

<b>CABINET</b>	<b>AGENDA ITEM No.</b>
<b>7 APRIL 2015</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Cllr Marco Cereste - Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement	
Contact Officer(s):	Simon Machen, Corporate Director Growth and Regeneration Brendan Troy, Principal Infrastructure and Monitoring Officer	Tel. 453475  Tel. 863773

**PETERBOROUGH COMMUNITY INFRASTRUCTURE LEVY (CIL) – DRAFT CHARGING SCHEDULE**

<b>RECOMMENDATIONS</b>	
<b>FROM :</b> Corporate Director Growth and Regeneration	<b>Deadline date :</b> Full Council 15 April 2015
<p>1. That Cabinet recommends to Council that:</p> <ul style="list-style-type: none"> <li>A. the Examiner’s Report into the Draft CIL Charging Schedule is considered and the recommendations and conclusions that underpin them are accepted (Appendix A);</li> <li>B. the Peterborough Community Infrastructure levy (CIL) Charging Schedule (Appendix B) is adopted, with CIL to come into effect for all planning applications approved on or after 24 April 2015;</li> <li>C. the Council’s CIL Supporting Policies Document (including Regulation 123 List, Instalment Policy, Payment in Kind Policy and Statement of Exceptional Circumstances Relief) be adopted and published (Appendix C);</li> <li>D. delegated authority be given to the Director of Growth and Regeneration (a) to take all steps necessary to implement the Community Infrastructure Levy Regulations 2010 (as amended), and (b) to take all necessary enforcement action under the Community Infrastructure Levy Regulations 2010 (as amended);</li> <li>E. Local Validation Requirements be amended to require the submission of CIL liability details from 24 April 2015;</li> <li>F. 5% of CIL is retained for the administration and governance costs incurred by the Council, in accordance with the CIL Regulations; and,</li> <li>G. The Community Infrastructure Levy is added to the Council’s Major Policy Framework and to approve the consequential Constitutional amendments resulting (Appendix F).</li> </ul> <p>2. That Cabinet approves the Developer Contributions Supplementary Planning Document (SPD) for adoption, with the SPD coming into effect on 24 April 2015 (Appendix D).</p> <p>3. That Cabinet revokes the Planning Obligations Implementation Scheme (POIS) SPD, effective from 24 April 2015.</p>	

**1. ORIGIN OF REPORT**

1.1 This report is submitted to Cabinet following the Examination in Public of the Peterborough Community Infrastructure Levy (CIL) Draft Charging Schedule (PDCS). Please note a

Frequently Asked Questions note on CIL in Peterborough has been provided at Appendix G to this report.

## 2. PURPOSE AND REASON FOR REPORT

- 2.1 The report explains the outcome of the Examiner’s report on the Peterborough CIL Draft Charging Schedule, the proposed modifications to the final charging schedule and associated policies, and proposes a formal adoption date of 24 April 2015. The Charging Schedule and supporting policies are attached as appendices.
- 2.2 This report is for Cabinet to consider under its Terms of Reference No. 3.2.1, ‘to take collective responsibility for the delivery of all strategic Executive functions within the Council’s Major Policy and Budget Framework and lead the Council’s overall improvement programmes to deliver excellent services’.

## 3. TIMESCALE

Is this a Major Policy Item/Statutory Plan?	<b>YES</b>	If Yes, date for relevant Cabinet Meeting	7 April 2015
Date for relevant Council meeting	Full Council 15 April 2015	Date for submission to Government Dept <i>(please specify which Government Dept)</i>	N/A

