

# COMMUNITY INFRASTRUCTURE LEVY: CONSULTATION RESPONSE

<b>Cabinet Member</b>	Councillor Keith Burrows
<b>Cabinet Portfolio</b>	Planning and Transportation
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<b>Papers with report</b>	Appendix 1 – draft consultation response

## HEADLINE INFORMATION

<b>Purpose of report</b>	This purpose of this report is to set out the key issues associated with the government's proposals as set out in the Communities and Local Government document 'Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy, Consultation'. The report seeks endorsement of the response the consultation document as set out in Appendix 1.
<b>Contribution to our plans and strategies</b>	<ul style="list-style-type: none"> <li>• Hillingdon Partners Sustainable Community Strategy</li> <li>• Council Plan</li> <li>• Unitary Development Plan (Saved Policies September 2007)</li> <li>• Emerging Local Development Framework</li> </ul>
<b>Financial Cost</b>	There is no direct cost in responding to the consultation. Subject to the outcome of the consultation and the Governments' introduction of the Community Infrastructure Levy there will be management and monitoring costs associated with the introduction of the Levy.
<b>Relevant Policy Overview Committee</b>	Residents' and Environmental Services
<b>Ward(s) affected</b>	All

## **RECOMMENDATIONS**

### **That Cabinet:**

- 1. Notes the contents of this report regarding the Government's detailed proposals and draft Regulations for the introduction of the Community Infrastructure Levy and;**
- 2. Endorses the consultation response as set out in Appendix 1, with authorisation to the Director of Planning and Community Services to make any further detailed comments in relation to the specific consultation questions.**

## **INFORMATION**

### **Reasons for recommendation**

The Community Infrastructure Levy (CIL) will be a new charge which local authorities in England and Wales will be empowered, but not required, to charge on most types of new development in their area.

The introduction of the proposed CIL will comprehensively change the way that planning obligations, related to off site infrastructure, are quantified and collected. At this stage, there are a number of issues relating to both the implementation and ongoing operation of the CIL.

These concerns warrant the council providing a response in relation to the consultation document.

### **Alternative options considered / risk management**

The Cabinet may influence the Government's proposals by:

1. Agreeing that a response to the consultation document be provided in full or in part;
2. Making any amendments to the draft response that are considered appropriate.

Alternatively Cabinet may make no response to the Government's proposals.

### **Comments of Policy Overview Committee(s)**

None at this stage.

### **Supporting Information**

#### **Summary**

On 30 July 2009, the Department for Communities and Local Government (CLG) published a consultation document detailing proposals for the introduction of the Community Infrastructure Levy (CIL), CIL regulations, and new policy and guidance documents.

The consultation document contains some 54 questions that the Government seeks responses to. The full version of the consultation document can be accessed via the following web site link.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/communitylevyconsultation.pdf>

Draft regulations are published alongside the consultation document. The London Borough of Hillingdon will be submitting a response to this consultation focusing primarily on our concerns about the operation of CIL in London and proposed changes to the current arrangements for S106 planning obligations.

This report summarises the consultation document, focusing on those issues of greatest significance to the London Borough of Hillingdon. Appendix 1 to this report provides draft responses to each of the questions set out in the consultation document.

## **1.0 Background**

- 1.1 CIL will be a new charge which local authorities in England and Wales will be empowered, but not required, to levy on most types of residential, commercial and industrial development in their areas. The proceeds of the levy will be spent on local and sub-regional infrastructure. The intention is that CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments asked to contribute; will allow the cumulative impact of small developments to be better addressed and will enable important sub-regional infrastructure to be funded.
- 1.2 Chapter 5 of the consultation document sets out the Government's proposals as to how planning obligations could be reformed following the introduction of CIL. The Government is seeking views on whether a restriction on the use of planning obligations should extend to their use for pooled contributions and tariffs, given that CIL is the Government's preferred approach for the collection of such contributions.
- 1.3 Part 11 of the Planning Act 2008 provides the legislative basis for CIL and enables the Secretary of State to lay regulations before Parliament establishing CIL. It is these regulations which form the basis of the current consultation. The final CIL regulations will need to be approved by the House of Commons.
- 1.4 In London, both the Mayor and the boroughs will be able to charge CIL and there are concerns relating to the potential impact of the Mayoral CIL on this borough's ability to raise developer contributions either through CIL or S106. It is also important to ensure that this borough does not lose out financially as a result of having to collect and enforce the CIL. A key concern with the CLG's proposals relates to potential restrictions on the borough's ability to continue to use existing S106 tariff arrangements to fund local infrastructure.
- 1.5 The following paragraphs summarise the key issues in relation to the collection and administration of the CIL. They also address the key questions asked by the Government in the CLG consultation document.

