

**AGENDA MANAGEMENT SHEET**

**Name of Decision-maker** Portfolio Holder (Leisure, Culture and Housing) Decision Making Session

**Date of Decision** 16 October 2009

**Report Title** Government Consultation on Detailed Proposals and Draft Regulations for the Introduction of the Community Infrastructure Levy (CIL)

**Summary** Government has published (31 July) for consultation its detailed proposals for the introduction of the Community Infrastructure Levy (CIL). This will be a new charge that local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. This is the consultation that had been promised for publication last January. The deadline for comments is 23 October 2009.

The Director's report recommends an appropriate response to the consultation.

**For further information please contact** Andy Cowan  
County Planner  
Tel. 01926 412126  
andycowan@warwickshire.gov.uk

**Would the recommended decision be contrary to the Budget and Policy Framework?** No

**Background Papers** None (i.e. The 161 page consultation document can be found by following this link:  
<http://www.communities.gov.uk/publications/planningandbuilding/communitylevyconsultation>).

**CONSULTATION ALREADY UNDERTAKEN:-** *Details to be specified*

Other Committees  .....

Local Member(s)  .....  
(With brief comments, if appropriate)

Other Elected Members  Councillor D Bryden  
Councillor M Doody } for information  
Councillor P Fowler  
Councillor R Sweet  
Councillor J Whitehouse

Cabinet Member  Councillor C Saint - comments incorporated  
(Reports to The Cabinet, to be cleared with appropriate Cabinet Member)

Chief Executive  .....

Legal  I Marriott – agreed.

Finance  .....

Other Chief Officers  D Clarke, Strategic Director of Resources –  
Comments included.

District Councils  .....

Health Authority  .....

Police  .....

Other Bodies/Individuals  .....

**FINAL DECISION** **YES** (If 'No' complete Suggested Next Steps)

**SUGGESTED NEXT STEPS :**

*Details to be specified*

Further consideration by  .....  
Portfolio Holder

To Council  .....

To Cabinet  .....

To an O & S Committee  .....

To an Area Committee  .....

Further Consultation  .....

**Portfolio Holder (Leisure, Culture and Housing)  
Decision Making Session - 16 October 2009**

**Government Consultation on Detailed Proposals and Draft  
Regulations for the Introduction of the Community  
Infrastructure Levy (CIL)**

**Report of the Strategic Director for  
Environment and Economy**

**Recommendation**

That the conclusions set out in section 4 and the completed questionnaire set out in **Appendix A** of the Director's report be agreed as the Council's response to the Government's Consultation on the detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy (CIL) published on 31 July 2009.

**1. Introduction**

- 1.1 The Department for Communities and Local Government (DCLG) published (on 31 July) for consultation the Government's detailed proposals for the introduction of the Community Infrastructure Levy (CIL). The CIL will be a levy that local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. (NB. This consultation had been promised for publication in January 2009). The deadline for comments is 23 October 2009.
- 1.2 The CIL has been almost universally regarded as a major potential source of 'new money' to fund public infrastructure services - not least in this Sub-region with its growth agenda for at least 82,000 new houses to be built over the 20 year period 2006-26. (A pilot scheme in Milton Keynes levied £18,000 per house). Whilst the extent to which developers can be expected to fund infrastructure has been seriously dented in the short-term by the impact of the credit crunch on the house building industry, CIL remains an important longer term prospect for funding infrastructure. The 2008 Planning Act only introduced the principle of the CIL and left the important detail to be made in Regulations. This is what the Government is now consulting upon.
- 1.3 The 161 page Consultation document – “Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy (CIL)”, published on 31 July 2009, can be found on the DCLG website following this link:-  
<http://www.communities.gov.uk/publications/planningandbuilding/communitylevyconsultation>

