

**TO: EXECUTIVE  
12 MARCH 2013**

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**RESPONSE TO OVERVIEW AND SCRUTINY REVIEW OF THE PREPARATIONS  
FOR THE COMMUNITY INFRASTRUCTURE LEVY**

**Director of Environment, Culture and Communities**

**1 PURPOSE OF REPORT**

1.1 The purpose of this report is:

- to provide a reasoned response to the recommendations made by a Working Group of the Overview and Scrutiny Commission in the final report on their review of the preparations for the Community Infrastructure Levy (CIL): and,
- to recommend which of the report's recommendations should be implemented.

**2 RECOMMENDATION(S)**

2.1 That:

- (i) **the Executive commend the Working Group for the thorough review which it conducted and the helpful report which it has produced: and,**
- (ii) **the Executive endorse the proposed response to the Working group report as set out in section 5 of this report.**

**3 REASONS FOR RECOMMENDATION(S)**

3.1 Most of the Working Group Report's recommendations are considered appropriate in light of the extensive evidence gathered during the review and should be implemented.

**4 ALTERNATIVE OPTIONS CONSIDERED**

4.1 Under the council's normal operating procedure, there is no alternative other than to respond to the working group's report. Options do exist in terms of responding to the recommendations, but these are reflected in the responses.

**5 SUPPORTING INFORMATION**

5.1 **The Review**

5.1.1 A Working Group (WG) was established following a request by the Executive on 10 January 2012, to undertake a review of the Council's CIL arrangements. The work of the WG took place between February 2012 and January 2013, with a review report (the Review) published in January 2013. The Review summarises the background to the CIL and sets out how the WG established the review, the information and evidence gathered by the review,

and conclusions reached following the review, together with a number of recommendations. Proposed responses to the recommendations are set out in sections 5.2-5.11, below.

5.1.2 The WG undertook the following as part of the Review:

- Introductory Review Work, February 2012 – received a comprehensive introductory briefing from Council officers, including a briefing from the Borough Solicitor on the legal considerations applying to CIL. The WG also met the Borough Treasurer to explore the financial consequences of CIL.
- Assessment of Viability, March-January 2013. In March 2012, met with a Senior Director of BNP Paribas Real Estate (the consultants who undertook a Viability Study of CIL) to learn about the wider picture on CIL developments nationally, and to consider the CIL viability assessment for the Borough. In May 2012, the WG also considered a revised Viability Study, and received further updates at their last meeting in January 2013.
- Views of the Private Sector. In May 2012, met with the Planning Director of the Home Builders Federation (HBF) to gain an understanding of the of the HBF's perceptive on how CIL is viewed by developers, in terms of what would be a viable tariff and suitable CIL arrangements.
- Other Council's CIL Charging Schedules. The WG reviewed the CIL charging schedules from other authorities and decided to meet members and officers of another Council which was more advanced in its CIL preparations to learn from their experiences. In June 2012, two members of the WG visited Portsmouth City Council where they received a briefing of the experiences and lessons to be learnt. In October 2012, two members of the WG attended a CIL conference at Huntingdon (which was amongst the first Council's to implement CIL), who drew attention to various learning points.
- CIL Consultation Responses, September-October 2012. The WG reviewed the responses to the Preliminary Draft Charging Schedule consultation (which took place between June and August 2012). Officers highlighted that responses showed there was still confusion about CIL and s.106, disagreement about how much money is available from other sources and lack of justification on the requirements/estimated costs. The WG reviewed all the responses to the consultation and draft views of officers on the responses.
- Prioritisation and approval of CIL funded Capital Projects. In November 2012, the WG met with the Borough Treasurer to discuss the prioritisation and decision making process for the capital programme and how the CIL-funded projects might be handled.

5.1.3 The work undertaken above Informed the Group's conclusions and recommendations. The recommendations are reproduced in the following sections along with a proposed response to each.

5.1.4 Officers involved in the preparation of the Council's CIL regime have been involved in the review and attended the Group's sessions and visits. The process has been very valuable in providing a wider perspective on CIL and being able to learn from the experiences of others who are more advanced in the process.

## **5.2 Recommendation 1**

- 5.2.1 The Executive should proceed carefully with the planned introduction of CIL, after fully assessing the risks, advantages and oft overlooked disadvantages of the scheme.