## 4. BACKGROUND

- 4.1 A number of changes to the way local authorities can collect and distribute developer contributions have and are being implemented. These changes are being driven by legislative and statutory changes at the national level. In order to continue to secure ‘developer contributions’ for investment in infrastructure it is considered critical to accommodate our growth targets and maintain sustainable communities, we need to make changes to our existing systems and processes. The main thrust of these changes is through the adoption of a Community Infrastructure Levy (CIL) which, once adopted by Council, will replace the current Peterborough Planning Obligations Implementation Scheme (POIS). This report reminds Cabinet about CIL, how it will work, and the timetable for adopting and implementing a CIL by 24 April 2015. If it is approved by Council, it will be implemented on all new planning permissions granted on or after 24 April 2015.
- 4.2 The CIL is a non-negotiable charge on new buildings in £’s per square metre and the rates must be set out in a Charging Schedule. It can be charged on most buildings / extensions over 100 sq.m and dwellings of any size (unless built by a self-builder), based on a net increase in floorspace. It cannot be charged on affordable housing, charities, householder extensions under 100 sq.m, self-build extensions or dwellings, or specified types of development that the Council has decided should have a ‘zero’ rate in the Charging Schedule. The CIL is charged on new development. It normally becomes liable on the grant of planning permission, but may also be payable in relation to permitted development. CIL is only payable on commencement of development. The rates will be index linked from the date of adoption; any further changes to the CIL rates would require the Council to undergo a fresh CIL consultation exercise.
- 4.3 The CIL Regulations 2010 (as amended) restrict the use of S106 Planning Obligations from 6 April 2015. After that date, pooling of more than five S106 planning obligations per type or item of infrastructure will no longer be possible. In effect, this makes our current S106/POIS<sup>1</sup> tariff-based system unlawful from 6 April 2015 and CIL becomes the only available mechanism to pool funds. At the same time as the CIL is adopted in Peterborough, it will be necessary to revoke the existing POIS Supplementary Planning Document.

<sup>1</sup> POIS – Peterborough Planning Obligations Implementation Scheme SPD (Feb 2010)

## **PETERBOROUGH COMMUNITY INFRASTRUCTURE LEVY (CIL)**

- 4.4 Before a CIL Charging Schedule is adopted it must go through two formal rounds of public consultation, followed by an independent examination. The first round, known as the Preliminary Draft Charging Schedule stage, occurred in November/December 2012.
- 4.5 The second round of public consultation, the Draft Charging Schedule stage, took place between 18 August and 15 September 2014.
- 4.6 Following consultation on the Draft Charging Schedule, it was submitted to the Planning Inspectorate for independent examination on 24 October 2014. An examination was carried out by William Fieldhouse BA(HONS) MA MRPTI and a public hearings session was held at Peterborough Town Hall on 27 January 2015.

### **Examiners Report**

- 4.7 The Examiner issued his report on 16 February 2015 (Appendix A). Three modifications are recommended, in order that the charging schedule meet statutory requirements. Two of the modifications relate to clarifying the definitions of proposed land use charges. The third recommends that the proposed rate for residential developments comprising 500 dwellings or more be reduced from the proposed £15 / sq.m to £0 / sq.m. In light of new evidence on benchmark land values, which came forward at Draft Charging Schedule Consultation Stage, the Examiner found that the proposed £15 / sq.m charge was no longer viable.
- 4.8 The Examiner concluded in his report that, subject to modification, the Peterborough City Council Community Infrastructure Levy Charging Schedule (Appendix B) provides an appropriate basis for the collection of the levy in Peterborough and that the specified modifications do not significantly alter the basis of the Council's approach.

### **Final Charging Schedule**

- 4.9 The Charging Schedule sets out '£ rates per sq m' for different development types that are liable to pay the charge. The final document for adoption, including modifications, is attached at Appendix B. The Charging Schedule is a short document that sets out the rates of CIL that will be applied in Peterborough. To summarise the rates proposed are as follows:

**Table 1 Schedule of Rates**

Development Type	Charging Zone		
	High	Medium	Low
Market Housing on sites of less than 15 units	£140	£120	£100
Market Housing on sites of 15 or more units	£70	£45	£15
Apartments on sites of less than 15 units	£70	£45	£15
Residential development comprising 500 or more dwellings	£0	£0	£0
Supermarkets	£150		
Retail Warehouses	£70		
Neighbourhood Convenience Stores	£15		
All other development	£0		
All charges are £ per sqm			

*(Source: CIL Charging Schedule – see Appendix A)*

(Please note that residential developments of 500 dwellings or more will continue to meet their infrastructure requirements through S106 planning obligations)

- 4.10 The Community Infrastructure Levy Regulation 2010 ( as amended) ("the Regulations") allow for differential rates to be set by geographical zone, by land use, by scale of development or

a combination of those approaches. The proposed Charging Schedule utilises all these options (see Appendix B).

- 4.11 Once adopted and published, the Charging Schedule takes effect at the beginning of the day specified in the Charging Schedule. It is proposed that the Charging Schedule comes into effect on 24 April 2015. Any planning applications determined after this date will be liable to pay CIL according to the above respective rates.