## 2. Summary of Key Features

- 2.1 **CIL Expenditure:** The 2008 Planning Act ring-fences expenditure of CIL income to infrastructure, though Government favours a wide definition of what constitutes 'infrastructure'. In addition to the more obvious items such as transport, schools and flood defences, it is supporting the inclusion of play areas, parks and green spaces, health and social care facilities, police stations, other community safety facilities (e.g. fire and rescue stations), traffic demand management and local renewables (e.g. district heating projects), in the definition. Government is also thinking about allowing CIL income to be spent on carbon reduction schemes.
- 2.2 **Funding Streams:** CIL will be a new charge that local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area. The Government believes that CIL should be used to fund the infrastructure needs of development contemplated by the development plan for the area, not to remedy existing deficiencies. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area. While CIL will make a significant contribution to infrastructure provision, the Government stresses that core public funding will continue to bear the main burden, and local authorities will need to utilise CIL alongside other funding streams to deliver infrastructure plans locally. The long-standing system for securing developer contributions using Section 106 of the Planning Acts will be retained largely intact but its scope confined to direct mitigation of the planning impacts of a development and to the provision of affordable housing (CIL will not be available to fund affordable housing).
- 2.2 **Sub-regional:** Government sees a key advantage of CIL is that it can more easily fund sub-regional infrastructure i.e. larger pieces of infrastructure typically benefiting more than one local authority area. It proposes that local authorities should have the freedom to work together to pool contributions from CIL within the context of delivering their local development plans – although this will depend on voluntary arrangements between the affected districts and unitaries on how to manage cross-boundary services. Timely delivery of infrastructure is also assisted by the introduction of CIL – not simply because it is a new source of income, but because it is a more predictable one. The Government considers that public sector bodies such as the Regional Development Agencies could provide forward-funding for infrastructure and be reimbursed from a CIL income stream by the benefiting local authorities thereafter.
- 2.3 **Development Plan:** The process of setting CIL is inextricably tied up with the development plan process. Only those authorities who prepare development plans are proposed to be CIL 'charging authorities' - district and unitary councils for most development types, county councils only for minerals and waste developments. But development plans have to be up-to-date before CIL can be charged and the development plan has to be supported by an infrastructure delivery plan that identifies what infrastructure will be needed, when it is needed and at what cost. Taking other funding sources into account, the charging authority should identify gaps in funding to arrive at a proposed amount to be

raised from CIL, subject to an assessment of local development viability at the plan level. Estimating these 'gaps' and 'viability' will be a significant challenge to authorities. (John Healy MP, Minister for Housing and Planning has made it clear that the level at which the CIL is set should not deter housing development).

- 2.4 **Charging Schedules:** Government is proposing that the local authority's charging schedule of CIL rates for different locations and types of development should go through similar testing to that applied to local development documents – although the schedule would not be formally part of the statutory development plan. It is proposed that they should go through public consultation and a public inquiry held by an independent planning inspector - whose report will be binding on the local authority. Each schedule will have to say how much money is to be raised by each main class of development, expressed as a cost per m<sup>2</sup> of building floorspace and indexed to inflation. To ensure that the charges levied do not risk delivery of the development plan, Government proposes that the processes of infrastructure planning and setting the CIL charges are normally contemporaneous.
- 2.5 **Application:** Government is minded to set national definitions, exemptions and indices to ensure consistency in these areas but also to enable local flexibility in tailoring charging schedules to local circumstances. For example, national exemptions would exclude householder development by home owners whilst local flexibility would allow lower charges in regeneration areas. Exemption or a lower CIL rate is proposed for affordable housing (albeit with a 'claw back' if the house is sold on). Charges would be set on the grant of planning permission but payment would not be due until the development commenced. Liability for the charge will 'run with (the owner of) the land' in default of the developer failing to pay within 28 days. Charges would only apply to buildings to which people go and not to open uses such as quarrying and landfill or to structures such as wind turbines or to facilities which people do not visit such as electricity sub-stations.

### 3. Assessment

- 3.1 The assessment below focuses on the key areas of interest for the County Council as a major infrastructure service provider and as the planning authority for minerals and waste development and as a partner to the other seven authorities in the CSW Sub-region. It has benefited from contributions from colleagues across all directorates of the County Council and the Police Authority. **Appendix A** to the Director's report includes a completed version of the consultation questionnaire, consistent with this report - its assessment and recommendations.
- 3.2 **Operating Costs:** There is no reference in the consultation document to the ability or otherwise to charge administrative costs incurred in establishing and operating the CIL against CIL income (e.g. the costs of preparing charging schedules, supporting their examination, billing, enforcement, debt recovery etc.) In addition, borrowing to forward fund infrastructure implies the need to use CIL income to pay the interest charges on this borrowing as well as the capital repayments. Since the most expensive items of infrastructure are likely to be those transport and other 'hard infrastructure' items that need to be in place

before development commences (i.e. when CIL liability is triggered), the need to be able to fund interest payments from CIL revenue will be paramount. Moreover, the complexity of the proposed system is exacerbated in two-tier areas where one tier sets the charging schedule (districts) and the other tier is responsible for large elements of the infrastructure (counties). These issues must be addressed, possibly with joint arrangements providing transparency and accountability, in further Government guidance and the regulations. On a related matter, there is a question of whether local government has the staff with sufficient skills in development economics to address the viability issues in producing differential CIL charges. Government needs to recognise this likely skill shortage and identify ways to address this – including the use of CIL income e.g. to fund training/recruitment/hiring consultants.

