

CABINET	AGENDA ITEM No. 4
24 SEPTEMBER 2012	PUBLIC REPORT

Cabinet Member(s) responsible:	Cllr Cereste (Leader of the Council and Cabinet Member for Growth, Strategic Planning, Economic Development, Business Engagement and Environment Capital) Cllr Hiller (Housing, Neighbourhoods and Planning)	
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PETERBOROUGH 'COMMUNITY INFRASTRUCTURE LEVY (CIL) – PRELIMINARY DRAFT CHARGING SCHEDULE (PDCS)' AND INFRASTRUCTURE DELIVERY SCHEDULE (IDS)

R E C O M M E N D A T I O N S	
FROM: Director of Operations	Deadline date: 24 September 2012
It is recommended that Cabinet:	
<ol style="list-style-type: none"> 1. Approves the Community Infrastructure Levy Preliminary Draft Charging Schedule and supporting documentation, including the Infrastructure Delivery Schedule 2012, for 6 weeks public consultation commencing in October 2012; 2. Agrees that a refreshed Infrastructure Delivery Schedule is scrutinised and approved by Cabinet annually each year (around summer), but that delegated authority is given to the Leader, as Portfolio Holder for Growth, to add or delete infrastructure items on the Schedule at any time via a CMDN; and 3. Agrees to the request made by Sustainable Growth and Environment Capital Scrutiny Group on 6 September 2012 that it is made explicit that the intention, subject to consultation, is for the element of the CIL receipts which is to be ringfenced for spend by Neighbourhood Committees should be distributed to each Neighbourhood Committee on an equal basis. 	

1. ORIGIN OF REPORT

- 1.1 This report is submitted to Cabinet following its approval on 8 February 2010 to research the potential for adopting a Community Infrastructure Levy (CIL) for Peterborough.
- 1.2 Responsibility for this report, and for overseeing CIL generally, falls within the Strategic Planning function of the city council. However, the content of this report is based upon work undertaken by the IDS Working Group, a group of senior officers from across the city council.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The purpose of this report is for Cabinet to approve a set of documents for the purpose of public consultation, this being the first step in an 18 month process for bringing into force a CIL for Peterborough. Perhaps the most important element Cabinet is being asked to approve is the 'Preliminary Draft Charging Schedule' (see Table 1 below). If, following due process, CIL is subsequently adopted by full council in late 2013 or early 2014, it will signify

an important shift in the way the council collects and administers developer contributions to help pay for the necessary infrastructure Peterborough needs to grow sustainably.

- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.3, 'to take a leading role in promoting the economic, environmental and social wellbeing of the area'.

3. **TIMESCALES**

Is this a Major Policy Item/Statutory Plan?	Not at present, but to be added to constitution as a Major Policy item shortly	If Yes, date for relevant Cabinet Meeting	24 September 2012 (stage 1); Mid-2013 (stage 2); Late 2013 (final stage)
Date for relevant Council meeting	Mid-2013 (Stage 2); Late 2013/early 2014 (adoption)	Date for submission to Government Dept <i>(please specify which Government Dept)</i>	N/A

4. **WHAT ARE THE CRITICAL ITEMS/ISSUES FOR FOCUS?**

Community Infrastructure Levy (CIL)

- 4.1 The CIL is a new nationally based optional approach to securing developer contributions which, if adopted by the city council, will replace (a) the current locally based Peterborough Planning Obligations Implementation Scheme (POIS) and (b) elements of the current s106 arrangements.
- 4.2 The key driver for introducing CIL is legislative change which, from April 2014, will make unlawful both our current POIS system and some elements of the current S106 process. In simple terms, the key legislative change is that if a council wants to 'pool' developer contributions in order to pay for infrastructure then it must introduce a CIL. If it does not introduce a CIL, then from April 2014 there are severe restrictions on the ability of a council to pool contributions.
- 4.3 It is important to note at this stage that CIL will not be a radical new initiative in Peterborough. It is very similar to the existing POIS system we have successfully had in place in Peterborough for the past few years, i.e. a 'levy' placed on development, a similar set of '£' rates, and a similar proposed spending arrangement. It is not therefore anticipated to cause undue concern to the vast majority of developers and investors in the city.
- 4.4 Cabinet endorsed research into 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 study (Peterborough City Council Community Infrastructure Levy Study, Roger Tym and Partners, May 2012 - see Appendix 5) 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 to support growth and that we have a realistic idea of what infrastructure is necessary to accommodate this growth.
- 4.5 In summary, there are a number of important points to note about the CIL:
- First, as referred to above, 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.