## **2.0 Planning obligations**

- 2.1 Planning obligations will remain available to local planning authorities after the CIL regulations come into force and developer contributions towards affordable housing

will continue to be made through planning obligations. However, the Government considers that, in the light of the introduction of CIL, it is not appropriate to continue to permit planning obligations to be used in the way they currently are, which goes beyond their original purpose for development-specific impact mitigation. They are therefore proposing to restrict through regulations the use of planning obligations to their original purpose of direct impact mitigation.

- 2.2 The Government proposes to make the policy tests in Circular 5/05: Planning Obligations compulsory and thinks that this approach should require little adjustment by practitioners and that there is no need for any significant transitional period. It is therefore proposed that this reform could potentially take effect as early as the commencement of CIL regulations on 6 April 2010 and would be applied universally whether a local authority uses CIL or not.
- 2.3 In addition, the Government considers that Section 106 of the Town and Country Planning Act 1990 is no longer a suitable basis for standard charges in light of the introduction of CIL. It proposes that existing tariff schemes should, over time, be migrated to CIL, and the ability to establish a new tariff should be prevented after a suitable transition period. The consultation also proposes to include an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development.
- 2.4 The Government acknowledges that a longer transitional period is likely to be required for reform of planning obligations to prevent the use of tariffs, as local authorities who currently use them would require sufficient time to establish a CIL as a replacement. However, it wishes any transitional period to be as short as possible and has proposed at least two years from commencement of regulations (i.e. by April 2012 at the earliest), before planning obligations would be restricted to impacts 'solely' caused by a development. It has also suggested that there would be a need for special arrangements for the timing of a scaleback in London to take account of the existing commitments for planning obligations to raise revenue for Crossrail.

### **3.0 Definition of 'infrastructure'**

- 3.1 CIL receipts can be used only to fund infrastructure. This is specified in the Planning Act which also provides a definition of what is meant by infrastructure and lists examples of infrastructure to which CIL could be applied. The Government favours a wide definition of infrastructure to give local communities flexibility to choose what infrastructure they need to deliver their development plan. However, it is important to remember that S106 is currently used to fund maintenance and operational costs as well as set up costs and it is essential that such costs can also be covered by CIL or that the ability to use S106 for these elements is retained.
- 3.2 The Act contains a power for the regulations to amend the definition of 'infrastructure' so that CIL can be kept up to date but for the time being the Government proposes not to use this power except in relation to affordable housing and the Mayor of London's spending powers. 'Affordable housing' was added to the definition of infrastructure to provide powers to create a fallback mechanism should CIL and planning obligations interact in such a way so as to cause a reduction in the amount of affordable housing delivered. However, the draft regulations do not specify that CIL may be applied to housing as the Government considers that planning obligations remain the best way of delivering affordable housing in the future.

3.3 Draft regulation 41(3) specifies that the sole infrastructure projects to which the Mayor may apply CIL will be transport projects, including Crossrail. This is intended to ensure that a balance can be struck between the objectives of the boroughs and those of the Mayor in respect of CIL spending.