**3.3 The Boundary:** It is in the interests of public authorities and private developers that a clear and transparent boundary is drawn between the purposes and operation of S106 and CIL i.e.

- (i) CIL is a levy to recycle the development value built up by existing community infrastructure back into extending and improving that infrastructure and does not depend on any link between a specific development and a specific item of infrastructure and
- (ii) S106 obligations enable a specific planning application to resolve its impacts beyond the normal scope of planning conditions, largely within the confines of the application site.

The Government should reflect this distinction, particularly the difference between linked and non-linked infrastructure, and not only in the CIL regulations but more widely to all sources of capital infrastructure funding (since the principles of recycling development value and mitigating local impacts equate to the wider principles of individual and broader community benefit of public service investments).

**3.4 Developer Contributions:** Although local authorities will not be required to charge CIL, the use of planning obligations will be cut back for all authorities and this income stream will reduce. CIL is expected to increase overall income for the public sector from development by a substantial amount, so authorities will be under pressure to adopt CIL. In reality, the option not to avail themselves of CIL revenue would be a very hard, if not impossible, choice to make. Depending on exactly how far the Government decides to cut back the scope of planning obligations, major elements of infrastructure such as the new Warwick bus station and Rugby Western Relief Road might not be fundable without CIL in the future. That said, there are obvious advantages to major infrastructure providers (such as the County Council) in streamlining the use of S106 developer contributions to enable the much wider scope of CIL to secure contributions to address the accumulated impacts of a wider range of developments on public services.

**3.5 Sub-regional:** This key advantage of CIL (see 3.4 above) extends to the funding of the larger elements of infrastructure that are needed to service communities in several local authority areas. Therefore, the proposed option for local authorities to work together to pool contributions from CIL on a sub-regional basis is to be

welcomed. However, since this needs to be within the context of delivering local development plans, a Sub-regional CIL presumes joint infrastructure planning and therefore movement towards joint sub-regional development plan-making also becomes an inevitable consequence. Government needs to address this implication. It also makes the dubious assumption that areas will have sufficient resource for their local needs in the first instance, and this is rarely, if ever, the case. This is clearly an area where the funding need should be met largely from national and regional allocations rather than CIL which is, in essence, a locally derived levy recycling benefit in land values accrued largely from local infrastructure laid down in the past. No doubt there will be claims that major motorway and rail investments have contributed (albeit, unintentionally) to the benefits of local infrastructure but, as always, these can only be realised with substantial local infrastructure connections being made.

- 3.6 **Minerals and Waste:** In two-tier authority areas, county councils will collect CIL from minerals and waste development although the districts and boroughs will set the charges. Special difficulties are posed in relation to CIL being applied to these developments. Both often give rise to significant off-site impacts, usually transport impacts and therefore, in principle should be subject to the CIL along with other classes of development. However, both minerals and waste developments present problems of measuring their impacts using building floor space. For example, whilst a cement plant may present little difficulty in this respect, quarries have very few and typically small buildings. On the other hand, whilst some waste operations will have larger covered areas many others tend to have much larger operational site areas in relation to their building coverage.
- 3.7 **Exemptions:** There is an intuitive unfairness when, for example, a new runway at Birmingham Airport is free from CIL whilst a new hospital is taxed at the maximum rate. This issue clearly requires further research and subsequent guidance from Government. In addition, there is a further complication in relation to waste-to-energy projects and may well benefit from one or other of the national public funding streams to encourage renewable energy, waste minimisation and carbon reduction. It appears sensible that such projects should, in principle, benefit from the proposed CIL exemption or lower rate being canvassed in the consultation document for affordable housing – to avoid the situation where particular developments are encouraged with public subsidies only to then to have them nullified by CIL. However, this opens the door to using CIL to engineer socially desirable outcomes and the Government is resistant to allowing different treatment except for (a) charities and (b) on grounds of economic viability. The application of EU funding rules adds another dimension. If local authorities use public money to gap fund a development, would they be permitted to use that money to pay CIL? These issues need to be addressed by Government prior to issuing the final regulations.
- 3.8 **'Infrastructure':** The consultation document does not propose to define 'infrastructure' beyond quoting current examples such as transport, schools, flood alleviation etc, preferring to give local authorities the flexibility to embrace other local issues or features not yet universally acknowledged as 'infrastructure' (e.g. broadband/optic telecommunications). However, whilst this proposed approach is both welcome and well-intentioned, without a clear definition of what constitutes 'infrastructure', the CIL process is likely to be overloaded with