- Second, the setting of a CIL charge for development must be based on viability grounds (hence the need for the aforementioned viability study) and backed up by the demonstration of an infrastructure funding gap. CIL cannot be used as a policy mechanism i.e. you cannot: set artificially low rates in order to attract development, or too high rates if this would make the majority or specific types of development unviable.
- 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’.
- 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.
- Fifth, if adopted, the levy will become a fixed, non-negotiable charge placed on all applicable development. This is a change to our current POIS system, where an element of flexibility and negotiation is possible.
- 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.
- Seventh, three forms of Discretionary Relief are available to Charging Authorities (CAs) in addition to mandatory relief set out in the regulations. These are **Discretionary Charitable Relief**, **Discretionary Relief for Exceptional Circumstances** and the ability to adopt an alternative **Instalments Policy** than that set out in the original CIL Regulations. Although these elements do not strictly need to be decided upon until after a CIL is adopted, it is considered prudent to set out our intentions early on to give people an opportunity to comment on them. It is the officers’ view that the **Discretionary Charitable Relief** is not included in our policy, because of the complexity and infrequent likely use of such relief, but we do recommend that the council takes advantage of the other two forms of relief. Full details of these reliefs are in the CIL Preliminary Draft Charging Schedule consultation document (Appendix 2).

4.6 The proposed levy rates in Peterborough are set out in Table 1 overleaf. The PDCS will, by law, be consulted upon in public before it can be drafted into the ‘Draft Charging Schedule (DCS)’ which is also required to go through a second round of public consultation, followed by independent examination, before finally being able to be adopted by full council.

Table 1: Proposed Preliminary Draft Charging Schedule (PDCS)

Use	CIL charge (per sq m)
Private market houses on:	
(i) Sites where no affordable housing provision is secured via a S106 Planning Obligation	£110
(ii) Sites of up to 799 units where affordable housing provision is secured via a S106 Planning Obligation	£75
(iii) Strategic Development Sites (800 plus residential units)	£30
Apartments or flats with*/without** affordable housing requirement	£10*/£50**
Retail development:	
(a) All Comparison*/Convenience** retail development unless covered by (b) or (c)	£175*/£400**
(b) All retail development within the City Centre Primary Shopping Area	£10
(c) All retail development below 280 sq m (net additional floorspace) within a District or Local Centre	£10
Public/institutional facilities as follows: education, health, community and emergency services	£0
All other chargeable development	£10

Infrastructure Delivery Schedule (IDS)

- 4.7 In order for a Charging Authority (Peterborough City Council in this instance) to justify setting a CIL, it not only needs to demonstrate that CIL rates will not make overall development of the area unviable (which is the purpose of the CIL Viability Study), but it also needs to demonstrate it has an '**Infrastructure Funding Gap**' larger than the amount they anticipate securing through the imposition of a CIL (which is the purpose of the Infrastructure Delivery Schedule (IDS) 2012: Appendix 3). This provides the 'moral' justification (although it is also required as part of the evidence base for examination) for seeking contributions from the private development sector to contribute towards infrastructure provision.
- 4.8 In order to demonstrate an **Infrastructure Funding Gap** it is first necessary to demonstrate an understanding of the infrastructure requirements of the area covering the plan period and where the likely sources of funding for these items will come from. This is largely achieved through the already adopted Integrated Development Programme (adopted by Cabinet in 2009) but has required a significant level of updating and refreshing since then.
- 4.9 Once all potential sources of known funding have been identified and quantified, the gap between what can be funded and what is required overall to accommodate the growth planned over the plan period (to 2026) is referred to as the 'gap'.
- 4.10 A schedule of infrastructure projects, known as the Peterborough Infrastructure Delivery Schedule (IDS), is provided in Appendix 3 along with their estimated costs and anticipated source(s) of funding. To qualify for inclusion on the IDS, a project must have appropriate justification and evidence i.e. it can not be a 'wish list' of projects, but rather a genuine list of projects which will enable the sustainable growth of Peterborough.
- 4.11 In summary, we are currently able to demonstrate an approximate 'infrastructure funding gap' across all relevant 'Thematic Areas' of around £491 million over the period 2011-2026. This is in excess of what we anticipate CIL income will be over the same period (approximately £67m). Thus, as the CIL income does not exceed the 'gap', then we pass an important element in setting the CIL rates (Note: if the CIL likely income exceeded the 'gap' then we would not be able to proceed with the CIL rates because it would mean we would be collecting more money than we needed).