#### **4.0 Deciding the rate of CIL**

4.1 The Act requires charging authorities to produce a draft charging schedule setting out the CIL charges in their area. The Government proposes that the schedule will not be legally part of the development plan but it will be tested in a similar way to development plan documents and should be treated as part of the Local Development Framework. Regulation 24 requires charging authorities to have regard to certain matters in setting CIL rates. These include the total cost of infrastructure requiring funding from CIL, the availability of other funding sources and the potential effects upon the economic viability of development. In addition, London boroughs when considering the potential effects of the imposition of CIL upon the economic viability of development, would be required to consider the level of any Mayoral CIL that has already been set in that area. CLG considers that this will help to ensure the right balance between the funding of strategic and local infrastructure in London.

4.1 Achieving the above will require considerable resources. It is noted that while this borough will be required to take account of the Mayoral CIL, there is no need for the Mayor to take account of the borough CIL or S106 arrangements. The Mayoral CIL will effectively take precedent and reduce this boroughs' ability to raise developer contributions.

#### **5.0 Differential rates for CIL**

5.1 The consultation document makes it clear that it is the Government's intention to allow charging authorities to set differential rates of CIL and the regulations will permit this. The purpose of this is to make CIL a more flexible instrument, able to support the development of an area, without unduly placing it at risk. Regulation 25 allows local authorities to set differential CIL rates in one of two ways - firstly for different geographical zones or sub-areas and secondly, by reference to the intended use of development (for example residential and commercial development). In either case the different rates will need to be justified by an assessment of economic viability and should be set in such a way as to comply with state aid rules. Guidance will specify that charging authorities in setting differential rates, should avoid placing excessive burdens on a small group of developers. Differential rates may not however be set in relation to infrastructure costs or over time.

5.2 The principle of the Mayor and this borough being able to charge differential rates of CIL for different geographical zones or sub-zones and for different types of development is acceptable, although could prove highly problematic in a complex out of London setting. Further views are contained in the draft response attached in Appendix 1.

## **6.0 Charging metrics**

- 6.1 The consultation document states that charging authorities will be required by Regulation 23 to express their CIL charges in their charging schedules as pounds per square metre of gross internal floorspace.
- 6.2 The Government has selected this metric because it believes that this offers uniformity across all classes of CIL-liable development. The consultation document sets out why the Government has ruled out offering a choice of metrics and allowing different metrics for different types of development. Primarily this is because it believes that a uniform metric is a fairer and more economically efficient instrument. Further views are contained in the attached Appendix.

## **7.0 Charging schedule procedures**

- 7.1 The consultation document sets out in some detail the procedure that charging authorities will need to go through in setting a CIL charge, including how CIL examinations are likely to work. Charging authorities will be required to consult on their proposed CIL rates before they finalise a draft charging schedule for examination. The regulations specify that a charging authority must consult with local authorities whose area is in or adjoins the charging authority's area (i.e. the Mayor will need to consult the boroughs and boroughs will need to consult neighbouring boroughs) and the boroughs must consult the Mayor on proposals for charging CIL or any proposed revision to the charging schedule.
- 7.2 The draft regulations do not specify precisely how charging authorities should consult but suggests that as a matter of good practice charging authorities should consider consulting on charging schedule proposals for at least six weeks.
- 7.3 When a charging authority thinks that a draft charging schedule is ready for examination, Regulation 28 requires the charging authority to publish the draft charging schedule and evidence, and call for representations, and to send a copy of the draft charging schedule to the bodies that were consulted during its preparation. The document details the arrangements for the CIL examination which the Government proposes should have a similar format to examinations into development plan documents. In preparing for the examination, the charging authority must allow at least four weeks in which any person may make representations about a draft charging schedule.
- 7.4 The Act provides the right for any person who makes a representation, if they request, to be heard in person by the independent examiner. This process does not currently exist and will be undertaken outside of the normal LDF, Examination in Public process. It will need to be organised and paid for by the Council.
- 7.5 Regulation 34 provides charging authorities with a choice of a stand-alone CIL charging schedule examination, or a joint CIL charging schedule and development plan examination. In addition, two or more charging schedules may be examined as part of the same examination if the charging authorities who prepared the draft charging schedules are agreeable. This means that two or more boroughs could have their charging schedules examined together or the Mayor and one or more borough could decide to work collaboratively and hold a joint examination into the London wide and borough CIL proposals.

