

**DRAFT CONSULTATION RESPONSE TO EAST CAMBRIDGESHIRE DISTRICT COUNCIL'S PROPOSED APPROACH TO SEEKING DEVELOPER CONTRIBUTIONS**

*To:* **Cabinet**

*Date:* **12th June 2012**

*From:* **Executive Director: Economy, Transport and Environment**

*Electoral division(s):* **All East Cambridgeshire Divisions with particular relevance to:**

- **Ely South and West**
- **Ely North and East**
- **Burwell**
- **Littleport**
- **Soham & Fordham Villages**
- **Sutton**
- **Woodditton**

*Forward Plan ref:* **Key decision: No**

*Purpose:* **To inform Cabinet of the proposed consultation response to the Draft Charging Schedule for the East Cambridgeshire Community Infrastructure Levy (CIL).**

*Recommendation:* **Cabinet is invited to:**

- a) **Consider and endorse the draft consultation response as set out in Appendix A; and**
- b) **Delegate to the Lead Member for Growth and Planning in consultation with the Executive Director Economy, Transport and Environment and Local Members, the authority to make any minor changes to the draft consultation response prior to its submission.**

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## 1. BACKGROUND

- 1.1 On 3rd May 2012, East Cambridgeshire District Council published a Community Infrastructure Levy (CIL) Draft Charging Schedule document for public consultation. This followed an initial consultation on a Preliminary Draft Charge Schedule in December 2011, which Cabinet considered on 31st January 2012. A copy of the Draft Charging Schedule document is available to view at:-  
<http://www.eastcambs.gov.uk/content/community-infrastructure-levy>
- 1.2 The consultation expires on 31st May 2012. Officers have prepared draft comments on the consultation and County Council Members in East Cambridgeshire have been given the opportunity to comment on the document. Officers have agreed with East Cambridgeshire District Council that the County Council response can be submitted after this Cabinet meeting. The draft consultation response is set out in Appendix A.
- 1.3 CIL is a new planning charge on development that came into force in April 2010. It largely came about as a result of Government dissatisfaction with the current system and the lack of Section 106 money being secured by local authorities around the country.
- 1.4 The CIL Draft Charging Schedule uses costs set out in the Draft Infrastructure Study which was subject to a viability assessment (see page 7 of consultation document) and which has been fundamental in defining proposed CIL rates.
- 1.5 County Officers have assisted in drawing up the Draft Infrastructure Study through an internal CIL Project Team and the work undertaken by this group has been fed through to East Cambridgeshire District Council to allow them to form the charging schedule. County Council Officers have worked closely with East Cambridgeshire District Council in the formation of their CIL proposals and particularly in terms of inputting key infrastructure requirements. The Draft Infrastructure Study sets out the infrastructure needed to underpin new development in the District until 2025.
- 1.6 The timetable for implementing CIL in East Cambridgeshire is set out in Table 1.

**Table 1: ECDC CIL Timeline**

<b>Process Stage</b>	<b>Timetable</b>
Preliminary Draft Charging Schedule Consultation	21 <sup>st</sup> December to 2 <sup>nd</sup> February 2012
<b>Draft Charging Schedule</b>	<b>3<sup>rd</sup> May to 31<sup>st</sup> May 2012</b>
Statement of Modification	July/August 2012
Submission of Schedule to Examiner	July 2012
Examination hearing	September/October 2012
Inspector's Report	Autumn 2012
Adoption of Charging Schedule	December 2012
CIL Implementation	January 2013 (estimated date)

