

WIRRAL COUNCIL

CABINET

8 DECEMBER 2011

SUBJECT:	<i>LOCAL DEVELOPMENT FRAMEWORK FOR WIRRAL – DEVELOPER CONTRIBUTIONS AND THE COMMUNITY INFRASTRUCTURE LEVY</i>
WARD/S AFFECTED:	<i>ALL</i>
REPORT OF:	<i>ACTING DIRECTOR OF DEPARTMENT OF REGENERATION, HOUSING AND PLANNING</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>REGENERATION AND PLANNING STRATEGY – CLLR PHIL DAVIES</i>
KEY DECISION?	<i>YES</i>

1.0 EXECUTIVE SUMMARY

- 1.1 The Community Infrastructure Levy (CIL) is a new levy that local authorities in England and Wales can choose to charge on new developments in their area. CIL will have significant implications for the use of planning agreements and obligations. This report advises on the changing legal and policy context for planning agreements and obligations and on the potential for CIL to provide future funding for essential infrastructure.
- 1.2 It is recommended that an evidence base of infrastructure is developed as part of the Local Development Framework for Wirral, to facilitate the production of a CIL Charging Schedule and that this report is referred to Planning Committee for information.
- 1.3 This report also outlines the content of a national consultation by the Department for Communities and Local Government on detailed proposals and draft regulations for reform of the Community Infrastructure Levy, which could have implications for securing financial benefits from new development to be used to provide new infrastructure required by the wider community. It is recommended that the comments set out in Appendix 1 are submitted as the Council's formal response to the Department for Communities and Local Government Department.

2.0 RECOMMENDATIONS

- 2.1 That an evidence base of infrastructure to support the Core Strategy is prepared with the engagement of all Council Departments and Heads of Service and with relevant external infrastructure providers to determine infrastructure requirements for each of the Settlement Areas identified in the Core Strategy and that Officers draw up a draft Charging Schedule of infrastructure and costs to support the Core Strategy including an assessment of the impact on the viability of future development and that this will be the subject of a further Cabinet report to determine the likely costs applicable should CIL be introduced in Wirral.**
- 2.2 That the comments set out in Appendix 1 to this report form the basis of the Council's response to the Department for Communities and Local Government.**
- 2.3 That this report is referred to Planning Committee for information.**

3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 To take account of the enactment of national regulations for the Community Infrastructure Levy and the implications for the future use of legal agreements under section 106 of the Town and Country Planning Act 1990 (S106 Obligations) and to enable the Council to continue to draw financial benefits from new development to be used to provide new infrastructure required by the wider community.
- 3.2 To agree a Council response to a consultation by the Department for Communities and Local Government on detailed proposals and draft regulations for reform of the Community Infrastructure Levy.

4.0 BACKGROUND AND KEY ISSUES

Developer Contributions

- 4.1 Section 106 of the Town and Country Planning Act 1990 makes provision for agreements between developers and the Local Planning Authority, sometimes referred to as 'Planning Obligations' (S106 Obligations). They are a mechanism for mitigating the impact of development and are intended, where possible, to make development acceptable which would otherwise be unacceptable in planning terms. They can also be used to restrict the development or use of land in a certain way.
- 4.2 S106 Obligations can be used to prescribe the nature of development (e.g. by requiring that a given proportion of new homes are affordable); or to secure a contribution from a developer to compensate for loss or damage created by a development (e.g. loss of open space); or to mitigate the impact of a development on a locality (e.g. through the provision of necessary infrastructure and facilities such as amended highway or increased public transport provision). The objective is to ensure that the proposed development is made to comply with national planning policies and established local requirements.

The Community Infrastructure Levy (CIL)

- 4.3 The Community Infrastructure Levy (CIL) is a new tariff-based levy that local authorities in England and Wales can choose to charge on new developments in their area, which is to be set locally and can cover most types of development. The money raised can be used to fund a wide range of infrastructure that is needed as a result of new development.
- 4.4 The broad aims of the CIL system are to:
- Increase certainty and transparency for developers;
 - Increase fairness by broadening the range of developments asked for contributions;
 - Allow the cumulative impacts of smaller developments to be better addressed;
 - Provide a more flexible system which can develop over time;
 - Provide a better and more predictable flow of revenue for Local Authorities; and,
 - Link contributions to robust infrastructure planning and economic viability evidence.
- 4.5 The levy must be charged in pounds (£) per square metre on the net additional increase in floorspace of any given development. Most new buildings will be liable to pay the levy but buildings into which people go only intermittently, for example, for the purpose of inspecting or maintaining fixed plant or machinery, will not be liable to pay. Structures which are not buildings, such as pylons and wind turbines, will also not be liable to pay. The levy will not be charged on changes of use that do not involve an increase in floorspace. There are also exemptions for development undertaken on behalf of registered charities and for affordable housing.
- 4.6 The Planning Act 2008 provides a wide definition of the infrastructure which can be funded by the levy as including:
- Roads and transport facilities;
 - Flood defences;
 - Schools and other educational facilities;
 - Medical facilities;
 - Sporting and recreational facilities; and,
 - Open spaces.
- 4.7 The regulations are clear that Local Authorities can only spend CIL receipts on the capital cost of providing new infrastructure needed to support development in their area. It should be focused on new infrastructure rather than being used to remedy pre-existing deficiencies unless those deficiencies can be shown to be made more severe by new development.
- 4.8 The introduction of CIL was the previous Government's response to continuing concerns that the use of S106 Obligations were not transparent, that they were ineffective in providing for major infrastructure and the needs arising from cumulative developments, had a disproportionate effect on major developments, and that most development did not pay. The set scale of charges and the legal obligation to pay the CIL are intended to bring much greater certainty and will capture a much broader range of development.