7.6 The consultation document sets out the conclusions the examiner will need to reach in order to recommend a charging schedule for approval. These are primarily that the charging authority has had regard to all the matters required under the Act and CIL regulations and has used appropriate available evidence to inform the draft charging schedule.

## **8.0 Exceptional circumstances**

8.1 The draft regulations do not include provisions for an exceptional circumstances procedure, where by a developer does not have to pay.

8.2 The draft regulations propose that charging authorities could have a discretionary power to offer specific schemes that are unviable due to the imposition of CIL some form of relief so that they may go ahead. The details of how this process would work in detail are still to be clarified.

## **9.0 Collection and enforcement arrangements**

9.1 This Council will be required to collect the CIL charged by the Mayor of London even if the CIL process is not implemented at borough level. The Council will be required to transfer funds collected to the Mayor on a monthly basis. Once a chargeable development has been granted permission, the collecting authority is required to calculate the chargeable amount the Government proposes that the final CIL regulations will require and to register a conditional local land charge.

9.2 CIL collection authorities will also be responsible for the discretionary enforcement of outstanding CIL debts.

## **10.0 Conclusion**

10.1 There are a number of fundamental concerns about the operation of CIL and proposed changes to the current arrangements for S106 planning obligations. The key areas of concern include:

- The administrative burden for the borough in preparing the CIL and the associated charging schedule; the revised/reduced S106 planning obligations policies, coupled with the associated public examination and adoption of these documents would be considerable. Potentially these documents would be more complex, resource and time intensive than the preparation of the emerging LDF.
- Councils must have an adopted core strategy before a CIL can be implemented. A charging schedule must also be consulted on before being independently examined. The move to CIL is a long one and yet the transitional period seems short.
- Phasing out section 106 tariffs contradicts the notion that the CIL will be optional. The proposals state that the ability to use other structures will be removed and therefore it would appear that the government's intention is clearly to force authorities to use CIL.
- There are doubts about the practicality of boroughs regularly reviewing CIL charges, which need independent examination. This work can take at least a year to undertake by specialist consultants and it is not an easy process.
- The implications for internal restructuring and resourcing of relevant Council departments to enable implementation of the CIL, including collection of funds,

enforcement and monitoring. The government has not proposed that any additional resources are to be provided to enable this work.

- The proposed approach may well result in the CIL operating as a 'tax' on development, and would not offer bespoke mitigation of unique local off site impacts associated with individual development proposals (as is currently afforded by planning obligations). Developers may try to resist payment of s106 contributions or to offset s106 contributions against the CIL payment. This could result in local communities feeling that the adverse impacts of developments are no longer being addressed through the planning process.
- The implications for borough level contributions given that the proposals give the Mayoral CIL precedence over the borough's CIL.
- As currently proposed, the CIL would have potentially significant adverse impacts on the viability of a large number of development proposals. The council would bear the burden of testing claims made by developers that a scheme is not viable with the imposition of a CIL. This is likely to have significant implications in terms of resources for the council, which has not been taken into account by the CLG.
- Councils may face major funding deficits because the CIL is unlikely to be able to balance scheme viability and infrastructure needs.
- If the financial viability of a development proposal is affected by the CIL, the Council would have to accept that either the development cannot take place or that there would be a lack of funding to support necessary infrastructure. In the current economic climate there are concerns that this will lead to difficult decisions having to be made as there is a need to encourage investment and regeneration.

10.2 At this stage, it is considered that the lack of sufficient in depth analysis of all of the aspects to the CIL and examination of options to resolve apparent issues, means that as proposed, the CIL is ill conceived and its introduction would be premature.

### **Financial Implications**

There are no direct financial implications from the return of the questionnaire consulting on the Community Infrastructure Levy.

The report outlines CLG's consultation document proposals regarding the introduction of the CIL regulations. In terms of the administration it is proposed that the Local Authority becomes responsible for not only setting and administering its own charges for CIL but also for the collection and enforcement of the Mayor of London. At this stage the apparent expectation from the CLG is that any costs associated with this administration would have to be absorbed by the Authority, for both the Authorities and the Mayors CIL.