### **Proposed Response**

- 5.2.2 Agreed. As noted in the Working Group Report the CIL procedures are far more complex than many originally envisaged and further regulations are expected. There is therefore a degree of uncertainty about the final form of CIL and there are risks related to its introduction. However, the pending introduction of a limit on the pooling of S106 contributions means that on balance it is considered that not introducing CIL would be a greater risk to the authority by significantly impeding its ability to secure funding from development for major new infrastructure such as a new secondary school. It is agreed that Executive should proceed with caution and on the basis of a thorough understanding of the risks and uncertainties.

## **5.3 Recommendation 2**

- 5.3.1 Particular care should be taken in drawing up the 'Regulation 123' list. It should not include any items where a S106 contribution would deliver a larger and more appropriate contribution towards meeting infrastructure needs. Of equal importance will be the need to include items in the Regulation 123 list where pooling of contributions from multiple sources will be needed after April 2014.

### **Proposed Response**

- 5.3.2 Agreed. The 'Regulation 123' list is important because it is a list of the infrastructure projects for which it is intended to charge CIL. The importance also derives from the Council not being able to seek contribution by way of a S106 agreement for anything included on the Regulation 123 list to prevent double charging of developers.
- 5.3.3 It is agreed that careful consideration should go into the preparation of the 'Regulation 123' list of infrastructure for which CIL will be charged. This process is made more difficult by the uncertainty over the number of planning applications that may be made for the development of larger sites. Where an item is anticipated to be provided via S106, developers could potentially seek to limit their S106 liabilities by making more than five applications and thereby preventing pooling of contributions from the later applications towards any project not included in the Regulation 123 List.
- 5.3.4 It is not, however, possible to pre-determine whether a S106 would deliver a greater contribution as these agreements are subject to negotiation and, where appropriate, viability testing.

#### **5.4 Recommendation 3**

- 5.4.1 To assist consistent, transparent and informed planning and prioritisation, for every prospective infrastructure project a standard set of information should be produced. This should include any timing constraints, the sources of funding and its expected contribution to the Borough's infrastructure. This should ideally include some common ranking scores, showing how each meets the priorities set in – what needs to be - a clear and comprehensive infrastructure plan for the whole Borough. This is likely to require better integration of information and processes.

##### **Proposed Response**

- 5.4.2 Mainly agreed. Much of this information is already contained in the Infrastructure Delivery Plan. The main area that would require additional work is the inclusion of ranking scores against agreed priorities. The present intention is to rank, in priority order, those schemes to be funded by CIL, as part of the annual budget setting process. Where funding is secured via S106, funds will generally be allocated to specific projects as part of the agreement.
- 5.4.3 When formulating the capital programme the Council currently compiles information about each scheme identifying significant milestones, the impact of the scheme and how it contributes towards the Council's priorities and objectives. This approach could be extended to accommodate CIL funded schemes, although the approach needs to be proportionate, reflecting the scale and impact of the individual schemes.
- 5.4.4 There will need to be some flexibility within this process as the need for specific items of new infrastructure will depend on the timing and location of development, which the Council has little control over.

#### **5.5 Recommendation 4**

- 5.5.1 The Capital Programme apparatus is enhanced for use in CIL-funded projects, particularly to: incorporate the input of non-executive and ward members, along with other partners' input to decision-making; and to show how CIL monies are used to meet infrastructure bids from external organisations.

##### **Proposed Response**

- 5.5.2 Partially agreed. The budget consultation process already provides a six week window during which interested parties are able to comment upon the Council's proposals and there exists already opportunities to influence the capital programme prior to public consultation. In future CIL projects will be specifically identified.
- 5.5.3 Additional opportunities for non-executive members to consider and review the capital programme at an early stage will be available following the introduction of Portfolio Review Groups, the details of which are being developed currently. As Members develop the details, consideration could be given to ensuring all members receive the emerging capital programme

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including the list of CIL funded projects to ensure early engagement and an ability to influence priorities.

- 5.5.4 In addition to the above, the existing consultation processes which involves ward members relating to in-year s106 schemes and the smaller integrated transport schemes, would be extended to CIL funded schemes.