challenges and rivalry from all sides that could threaten the efficacy of the related development plan process. A tighter specification of criteria for the eligibility of 'infrastructure expenditure items' in the regulations, at least in the early days, should reduce the risk of this happening without unduly restricting scope for local interpretation. NB. Clearly, the County Council will wish to secure the scope for development contributions to its transport, regeneration, education, services for older people and fire and rescue services.

**3.9 Forward Funding:** The consultation document has, however, one significant omission. It does not address the vital question of forward funding of infrastructure financed by future CIL revenues from developments. A passing reference to Regional Development Agencies providing such funding hardly touches this issue. Whilst the wholesale investment banking sector continues to be disengaged from investing in development (i.e. since the credit crunch started last year), the burden is likely to fall on existing public funding sources – themselves likely to come under increasing pressure. Without the ability to forward fund (usually the most expensive items of infrastructure) developments will be unable to proceed – in some cases because local planning authorities and inspectors would not be inclined to grant planning consent without some certainty that major roads, rail stations, schools, flood relief schemes etc. could be provided in a timely fashion. This would be a reversion to the embargoes imposed by inadequate infrastructure that prevailed several decades ago. (When, for example, some housing schemes had to be refused planning permission because the necessary improvements to the sewage pumping station were not in the water utility company's current capital investment programme). Government needs to provide guidance on the scope of sources for forward funding predicated on CIL revenues before issuing the final regulations - otherwise the advantages of the new system over current arrangements will be seriously, if not fatally, undermined. Indeed, the current arrangements (relying largely on S106 contributions) have the merit of being adjustable to suit economic conditions. Given the uncertainties identified in this assessment, a 'no-risk' strategy can be (and often is) adopted whereby expenditure on infrastructure is restricted to the developer contributions in-hand. Inevitably, this means that some critical infrastructure 'arrives late' (e.g. well after new houses have been built and occupied) – an issue that has in the past created serious local controversy.

**3.10 Funding Environment:** Despite its potential advantages, the introduction of CIL creates a very complex funding environment, with development met from CIL receipts, S106 monies, RDA (and possibly HCA) funding, and a whole multiplicity of Government capital allocations for schools, LTP, etc. With the pressure on the public purse currently, the Government will be seeking opportunities to reduce public expenditure – opportunities that will be increased with the growing complexity of the infrastructure funding equation. There has to be a serious concern about whether the public purse will have the capacity to continue to bear the main burden of infrastructure development and, in particular, the extent to which withdrawal of public funding would take account of the fact that infrastructure development yields benefits well beyond the immediate impact area. Moreover, CIL would be essentially 'gap funding', (i.e. what is required for development infrastructure after taking account of other sources of funding). The flaw in the logic of the Government's proposals is that



we rarely know the level of other available mainstream capital funding well in advance. For example, education capital allocations are often not known until we are into the year in which they are expected to be spent. Consequently, the use of CIL to bridge the gap - between the cost of the public infrastructure required and the mainstream funding available - needs a significant change in Government capital allocation processes, especially much earlier notifications.

## **4. Conclusions**

- 4.1 Insofar as it goes, this is a thorough document on the subject reflecting the importance of this substantial change in the way development contributes to funding infrastructure. The 54 questions in the questionnaire included with the consultation fairly sets out the options for proceeding to implement CIL.
- 4.2 However, the omission of any real attempt to address the vexed issue of forward funding is a serious weakness that threatens to undermine the advantages of the CIL. This gap in national guidance should be remedied in further Government advice prior to issuing the final regulations.
- 4.3 That said, from a general perspective, the remaining shortcomings identified in paragraphs above should be capable of resolution in the manner indicated.
- 4.4 From its particular operational perspective, the County Council will need to have further guidance from Government on the definition of 'infrastructure' measurement of minerals and waste development for CIL charging purposes; the applicability of CIL to developments already in receipt of public subsidy; and the programming of mainstream capital funding.