#### **CIL Supporting Policies**

- 4.12 A number of other policies are required alongside the Charging Schedule for the efficient operation of the CIL regime. These are attached in Appendix C – CIL Supporting Policies and are discussed further below.

#### **CIL Supporting Policies - Regulation 123 List**

- 4.13 The CIL Regulations seek to ensure that developers are not charged twice for the same piece of infrastructure, through both CIL and S106 Planning Obligations. The Regulations dictate that unless a Council publishes a list of infrastructure (known as a Regulation 123 List) which sets out the projects / types of infrastructure that can be funded by CIL, then it can no longer enter into any S106 Planning Obligations for any infrastructure. The Regulation 123 List must set out the types of infrastructure that will, or may, be funded in whole, or part, by CIL. If an item, or type, of infrastructure is on the Regulation 123 List, the Council cannot require a S106 to make provision to fund it, as part of approving a planning application.
- 4.14 A Regulation 123 List is produced as part of the CIL Supporting Policies Document (Appendix C). Following the introduction of CIL in Peterborough, the use of Planning Obligations will be significantly scaled back, and, on sites of 500 dwellings or less, planning obligations will only be used in a minority of cases. S106 Planning Obligations will however remain as the main instrument for securing infrastructure on strategic sites of 500 or more dwellings. The Regulation 123 list has been drafted to accommodate this.
- 4.15 The Council consulted on a Draft Regulation 123 List at Draft Charging Schedule Stage. A number of representors commented on the complexity of that list and expressed concerns that there was potential for double counting of planning obligations and CIL. The final Regulation 123 List has been modified and simplified as a result of this, and the examiners proposed modifications. The Regulation 123 List can be amended at any time, subject to appropriate local consultation, as priorities / circumstances change. The Developer Contributions SPD, which is proposed for adoption as part of this report (see paragraphs 4.20 to 4.24 below) provides further detail and clarification on the relationship between CIL and planning obligations. The Developer Contributions SPD has been drafted and consulted on alongside the Regulation 123 List and CIL Charging Schedule.

#### **CIL Supporting Policies – Instalment Policy**

- 4.16 The Council can set an Instalment Policy to allow CIL to be paid in Instalments. This is a means of ensuring that the cashflow impacts of CIL (which would otherwise be payable in full for each phase of development within 60 days of commencement on a site) are minimised. The Draft Instalment Policy which was consulted on at Draft Charging Schedule has been modified to bring it into line with the CIL Regulations.

#### **CIL Supporting Policies – Exceptional circumstances relief**

- 4.17 The Regulations allow the Council to set an Exceptional Circumstances Policy, which is the only way in which any reduction in a development's CIL payment may be allowed on viability grounds. The CIL Regulations set strict and narrow criteria for Exceptional Circumstances Relief and the Council expects that this policy will be rarely used because the Peterborough CIL rates have been set to take account of viability issues, development costs and full policy requirements.

- 4.18 The CIL Regulations state that relief from paying CIL may be granted “if it appears to the charging authority that there are exceptional circumstances which justify doing so; and the charging authority considers it expedient to do so.” Further criteria are that relief can only be granted if the development also has a signed S106; if the Council considers that to require payment of the CIL would have an unacceptable impact on the economic viability of a development; and, the relief would not constitute State Aid (where one organisation may only receive 200,000 euros of relief of any type across the whole of the UK within each 3 year rolling period). Of note, the Council is able to remove the policy by simply giving two weeks’ notice, so its use (or ‘misuse’) can be monitored and acted on. A development ceases to be eligible for relief if the site is sold before it commences, or if it does not commence within 12 months.

### **CIL Supporting Policies – Payments in kind of land or infrastructure**

- 4.19 This policy will allow developers to pay either ‘in kind’ with land or to provide infrastructure (listed on the Regulation 123 List) in lieu of a CIL payment, subject to meeting certain criteria laid out in the CIL Regulations. The Council has discretion on whether to accept payment in kind or not.