- 4.9 CIL differs fundamentally from S106 Obligations in that the funds collected are not tied to a specific development or to the provision of specific infrastructure. Whereas infrastructure provision necessary to mitigate the impact of a particular development secured through S106 Obligations can only be used for that specific purpose; CIL funds could be used flexibly by the Council to fund any infrastructure as defined within the regulations.
- 4.10 Unlike S106 Obligations, once adopted, the CIL Charging Schedule will be a standard charge to be consistently applied, with no negotiation permitted between the Local Authority and the developer. Charging authorities can offer relief from paying the levy in exceptional circumstances where applicants can satisfactorily demonstrate that the costs of site specific infrastructure would make a particular scheme unviable if the full charge set by CIL was imposed.
- 4.11 When setting the CIL, local authorities need to produce an evidence base relating to what infrastructure is required to deliver the development strategy set out within the Local Development Framework Core Strategy. They must then identify what funding is available from existing sources to pay for the required infrastructure and then calculate any shortfall, which could be funded by CIL.
- 4.12 The application of CIL powers is not mandatory and is entirely at the discretion of the Local Authority. However, in order to encourage Local Authorities to use the CIL, the scope for using S106 Obligations is to be scaled back significantly. S106 Obligations are to be restricted to the regulation of development and in particular for site-specific mitigation, whereas CIL could fund a wider range of off-site improvements for the benefit of the wider area.
- 4.13 After 6 April 2014 the use of pooled contributions collected through S106 Obligations will be limited for all authorities – although, generally, Wirral has historically not taken this approach. For those adopting CIL before April 2014, the restrictions will come into place on its adoption. This is consistent with the principle that the vehicle for future collection of pooled contributions for infrastructure should be CIL and not S106 Obligations. Provisions are also in place to prevent ‘double-charging’ under both sets of requirements.
- 4.14 The impact of the restriction on pooled contributions is that authorities will only be able to accept a maximum of five contributions from individual planning applications towards infrastructure projects or types of infrastructure that could otherwise be funded from the CIL. If an authority has more than five S106 contributions for a project or type of infrastructure (such as a school extension or public realm improvements), from April 2014 or the date they adopt CIL if earlier, they will not be able to collect any more contributions for that purpose. The five contributions include any from unimplemented consents.
- 4.15 For development which cannot be funded by CIL, there are no pooling restrictions, and non-infrastructure items such as training or local labour agreements, for example, are not subject to these provisions. All these items should still however, meet the statutory policy tests for S106 Obligations.

The Localism Bill

4.16 The Localism Bill currently going through Parliament includes a number of additional provisions which will affect CIL. These will:

- Clarify that CIL can be spent on the ongoing costs of providing infrastructure and provide for regulations specifying what may or may not be funded;
- Require CIL charging authorities to allocate CIL to other persons or bodies and provide for regulations which will require a 'meaningful proportion' to be transferred to local communities;
- Place limits on the binding nature of CIL examiners reports; and,
- Provide for Mayoral Development Corporations to be CIL charging authorities.

4.17 The Government is also consulting on further possible changes to the CIL regime, including the passing on of a 'meaningful proportion' of CIL to neighbourhoods and whether CIL funds should be available to spend on affordable housing. This is covered in further detail in paragraphs 4.46 to 4.54 (below).

KEY ISSUES

4.18 Decisions on whether or not to adopt CIL should be taken in full awareness of the scaling back of S106 Obligations and the potential income streams for funding infrastructure.

Scaling Back S106 Obligations

4.19 S106 Obligations are intended to make unacceptable development acceptable. If a development is acceptable without the obligation, it should be approved.