### **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

Whilst the CIL may have a borough wide benefit, in terms of overall provision of infrastructure, the mitigation of unique site specific impacts arising from individual development may not be provided for.

The application of the CIL to development of 100sqm or more will affect small development proposals, which currently are not required to meet planning obligations. This is likely to have a direct impact on borough residents and the local business community.

The provision of an appropriate level of physical, social and green infrastructure is central to the delivery of the emerging LDF and the Sustainable Community Strategy (SCS). Officers are currently preparing a Strategic Infrastructure Plan (SIP), which will set out the infrastructure required to deliver the Core Strategy. This document will explain the CIL proposals and how they relate to the strategic objectives of the SCS.

### **Consultation Carried Out or Required**

Internal consultation with the Council's legal, finance, leisure services, property, planning, education, highways, and green spaces, departments has been undertaken.

External consultation has been undertaken with the Hillingdon PCT and Police Crime Prevention Unit.

## **CORPORATE IMPLICATIONS**

### **Corporate Finance**

The possible administrative implications of the Community Infrastructure Levy on the planning service are set out in the financial implications above.

The Community Infrastructure Levy in London will form a key funding stream for Crossrail. As such the comments in the consultation response regarding any administrative burden on the Council arising from the introduction of the Community Infrastructure Levy, or any concerns about funding foregone for local infrastructure projects should be set against the enormous opportunities and potential for economic development and regeneration that are offered by Crossrail. Such comments should not be read as in any way calling into question the Council's unequivocal support for Crossrail and the funding package that underpins it.

### **Legal**

Legal Services have considered the content of this report. The Secretary of State will be required to take into account the Council's responses as well as all the other respondents.

### **Corporate Property**

The Head of Corporate Property Services advises that there are no direct property implications arising from this report.

### **Relevant Service Groups**

## **BACKGROUND PAPERS**

"Community Infrastructure Levy - Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy, Consultation" – Communities and Local Government

## London Borough of Hillingdon's response to consultation by Communities and Local Government regarding community infrastructure levy.

### General Comment

The Council has carefully considered the consultation document and draft regulations. There are a number of fundamental concerns about the operation of CIL and proposed changes to the current arrangements for S106 planning obligations. The key areas of concern include:

- The administrative burden for the borough in preparing the CIL and the associated charging schedule; the revised/reduced S106 planning obligations policies, coupled with the associated public examination and adoption of these documents would be considerable. Potentially these documents would be more complex, resource and time intensive than the preparation of the emerging LDF.
- Councils must have an adopted core strategy before a CIL can be implemented. A charging schedule must also be consulted on before being independently examined. The move to CIL is a long one and yet the transitional period seems short.
- Phasing out section 106 tariffs contradicts the notion that the CIL will be optional. The proposals state that the ability to use other structures will be removed and therefore it would appear that the government's intention is clearly to force authorities to use CIL.
- There are doubts about the practicality of boroughs regularly reviewing CIL charges, which need independent examination. This work can take at least a year to undertake by specialist consultants and it is not an easy process.
- The implications for internal restructuring and resourcing of relevant Council departments to enable implementation of the CIL, including collection of funds, enforcement and monitoring. The government has not proposed that any additional resources are to be provided to enable this work.
- The proposed approach may well result in the CIL operating as a 'tax' on development, and would not offer bespoke mitigation of unique local off site impacts associated with individual development proposals (as is currently afforded by planning obligations). Developers may try to resist payment of s106 contributions or to offset s106 contributions against the CIL payment. This could result in local communities feeling that the adverse impacts of developments are no longer being addressed through the planning process.
- The implications for borough level contributions given that the proposals give the Mayoral CIL precedence over the borough's CIL.
- As currently proposed, the CIL would have potentially significant adverse impacts on the viability of a large number of development proposals. The council would bear the burden of testing claims made by developers that a scheme is not viable with the imposition of a CIL. This is likely to have significant implications in terms of resources for the council, which has not been taken into account by the CLG.
- Councils may face major funding deficits because the CIL is unlikely to be able to balance scheme viability and infrastructure needs.
- If the financial viability of a development proposal is affected by the CIL, the Council would have to accept that either the development cannot take place or that there would be a lack of funding to support necessary infrastructure. In the

current economic climate there are concerns that this will lead to difficult decisions having to be made as there is a need to encourage investment and regeneration.

