



## **PORTFOLIO HOLDER DECISION NOTICE**

### **INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR BUILT ENVIRONMENT**

### **TOPIC - COMMUNITY INFRASTRUCTURE LEVY REVIEW PANEL – RESPONSE TO QUESTIONNAIRE**

### **PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Chief Operating Officer, the Chief Executive and the Chief Finance Officer are consulted together with Chairman and Vice Chairman of The Overview and Scrutiny Committee and any other relevant overview and scrutiny committee. In addition, all Members are notified.

If five or more Members from those informed so request, the Leader may require the matter to be referred to Cabinet for determination.

**Contact Officers: Simon Finch Assistant Director Environment & Steve Opacic Head of Strategic Planning.**

**Case Officer: N/A**

**Democratic Services Officer:** Nancy Graham

### **SUMMARY**

The community infrastructure levy (CIL) was introduced nationally in April 2010 and seeks to provide a faster, fairer, more certain and transparent means of collecting developer contributions to infrastructure than individually-negotiated 'Section 106' planning obligations. The City Council introduced its own CIL in April 2014.

The government confirmed in November 2015 that it has asked an independent group to conduct a review of CIL. To this end a consultation has been launched seeking views from a wide range of people including local authorities, communities groups, developers, surveyors, lawyers and consultants. The government has requested that interested parties provide their feedback by completing a questionnaire and the City Council's response is attached at Appendix A. The closing date is 15<sup>th</sup> January 2016 and full details can be viewed at: <https://www.gov.uk/government/consultations/community-infrastructure-levy-review-questionnaire>

The independent group met on 12 November 2015 and will assess the extent to which CIL does or can provide an effective mechanism for funding infrastructure, as well as recommend changes that would improve its operation in support of the government's wider housing and growth objectives.

In Winchester CIL has been operating for approximately 21 months. Overall it is broadly considered that CIL works reasonably well. Positive aspects include:

- CIL contributes to providing the infrastructure needed to support development, but a funding gap remains. However it should be recognized that the amount of CIL generated by qualifying development is unlikely to fund anything other than localised interventions, which are of benefit in the immediate neighbourhood where they are located, but which do not have any large scale impact on improving infrastructure more widely. Other sources of funding are still therefore required.
- It simplifies the assessment and collection of contributions for infrastructure reducing the number of planning applications which require planning obligations (s106 agreements and unilateral undertakings). This has helped reduce costs incurred by the Council and developers and has improved planning performance.
- It is transparent and allows developers to calculate the financial liability for mitigating the effects of their developments prior to submission of planning applications. CIL payments are non-negotiable. There is little evidence locally to suggest that CIL is hampering the delivery of development schemes.

However, CIL is by no means a perfect replacement for the previous system which relied wholly upon the use of s106 agreements and unilateral undertakings to mitigate the impacts of development in relation to the delivery of infrastructure. . Some negative aspects of CIL are set out below:

- Restrictions on pooling contributions which are still dealt with by s106s can generate unintended complexities particularly in relation to large strategic sites, which may be CIL exempt, and therefore subject to a number of planning permissions as schemes evolve as they are built out. Furthermore the pooling restriction could be a constraint on spending financial contributions on infrastructure collected from individual developments in relation to schemes which deal with mitigating the effects of development on internationally designated under the Habitat Regulations such as the scheme operated in the south coast area by the Solent Recreation Mitigation Partnership for example.
- The self build new home exemption for new dwellings has resulted in a potential 'loss' of £315k to Winchester. This could be greater if large custom build schemes are approved. There is concern at the extent of exemptions and the way in which these seem to be used to achieve policy aims (something local authorities are unable to use CIL for). It is therefore suggested that all developments are likely to generate infrastructure

requirements and the number of exemptions and reliefs should be kept to a minimum – developments that cannot afford to contribute CIL will be identified through the process of developing and examining local CIL Charging Schedules.

- As CIL is a fixed cost it is likely that other costs associated with development proposals, such as affordable housing, are subject to negotiation and on site provision or off-site financial contributions reduced because of viability concerns. Resolving viability issues also adds expense to the planning system for developers and the Council. This may also be contributing to inflated land values.
- As explained above whilst CIL will help to deliver infrastructure required to mitigate the effects of new developments it will not provide full funding so other sources of funding remain essential in order to sustain economic growth.