### **5.6 Recommendation 5**

- 5.6.1 That due to the many variables and uncertainties, the CIL rates are fundamentally reviewed after one year of operation, in consultation with major property developers, and at least at two yearly intervals thereafter.

#### **Proposed Response**

- 5.6.2 Agreed in part. It is recognised that an assessment should be made of the operation of CIL and of any changes to development values and costs to determine whether it would be appropriate to make changes to the CIL rates. Experience from other authorities suggests that one year may be too quick to review rates as the CIL regime will not have had sufficient time to bed in.
- 5.6.3 However, one year would be an appropriate period to review whether the economic cycle had changed sufficiently to indicate whether the parameters that affect the CIL rates had also changed to such an extent that the rates themselves needed to be re-examined. This review would form part of the council's economic development plan.
- 5.6.4 The procedure for changing CIL rates is a lengthy one involving two rounds of consultation and an independent examination. Any such assessment should not just involve consultation with developers but should also include reference to indices of construction costs and to current property sales prices etc.

### **5.7 Recommendation 6**

- 5.7.1 More work is done to assess the best balance between the usage of CIL as opposed to S.106, so as to get the best and fairest contributions towards infrastructure costs, without risking destabilising the property development market. It will be important to exclude from the CIL Infrastructure list those projects where S106 presents a more financially viable route for the Council.

#### **Proposed Response**

- 5.7.2 Agreed. More work will be required on this aspect. This is particularly important in light of the recent government guidance that the Draft Charging Schedule should be accompanied by a draft Regulation 123 List. This is the list of items for which the authority plans to charge CIL (and which therefore cannot be funded via S106). A draft Regulation 123 List will therefore form part of the report to Executive to agree the Draft Charging Schedule.

## **5.8 Recommendation 7**

- 5.8.1 That the Executive reach a concord with the T&PCs on an equitable means of deploying the CIL funding allocated to them for the essential infrastructure needs of both their respective areas and for everyone who lives in Bracknell Forest. This is even more significant in the light of the recent Ministerial statement.

### **Proposed Response**

- 5.8.1 Agreed. The recent ministerial announcement referred to is that 15% of CIL receipts should go to the community within whose area the related development has taken place. It was also announced that where a Neighbourhood Development Plan is in place this percentage should rise to 25%. Within Bracknell Forest these percentages would be paid to the Parish and Town Councils.
- 5.8.2 This will significantly reduce the level of funding received by the charging authority. This is funding for infrastructure which the charging authority will need to have demonstrated requires CIL funding in order to justify the introduction of CIL. It would therefore be very unfortunate if a significant proportion of this funding was diverted from the key infrastructure requirements used to justify charging CIL in the first place. This recommendation would therefore be an appropriate mechanism for agreeing spending priorities and building on the existing partnership working with the Town and Parish Councils. Further consideration will need to be given to the appropriate form and content of the concord.

## **5.9 Recommendation 8**

- 5.9.1 The Executive should ensure that all Members are given proper opportunity to participate in CIL decisions. As a minimum, this should extend to Ward Members being involved in decisions on CIL-funded projects and spending of CIL monies raised through developments in their wards; and the application of any CIL exemptions should be approved by the Council's Planning Committee, who are best placed to exercise that judgement.

### **Proposed Response**

- 5.9.1 Partially agreed. Infrastructure is sometimes provided locally but rarely on a ward basis. The existing process of agreeing the council's capital programme (recommendation 4 refers) includes an appropriate opportunity for ward members to comment on CIL related (and other) capital schemes. Any schemes which come forward outside the annual capital programme cycle must be approved by full council and includes an appropriate degree of consultation. The emerging Portfolio Review Groups will also give non-executive members more opportunity to contribute to the capital programme.
- 5.9.2 Decisions on exemptions are Executive functions (the relevant Regulations do not specify them as non-Executive) so although the Planning Committee could theoretically express a view it could not take the final decision.

## **5.10 Recommendation 9**

- 5.10.1 The risks applying to the introduction and operation of CIL should be identified, enumerated, and a strategy be recorded for dealing with them. In view of the significance of CIL, this should be referred to in the Strategic Risk Register.