At this stage, it is considered that the lack of sufficient in depth analysis of all of the aspects to the CIL and examination of options to resolve apparent issues, means that as proposed, the CIL is ill conceived and its introduction would be premature.

## **Response to Questions**

### ***Question 1: Do you agree with the proposals that the draft CIL regulations do not define infrastructure further?***

It is considered that the definition of infrastructure has broadened in recent years, beyond the physical provision of roads and utilities. It is not necessary to provide a more precise or exact definition.

### ***Question 2: Is any further reporting required for CIL?***

It is suggested that CIL should be used to implement the provisions of individual Strategic Infrastructure Plans (SIPs). Monitoring of how contributions are spent should be linked to this.

Paragraph 2.33: It is noted that Councils will not be required to prepare a list of projects to be funded through CIL. It is important that CIL responds to the needs and deficiencies outlined in the Strategic Infrastructure Plans.

Paragraph 2.51: Monitoring arrangements could be difficult if contributions are paid into a single CIL account and are not linked to specific development proposals.

### ***Question 3: Is a 1 October deadline for reporting on the previous year's activity sufficient for local authorities? Will this timescale enable developers and local communities' to understand how CIL revenue has applied?***

No comment at this stage

### ***Question 4: Do you have any comments on any further matters raised in chapter 2 which are not covered by the questions above?***

Para 2.15 states that CIL should not be used to remedy pre-existing deficiencies in infrastructure provision, except to the extent that they will be aggravated by new development. However, paragraph 2.18 encourages a degree of flexibility in how money is spent, the implication being that CIL should not be tied to specific development proposals.

Specific infrastructure issues arise from the majority of large scale development proposals. The guidance is unclear on the following points in this regard:

- Will there still be a requirement to address infrastructure issues resulting from specific development proposals?
- If the payment of a commuted sum means that developers are not liable to undertake infrastructure works resulting from development proposals, this burden and expense will be placed on the local authorities.

- What will happen in circumstances where infrastructure costs are higher than the standard CIL charge?

***Question 5: Are there any circumstances where a normal CIL charging authority would not be able to fulfil its charging authority functions effectively?***

The council notes at paragraph 3.5 of the consultation document that the Mayor of London is also a charging authority. There is concern that two lots of CIL will be charged in London. The scope of the GLA's remit will need to be clearly defined and taken into account when setting CIL for individual London Boroughs to ensure that it does not prohibit the Boroughs ability to collect the required CIL for their sub regional infrastructure needs.

***Question 6: In deciding whether to use the power at Section 207 of the Act, should the government apply different criteria to those described above? Which functions should a joint committee perform?***

No comment at this stage.

***Question 7: Do you agree that differential rates should be based only on the economic viability of development:***

With regard to paragraph 3.36 of the consultation document, the assessment of economic viability is critical to ensuring that CIL is set at an optimal rate to support development. If the rate is set too high it will stifle development and slow economic growth.

Paragraph 3.37: To be fully effective, the assessment of economic development will need to take account of the following factors:

- The land values for different uses in different parts of the borough
- Other CIL charges levied on development and subsidies that developer might receive
- The densities that are appropriate in different areas.

All of these issues are important in Hillingdon. For example, higher land values are likely to be achieved in the northern part of our borough where lower densities will be appropriate. Conversely, parts of the southern area around Hayes, West Drayton and Yiewsley attract higher densities, but land values may be lower.

These issues present a complex picture in relation to economic viability for different types of development and are likely to result in a number of different CIL charging zones around the borough.