4.20 Going forward S106 Obligations should only be used for:

- Regulating development;
- On-site mitigation;
- Affordable housing (subject to further national consultation); and,
- Securing benefits from non-CIL developments.

4.21 S106 Obligations should not be used for general contributions to infrastructure funding.

4.22 On larger developments, where the on-site requirements for the provision of infrastructure (for example education, health and flood prevention works) are going to be difficult to fund through CIL within the required timescales or where the CIL generated is likely to be less than the value of the S106 Obligations, it may be possible to identify such sites as exceptions and therefore not liable for CIL.

Setting a CIL Charge for Wirral

- 4.23 The level of the CIL charged must be informed by the evidence base, listing the infrastructure required to deliver the levels of development set out in the Council's Core Strategy and the scale of any identified funding gap.
- 4.24 Identifying the scale of the funding gap is critical in justifying the need for the CIL and will provide evidence that it is reasonable to ask for financial contributions from development towards infrastructure. Once the need for CIL has been established, economic viability testing of different development types in different locations across the Borough must be undertaken to justify the proposed level of CIL to be charged.
- 4.25 CIL rates should be set based on viability evidence only and not on policy related choices. Information on construction costs, detailed viability appraisals, development scenarios, actual land sales/values and comparative costs will be required to support the conclusions. However, decisions can be informed by an understanding of the local development market, knowledge of the local area, available sites and the type and quantity of development expected to come forward.
- 4.26 Charging authorities can set differential rates – either for different parts of their area or for different uses – a nil rate can also be set if justified in terms of economic viability. There may be differing economic factors which suggest that differential rates may be appropriate. This may be on the basis of use, for example, where the market for housing may be more buoyant than commercial development and therefore capable of bearing a higher rate – or on the basis of location, where there are clear market differences between different geographical areas.
- 4.27 Until these pieces of work are completed, it will not be possible to speculate on what the potential CIL charging rates for Wirral could be. Some viability work has already been completed as part of the Council's Strategic Housing Land Availability Assessment (Cabinet 22 September 2010, minute 121, Cabinet 21 July 2011, minute 80) and Affordable Housing Viability Assessment (Cabinet 14 October 2010, minute 171).
- 4.28 It is useful, however, to consider the limited number of charging schedules, prepared by other Local Authorities, three of which have now been through examination and approved, one currently at examination and five at various stages of public consultation:

TABLE OF OTHER COUNCILS' PROPOSED LEVY CHARGES PER SQUARE METRE OF DEVELOPMENT

Council and CIL status	Residential	Offices	Business/ industrial/ warehouses	Small retail	Large retail/ supermarkets	Assembly and leisure
London Borough of Redbridge Approved	£70	£70	£70	£70	£70	£70
London Borough of Croydon Consultation ended	£0–£120	£20 inside centre of borough; £0 elsewhere	£0–£20	£120	£120	£120
London Borough of Wandsworth Consultation ended	£250; £265–£575 in the Vauxhall Nine Elms Battersea opportunity area; £0 in Roehampton	£100; £0 in Roehampton	£0	£100; £0 in Roehampton	£100; £0 in Roehampton	£0
Mid Devon District Out for consultation	£113	£0	£0	£0	£250	£0
Newark and Sherwood Approved	£0–£75	£0	£0–£20	£100–£125 for all schemes		£0
Greater Norwich Development Partnership Consultation ended	£135–£160 Zone A Inner Charging Zone; £75 Zone B	£5	£5	£25	£135	£0
Shropshire Approved	£40 in towns or £80 in rural areas	£0	£0	£0	£0	£0
Plymouth Consultation ended	£0 for high rise; £30 for more than 15 units; £60 for less than 15 units	£0	£0	£30	£100	£0
Portsmouth Examination	£105	£0	£0	£53 for all in-centre retail and out-of-centre projects less than 280 square metres	£105	£105

- 4.29 In Wirral, since 2000, a total of 3,173 new build private dwellings; over 23,400 square metres of new retail space; and over 242,100 square metres of new employment space (Use Classes B1, B2 and B8) have been granted planning permission.
- 4.30 A charge of £50 per square metre levied on a typical 86 square metre 3-bedroom house would raise £4,300 per dwelling.
- 4.31 Notwithstanding the uncertainty, at this stage, over what it might be viable to charge in Wirral, it is clear that the CIL revenue for a single year could be substantial.

Potential Advantages of CIL

- 4.32 The following advantages are identified in relation to CIL:
- It is a standard, fixed charge which will aid transparency for the development industry;
 - It is non-negotiable so will speed up the process over S106 Obligations, which can be time consuming in both negotiations and procedure;
 - It can be used to secure additional funding streams and therefore enable timely infrastructure delivery across an area;
 - A proportion of CIL will in the future be passed back to local communities to benefit from development in their areas;
 - Legislation already limits the use of S106 Obligations to only site specific infrastructure; and,
 - CIL is now the only mechanism for local authorities to secure money towards mitigating the cumulative impact of development by providing strategic infrastructure.