- 4.12 The IDS provided at Appendix 3 should be regarded as ‘live’ document. Due to the nature of infrastructure planning this list is subject to constant changes. Ultimately, once CIL is adopted and running, only projects on the IDS will be able to access CIL funds.
- 4.13 It is intended that the IDS is fully refreshed, scrutinised and agreed by Cabinet annually, in summer, in order to keep it up to date. However, between such full refreshes, it is likely to be necessary for previously unforeseen or urgent projects to be added (or deleted) in order for such projects to access CIL funding. It is therefore recommended that delegated authority is given to the Leader, as Portfolio Holder for Growth, to be able to add or delete projects at any time, via the CMDN approval route.

Spending CIL Receipts

- 4.14 Whilst not required by law to be part of the CIL adoption/consultation process, agreement on how we decide corporately to allocate the CIL funds once they begin to accrue is a crucial part of the governance arrangements relating to the administration of our infrastructure delivery plans.
- 4.15 The IDS Working Group were tasked with recommending how CIL receipts should be split, and as a starting point took the current council agreed ‘POIS Split’ (Appendix 1). This was refined slightly and the current recommended proposal is as follows:

Table 2: Proposed CIL funding split.

Transport	28%
Education & Skills	38%
Community Infrastructure	9%
Utilities & Services	5%
Emergency Services	5%
Environmental Sustainability	5%
Health & Wellbeing	5%
‘Meaningful Proportion’ for neighbourhoods as set out in CAP’s	5%

- 4.16 One of the key changes from the original POIS approach has been the introduction of a 5% contribution to ‘neighbourhoods’. This is in keeping with the Localism Act 2011 requirement for a ‘meaningful proportion’ of CIL funds to be given to local communities.

How will the ‘Meaningful Proportion’ contribution to Neighbourhoods work?

- 4.17 The ability of the council to invest flexibly in services, facilities and resources in our neighbourhoods has been restricted to those areas where tangible growth has attracted a direct planning contribution. This has the effect of benefitting areas of growth over other areas where perhaps growth is less viable. In recent years we have tried to address this through, for example, maximising the delegations to Neighbourhood Committees so that service delivery can be shaped and influenced by communities. However, this goes only so far in tackling some of the more deep-rooted or entrenched issues, spatial or otherwise, where more significant and real investment would have a greater effect.
- 4.18 There is likely to be an opportunity to effectively top-slice CIL contributions by 5% with the specific purpose of forming a flexible fund to invest in communities. Our estimations suggest that this could amount to a figure in the region of £220k per annum. This development coincides with the drafting of our Community Action Plans, which set out the social and economic issues in neighbourhoods and begins to suggest actions that address those issues. The plans themselves are overseen by each Neighbourhood Committee but will provide a robust evidence-based set of recommendations and actions. Thus, our proposal is that investment into neighbourhoods from the 5% pot will be made in direct support of these actions. We propose that the pot is managed and allocated as flexibly as possible on both revenue and capital projects, with the overall budget remaining under the control of the Neighbourhood Managers in the same way that the current allocation is of £25k per Neighbourhood Committee.