## **2. MAIN ISSUES**

### **Community Infrastructure Levy - Draft Charging Schedule**

- 2.1 East Cambridgeshire District Council (ECDC) is proposing to levy CIL on most forms of development.
- 2.2 The CIL system will reduce the use of Section 106 agreements, but will not replace them entirely. It is intended that Section 106 agreements (and Section 278 Highways agreements and planning conditions) will still be used by ECDC in 3 main ways, to secure:
1. Site-specific mitigation - e.g. local improvements/infrastructure necessary to enable the grant of planning permission. For example, access roads, on-site open space, archaeology, and some off-site requirements directly related to support individual sites.
  2. Affordable housing - Under the current Regulations, Section 106 agreements will continue to be used to secure affordable housing.
  3. Development-specific infrastructure on large development sites – Large strategic sites often necessitate the provision of their own development-specific infrastructure, such as primary schools, which are dealt with more suitably through a Section 106 agreement. Using Section 106 agreements will help to ensure the timely delivery of key pieces of infrastructure on large schemes.
- 2.3 Exemptions are applied to affordable housing (which will be secured through Section 106 agreements), development for charitable purposes and buildings which people do not normally go into.
- 2.4 There are advantages to the County Council in the continued use of Section 106 in this way. Firstly, the funding should be paid directly to the County Council. Secondly, it means that the risk of insufficient funding being secured for key infrastructure for strategic sites should be reduced. This is because the planning policy identifies that strategic sites will be expected to provide key facilities on-site and this strong policy background should mean that an appropriate balance is struck between on-site affordable housing levels and ensuring key facilities are also provided.
- 2.5 East Cambridgeshire District Council has indicated that it will revise its s106 Supplementary Planning Document in 2012 to reflect these changes.
- 2.6 Table 2 identifies the proposed CIL charge. The viability information presented by the District Council suggests that the figures are viable, i.e. can be secured and will not prevent development from happening, and County Officers consider the figure to be reasonable in this present economic climate. County Officers consider the residential figures of £40/70/90 per square metre to be reasonable in this present economic climate but it is suggested that the response back to East Cambridgeshire strongly suggests that the proposed CIL rates are reviewed on an annual basis, rather than the 2 years proposed

**Table 2: Proposed CIL Rates**

Proposed Charge	CIL rate (per square metre)
Residential Zone A – Littleport and Soham (C3)	£40
Residential Zone B – Ely (C3)	£70
Residential Zone C – Rest of the district (C3)	£90
Retail development1 (A1/A2/A3/A4/A5) up to 350m2, and sui generis uses akin to retail (e.g. petrol filling stations and motorsales units)	£60
Retail development1 (A1/A2/A3/A4/A5) more than 350m2	£120
All other uses (unless stated otherwise in this table)	£0

- 2.7 Payment of CIL is due from the date the chargeable development commences (with payment required within 60 days). For some sites, instalments may be permitted in line with the ECDC's Instalments Policy. The Draft Instalment Policy is set out in Appendix B of this report.
- 2.8 Table 3 sets out the main changes that have occurred since the Preliminary Charging Schedule consultation.

**Table 3: CIL Changes**

Change	Reason
1. Removal of the £10/m2 levy charge for business development	This responds to concerns that imposition of charges, in the current economic climate, is likely to push development unacceptably close to the margins of viability. A further review of the viability appraisal information was undertaken in relation to this. It is now proposed to levy a charge of £0/m2 for business (B1/B2/B8) development.
2. Changes to the description of retail development	In response to comments received, clarification has been introduced that the proposed retail charges also apply to extensions to units. To assist, the threshold is now expressed as a gross floorspace figure of 350m2 (rather than a sales floorspace figure of 280m2). The figure of 350m2 has been informed by local evidence of gross/net ratios.
3. Removal of the 200 unit threshold for 'large scale major development sites'	The threshold of 200 dwellings has been removed, as development specific facilities may be required on schemes of varying sizes. Reference has also been included to the use of Section 106 agreements to secure site-specific mitigation and development-specific infrastructure.
4. Amendment of the residential levy charge for Ely to £70/m2 (from £90/m2)	This responds to concerns that the Ely residential sales values in the viability appraisal are too high – and therefore the levy charges are too high in Ely and likely to make development unviable. Further analysis and sensitivity testing has been carried out on this matter. It is now proposed to levy a charge of £70/m2 for residential development in Ely (therefore introducing 3 charging zones in the district).