PAUL GALLAND  
Strategic Director for Environment and Economy  
Shire Hall  
Warwick

30 September 2009

**Portfolio Holder (Leisure, Culture and Housing)  
Decision Making Session - 16 October 2009**

**Government Consultation on Detailed Proposals and Draft  
Regulations for the Introduction of the Community  
Infrastructure Levy (CIL)**

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**Questionnaire Response – Warwickshire County Council**

**Authorised by: Councillor C J Saint, Portfolio Holder for Leisure,  
Culture and Housing**

**NB. WCC answers/comments appear in blue on the website.**

**Contact:**

**(i) Your details:-**

Name: [Andy Cowan](#)  
Position: [County Planner](#)  
Name of organisation: [Warwickshire County Council](#)  
(if applicable):  
Address: [Shire Hall, Warwick CV34 4SX](#)  
Email: [andycowan@warwickshire.gov.uk](mailto:andycowan@warwickshire.gov.uk)  
Telephone number: [01926 412126](#)

**(ii) Are the views expressed on this consultation an official response from the organisation you represent or your own personal views?**

**Organisational Response**

**(iii) Please tick the box which best describes you or your organisation:**

[Warwickshire County Council](#)

**(iv) What is your main area of expertise or interest in this work (please tick one box)?** [N/A – County Council response authorised by Portfolio Holder and based on advice from various disciplines.](#)

**Do your views/experiences mainly relate to one or more v) specific regions within England and Wales, to one or both countries?**

[West Midlands](#)

**Would you be happy for us to contact you again in relation to this questionnaire?**

[Yes](#)

Please refer to the relevant parts of the consultation document for narrative relating to each question.

## Chapter 2. Delivering infrastructure with CIL

1. **Do you agree with the proposal that the draft CIL regulations do not define 'infrastructure' further?**

**No. Comments** – The proposed approach is well-intentioned in relation to providing the scope to engage local issues but, without a clear definition of what constitutes 'infrastructure', the CIL process is likely to be overloaded with challenges and bids that could threaten the efficacy of the related development plan process. Perhaps a tighter specification of criteria for the eligibility of expenditure items would reduce the risk of this happening whilst retaining latitude to include as yet unforeseen items as 'infrastructure'. Lack of definition may also impose an unreasonable burden on bodies across the country to repeatedly make the case for inclusion of a specific type or class of infrastructure being eligible in the case of every separate charging schedule (e.g. policing, fire and rescue).

2. **Is any further reporting required for CIL? Yes. Comments** – In the context of comment under 1 above, it will be important for CIL expenditure report to be accompanied by reporting on relief given and to identify tactics used to avoid CIL – an important source of feedback for the charging authority and the public in general. The charging authority should set out the proportions of income to be dedicated to particular types of infrastructure so that there can be no dispute as to whether an agency has received a fair share in any given year and so that agencies like counties with multiple infrastructure responsibilities know how to split the income.

### Format of Reports

3. (a) **Is the 1 October deadline for reporting on the previous year's activity sufficient for local planning authorities? Insufficient information to base comment.**  
(b) **Will this timescale enable developers and local communities to understand how CIL revenue has been applied? Insufficient information to base comment.**

### General

4. **Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above? Yes – see below:-**
  - The benefits of predictability arising through codification of the processes of securing developer contributions has to be balanced against the unpredictability of economic conditions that will cause the viability of development schemes to vary up and down within the timescale of a development plan document and its associated charging schedule.
  - The consultation document does not address the vital question of forward funding of infrastructure predicated on future CIL revenues from developments. The reference to RDAs providing such funding hardly touches this issue. Since the wholesale investment banking sector continues to be unengaged in this area

(i.e. since the credit crunch started last year), the burden would seem to fall on funding from existing public resources. Without the ability to forward fund (usually the most expensive items of infrastructure) developments will be unable to proceed – in some cases because local planning authorities and inspectors would not be inclined to grant planning consent without some certainty that major roads, rail stations, schools, flood relief schemes etc. could be provided in a timely fashion.

## Chapter 3. Setting the CIL Charge

### Charging Authorities

5. **Are there any circumstances where a CIL charging authority would not be able to fulfil its charging authority functions effectively?** Insufficient information to base comment – however, in the circumstance where a lower tier authority is venal, incompetent or parochial, Counties should have step in powers.
6. (a) **In deciding whether to use the power at section 207 of the Act, should the Government apply different criteria?** No
- (b) **Which functions should a joint committee perform?** Depends on individual circumstances.

