Charging Schedule.

### **Effect on Strategic Aims**

#### **Aim 1 – We will listen to and engage with residents, parishes and businesses to ensure we deliver first class services and value for money**

68. A7. Ensure the South Cambridgeshire Local Plan and Community Infrastructure framework are based on effective engagement



**Aim 2 – We will work with partners to create opportunities for employment, enterprise, education and world-leading innovation**

69. Approach - Planning for timely infrastructure to support developments  
Approach - Maximising benefits to the community from new developments

**Background Papers**

Where [the Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#) require documents to be open to inspection by members of the public, they must be available for inspection: -

- (a) at all reasonable hours at the offices of South Cambridgeshire District Council;
- (b) on the Council's website; and
- (c) in the case of documents to be available for inspection pursuant to regulation 15, on payment of a reasonable fee required by the Council by the person seeking to inspect the documents at the offices of South Cambridgeshire District Council.

**Appendix A** – Summary statement of representations on the PDCS

**Appendix B** – National CIL charges (Pinsent Masons circular)

**Appendix C** – Transport strategy for Cambridge and South Cambridgeshire major transport programme

**Appendix D** – Infrastructure items identified through the PDCS consultation

**Appendix E** – Draft R123 infrastructure list

**Appendix F** – Draft CIL instalment policy

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