Whilst economic viability is critical, contribution rates should also take account of the need for infrastructure types in certain parts of the borough and this should be reflected in regulation 24.

***Question 8: Do you agree that CIL charges should be based on a metric of pounds per square metre?***

The Council agrees that CIL should be charged at a metric of pounds per square metre.

**Question 9: Would you prefer to have a choice of changing metrics and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions?**

It is suggested that rates for commercial floorspace could reflect commercial rents, using a unit cost per square foot of floorspace.

**Question 10: Do you agree with the Government's proposal to apply the charging metric to gross internal area of development or do you think there are advantages to levying CIL on the gross external area?**

Contributions should relate to the useable, income generating part of the development, which is generally the internal area of a building.

**Question 11: Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development?**

The Council agrees that CIL should be levied on the gross development area.

**Question 12: Should authorities be required to index CIL charges?**

Index linking would ensure that the CIL is not diminished through time and inflation, and therefore this approach is supported.

**Question 13: Should indexation be based on a national index to provide simplicity, consistency and a readily understood index or, alternatively, should charging authorities be allowed to choose different indices in different places?**

A national index may be appropriate, however further research would be required to understand there should be the flexibility to use other local indices in some cases.

**Question 14: Do you agree with the Government's proposed choice of an index of construction costs?**

Construction costs are monitored nationally, costs could be indexed against, for example, the BCIS.

**Question 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?**

It is considered that the indexing should start from the date of planning permission as this will ensure CIL contributions are not devalued through inflation.

**Question 16: Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?**

Application of indexation monthly would help to ensure CIL funding is not diminished through inflation.

**Question 17: Do you agree that charging authorities should be able to index their charges from 1 January each year (Taking the November index)**

No objection would be raised to this approach.

***Question 18: Do you agree with the Government's proposal to allow joint charging schedule/ development plan examinations.***

The Council notes that some items of infrastructure will cross local authority boundaries, or will result in joint use between different local authority areas. To some extent, this issue will need to be addressed in the Strategic Infrastructure Plan (SIP). Given the discretionary nature of CIL, the proposal to allow joint examinations is accepted.

***Question 19: Do regulations need to cover any additional matters relating to joint examination?***

It is suggested that this issue could be addressed through the use of good practice examples, as and when they become available.

***Question 20: Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate***

The CIL rate should be set by local authorities to reflect local circumstances. As such, and to ensure a consistent approach, the CIL examiner should not be able increase the proposed CIL rate.

***Question 21: Do you have comments on any other matters raised in Chapter 3 which are not covered by the questions above?***

No further comments at this stage.

***Question 22: Do you agree with the chosen definitions of building, planning permission and 'first permits'? If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?***

No objection is raised in relation to the above definitions.

***Question 23. Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions. If not, what changes would you wish to see that deal fairly with these types of permissions?***

The approach is considered reasonable.

***Question 24: What are your views on the principle of providing a reduced rate of CIL for all affordable housing development? What do you think the likely consequences of providing such a discount might be?***

A reduced CIL for affordable housing proposals would encourage this form of development, although as a consequence the impact and infrastructure costs attributable to the development would not be off set. There is likely therefore to be adverse implications arising from this approach.

The proposals in relation to affordable housing would have to take account of the need for limited retention of S106 planning obligations.

**Question 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.**

While the definition is considered workable, it excludes (by definition) privately funded affordable housing development. This would have the effect of reducing affordable housing provision.

**Question 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?**

For consistency it is considered that CIL relief for charities building affordable housing be applied according to this definition.

**Question 27: Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback? 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? How should such a clawback operate?**

To recoup the CIL in an instance where LCHO afford residents the opportunity to 'stair case' or purchase the remaining share of a property, the CIL would need to be embedded in the cost of purchase, which may well result in the property not being affordable. Further analysis is required to assess this issue.

**Question 28: Is 7 years an acceptable time period for clawback to operate over?**

No objection is raised.

**Question 29: Is it reasonable to ask a claimant to submit an apportionment of liability in this way?**

While no objection is raised to a formal process being in place for charities etc to follow when seeking exemption from the CIL, this involves an administrative burden for both the applicant and Council, the implications of which require further investigation.