Potential Disadvantages of CIL

- 4.33 The following disadvantages are identified in relation to CIL:
- Some development on some sites may not be viable as a result of CIL being set at a particular level. In marginal cases, CIL could be the determining factor in whether development goes ahead;
 - It is intended to be mandatory with few exceptions. As a consequence those sites which are unable to bear the burden of CIL will not come forward for development;
 - It lacks flexibility and will be difficult to amend quickly as market conditions change;
 - Local residents may not directly benefit from developer contributions, with new infrastructure not necessarily being provided in the locality where development has taken place;
 - There may be cases where it is more appropriate and beneficial to require on-site provision of community infrastructure rather than a financial contribution; and,
 - It will be an additional development cost over and above S106 Obligations which will continue to be needed to address site specific mitigation issues and affordable housing.
 - Unlike S106 Obligations, CIL will be a mandatory cost with no negotiation, potentially reducing the likelihood of any planning gain for the delivery of affordable housing which may be considered non essential.

Conclusions

- 4.34 S106 Obligations are now restricted but still operational to enable necessary requirements directly related to the development to be met, although only five individual planning obligations could now be pooled to provide funding for a project or type of infrastructure. Wirral has not historically pooled planning contributions to provide infrastructure and could probably continue to apply S106 Obligations in a similar way as in the past, with very little difference.
- 4.35 If, however, the Council wanted to pool contributions to support and provide infrastructure to support new developments over a wider area, this will in future only be possible via CIL (after 6 April 2014). In a period of reduced funding, it may be that CIL could become an important income stream for the maintenance and provision of community infrastructure, providing development continues to come forward.
- 4.36 It will also be important to consider other new and emerging costs on development when setting CIL charging rates. The combination of CIL with other existing or new requirements, such as those for affordable housing through planning gain and payments for allowable solutions under the Building Regulations, when combined, may make marginally viable schemes unviable and prevent needed development from taking place, and may also reduce the ability to maximise affordable housing through planning gain as this will not be enforceable as opposed to the CIL.
- 4.37 There are benefits from CIL in terms of providing a revenue stream for identified priorities and providing clarity to developers on what the cost will be in bringing sites forward for development. However, the current situation is that many developments planned for Wirral are not proving to be viable at this point in time. This has so far been addressed by agreeing at the detailed stage of the planning process, that a viability assessment should be undertaken to determine the funding that is likely to be available for community infrastructure. This flexible and pragmatic approach would not, however, be possible under CIL, which could have the effect of delaying or abandoning future proposed development.
- 4.38 The Government recognises that not all authorities will adopt CIL (the Final Impact Assessment assumes that 65% to 78% of authorities will take up CIL). It will be for individual authorities to decide on the appropriate balance for their area and how much potential development they are prepared to put at risk. Authorities, such as Wirral, therefore face a dilemma between seeing developments happen or applying CIL to increase income for needed infrastructure.
- 4.39 Charging authorities may set differential rates, either on a geographical or land-use basis, provided they are justified by reference to economic viability and are not applied just to support particular policy objectives. A single rate can also be set.
- 4.40 Ultimately, the decision on whether to become a charging authority will need to be judged against the viability of development and the potential level of CIL income and the consequent amount of infrastructure it will deliver. Too high a rate could have an adverse impact on the ability to meet development plan targets, while too low a rate could prejudice the provision of infrastructure to support development.

Next steps

- 4.41 A draft 'Interim Council Guidelines: Section 106 Agreements' document has already been consulted upon internally but in the light of implementation of the CIL Regulations and the scaling back of S106 Obligations will now need substantial revision if it is to be progressed further.
- 4.42 To make optimum use of CIL and S106 Obligations will require pro-active infrastructure planning and funding involving a wide range of partners including most internal Council services and departments as well as external infrastructure providers.
- 4.43 Work is already underway to develop an Infrastructure Delivery Plan to support the Council's Core Strategy, which is an essential pre-requisite to producing a CIL Charging Schedule. The Infrastructure Delivery Plan will bring key infrastructure and service providers together both to identify current deficits in provision and to assess the impacts of growth on Wirral and its future infrastructure needs. To achieve this, effective relationships with infrastructure providers and joint working with all Council services and departments will be essential.
- 4.44 A key element of preparing a draft CIL Charging Schedule will be assessing the impact of the levy, to ensure charges on development are realistic and achievable and will not prevent needed development from continuing to come forward. This is likely to require independent external consultancy to assess economic viability.
- 4.45 The Infrastructure Delivery Plan and a draft schedule of infrastructure and costs will be the subject of a further report to a future Cabinet and will require a resolution of Full Council before it can be published for public consultation and submitted alongside the Core Strategy to the Secretary of State for public examination.