### Differential Rates

7. **Do you agree that differential rates should be based only upon the economic viability of development?** Yes **Comments:** However, this implies higher as well as lower than ‘average’ rates e.g. in areas where growth threatens to overheat the economy and generate labour shortages, high commuting levels and house price inflation. That said, the costs of some infrastructure provision (such as school buildings) does not vary to any great extent with geography and some sites may be more costly to develop than others or make less demands on infrastructure. It also needs to be made clear whether the charging schedule must apply to all development that are buildings to which people go or whether types of building, e.g. schools, can be omitted.

### Metrics

8. **Do you agree that CIL charges should be based on a metric of pounds per square metre?** Yes **Comments:** But attention needs to be paid to minerals and waste developments where building floorspace is not necessarily a good guide to the infrastructure impact of the development. The capacity/turnover in tonnes might be a practical alternative and lend itself to payment by annual instalments.
9. **Would you prefer to have a choice of charging metrics, and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions?** No **Comments:** Subject to the last question, variable metrics will lead to confusion and loopholes for avoidance of the levy where it is justified in principle.

10. **Do you agree with the Government's proposal to apply the charging metric to the gross internal area of development or do you think there are advantages to levying CIL on the gross external area?** No Comments: We prefer measurement on a gross external area basis since there is less planning control over internal areas which would lead to more tactics for levy avoidance.
11. **Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development?** Yes Comments: It is the whole gross development that produces the infrastructure impact. The replacement of a factory building constructed 70 years ago when most people walked to work with a slightly bigger area of B1 or residential use which generates mostly car traffic is like subtracting apples from pears.

**NB.** In 2009, the factory places a certain demand on infrastructure according to modern usage and the redevelopment may not result in any net increase. Applying the levy to a replacement will encourage make do and mend rather than new-build. However, net calculations become very complex if you are going to get them right and arguably modification is better than new-build in terms of sustainability.

## Indexation

12. **Should authorities be required to index CIL charges?** Yes Comments: But different indices should be used to reflect the different rates of cost inflation experienced by different forms/ mixes of development e.g. highway construction costs have increased significantly more than general housing building costs in recent years. We might use a basket of indices reflecting the proportions of infrastructure types to be paid for in order to fix an average rate of inflation for charges.
13. (a) **Should indexation be based on a national index to provide simplicity, consistency and a readily understood index.** Yes, but subject to the qualification above.
- (b) **Alternatively, should charging authorities be allowed to choose different indices in different places?** Yes, but subject to the qualification above. Comments: It would be best to have nationally acknowledged indices with a regional and development type breakdown.
14. **Do you agree with the Government's proposed choice of an index of construction costs?** N/A Comments: See comment above.
15. **Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences?** No. Comments: Development might commence five years after permission is granted and that is when the infrastructure need emerges. The charge is collectable upon commencement, so that is when inflation should be calculated.
16. **Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?** Comments: Application on an annual or monthly or other time scale will depend on the nature of the development.

17. Do you agree that charging authorities should be able to index their charges from 1 January each year (taking the November index)? See comments above.

## Charging Schedule Procedures

18. Do you agree with the Government's proposal to allow joint charging schedule/development plan examinations? Yes - but see comments below  
Comments: The proposals have the potential to create a highly bureaucratic process, with a cumbersome collection regime and penal levies, and needs clarity and simplicity. For example, the Inspector is looking at the soundness of infrastructure planning as part of the examination of the plan. His/her recommendations on the plan and the schedule are binding, so there is certainty (unless the authority decides to start again). However, as a matter of principle, the charging schedule should always be examined after the development plan has been examined so that it is based on a greater certainty of what the development plan is proposing. Joint examinations should avoid the appearance of development being led by the prospect of CIL income rather than the need for development. It would help simplify the process if the system could bring together (as close as possible) the time of the CIL being charged with the time that the development produces an income. This should reduce the scope and need for argument at the LDF Core Strategy Examination.
19. Do regulations or guidance need to cover any additional matters relating to joint examinations? See comments above.
20. Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate? Yes. Comments: If the decision-making on the charging schedule is to be objectively based on viability, then the examiner must have the option to increase as well as decrease.

## General

21. Do you have comments on any other matters raised in chapter 3 which are not covered by the questions above? No.

Has anyone thought about the impact on the farming industry?

## Chapter 4 Paying CIL

22. (a) Do you agree with the chosen definitions of building, planning permission and 'first permits'? No comment: The Consultation Paper says that a "building" is defined in the 2008 Act in a different way to the 1990 Act. However, the 2008 Act adopts the definition of "building" in the 1990 Act (see section 235(1)). Therefore, it is not clear that "structures" like wind turbines are in fact excluded. As the definition stands, it would include polytunnels which are classed as "buildings" and this could have disproportionate impacts on the agricultural industry as a whole as well as particular individual farming businesses.
- (b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?