**Question 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? If not, how could it be done in a way that is fair, non-distortionary and not open to abuse?**

It is not considered that a special procedure is necessary. The proposed process provides sufficient flexibility. Further procedures would place additional administrative burdens on local authorities.

**Question 31: Do you agree with the Government's proposals for liable parties and assumption of liability?**

The approach is considered reasonable.

**Question 32: Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?**

Requiring transfers less frequently would reduce administrative burdens for collecting authorities.

**Question 33: Do you think that the final regulations should provide for the payment of CIL in-kind?**

In kind provision is appropriate and this approach is supported

**Question 34: If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?**

Direct provision of infrastructure by developers will always be preferable to the provision of a commuted sum for local authorities to undertake works. This process already takes place under the existing S106 procedures and is considered workable.

**Question 35: Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development? How should the instalments be structured?**

Payments of CIL in instalments is supported. There is concern that the viability of development would be adversely affected if payment in full was required immediately upon implementation.

**Question 36: Do you agree that payment on account should not be provided for in the final CIL regulations?**

No, collection of CIL should only occur if a scheme is implemented. Payment on account would also unnecessarily increase the administrative burden for collecting authorities.

**Question 37: Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability?**

While no objection is raised to this approach, there will be an administrative burden for collecting authorities. At this stage no additional resources have been proposed to assist with administering the CIL process.

**Question 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?**

A warning is considered appropriate and in line with current enforcement procedures.

**Question 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?**

The measures are considered sufficient.

**Question 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?**

Enforcement measures are essential to ensure the CIL is workable.

**Question 41: Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice?**

No bespoke compensation regime is required.

**Question 42: Do you have comments on any other matters raised in Chapter 4 which are not covered by the questions above?**

No further comments at this stage.

**Question 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?**

Formalisation of the policy tests into law would be undesirable, inflexible and add another layer of complexity. There are still a number of uncertainties about how CIL will be implemented and particularly about how it will operate in London, it is essential that boroughs are able to continue using existing approaches for collecting developer contributions until such time as CIL can be seen to have worked.

**Question 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?**

The tests reflect those set out in Circular 05/05 and are considered appropriate.

**Question 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, and if so what should it be and why is such a period required?**

Yes, a transitional period is required to assist in the smooth introduction of the CIL process.

The tests contained in Circular 05/05 are considered sound, however consideration should be given to the provision of social infrastructure needs arising from specific development proposals.

**Question 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?**

No objection raised to the application of CIL nationally, however as discussed above a transitional period should be provided to assist in the smooth introduction of the CIL process, and further consideration needs to be given to the provision of social infrastructure needs arising from specific development proposals.

**Question 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?**

The flexibility to allow the pooling of S106 contributions for site specific impacts should be retained.

**Question 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? If not, please state why not. Can you think of an alternative which would have the same or similar effect?**

The implementation of this proposal would necessitate the introduction of the CIL process by all authorities. This is at odds with the principle of discretionary implementation outlined in this consultation document.

**Question 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?**

The proposed transitional period is unduly restrictive, given the complexity of the process involved in preparing and agreeing the CIL. The transitional period should extend until such time as the individual local authority has prepared and implemented the CIL.

**Question 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?**

As commented in response to question 46, no objection is raised to the application of CIL nationally, however as discussed above a transitional period should be provided to assist in the smooth introduction of the CIL process, and further consideration needs to be given to the provision of social infrastructure needs arising from specific development proposals.

**Question 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?**

As commented in response to question 49, the transitional period should extend until such time as the individual local authority has prepared and implemented the CIL.

This question implies that implementation of the CIL process will be required by all authorities which is at odds with the principle of discretionary implementation outlined in this consultation document.

**Question 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?**

No further comment at this stage.

***Question 53: Do you think any 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?***

No further comment at this stage.

***Question 54: Do you have comments on any other matters raised in Chapter 5 which are not covered by the questions above?***

No further comment at this stage.