

SCRUTINY COMMISSION FOR RURAL COMMUNITIES	Agenda Item No. 6
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Report of the Executive Director of Operations

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OVERVIEW OF EMERGING CHANGES TO PLANNING OBLIGATIONS (S106/POIS) AND DETAILS ABOUT A PROPOSED NEW DEVELOPMENT LEVY FOR PETERBOROUGH (COMMUNITY INFRASTRUCTURE LEVY – CIL)

1. PURPOSE

- 1.1 The purpose of this report is to provide a high-level overview of the emerging changes to the way we collect 'developer contributions' through the planning system as a result of regulatory changes to the existing approach. The proposal is to ultimately adopt a Community Infrastructure Levy (CIL), however, a number of stages of consultation and an independent examination will be required before the Council can achieve this.
- 1.2 A CIL Preliminary Draft Charging Schedule is currently being prepared and will be reported to Cabinet on 24 September 2012 for approval for the purposes of public consultation. The document and supporting papers relating to it will be in the public domain after the 4 September 2012. The purpose of this report is therefore to brief Members in general terms on the CIL and by ramification changes to the Planning Obligations system. A full report on CIL will be presented to the Sustainable Growth and Environment Capital Scrutiny Committee on 6 September 2012.
- 1.3 If approved by Cabinet, consultation with the public and stakeholders on a CIL Preliminary Draft Charging Schedule will take place in late 2012 for a minimum statutory period of six weeks.

2. RECOMMENDATIONS

- 2.1 None. Report for information only.

3. LINKS TO THE SUSTAINABLE COMMUNITY STRATEGY

- 3.1 The CIL and associated matters cut across all four priorities of the Sustainable Community Strategy (SCS). Without infrastructure, or the funds to deliver infrastructure, none of the priorities could be achieved.

4. BACKGROUND

Introduction

- 4.1 The CIL is a new optional mechanism for securing 'developer contributions' (financial or in-kind contributions e.g. cash or land) necessary to make development acceptable in planning terms which, if adopted, will largely be replacing the current S106/POIS tariff-based system which will become unworkable for funding the majority of large infrastructure projects from April 2014 due to legal limitations on use of planning obligations¹, and the 'pooling' of contributions in particular.

¹ Regulations 122 and 123 of the CIL Regulations 2010.

- 4.2 Cabinet endorsed work to research the potential for adopting a CIL on 8 February 2010. In order to set a CIL in Peterborough we need to consult on and ultimately adopt a CIL Charging Schedule. In order to be in a position to do this we have commissioned consultants (Roger Tym and Partners) to undertake a development viability study² and we have undertaken work internally to refresh and update our approach to Infrastructure Planning. This latter work is required to both demonstrate we have a valid need for developer contributions towards infrastructure to support growth and that we have a realistic idea of what infrastructure is necessary to accommodate this growth.
- 4.3 There are a number of important points to note about the CIL:
- 4.4
- First, from April 2014 it will be unlawful for Local Authorities to pool contributions from more than 5 planning obligations secured via Section 106 agreements for funding any single infrastructure project. In effect, this makes our current S106/POIS tariff-based system unlawful from April 2014 and a CIL will become the only available mechanism to pool funds.
- 4.5
- Second, the setting of a CIL charge for development must be based on viability grounds (and backed up by the demonstration of an infrastructure funding gap) as opposed to being used as a policy mechanism i.e. you cannot set artificially low rates in order to attract development, nor too high if this would make the majority or specific types of development unviable.
- 4.6
- Third, differential rates can be set by geographical zone, by land use, or by both. Zero rates can also be set where viability evidence shows that development across the area would be unviable because of the imposition of a charge. The statutory guidance is clear that Charging Authorities should avoid 'undue complexity' when setting rates and should seek to achieve an 'appropriate balance between the need to fund infrastructure and the potential implications for the economic viability of development'³.
- 4.7
- Fourth, the drivers for seeking contributions are:
 - to mitigate for additional pressures placed on existing infrastructure;
 - to help fund infrastructure needs arising from development;
 - to ensure infrastructure is in place to attract private investment in Peterborough; and
 - to help ensure we deliver sustainable communities.
- 4.8
- Fifth, if adopted, the levy will become a fixed, non-negotiable charge placed on all applicable development.
- 4.9
- Sixth, money collected through a CIL is not as limited in terms of how it is spent (unlike Section 106). This will provide a simple process which is flexible, predictable and transparent.
- 4.10
- Not all development is liable to pay a CIL charge and the regulations exempt certain types of development, including affordable housing and certain forms of charitable development, from paying. Further details are given in the regulations and supporting statutory guidance (see Background Documents Section 9).