5. Removal of the £30/m2 levy charge for equine-related development	This responds to concerns that there is little viability in certain types of equine-related development (e.g. those with specialized and high tech facilities). A further review of the viability appraisal information was undertaken in light of this, and it is clear from an assessment of previous applications that equine developments are very varied in nature and type. It is therefore now proposed to levy a charge of £0/m2 for equine-related development.
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- 2.9 Over the period to 2015/16, the District Council predicts that it could raise around £7M from residential development from CIL. A charge of between £40 (Littleport and Soham) and £90 (rest of the district) per square metre is proposed for residential units across the district. Therefore, an average sized 3-bedroom property (95 sq m) would be expected to pay £3,800 (in Littleport or Soham), £6,650 (in Ely) or £8,550 (in the rest of the district) in CIL money. By way of comparison, a typical 3 bedroom property in Ely would pay £11,880 under the District Council's extant s106 Supplementary Planning Document (SPD) if all contributions were required.
- 2.10 If development in East Cambridgeshire were to fully meet infrastructure cost a charge of £61,661 per dwelling or £649 per m<sup>2</sup> would be required. This would be unviable. The is based on total costs of infrastructure expected to be in region of £193,786,634, with CIL expected to bring in £25,698,500 in income, and the viability gap would be in the order of £168,088,134. The need for CIL is proven and will help towards the infrastructure costs bill.
- 2.11 The largest infrastructure costs are transport and education being £105M and £46M respectively. However, while CIL income is anticipated to bring in some £25,698,500, the CIL Infrastructure Study in the Consultation Draft has identified that only £6m is expected to be raised through CIL for Transport Infrastructure. Conversely, while the costs for open space are likely to be £6.6m, CIL is expected to cover £5.7m. Comparatively then the figure for CIL contributions to transport infrastructure appears quite low, especially given the level of commitment there is already to progressing key transport infrastructure projects within East Cambridgeshire such as Ely crossing. The Ely crossing project alone is likely to cost in the order of £28m which the County Council is borrowing to help deliver as a key local priority to help address this barrier to growth. We would therefore query the current proposed split for how CIL should be allocated, and ask that this be reviewed to ensure that this reflects agreed priorities. Clarity is also needed on amounts of CIL expected to be available for key projects which are already committed.
- 2.12 While CIL funding can be supplemented by S106 for key projects such as this, it will be important that there is clarity on how CIL is to be prioritised and where possible CIL income should ideally be distributed proportionately from the outset to reflect committed priorities. In this case, we would welcome the opportunity to work early and closely with East Cambridgeshire District Council to agree priorities.
- 2.13 As outlined, Table 2 of the Consultation Draft sets out the list of infrastructure costs and expected funding from CIL. Our understanding is that this is indicative and a starting point for discussion around levels of funding

anticipated and how this might be allocated against types of infrastructure. It will be important therefore to work with partners in East Cambridgeshire to identify priorities and levels of CIL and S106 to support delivery. We would therefore welcome the opportunity to work with the District Council to develop a CIL Funding Strategy and Delivery Plan to identify projects and agree governance arrangements prior to the charging schedule taking effect in January 2013.

2.14 The Government expects local authorities to address the viability gap through other sources of funding. East Cambridgeshire District Council predict that £25,698,500 of income will be generated from Government funding and s106 agreements, however, there is no guarantee that these levels of funding will be secured. At present, the prospect of any significant other sources of funding is very uncertain. However CIL should improve the potential for securing contributions towards infrastructure more generally.

2.15 The ECDC Draft Charging schedule Consultation Draft sets out a number of questions which are answered in Appendix A of this report. Cabinet is asked to consider and endorse the suggested responses.

### **3. ALIGNMENT WITH PRIORITIES AND WAYS OF WORKING**

#### **3.1 Supporting and protecting vulnerable people when they need it most**

3.1.1 CIL funding will help to provide essential facilities, such as community buildings, health provision and emergency services, and as such will benefit the whole community including the most vulnerable members.

#### **3.2 Helping people live healthy and independent lives in their communities**

3.2.1 CIL will provide a range of community facilities including health provision which will contribute towards this priority.

#### **3.3 Developing the local economy for the benefit of all**

3.3.1 CIL will simplify the process by which developers make contributions to necessary infrastructure and helps ensure that most developments should in future make a contribution towards infrastructure. This is an improvement compared to the current system of S106 where only a small percentage of developments make a contribution. As such this should contribute towards developing the local economy for all..

#### **3.4 Ways of working**

3.4.1 Partnership working with East Cambridge District Council has been strong in the preparation of the infrastructure project list. It is important that this continues. When CIL money is collected in the future, it is important that the authorities work closely together in order to ensure best value and that it is allocated in the most effective way.

## **4. SIGNIFICANT IMPLICATIONS**

### **4.1 Resource and Performance Implications**

- 4.1.1 As noted above, the likely funding gap arising from the proposed implementation of CIL in East Cambridgeshire is approximately £168m although it should be noted that introducing CIL should increase the overall contributions compared to the existing s106 system. Annual reviews of the CIL charges may help to reduce this viability gap, however, the District Council propose to review the charges every 2 years or so, as necessary. There is a significant risk to the County Council that alternative sources of funding may not be found. This will mean that certain infrastructure projects are delayed or never built. Careful consideration will be required when prioritising County infrastructure projects and there will need to be close working with the District Council in this regard.
- 4.1.2 The District Council is the collection authority for all CIL money. It is crucial that there is early agreement regarding priority projects and that the District Council transfers a proportion of CIL funds to the County Council for County led infrastructure projects. However, strictly speaking, the CIL regulations place no obligation on the District to do this. Technically, the District Council do not have to share any CIL money with the County Council. Whilst this is not expected and work to date has been very constructive on this point. It is recommended that the County's consultation response requests that East Cambridgeshire District Council identify the proposed percentage of CIL that they intend to transfer to the County Council for priority projects, and that there is agreement on the governance of CIL.
- 4.1.3 County Officers and Members will need to work closely with colleagues in East Cambridgeshire to ensure that the County receives its fair proportion of the CIL income through the development of the CIL Funding Strategy. A CIL Delivery Plan will be produced annually to identify which projects should receive funding the following year and there will need to be agreement over priority projects going forward as part of a rolling programme.