The Council's full and detailed response regarding the operation of CIL and continuing role and effectiveness of planning obligations is set out in the questionnaire attached at Appendix A.

### **DECISION**

That the attached questionnaire is submitted as the Council's response to the Government consultation on CIL.

### **REASON FOR THE DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

None considered.

### **RESOURCE IMPLICATIONS:**

No implications directly arising from the consultation but any further amendments to the regulations which increase the scope of exemptions will reduce CIL income.

### **CONSULTATION UNDERTAKEN ON THE DECISION**

Not applicable.

### **FURTHER ALTERNATIVE OPTIONS CONSIDERED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

Following publication of the draft notice, further amplification of the figures provided in 1(i) was provided. It was agreed with the Portfolio Holder that the following replace the original 1(i) in the response (and this is the version used in the response attached as appendix to this PHD):

The City Council only introduced CIL in April 2014 so funds received to date have been modest (by December 2015, WCC had collected a total of £455,989):

	<b>Issued</b>	<b>Received</b>	<b>Outstanding</b>
Parishes/town forum	98,962	68,398	30,564
Hampshire County Council	131,949	91,198	40,752
Admin	32,987	22,799	10,188
Winchester City	395,848	273,593	122,255
	<b>£659,747</b>	<b>£455,989</b>	<b>£203,759</b>

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

n/a

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

n/a

**Approved by: (signature)**

**Date of Decision: 15.01.16**

**Councillor Mike Read – Portfolio Holder for Built Environment**

**APPENDICES:**

Council's response to the government consultation on CIL.



## Appendix A

### Written Submissions

The Panel would find it most helpful if those wishing to respond could provide answers to the questionnaire which follows. It is not necessary to answer every question but where you are responding, **please provide as much evidence as possible to support your reply and where answering “yes” or “no” please amplify where possible providing practical suggestions around how any concerns could be addressed.**

#### **Please provide the following general background:**

- a. Brief description of your interest and involvement in CIL.

**Responses have been provided by officers involved in the development, implementation, introduction and administration of CIL at Winchester City Council:**

<b>Stephen Tilbury</b>	<b>Director of Operations</b>
<b>Simon Finch</b>	<b>Simon Finch, Assistant Director (Environment)</b>
<b>Steve Opacic</b>	<b>Head of Strategic Planning</b>
<b>Julie Pinnock</b>	<b>Head of Development Management</b>
<b>Paul Robinson</b>	<b>CIL Officer</b>

- b. If a local authority, the precise stage you have reached in the CIL process.

**Winchester City introduced CIL with effect from 7 April 2014**

- c. If a developer/consultant, some indication of the number of different CIL processes you have been involved in, in relation to both:
  1. the setting of CIL rates, and
  2. payment of CIL for specific developments including details of the land use and the scale and type of development.