### **Proposed Response**

- 5.10.2 Partially agreed. It is recognised that there are risks associated with the introduction and operation of CIL but the Council has agreed to adopt CIL and there is felt to be little risk in the administrative procedures required to actually introduce CIL. However, it is considered that the wider strategic risk is to the delivery of infrastructure required to support and mitigate the impacts of new development in the Borough. It is therefore recommended that the reference in the Strategic Risk Register should be to infrastructure delivery including those risks specifically associated with the CIL regime.

## **5.11 Recommendation 10**

- 5.11.1 The staffing requirements for the design and operation of the CIL scheme should be fully assessed and provided for. Capacity building and knowledge sharing need to be stepped up. Consideration should be given to moving responsibility to the Chief Executive's Office as this is by no means a mainly planning function.

### **Proposed Response**

- 5.11.2 Agreed. The Chief Executive will consider whether there is any benefit in a change in strategic leadership for CIL and whether there is the capacity within the Chief Executive's office to undertake this additional function. Of course, not all corporate initiatives have to be led by his office. In this instance, there is a well-established corporate CIL steering group chaired by the Director of the Environment, Culture and Communities Department. This is based upon his position as a member of the Corporate Management Team rather than the specific services for which he is responsible. The membership of the officer group includes the Borough Treasurer, the Assistant Chief Executive, the Borough Solicitor and senior representatives from all key service areas. The Chief Executive and CMT both receive briefings on progress. Consequently, it is considered that the CIL process already has adequate cross-departmental input and strategic overview and it is not obvious that there would be benefit in re-allocating responsibility within CMT. However, as requested, this will be reviewed.
- 5.11.3 Current thinking is that the operation of CIL will be divided primarily between corporate finance and planning. Planning is considered to be best placed to deal with the setting of CIL once the Reg. 123 list is established, as the planning function has a well established infrastructure planning role, including production of the Infrastructure Delivery Plan which supports the Site Allocations DPD. Planning is also well placed to deal with the calculation of CIL liability and issue and processing of notices as the information required will be closely related to planning application submissions and will be processed using the same software system. Corporate finance should have a

role in dealing with non-payment issues and CIL spend through the budget-setting process as described elsewhere in this report.

- 5.11.4 In nearly all the other leading authorities where CIL has been introduced the process has been led from within the planning function with input from across the authority. It is agreed that the staff resource required to deal with the administration of CIL will need to be planned for in advance of its introduction.

## **6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS**

### Borough Solicitor

- 6.1 Nothing to add to the report.

### Borough Treasurer

- 6.2 Nothing to add to the report.

### Equalities Impact Assessment

- 6.3 A full impact assessment for the introduction of the CIL has been published by CLG (January 2011). This includes an Equalities Impact Assessment, which concludes that the CIL is unlikely to have an adverse impact on any social group.

### Strategic Risk Management Issues

- 6.4 There are no strategic risks associated with this report, although there are strategic risks associated with the introduction of CIL which must be managed.
- 6.5 National policy and regulations – CIL is being developed at a time when the guidance and regulations covering it are still being drafted and there will be further regulations in the coming months. For example, recent guidance has imposed greater burdens on charging authorities in terms of the level of information to be provided at examination and the consultations required.
- 6.6 There is a risk that CIL will not provide adequate funding for the infrastructure required to support growth. There is significant uncertainty about what other sources of funding will be available over the period during which several major sites in the Borough are likely to be developed. There is also the contribution of at least 15% (and potentially up to 25%) of CIL income being passed on to Town and Parish Councils.
- 6.7 The risk of not introducing CIL is that we could fail to secure adequate funding via S106 agreements, and that the Council's ability to pool S106 contributions towards major infrastructure projects will be curtailed (current regulations will introduce the restriction from April 2014).
- 6.8 Section 5.10 above proposes that the delivery of infrastructure is referred to in the corporate risk register

## **7 CONSULTATION**



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- 7.1 In preparing their report the Working Group consulted with the Home Builder's Federation, a front-runner CIL authority (Portsmouth City Council) and with the Council's appointed viability consultants. The work of the Group was also regularly reported to the Town and Parish Council Liaison Group.
- 7.2 The Council's preparation and adoption of CIL is subject to statutory public consultation.

Background Papers

A Review of the Preparations for the Community Infrastructure Levy by a Working Group of the Overview and Scrutiny Commission, January 2013.

Contact for further information

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