CONSULTATION ON COMMUNITY INFRASTRUCTURE DETAILED PROPOSALS AND DRAFT REGULATIONS FOR REFORM

- 4.46 The Government have also consulted on detailed proposals and draft regulations for the reform of the Community Infrastructure Levy. The following paragraphs highlight the main areas for consultation and changes that would arise.
- 4.47 Local authorities will need to pass a 'meaningful proportion' of the CIL funds that they receive to the relevant parish or town council. Where there is no parish or town council the money will be retained by the charging authority who should engage with their communities in determining how to spend a 'meaningful proportion' of the receipts. The consultation paper indicates that the minimum proportion will not be fixed. It should simply be "sufficient to give neighbourhoods a meaningful contribution to meeting the impacts of development in their area".
- 4.48 There will, however, be a limit on the maximum amount that can be passed down (a per household cap based on the number of Council Tax dwellings) to prevent overly large windfalls to less populated areas.
- 4.49 Unlike charging authorities, parish and town councils will not need to list the items on which the money passed down to them can be spent. The money will be available to be spent "on the infrastructure that they want, for example open space provision,

playgrounds and cycle paths, or by contributing to larger projects funded by other bodies such as the district or county council". As with CIL monies generally, the money cannot be "used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development". Proposed Regulation 19 places an obligation on parish and town councils which receive CIL, to report on its expenditure.

- 4.50 There is currently a cap of 5% on the proportion of CIL monies which charging authorities may spend on administering the system. This is now proposed to be removed.
- 4.51 The existing 2010 Regulations specifically do not allow CIL receipts to be spent on affordable housing. The consultation paper seeks views as to whether local authorities should be given the option to use CIL "to deliver affordable housing where there is robust evidence that doing so would demonstrably better support its provision and offer better value for money". There is potential for this to be achieved if affordable housing is identified as a priority for the use of future CIL receipts. Views are sought as to what should be the appropriate balance between CIL and S106 Obligations and also how this would affect the application of the rule preventing, after 6 April 2014, more than limited pooling of S106 Obligation infrastructure contributions.
- 4.52 The Mayoral Development Corporations proposed in the Localism Bill will also have the power to levy CIL and the draft regulations provide some detail as to how that will work.
- 4.53 The draft regulations will also allow CIL to be charged (from 2013) on development carried out under Neighbourhood Development Orders (including Community Right to Build Orders) approved following a local referendum.
- 4.54 The suggested response to the consultation questions on the detailed proposals and draft regulations for reform is set out in Appendix 1 to this report.

5.0 RELEVANT RISKS

- 5.1 In setting CIL charging rates, there is a risk that the economic viability assessment may show that it would be unviable to charge CIL on any development, or it would only be viable for very limited amount of development in the Borough. Consequently, if plans to progress CIL were subsequently abandoned, this would have resource and financial implications from carrying out abortive and unnecessary work.
- 5.2 Managing the link with the preparation of the Core Strategy, which it is hoped will be submitted to the Secretary of State for independent examination during 2012, could be challenging for the timetable and resourcing for both documents.
- 5.3 In the event that the Council elects not to pursue a Community Infrastructure Levy for the Borough, there is a risk that the scaling back of S106 Obligations will limit the amount of infrastructure that may be funded through development, which could impact on the delivery of the Core Strategy and key regeneration objectives for the Borough.

- 5.4 The procedure followed in the preparation of the CIL Charging Schedule must be robust to secure a positive outcome from an independent public examination, which will ensure that all the correct procedures, legal process and statutory regulations have been followed and assess whether the levels of charges set out are 'reasonable'.
- 5.5 Whilst the Government in its Final Impact Assessment does not set out a proper assessment of the potential impact of setting and implementing CIL on the delivery of affordable housing, it has stated that it does not anticipate a reduction in the level of affordable housing as a result of the introduction of CIL and will monitor the situation closely. In case of an adverse impact, the Government is considering allowing CIL receipts to be used to fund affordable housing. There is a risk that the provision of affordable housing through planning gain will not be realised on developments.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 The only options to consider relate to the decision on whether it will be appropriate to seek to charge a CIL tariff in Wirral and on the level of the levy to be charged for different types of development. Some authorities may choose not to charge any levy for some or all types of development to make their areas more attractive to investors but at the risk of not being able to deliver required infrastructure.
- 6.2 The appraisal of a range of options will be the subject of a further report to Cabinet, once the initial preparatory work approved under this report has been completed.