User Friendly Guide

- 4.19 It is acknowledged that CIL, and associated background documents, are complex and subject to considerable legislative rules. However, to assist members of the public, officers have prepared a user-friendly guide entitled: ***'How CIL may work in Peterborough: A Simple Guide'***. Subject to any comment from Cabinet, this will be published on the city council website and is provided in Appendix 4 to this report.

5 CONSULTATION

- 5.1 The Regulations require a minimum of 6 weeks public consultation on the proposed CIL Preliminary Draft Charging Schedule (PDCS). Subject to Cabinet approval today, the PDCS will be published for public consultation in Autumn/Winter 2012. Further public consultation will be required in 2013 for a minimum of 4 weeks (after the document is approved by Full Council).
- 5.2 The CIL PDCS and supporting documentation (particularly the IDS) have been prepared by working closely with infrastructure providers across the council and some external partners.
- 5.3 The Rural Scrutiny Commission Panel was given a high level briefing on the implications of CIL on the 16 July 2012.
- 5.4 Planning and Environment Protection Committee (4 September) and Sustainable Growth and Environment Capital Scrutiny Committee (6 September) have also been consulted on the emerging proposals. In summary, they requested the following points be put to Cabinet today for their consideration prior to approval of the documentation:

Planning and Environment Protection Committee (4 September) comments:

- Following a good debate, the committee welcomed the presentation and supported the proposals.
- The only suggestion by the Committee to Cabinet was to ask Cabinet to consider whether, as a matter of principle, the growth in university provision in the city be added to the list of projects which could benefit from CIL funding. Having considered this suggestion (which was only a suggestion, rather than a firm recommendation of the Committee), officers are of the opinion that university related projects remain off the list eligible for CIL funding for the following reasons:
 - Being essentially a privately operated business, using public funding to help deliver university provision may involve complicated State Aid considerations (and may make such contributions unlawful).
 - By adding university projects to the list would, obviously, mean less funding available to other infrastructure projects on the list, many of which have no alternative form of funding (unlike university provision).
 - The documents will be published for consultation. Should we receive representation requesting that university provision be added to the list, then officers will reconsider this request in detail. Officers leading on the CIL are not aware of any such request to date.

Sustainable Growth and Environment Capital Scrutiny Committee (6 September) comments:

- Again, following a lengthy discussion (especially around the arrangements to apportion and spend CIL receipts, including a discussion whether the apportionment of 5% of all receipts to Neighbourhood Committees was sufficient)

the Committee welcomed the presentation. It was agreed that Cabinet be advised of two points in particular:

- **Scrutiny Recommendation 1:** That the consultation documentation makes it absolutely clear that the intention, subject to consultation, is that the element of the CIL receipts which is to be ring fenced for spend by Neighbourhood Committees should be distributed to each Neighbourhood Committee on an equal basis i.e. each Neighbourhood Committee would receive exactly the same level of CIL funding irrespective of size, population or level of growth within a Neighbourhood Committee Area.
- **Officers Recommend** this request is agreed by Cabinet, though officers caveat this remark with the fact that government has indicated it may shortly set more specific regulations on how CIL receipts are distributed to local communities, which may make such equal distribution unlawful. However, at present it would be lawful (and therefore reasonable to propose for the purposes of public consultation) to have an equal distribution as recommended by Scrutiny Committee. If Cabinet agree with this request, then officers will ensure this equalisation point is made clear in the document we intend to publish entitled 'How CIL may work in Peterborough: A Simple Guide' (see Appendix 4 for the current version of the document which does not make this point absolutely clear at present)
- **Scrutiny Recommendation 2:** That the Cabinet report emphasises that infrastructure projects can be added to the Peterborough Infrastructure Delivery Schedule (IDS) 'at any time'. This would ensure, for example, that projects identified in Community Action Plans that have been justified with an evidence base later this year could be added to the IDS after 24 September 2012 without having to wait for the annual full refresh of the IDS.
- **Officers** agreed to this request and this agenda report (and recommendation) makes this point clearly. The explanatory remarks at the front of the IDS (Appendix 3) already made this point, but clarifying this point in this covering agenda report is helpful. There is no further action required in this respect, other than, of course, for Cabinet to decide whether it agrees with the recommendation set out at the start of this agenda report regarding how and when projects can be added to the IDS and when a full refresh will be considered by Cabinet.