### **DEVELOPER CONTRIBUTIONS SPD (Appendix D)**

- 4.20 It is important to note that nationally, in accordance with the CIL Regulation 123, from 6 April 2015, limitations on pooling contributions from S106 come into effect. In effect this means that tariff based systems for collecting financial contributions via S106, such as the Planning Obligations Implementation System (POIS) currently operated by the Council, become unlawful after 6 April 2015. The CIL has been introduced to replace such tariff based systems. The POIS SPD will need to be revoked as a result.
- 4.21 However, although CIL will replace the pooling of S106 planning obligations, S106 obligations will still play an important on-going site specific role. They will still be used for site-specific infrastructure or mitigation required to make a development acceptable in planning terms. The principle is that all eligible developments must pay a CIL as well as any site-specific requirement to be secured through S106 obligations.
- 4.22 In line with National Planning Practice Guidance, the Council must ensure there is clarity about the Council’s infrastructure needs and what developers will be expected to pay for through which route (CIL or S106). There should be no actual or perceived ‘double dipping’ with developers paying twice for the same item of infrastructure.<sup>2</sup>
- 4.23 The future relationship between S106 and CIL in Peterborough is set out clearly in the Council’s Developer Contributions Supplementary Planning Document (SPD) (Appendix D). A Draft Version of this SPD was consulted on alongside the Draft CIL Charging Schedule. The consultation received a total of 7 responses. These responses are summarised in the Developer Contributions SPD Statement of Public Participation (Appendix E). The main issues raised were over better clarity on what infrastructure would still be required under planning obligations and some concerns about double counting. These comments have been addressed in the final version of the revised SPD for adoption.
- 4.24 A copy of the Developer Contributions SPD is provided at Appendix D. The revised SPD will need to be brought into effect on 24 April 2015, the same day as the CIL Charging Schedule. The POIS SPD will need to be revoked on the same date.

### **FINANCIAL AND GOVERNANCE IMPLICATIONS**

- 4.25 The Council presently receives financial contributions for infrastructure through its POIS. The Council received £436,146 in 2010/11, £2,467,890 in 2011/12 and £226,436 in 2012/13 through POIS. Failure to introduce a CIL will mean that this source of income for

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<sup>2</sup> NPPG095; see also NPPG Planning Obligations para.2

infrastructure delivery will be lost after restrictions on the use of Section 106 come into force on 6 April 2015.

- 4.26 Based on projected levels of development it is expected that the CIL will generate an income of approximately £18/£19m in the period 2015/16 to 2031, roughly £1.1m per year. While this will not provide funding for all the infrastructure needed to support development (the Council's Infrastructure Delivery Study 2014 estimates an infrastructure funding gap of between £519 and £852 million) the CIL will be an important funding source which will help to contribute to the sustainable development of Peterborough.
- 4.27 Once raised, CIL must be spent on supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure.
- 4.28 It will take some time for significant amount of CIL to accumulate. This is because developments will only be liable for CIL from the effect date, 24 April 2015, and CIL is not payable until development commences on site – which in many cases can be months or years.
- 4.29 Decisions on expenditure of CIL will need to be made with regard to the Council's wider decision making structures, and will likely be aligned with the Council's Capital Programme. Officers are currently working on detailed governance arrangements for decisions on expenditure of CIL. This will be the subject of a future report to Cabinet.

*Neighbourhood CIL*

- 4.30 CIL Regulations dictate that a Neighbourhood Proportion is passed on to local communities where development has taken place. This proportion to be passed on is highlighted in the table below:

<b>CIL Revenue split</b>	<b>Proportion of total CIL where development has taken place</b>
Neighbourhood Proportion – no Neighbourhood Plan	15% - capped at £100 per existing council tax dwelling
Neighbourhood Proportion - adopted Neighbourhood Plan	25% - uncapped

- 4.31 Where development happens in a Parish Council area the neighbourhood proportion will be transferred to that Parish Council, in accordance with the CIL Regulations<sup>3</sup>, unless otherwise agreed in writing. If there is no development in a Parish then there is no neighbourhood proportion.
- 4.32 Unparished areas (usually wards in urban areas) will not hold CIL funds. In such areas the Council will retain the 15% - 25% of Levy receipts but will engage with the communities where development has taken place and agree with them how best to spend that neighbourhood funding. Officers are currently working on detailed governance arrangements for decisions on expenditure of the Neighbourhood Proportion in unparished areas. This will be the subject of a future report to Cabinet.

*Administration*

- 4.33 The costs of CIL administration and on-going implementation are capable of being met through the levy itself. The Regulations allow local authorities to spend up to 5% of their total levy receipts on administrative expenses. Where the authority spends less than its allowance on administrative expenses, it must transfer the remaining allowance for receipt on capital infrastructure projects. It is proposed that the Council retains 5% of the levy for administrative expenses.