7.0 CONSULTATION

- 7.1 Consultation on the Preferred Options for the Core Strategy, which included an option on Developer Contributions (PO17) and a 'Draft Delivery Framework', took place between 15 November 2010 and 7 January 2011 to comply with the requirements of the Council's Statement of Community Involvement adopted in December 2006.
- 7.2 The outcome of this consultation was reported to Cabinet on 21 July 2011 (Minute 80 refers). Un-attributed individual responses can be viewed at: <http://wirral-consult.limehouse.co.uk/portal> by selecting the consultation event from the initial table and selecting the 'All comments' tab in the table at the foot of the following page.
- 7.3 Officers have begun to engage with other local authorities within the Liverpool City Region on the Community Infrastructure Levy, in order to share knowledge, best practice and to explore if there are any opportunities for joint working or shared infrastructure in order to make cost efficiencies. An officer working group has been established that reports directly to the District Planning Officers who co-ordinate strategic planning work across Merseyside and advise the Liverpool City Region Cabinet Housing and Spatial Planning Board.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 Voluntary, community and faith groups would need to be included in any consultation on infrastructure requirements and on the content of any CIL Charging Schedule and could be beneficiaries under the requirement for a 'meaningful proportion' of CIL receipts to be dispensed to the local community as contained within the Localism Bill.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 The proposed CIL system will introduce new systems for the collection and distribution of monies sought from developers and will widen the current administrative processes associated with the collection of payments when development commences. Authorities will be required to monitor and report annually on the collection and spending of their levy receipts.

9.2 It is important to note that it is not intended that CIL receipts will be the main source of finance for infrastructure and that existing and future funding streams will still be fundamental to the delivery of infrastructure. In effect, the CIL will 'top up' existing funding streams and fill a 'gap' in infrastructure funding. However, there has been concern raised that existing funding streams could be reduced if CIL is taken up across the country.

9.3 There will be resource implications for the Council in preparing and adopting a Charging Schedule before the charges can be applied to development. Costs for the initial set-up of the CIL and the ongoing administration of the levy are likely to include:

- Establishment of a new evidence base, including the costing of infrastructure and viability assessment;
- Public engagement and community consultation;
- Examination in public of draft charging schedule;
- Officer time in set-up and ongoing administration; and,
- Ongoing costs connected with advising developers of their CIL liability, collecting, monitoring, reporting and enforcing CIL.

9.4 A charging authority can finance its administrative expenses from CIL receipts up to a maximum of 5% per annum (CLG are consulting on removing this cap). Expenses can include set up costs as well as ongoing expenses, and initially these can be 'rolled up' and paid out of the first three years' income. From year four only the in-year costs can be paid from the annual income.

9.5 New mechanisms and systems necessary for CIL should be designed to minimise duplication with existing systems to make CIL as efficient a mechanism as possible. Local authorities will have the option of undertaking the preparation and public examination of their core strategy at the same time as the preparation and examination of their draft CIL charging schedule, where it is appropriate to their situation. Joint working should increase efficiency, for example, by allowing local authorities in assessing the viability of development in their area to draw upon the same information to underpin both processes.

- 9.6 The primary source of information in setting the CIL is linked to the Infrastructure Development Plan that must be prepared to support the Core Strategy Development Plan Document. In addition, this will need to be supplemented by additional infrastructure costing evidence, to be procured from independent consultants.
- 9.7 Independent external consultancy support will also be required to carry out an economic viability assessment of any proposed CIL Charging Schedule. Based on previous commissions carried out to test the viability of affordable housing, the commission of this work for residential development might be expected to cost up to £10,000. However, the inclusion of other development types, such as industrial retail and leisure, could increase the cost significantly.
- 9.8 The publication of a Draft Charging Schedule for consultation will be the subject of a further report to Cabinet. A separate consultation would be expected to cost in the region of £10,000 during 2011/12 but could be combined with consultation on the draft Core Strategy which is expected to cost in the region of £15,000 during 2011/12. The costs associated with the submission and public examination of the final Charging Schedule during 2012/13 will depend on the scale and nature of the representations received.
- 9.9 The final costs will be the subject of a further report to Cabinet before the Council's final approach to CIL is approved. However, in the 'Final Impact Assessment' (CLG, February, 2010) makes the following assumptions in estimating the set-up costs for individual authorities:
- Assessing viability of development for CIL purposes: £25,000 – £70,000;
 - Consulting on the Draft Charging Schedule: £10,000 – £20,000;
 - Costs of the examination in public: £29,790 (2-day hearing) – £42,203 (5-day hearing) – a 2-day hearing is expected to be the norm;
 - Printing costs: £500 – £1,500; and,
 - The modelling assumes a cost saving of 20% of the set-up costs where the examination is combined with the examination of another development plan document (such as a Core Strategy).
- 9.10 The need to keep the Charging Schedule up to date must also be recognised. For illustrative purposes, CLG assume that all set-up costs recur every five years. Although the Government has not set a timescale for when charging authorities will need to update their charging schedules, there is a requirement to keep such matters under review, as economic circumstances change rapidly, particularly in terms of the viability of developments.