6 ANTICIPATED OUTCOMES

- 6.1 It is anticipated that Cabinet will approve the documentation presented today in order for officers to proceed with public consultation on them. It is then anticipated that there will be a reasonably significant level of public interest in the proposals being set out in the CIL PDCS, particularly from landowners, businesses and developers.
- 6.2 It is then anticipated that a revised set of documents be brought to Cabinet in early to mid-2013.

7 REASONS FOR RECOMMENDATIONS

- 7.1 Government is introducing changes to the way Developer Contributions can be collected and spent. Charging Authorities have the option of adopting a CIL. From April 2014 the use of our existing methodology for collecting Developer Contribution (POIS) will become unlawful and so unless a CIL is adopted, the collection and use of Developer Contributions will be severely limited from that date.
- 7.2 There are many potential benefits of adopting a CIL. In particular, a standard charge will:
- introduce a clearer and simpler system for collecting and spending Developer Contributions for strategic infrastructure considered necessary to accommodate future growth

- aid infrastructure providers in planning the delivery and operation of infrastructure;
- aid developers in identifying the likely costs associated with development;
- improve accountability to the public for use of developer contributions for infrastructure;
- ensure that payments are made to town and parish councils when development occurs in their areas so that they can deliver local priority infrastructure; and
- increase the range of developments that are able to contribute towards infrastructure, including small residential developments which have often not been required to make contributions in the past.

8 ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The option to not prepare a CIL has been considered and rejected. This option may have been acceptable if, for example, Peterborough was only expecting very minimal growth over the plan period and the majority of that growth could be dealt with through the limited pooling of contributions for strategic infrastructure. This would have made the adoption of a CIL superfluous.
- 8.2 Any options to propose charging higher or lower CIL rates have been rejected, as to do so would result in development being unviable (if rates too high) or infrastructure not provided (if rates too low).

9 IMPLICATIONS

- 9.1 **Legal Implications** – The proposed changes have been prepared and will be consulted on in accordance with the regulations and statutory guidance issued by national government. There are legal implications arising from the changes relating to the implementation, monitoring and enforcement of the CIL once adopted. However, we are only at a draft stage and therefore there are no direct legal implications if today's recommendations are approved.
- 9.2 **Financial Implications** – There are financial implications in terms of the way we collect, administer, monitor, report on and spend CIL receipts. There will also be an ongoing requirement to monitor and review the Charging Schedule which may trigger the need for further specialist viability modelling should market conditions change significantly. However, we are only at a draft stage and therefore there are no direct financial implications if today's recommendations are approved.
- 9.3 **Human Resources** – CIL can be delivered within existing resources but will potentially require additional training, software and changes to existing work practises, especially ongoing engagement and input from service areas.
- 9.4 **Equality & Diversity** – The changes will have a positive impact on our customers and help to ensure continued investment in infrastructure considered critical to maintaining sustainable communities. Contributing a 'meaningful proportion' of CIL funds to local neighbourhoods will empower people and help to facilitate positive engagement and planning input.

10 SUPPORTING DOCUMENTS

- Appendix 1: POIS Split (see below)

Separate PDF documents provided alongside this report:

- Appendix 2: Peterborough CIL Consultation Document – Incorporating the Preliminary Draft Charging Schedule.
- Appendix 3: Peterborough Infrastructure Delivery Schedule 2012 (Note: Colour Table).
- Appendix 4: 'How CIL may work in Peterborough: A Simple Guide'.
- Appendix 5: Peterborough City Council Community Infrastructure Levy Study (May 2012).

APPENDIX 1: POIS SPLIT

<i>Infrastructure Type</i>	<i>Strategic 'Pool'</i>	<i>Neighbourhood 'Pools'</i>
<i>Transport & Communications</i>	25%	5%
<i>Community & Leisure</i>	5%	5%
<i>Education & Learning</i>	20%	20%
<i>Emergency Services</i>	5%	
<i>Environment</i>	5%	5%
<i>Health & Adult Social Care</i>		5%
<i>Total</i>	60%	40%

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