Section/question	Response																												
<b>1. On Infrastructure:</b>																													
<p>i. To what extent is CIL contributing, or will it contribute, to infrastructure to support development and is that infrastructure being delivered?</p>	<p>Winchester City Council produced an Infrastructure Delivery Plan to justify the introduction of its CIL, but this identified a substantial 'funding gap'. CIL will, therefore make a substantial contribution to providing the infrastructure needed to support development, but is not expected to be the only source of funding.</p> <p>The City Council only introduced CIL in April 2014 so funds received to date have been modest (by December 2015, WCC had collected a total of £455,989):</p> <table border="1" data-bbox="563 739 1455 1080"> <thead> <tr> <th colspan="4" data-bbox="1002 739 1214 769">Demand Notices</th> </tr> <tr> <th data-bbox="890 785 975 815">Issued</th> <th data-bbox="1043 785 1161 815">Received</th> <th colspan="2" data-bbox="1225 785 1385 815">Outstanding</th> </tr> </thead> <tbody> <tr> <td data-bbox="580 831 751 892">Parishes/town forum</td> <td data-bbox="890 845 975 876">98,962</td> <td data-bbox="1075 845 1161 876">68,398</td> <td data-bbox="1299 845 1385 876">30,564</td> </tr> <tr> <td data-bbox="580 892 804 952">Hampshire County Council</td> <td data-bbox="879 906 975 936">131,949</td> <td data-bbox="1075 906 1161 936">91,198</td> <td data-bbox="1299 906 1385 936">40,752</td> </tr> <tr> <td data-bbox="580 952 655 983">Admin</td> <td data-bbox="890 966 975 996">32,987</td> <td data-bbox="1075 966 1161 996">22,799</td> <td data-bbox="1299 966 1385 996">10,188</td> </tr> <tr> <td data-bbox="580 996 767 1027">Winchester City</td> <td data-bbox="879 1010 975 1041">395,848</td> <td data-bbox="1064 1010 1161 1041">273,593</td> <td data-bbox="1287 1010 1385 1041">122,255</td> </tr> <tr> <td></td> <td data-bbox="863 1041 975 1071"><b>£659,747</b></td> <td data-bbox="1043 1041 1161 1071"><b>£455,989</b></td> <td data-bbox="1267 1041 1385 1071"><b>£203,759</b></td> </tr> </tbody> </table> <p>The Council has not yet therefore allocated funds to specific infrastructure projects but is in the process of developing a spending protocol which will determine how CIL is used. The Council has taken a decision to pass on to Hampshire County Council 25% of CIL funds on the basis that they are a key infrastructure provider in the District (transport, education etc). Parish councils and the Winchester Town Forum receive 15% of funds where relevant (25% in the case of Denmead Parish Council because it has an adopted Neighbourhood Plan).</p> <p>As can be seen from the figures given above, the amount of CIL generated by qualifying development is unlikely to fund anything other than localised interventions which are of benefit in the immediate neighbourhood but which do not have any large scale impact on improving infrastructure.</p>	Demand Notices				Issued	Received	Outstanding		Parishes/town forum	98,962	68,398	30,564	Hampshire County Council	131,949	91,198	40,752	Admin	32,987	22,799	10,188	Winchester City	395,848	273,593	122,255		<b>£659,747</b>	<b>£455,989</b>	<b>£203,759</b>
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<p>ii. Has the role of the Planning Authority changed with the introduction of CIL and if so where has this worked most effectively?</p>	<p>No. The introduction of CIL has simplified the collection of financial contributions from development but this has had only incidental impact on resources and timescales.</p>																												

Section/question	Response
iii. How are large items of essential infrastructure critical for key sites or growth locations being secured in the CIL and s.106 system?	<p>Large scale developments, which are identified as strategic allocations in the Local Plan, are delivering infrastructure through S106 planning obligations and they have been excluded from CIL. This is the only secure means of ensuring that key infrastructure items are provided at the necessary stage of development. CIL is not a useful or reliable mechanism for such infrastructure. In some cases these strategic developments are also being supported by other sources of funding provided, for example, by Local Enterprise Partnerships (LEPs).</p>
iv. What role are CIL and s.106 playing alongside other sources of infrastructure funding and could changes to CIL (e.g. the ability to borrow against it or in kind contributions) allow it to be more effective?	<p>As mentioned at iii above funding for strategic development sites remains derived from S106 obligations and other sources like LEPs. CIL is expected to be a source of funding for infrastructure related to smaller developments but there that provision will lag behind development.</p> <p>Council's already have powers of prudential borrowing and this can take into account CIL expected receipts. The problem is that they do not amount to very large income streams and are commercially volatile.</p>
v. What has been the impact of pooling restrictions? Is there a difference between authorities which have adopted CIL and authorities which have not adopted CIL?	<p>The pooling restrictions have caused some unintended complexities and issues for large strategic sites which may be subject to a number of planning permissions and therefore planning obligations throughout the duration of construction period which in some instances will be a number of years. The restriction on the number of obligations on these sites can be an issue in such cases, especially where the developer needs to revise the scheme as it is being built out.</p> <p>Furthermore the pooling restriction could be a constraint on spending financial contributions on infrastructure collected from individual developments in relation to schemes which deal with mitigating the effects of development on internationally designated sites under the Habitat Regulations. For example in the south Hampshire a number of councils work jointly to deliver a scheme through the Solent Recreation Mitigation Partnership to mitigate the impacts of development within their districts on designated sites in the Solent area but the focus to date has been on management and education initiatives (non-infrastructure). There may be issues in the future when it comes to using pooled funds to deliver other larger infrastructure projects.</p>