10.0 LEGAL IMPLICATIONS

- 10.1 The implementation of CIL will change the way in which S106 Planning Obligations are formulated and governed.
- 10.2 There are extensive enforcement powers related to the levy to ensure that collecting authorities have the means to penalise late payment and deter future non-compliance, including stop notices and other enforcement provisions, applied to development proposals liable for CIL.

- 10.3 Once adopted, a CIL Charging Schedule will form part of the statutory Development Plan for Wirral. Any revisions to the Charging Schedule, in whole or in part, must follow the same process as that applied to the preparation, examination, approval and publication of the initial schedule (subject to any revisions to the Planning and CIL Regulations arising from the Localism Bill).
- 10.4 Part 11 of the Planning Act 2008 provided for the introduction of the Community Infrastructure Levy. The detail of how the CIL will work is set out in the Community Infrastructure Regulations 2010, which came into force in April 2010. S106 Obligations are now only intended to be used for site-specific mitigation. The CIL Regulations have three important repercussions for S106 Obligations:
- Making the tests for the use of S106 Obligations statutory (Regulation 122, already in force refers);
 - Ensuring that there is no overlap in the use of CIL and S106 (Regulation 123); and,
 - Limiting the use of 'pooled' S106 Obligations post April 2014 (Regulation 123).
- 10.5 The previous Government's intention was to ensure that the CIL and S106 Obligations are used to complement one another as methods of securing infrastructure and community benefits and the Regulations sought to define the circumstances where each can be used and where they are not appropriate.
- 10.6 The current Government intends to allow the CIL to proceed, with limited changes. Amendments to the CIL Regulations were laid before Parliament in February 2011. Further changes, including the requirement for a 'meaningful proportion' of CIL revenues to be passed on to the local community, must await the enactment of the Localism Bill. The Bill also makes provision to allow CIL monies to be spent on the ongoing costs of infrastructure as well as its initial provision.
- 10.7 The Government has also consulted on further proposed changes to the regulations which would widen the permitted uses of the levy to include the use of CIL funds to be spent on affordable housing.

11.0 EQUALITIES IMPLICATIONS

- 11.1 An Equality Impact Assessment will be required to assess the likely impact of the CIL Charging Schedule on different people groups, once the Charging Schedule has been completed.

12.0 CARBON REDUCTION IMPLICATIONS

- 12.1 CIL is unlikely to directly affect carbon reduction, unless it is used to fund infrastructure, such as open space and tree planting, which will directly assist in the delivery of carbon reduction.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

- 13.1 Once adopted, a CIL Charging Schedule would form part of the statutory Development Plan for Wirral.
- 13.2 The introduction of CIL will also have implications for the implementation of Unitary Development Plan Policy URN2 – Planning Agreements for Urban Regeneration and other policies referring to the use of S106 Obligations and the provision of essential infrastructure. These policies will remain part of the Council's Development Plan until superseded by policies in the Local Development Framework.
- 13.3 The preparation of a Charging Schedule must be closely linked to the infrastructure planning process and the Infrastructure Delivery Plan required to support the preparation of the Local Development Framework.
- 13.4 The content of the evidence base for the Core Strategy and Local Development Framework will be capable of being a material consideration in the setting of CIL charges.
- 13.5 CIL is unlikely to directly affect community safety unless it is used to fund infrastructure projects, such as flood prevention or coast protection, which will directly assist community safety.

REPORT AUTHOR: David Butler
Principal Planning Officer
telephone: (0151) 691 8314
email: davidbutler@wirral.gov.uk

APPENDICES

Appendix 1 – Suggested Response to the Community Infrastructure Levy Detailed Proposals and Draft Regulations for Reform Consultation

REFERENCE MATERIAL

The Planning Act 2008 can be viewed at
<http://www.legislation.gov.uk/ukpga/2008/29/contents>

The Community Infrastructure Regulations 2010 can be viewed at:
<http://www.legislation.gov.uk/ukdsi/2010/9780111492390/contents>

The Community Infrastructure Levy (Amendment) Regulations 2011 can be viewed at:
<http://www.legislation.gov.uk/uksi/2011/987/made>

Progress on the Localism Bill can be viewed at:
<http://www.communities.gov.uk/localgovernment/decentralisation/localismbill/>

Community Infrastructure Levy: An Overview can be viewed at:
<http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy/may11>