Comments: The 100m<sup>2</sup> threshold may have perverse consequences – as the history of property taxation demonstrates (e.g. ‘window taxes’). Some specific building types should be excluded from CIL in the final regulations to avoid perverse consequences but it may be that this has to be ad hoc because of the difficulty of identifying a general principle which does not set too many other hares running.

23. (a) **Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions.** Yes – but this should be confined to cases when infrastructure needs to be forward-funded – otherwise the time of the CIL being charged should be geared to when the development produces an income.
- (b) **If not, what changes would you wish to see that deal fairly with these types of permissions?** N/A.

## Exemptions and Discounts

24. (a) **What are your views on the principle of providing a reduced rate of CIL for affordable housing development?** Agreed – There seems no point in giving a public subsidy for affordable housing with one hand and taking it away in CIL with the other. But this is precisely what will happen with many other forms of socially desirable development. Really, the logic has to be that affordable housing will so frequently raise viability issues that it is simpler to exempt it generally. However, authorities might be given the power to “re-include” affordable housing where they are confident that viability arguments do not apply’ this might be a safeguard against manipulation by developers and reflect those public service infrastructure needs that may be particularly in demand in relation to affordable housing e.g. elderly care, policing, pre-school provision. In particular, account needs to be taken of the fact that the educational infrastructure demands of affordable housing are at least equal to those needs expressed by general market housing.
- (b) **What do you think the likely consequences of providing such a discount might be?** Hopefully make affordable housing more attractive a proposition to house builders and landowners than it currently is.
25. **If the Government were to provide a reduced rate of CIL for affordable housing development, do you think that the proposed definition of affordable housing is workable in practice?** Yes Comments: It must be made to work by closing the loop-holes and anticipating the perverse effects of avoidance tactics on the provision of affordable housing.
26. **If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity’s charitable purposes?** Yes Comments: According to such a definition and with each case signed off by the HCA.



27. **Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback?** **No**  
**Comment.**
- (b) **if LCHO properties where receipts are not recycled are subject to clawback of the CIL discount, should there be a time limit up till when staircasing to full ownership would invoke clawback?** **No**  
**Comment.**
- (c) **How should such a clawback operate?**
28. **Is seven years an acceptable time period for clawback to operate over?** **No**  
**Comment:** Whilst the principle of claw-back is realistic a seven year limit is to arbitrary. Basic criteria should be established to take account of the circumstances prevailing at the time e.g. current need for the infrastructure; state of the economy.
29. **Is it reasonable to ask a claimant to submit an apportionment of liability in this way?** **No Comments**
30. **Do you agree that it is best not to have a special procedure for developments that have difficulty in paying the advertised rate of CIL?** **Yes.**

### **The Liable Party**

31. **Do you agree with the Government's proposals for liable parties and assumption of liability?** **Yes No Comments.**

### **Collecting CIL**

32. **Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?** **No Comments**

### **Payment of CIL In Kind**

33. **Do you think that the final regulations should provide for the payment of CIL in-kind?** **No Comments:** Valuation complexities and uncertainties are associated with payments in kind – though in some cases payment in kind may be the most sensible form of payment e.g. the site for a school.
34. **If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?** **Only on the District Valuer's Valuation.**

### **Payment by Instalments**

35. (a) **Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development?** **Yes – if it helps to enable the development's cash flow.**
- (b) **How should the instalments be structured?** **Yes - to meet projected programmes of expenditure that will be a consequence of the development, phased to reflect income generated by the development.**



36. Do you agree that payment on account should not be provided for in the final CIL regulations? **Yes** Comments: To reduce complexity and the scope for avoidance or the perverse consequences of avoidance.

### Duty on The Authority to Remove the Local Land Charge Upon Request

37. Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability? **Yes** Comments: Once paid, the CIL should no longer be a charge on the land.

### Enforcement Of CIL Liabilities

38. Should the draft regulations be amended to require collecting authorities to have to issue a warning to liable parties (in writing and possibly by posting a warning on the site in question) before being able to impose a late payment surcharge? **Provision to enable additional interest charges on late payments may be a useful enforcement tool.**
39. Are the means of recovering CIL debts sufficient or would further methods, such as the ability to impose attachment of earnings orders, be helpful? **Yes No** Comments.
40. Should the Government provide for specific enforcement measures in regulations to allow collecting authorities to penalise and deter breaches of the conditions for relief? **Yes** Comments: Lack of sanctions of sufficient deterrence would encourage breaches.