Section/question	Response																				
vi. What impact do exemptions and reliefs have on delivering infrastructure?	<p>The City Council is very concerned at the extent of exemptions and the way in which these seem to be used to achieve policy aims (something local authorities are unable to use CIL for). All developments are likely to generate infrastructure requirements and the number of exemptions and reliefs should be kept to a minimum – developments that cannot afford to contribute CIL will be identified through the process of developing and examining local CIL Charging Schedules.</p> <p>Winchester's experience indicates that, on average, self build homes are significantly larger than market housing:</p> <table border="1" data-bbox="563 801 1348 1127"> <thead> <tr> <th></th> <th>Total relief granted</th> <th>No units</th> <th>Average</th> </tr> </thead> <tbody> <tr> <td>New homes</td> <td>£315,460</td> <td>23</td> <td>£13,700</td> </tr> <tr> <td>Extension only</td> <td>£234,240</td> <td>17</td> <td>£13,800</td> </tr> <tr> <td><b>Total</b></td> <td><b>£549,700</b></td> <td><b>40</b></td> <td><b>£13,700</b></td> </tr> <tr> <td><b>Demand notices sent (Residential only)</b></td> <td><b>£597,350</b></td> <td><b>68</b></td> <td><b>£8,780</b></td> </tr> </tbody> </table>		Total relief granted	No units	Average	New homes	£315,460	23	£13,700	Extension only	£234,240	17	£13,800	<b>Total</b>	<b>£549,700</b>	<b>40</b>	<b>£13,700</b>	<b>Demand notices sent (Residential only)</b>	<b>£597,350</b>	<b>68</b>	<b>£8,780</b>
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<b>2. On Viability</b>																					
viii. Has a lack of viability resulted in a failure to develop a CIL?	No, the impact of CIL on viability is one of the matters considered through the process of developing and examining the CIL Charging Schedule. This identified that it would not be viable for some forms of development to pay CIL (e.g. offices and industry), but that others could (e.g. housing).																				
ix. Have viability concerns resulted in a low CIL level and has this had an adverse impact on the delivery of infrastructure to support development?	<p>The City Council chose not to set its CIL at the maximum possible level so as to avoid jeopardising its ability to secure other requirements such as affordable housing and sustainable construction. Unfortunately, changes to Government policy have undermined the Council's ability to achieve its aims in these areas, resulting in CIL being lower than may be justified.</p> <p>At present the main constraint to delivery of infrastructure through CIL has been the limited scale of receipts due to the recent introduction of CIL, but current and future receipts could be higher (perhaps by 20%) if a higher CIL level had been sought.</p>																				

Section/question	Response
<p>x. Are there appropriate tools available for establishing viability? Would standardisation using just one methodology be helpful or feasible?</p>	<p>Local authorities expend a large amount of resources in establishing and testing viability and the various methodologies that exist enable others to do the same in order to challenge the results. A standardised methodology would therefore be helpful, but it may be difficult to develop one that would be applicable in all circumstances and fair to all sides.</p>
<p>xi. Do you have specific examples where non-viability on account of CIL has prevented development?</p>	<p>No, other matters (particularly affordable housing) have far greater impact on viability and it is these which are varied where necessary to enable development to proceed. CIL requirements may be considered a burden by small developments but they are unlikely to affect viability.</p>
<p>xii. Is CIL impacting on affordable housing provision?</p>	<p>Yes – this is an inevitable consequence of it being mandatory. Whilst all policy requirements including CIL should be reflected in lower land acquisition costs, this is not always the case especially on complex and expensive to develop sites which are already heavily discounted against greenfield sites. Developers will therefore try to reduce development costs to maintain profit margins by other means, including reducing affordable housing provided.</p> <p>The fact that affordable housing itself does not pay CIL does support the delivery of this type of accommodation particularly on schemes which are 100% affordable but at the expense of local infrastructure</p>
<p>xiii. In setting a CIL Charging Schedule has the development community played their part and been properly consulted on issues of local viability?</p>	<p>The City Council believes so and the input of the development industry has influenced its Charging Schedule. The examination process exists, in part, to ensure this happens.</p>
<b>3. On Charge-setting:</b>	
<p>xiv. Is the EIP process suitably robust?</p>	<p>Yes, the City Council feels its Charging Schedule was thoroughly examined.</p>
<p>xv. Should there be a requirement to review charging schedules at set times, if so when and why?</p>	<p>No. The danger of setting a fixed time period for reviews is that it may be too short for some authorities (resulting in resources being wasted in unnecessary updating) and too long for others (resulting in an out of date Charging Schedule). It is important that the link to inflation is maintained and that Schedules are updated 'as necessary', but a fixed time period would be overly prescriptive.</p>