Community Infrastructure Levy Final Impact Assessment can be viewed at:
<http://www.communities.gov.uk/publications/planningandbuilding/infrastructurelevyfinal>

The Community Infrastructure Levy: Detailed Proposals and Draft Regulations for Reform Consultation can be viewed at
<http://www.communities.gov.uk/publications/planningandbuilding/cilreformconsultation>
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1997385.pdf>

The associated consultation questionnaire can be viewed at
<http://www.communities.gov.uk/documents/planningandbuilding/doc/1997423.doc>

The Draft Regulations can be viewed at
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2004771>

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	

APPENDIX 1 – SUGGESTED RESPONSE TO THE COMMUNITY INFRASTRUCTURE LEVY DETAILED PROPOSALS AND DRAFT REGULATIONS FOR REFORM CONSULTATION

Consultation Question 1 – *Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?*

Yes. For areas with no parish or community council it would be better to retain the levy charges centrally with the local authority and apply a process of engaging with local residents and businesses to inform how the levy receipts should be spent on infrastructure in the local area. This will provide the greatest flexibility for local authorities and communities to effectively use the available funding and to ensure funding that it is directed towards areas where infrastructure where is most needed.

Consultation Question 2 – *Do you agree that, for areas not covered by a parish or community council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?*

No. Levy charges should be retained centrally by the local authority and it should be left up to local authorities to determine the most appropriate and suitable way of how to spend a meaningful proportion of the funds which responds to local circumstances. A programme of engagement with local residents and businesses should be put in place to inform how the levy receipts should be spent on infrastructure within a local area.

Consultation Question 3 – *What proportion of receipts should be passed to parish or community councils?*

It should be left up to local authorities – in consultation with local communities – to determine the proportion of receipts to be passed to parish or community councils. This will allow local authorities greater choice and flexibility in directing funding towards those areas in greatest need or where relevant projects can be identified. It will also help address a situation where funding is generated from development in a sparsely populated area, or an area with relatively few infrastructure needs.

Consultation Question 4 – *At what level should the cap be set, per council tax dwelling?*

It should be left up to local authorities – in consultation with local communities – to determine the level the cap should be set at, per Council Tax dwelling. This will allow local authorities greater choice and flexibility in directing funding towards those areas in greatest need, where relevant projects can be identified or towards borough-wide infrastructure projects, as well as making effective use of a limited amount of funding.

Consultation Question 5 – *Do you agree that the proposed reporting requirements on parish or community councils strike the right balance between transparency and administrative burden?*

Yes.

Consultation Question 6 – Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the councils website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

It would be reasonable that the charging authority places the report on their website. The cost of doing so could be met through the percentage of the levy that charging authorities may apply to administrative expenses.

Consultation Question 7 – Do you agree with our proposals to exclude parish or community councils' expenditure from limiting the matters that may be funded through planning obligations?

Yes subject to the comments under Q1 – 4.

Consultation Question 8 – Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

Yes.

Consultation Question 9 – Do you consider that local authorities should be given the choice to be able if they wish to use levy receipts for affordable housing?

Yes subject to comments under Q10. Providing that CIL rates are set at a level that does not make development unviable, then this approach could allow affordable housing to be prioritised. However, it would still compete with other claims on CIL funding. Contributions to affordable housing would be levied from all types of development and enable contributions from smaller schemes.

Consultation Question 10 – Do you consider that local authorities should be given the choice to be able if they wish to use both the levy and planning obligations to deliver local affordable housing priorities?

Yes. Currently, for most developments, viability is at best marginal. The use of viability assessments and the negotiation of s106 agreements are essential to allow development to proceed and to secure affordable housing contributions. If affordable housing can still be funded from planning obligations this will enable, where appropriate, on-site provision, which is important for generating mixed communities and offering a greater choice, which is a key objective of the Government. In addition, the s106 negotiation process allows flexibility around the amount and type of housing, as well as provisions to cater for situations where the availability of grant or the amount that registered providers might be prepared to pay for the units is uncertain. On smaller schemes, local authorities may want to take a CIL contribution to allow pooling of contributions to make some separate provision, or gap fund other schemes as appropriate. Allowing authorities to use both the levy and planning obligations provides the most flexibility for a charging authority in maximising its ability to secure affordable housing.

Consultation Question 11 – *If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?*

Local authorities should be required to clearly report on levy income and expenditure in relation to affordable housing, as part of the reporting arrangements in the existing and proposed regulations.

Consultation Question 12 – *If the levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?*

Yes it should be excluded. To enable flexible and effective delivery of affordable housing, the local authority should have the ability to pool affordable housing contributions to maximise opportunities.

Consultation Question 13 – *Do the proposed changes represent fair operation of the levy in Mayoral Development Corporation areas?*

Yes.