### Compensation

41. Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice? **Comments: A bespoke regime is unnecessary - the Ombudsman route should be sufficient.**

### General

42. Do you have any comments on any other matters raised in chapter 4 which are not covered by the questions above? **Yes – There is no reference to the ability or otherwise for charging administrative costs incurred in establishing and operating the CIL against CIL income e.g. the costs of preparing charging schedules, supporting their examination, billing, enforcement, debt recovery etc. In addition, borrowing to forward fund infrastructure implies the need to use CIL income to pay the interest charges of this borrowing as well as the capital repayment.**

### Chapter 5. Planning Obligations and Other Powers

43. What do you think about the Government's proposal as set out in draft regulation 94 to scale back the use of planning obligations? **This is to be welcomed from many points of view, especially to avoid the appearance of planning permissions being bought for unrelated financial gain and to focus on**

the purposes for which planning permission is either granted or refused. It would also save time in terms of negotiations on S106 agreements.

44. **Do you think the wording of the five tests as set out in draft regulation 94 is appropriate? Is each of the five tests meaningful and workable in practice, or could any be expressed in a better way?** Yes – the five tests of Circular 5/05 are the appropriate tests in relation to the operation of S106. however, it is not necessary to state tests (i) and (v) in the final regulations and tests (ii), (iii) and (iv) can be rolled up into a single test for these purposes. Comments: It is essential that a clear boundary is drawn between the purposes and operation of S106 and CIL – the latter being a tax to recycle the development value built up by the community back into the community and the former to enable a specific planning application to resolve its impacts beyond the normal scope of planning conditions.
45. **Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests.** No – the transition should be geared to the coming into effective operation of CIL across the country
46. **Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not?** Yes - CIL is the more appropriate tool for recycling the values accrued by community infrastructure beyond the scope of the 5 tests.
47. **Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs?** Not necessarily. Comments: Confusion and inconsistency need to be avoided if both CIL and S106 schemes doing a similar job were being run alongside each other but pooled contributions and even tariffs imposed via planning obligations can still make sense in a CIL world where there is a direct relationship between the development and the infrastructure and there is no duplication with infrastructure intended to be funded by CIL. This means a high level of clarity in infrastructure planning and charging schedules about just what is going to be covered by CIL. The Government also needs to consider whether it will allow charging in respect of general types of development, such as traffic calming anywhere, or only in respect of distinct projects.
48. **Do you think the Government’s proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts ‘solely’ caused by a CIL chargeable development is workable in practice?** No - For example, the housing estate that tips the balance of congestion at an adjacent roundabout. Developments that are exempt from CIL will nevertheless have impacts that need to be mitigated through planning obligations.

**If not, please state why not. Can you think of an alternative which would have the same or similar effect?** There is no need to limit the scope of planning obligations in this way – just so long as it is limited to the 5 tests on the scope of mitigation.

49. **What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to mitigate impacts ‘solely’ caused by CIL chargeable developments? Not necessary.**

For reasons given above, we need to preserve our ability to use planning obligations for as long as possible. Implementation of CIL is outside the control of many infrastructure providers including counties.

50. **Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has a CIL or not? No**  
**Comments:** It is essential that a clear boundary is drawn between the purposes and operation of S106 and CIL – the latter being a tax to recycle the development value built up by the community back into the community and the former to enable a specific planning application to resolve its impacts beyond the normal scope of planning conditions. Authorities would have a choice – but it should not be ‘Hobson’s Choice’. The Government’s proposals acknowledge that planning obligations can be used for pooled contributions and tariffs consistently with the five tests and, within these limitations, they should be available where CIL is not.
51. **What transitional period in London do you think would be required before a scale back of the use of planning obligations which prevented the use of pooled contributions and tariffs could take effect, to ensure a smooth transition from the existing to the new planning obligations regime, taking account for the need to use planning obligations for Crossrail purposes? N/A.**
52. **In revising Circular 5/05 in light of the introduction of CIL what further policy or areas of clarification do you think might be required with regards to the use of planning obligations? None.**
53. **Do you think any additional further guidance (additional to a revised Circular 5/05) is required to support the use of planning obligations or CIL, and if so who would be best to provide it? Yes**  
**Comments:** Provide additional guidance through a separate PPS following Government’s decision after this consultation exercise.

## General

54. **Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above? No.**