Section/question	Response
xvi. Should partial reviews (eg. types of use or location) be possible?	Yes, to reflect changing circumstances and development plans. However, in most cases such changes will necessitate a full review of the CIL Charging Schedule.
<b>4. On CIL Regulations and Guidance:</b>	
xvii. Are the CIL regulations and guidance easy to use and understand?	They were originally, but annual changes and 'tinkering' have undermined this. CIL is now more complex to implement than it should be and less effective, as a result of these changes.
xviii. Are there improvements that could be made to the arrangements for collecting and spending CIL?	<p>The process at present has a number of elements that would benefit from improvement:</p> <p><b>Self build exemption for extensions:</b> the vast majority of extensions that are CIL liable are ultimately granted exemption. The process of calculating CIL, assuming liability, claiming exemption and granting exemption is time consuming and benefits no one</p> <p><b>Self build exemption – new homes.</b> The proofs required are not always appropriate: we have a number of claimants who are not funding by mortgage, who are using standard warranties and because they have commissioned the build are not claiming VAT. The option to seek an alternative form of proof, eg copy of contract, etc would be helpful.</p> <p><b>Annual indexation:</b> the choice of the BCIS all in tender price index is fraught with difficulty because of the restriction imposed by the copyright owners. It would be more practical if DCLG published their own indexation figure – possible sourced from the same provider – which would be more open and transparent.</p> <p>The cost of subscribing to the index is prohibitive (currently, simply to obtain one figure each year costs £1,788.00) especially where the charging authority has no other need for the information.</p>
<b>5. On Neighbourhood issues:</b>	
xix. How have the requirements for the Neighbourhood proportion of CIL been implemented?	It's too early to draw any conclusions because Winchester have distributed only £1500 to parishes and hold £350 for the unparished part of the District.
xx. Is this encouraging communities' to support development?	No. We have no evidence that any consideration of CIL receipts ever plays a part in shaping attitudes towards development.

<b>6. Finally, on the overall system</b>	
<p>xxi. Has the introduction of CIL made the system for securing developer contributions and delivering infrastructure simpler, fairer, more predictable, transparent and efficient?</p>	<p>Yes, in that fewer planning permissions need planning obligations and this has also helped to speed up the process and reduce costs to councils and developers.</p> <p>However under the previous system of using planning obligations to deliver infrastructure it was established at the planning permission stage what infrastructure schemes would be funded by the development. Under CIL the allocation of funds is dealt with differently so the community or developer won't know how the funds will be used at the time permission is given. This could undermine confidence in the way that the impacts of development will be mitigated.</p>
<p>xxii. Is the relationship between CIL and s.106 fit for purpose and how is this working in practice?</p>	<p>Subject to the issue identified at 1v above being resolved the relationship between CIL and s106 is satisfactory.</p> <p>However it is worth noting that whilst the number of planning cases requiring s106s has fallen with the introduction of CIL in Winchester planning obligations are still widely used to secure affordable housing on market led schemes which commonly generates issues around viability. This results in financial appraisal work for the developer and Council which adds to costs and can delay decisions.</p> <p>It may also have the affect of reducing the quantum of affordable housing on these type of schemes (see 2 vii above).</p>
<p>xxiii. Is there a better way of funding the infrastructure needed to support development?</p>	<p>Subject to the issues identified at 1. v and 2. vii being resolved it is considered that CIL is a sound fair and proportionate way of securing infrastructure improvements from development.</p> <p>However it should also be recognised that development/CIL alone cannot deliver the infrastructure required to maximise economic growth in the District or to remedy existing infrastructure deficiencies. Other sources of funding will still therefore be required to fully mitigate all the effects of new development and to address shortcomings in existing infrastructure.</p>