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<sup>3</sup> In accordance with Regulation 59D the charging authority must make payment in respect of the CIL it receives from 1<sup>st</sup> April to 30<sup>th</sup> September in any financial year to the Parish Council by 28 October that financial year; and, any payment in respect of CIL it receives from 1 October to 31 March in any financial to the Parish Council by 28<sup>th</sup> April the following year.

- 4.34 A recommendation has been included to require information on CIL liability as part of the local validations requirements for planning applications has been included to help with the smooth operation of the administration process

### **Monitoring and Review**

- 4.35 The CIL Regulations prescribe monitoring requirements<sup>4</sup>, including in relation to receipts, balance and expenditure. It is intended that these monitoring requirements will be reported through the Authorities Monitoring Report which monitors the implementation of the Councils planning policies and is currently published on an annual basis.
- 4.36 Once the Charging Schedule takes effect, it has effect until the Council determines that it should cease to have effect<sup>5</sup>.

### **Implementation of the Community Infrastructure Levy – Amendments to the Constitution**

- 4.37 As the Community Infrastructure Levy (CIL) is a new addition to the Council's Major Policy Framework, at present there are no references to CIL within the Council's Constitution. There is reference to planning obligations and section 106 agreements within the Constitution. As CIL is a separate legal entity and has a different operational and regulatory framework it is necessary to ensure that the necessary amendments are made to the Council's Constitution.
- 4.38 The proposed additions and amendments to the Council's Constitution are set out at Appendix F to this report.

## **5. REASONS FOR RECOMMENDATIONS**

- 5.1 Government has introduced changes to the way developer contributions can be collected and spent. Charging Authorities have the option of adopting a CIL. From April 2015, the use of our existing methodology for collecting and pooling developer contributions (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.

## **6. ALTERNATIVE OPTIONS CONSIDERED**

- 6.1 The option to not adopt a CIL has been considered and rejected. There are limited genuine alternatives to adopting the CIL Charging Schedule. Although CIL is not a statutory requirement, authorities without a charging schedule from April 2015 will generally not be able to take into account as a reason for approval pooled contributions towards strategic infrastructure. There is no option to amend the Charging Schedule without doing further research and going through the consultation and adoption process again.

## **7. IMPLICATIONS**

- 7.1 **Legal Implications** – The proposed documentation have been prepared in accordance with the regulations and statutory guidance issued by national government. There are legal implications relating to the implementation, monitoring and enforcement of the CIL once adopted and implemented.
- 7.2 **Financial Implications** – This has been dealt with at paragraphs 4.25 – 4.33 above.
- 7.3 **Human Resources** – CIL can be delivered within existing resources. The S106 team, in the Development and Construction team will assume responsibility for the collection of CIL and the administration of the collection process, with support from Planning Administration. The revocation of POIS should free up the resource to do this. Existing planning software will be used for CIL administration.

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<sup>4</sup> Regulation 62(4) of the CIL Regulations 2010 (as amended)

<sup>5</sup> Regulation 28(3) of the CIL Regulations 2010 (as amended)

7.4 The Sustainable Growth Strategy team will be responsible for putting a decision making processes in place (Governance arrangements) in relation to prioritisation of infrastructure projects and CIL spend. This will be the subject of a future report to Cabinet.

7.5 **Equality & Diversity** – The changes will have a positive impact on our customers and help to ensure continued investment in infrastructure considered *critical to maintaining and creating sustainable communities*.

## 8. **NEXT STEPS**

- **15 April 2015** - Full Council Meeting for formal Adoption of CIL Charging Schedule
- **24 April 2015** – Implementation of CIL Charging Schedule

## 9. **APPENDICES**

- Appendix A: Examiners Report into the Peterborough Draft CIL Charging Schedule
- Appendix B: Peterborough City Council CIL Charging Schedule
- Appendix C: Peterborough City Council CIL Supporting Policies
- Appendix D: Peterborough City Council Developer Contributions SPD
- Appendix E: Draft Developer Contributions SPD Statement of Public Participation
- Appendix F: Changes to the Council's Constitution
- Appendix G: The Community Infrastructure Levy in Peterborough: Frequently Asked Questions