5. KEY ISSUES

- 5.1 Whilst optional, choosing not to adopt a CIL will severely constrain our ability to secure developer contributions towards infrastructure going forwards.
- 5.2 Whilst a CIL is effectively a new form of 'tax' on development, it is not strictly additional to existing

² Peterborough City Council Community Infrastructure Levy Study, Roger Tym and Partners, May 2012.

³ DCLG (March 2010) *CIL Charge Setting and Charging Schedule Procedures* (10)

requirements but rather it is partially replacing existing mechanisms, namely POIS. It will be set according to careful modelling and research into what is technically viable and genuinely necessary to accommodate our growth targets without making development across the district unviable. This will be tested through independent examination of our proposals.

- 5.3 It is legally and morally justified to seek to secure contributions for shared infrastructure from the private development sector since we all utilise it and benefit from its provision.

6. IMPLICATIONS

- 6.1 **Financial:** If adopted, a CIL will generate a 'pot' of infrastructure funding which the Charging Authority (Peterborough City Council) will be responsible for administering, monitoring and reporting on. The charges set through the CIL will have implications for the property development sector, however, careful attention will be given to ensuring the charges remain broadly within the limits of development viability and a balance is achieved between the desirability to fund infrastructure and the potential effects (taken as a whole) on the economic viability of development. The aim being to ensure that the provision of infrastructure necessary to maintain sustainable communities is secured without putting a hold on development activity across Peterborough.

Legal Implications: The adoption and subsequent operation of a CIL in Peterborough will require careful adherence to the law. New systems and process, or adaptations to existing processes, will be required in order to operate and regulate this system effectively. There will undoubtedly be a constant 'low level' requirement for legal support throughout the implementation and operation of a CIL.

- 6.2 **Environmental:** A number of infrastructure schemes, services and projects contributing positively to the environment will be identified to benefit from any potential CIL income which may be collected. The imposition of a CIL will, amongst other things, contribute positively to funding environment related infrastructure and services.
- 6.3 **Social:** A number of infrastructure schemes, services and projects contributing positively to 'community infrastructure and services' will be identified to benefit from any potential CIL income which may be collected. The imposition of a CIL will, amongst other things, contribute positively to funding social infrastructure and services.

7. CONSULTATION

- 7.1 Subject to Cabinet's approval on 24 September 2012, the proposal is to consult on a CIL Preliminary Draft Charging Schedule (PDCS) in late 2012.

8. NEXT STEPS

- 8.1 The document will then proceed through a number of additional stages (summarised below) before being adopted:
- 8.2
- Spring/Summer 2013 – 4 weeks public consultation on CIL Draft Charging Schedule (following internal approvals process similar to that for PDCS).
- 8.3
- Autumn/Winter 2013 – Independent Examination of the CIL DCS and presentation at the next appropriate Full Council Meeting for formal Adoption once any amendments proposed by the examiner have been addressed.

9. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985

- 9.1
- The Planning Act 2008
 - The CIL Regulations 2010⁴, as amended in 2011⁵
 - The CIL Guidance, which is statutory guidance, i.e. it has the force of law⁶.

⁴ http://www.legislation.gov.uk/ukdsi/2010/9780111492390/pdfs/ukdsi_9780111492390_en.pdf

⁵ http://www.legislation.gov.uk/ukdsi/2011/9780111506301/pdfs/ukdsi_9780111506301_en.pdf

10. APPENDICES

10.1 None.

⁶ DCLG (March 2010) *CIL Charge Setting and Charging Schedule Procedures*
<http://www.communities.gov.uk/publications/planningandbuilding/cilguidance>