### **4.2 Statutory, Risk and Legal Implications**

- 4.2.1. The Community Infrastructure Levy is a District wide charge on most new development under the CIL Regulations 2010 to fund a range of local and District wide infrastructure to support residential and economic growth. Even though CIL is described as an optional tool for local planning authorities, severe limitations on the use of Section 106 agreements will come into force in 2014 at the latest. Therefore, for those Districts who have not managed to adopt CIL by 2014, the use of Section 106 agreements will be limited which is likely to result in a reduced income from development contributions and significant additional financial burden on the service provider.

### **4.3 Equality and Diversity Implications**

- 4.3.1 There are no significant implications for equality and diversity.

### **4.4 Engagement and Consultation**

- 4.4.1 The report above sets out the consultation process undertaken which have been thorough and constructive. Both Members and Officers have been consulted on the draft charging schedule and their comments are reflected in the draft response.

<b>Source Documents</b>	<b>Location</b>
East Cambridgeshire Community Infrastructure Levy – Draft Charging Schedule	Growth & Economy 2 <sup>nd</sup> Floor, A Wing Castle Court  <a href="http://www.eastcambs.gov.uk/content/community-infrastructure-levy">http://www.eastcambs.gov.uk/content/community-infrastructure-levy</a>



## **APPENDIX A – Draft Charging Schedule**

The following sections contain comments on the specific questions asked by East Cambridgeshire District Council in the CIL consultation.

### **General Comments**

Thank you for inviting comments on your Draft CIL Charging schedule, and we are pleased to see continued progress with progressing plans for implementing CIL in East Cambridgeshire and look forward to continuing to work with you in this regard.

In particular, we will be keen to support you in developing the CIL Funding Strategy and Delivery Plan, and in this regard identifying priority projects for CIL funding early.

The County Council has been working hard with our partners in East Cambridgeshire to progress some key infrastructure projects locally, whether this is in planning for new schools or for transport projects such as Ely Crossing which is currently being designed. We would therefore welcome clarity early over levels of funding anticipated and how funds will be transferred to help support delivery of key priorities into the future, and in particular how CIL and S106 is expected to support the delivery of committed projects such as Ely crossing.

Early agreement on priorities and what proportion of CIL is expected to contribute towards delivery of priorities is needed, and in particular in relation to Transport and Education. These two areas have been identified as the largest infrastructure costs in the order of £105M and £46M respectively. Therefore it will be important to ensure that CIL contributes towards these costs proportionately to support the delivery of the local plan.

Table 2 currently outlines that only some £6m is proposed to be allocated towards transport infrastructure, while some £5.7m is proposed to be allocated towards Open Space against total costs of £6.6m. Comparatively then the figure proposed for CIL contributions to transport infrastructure appears very low, especially given the level of commitment there is already to progressing key transport infrastructure projects within East Cambridgeshire such as Ely crossing. The Ely crossing project alone is likely to cost in the order of £28m which the County Council is borrowing to help deliver as a key local priority to help address this barrier to growth. We would therefore query the current proposed split for how CIL should be allocated, and look to work with you to review this to ensure that this better reflects agreed priorities.

We look forward to also working closely with you on governance of CIL and how we can best support you in this regard, and supporting the regular review of priority projects, ideally on an annual basis into the future

We have set out answers to the specific questions you have asked below and these have been approved by the County Council's Cabinet.

**Question 1 – Do you agree or disagree with the Council's Draft Instalments Policy (as set out in Appendix 2)? Please explain your reasons for agreeing or not agreeing, and provide evidence in support of your case if available.**

It is acknowledged that the payment of CIL, for amounts over £40,000, could be paid over a period of longer than 60 days (from commencement of development) to assist with the mitigation of payments and to assist with development viability.

Under the proposed Instalment Policy the latest payment (for amounts over £100,000) would be 540 days (1.5 years approx.) from commencement – being the final 25% of the total CIL payment due.

The County Council supports the Draft Instalments Policy.

We also acknowledge that the District Council is entitled to apply a charge of up to 5% for administration on all CIL monies collected. However, it is unclear at this stage whether the County Council will receive any of this administration charge in relation to work around transport and infrastructure in support of local priorities and this needs to be clarified. The Council requests that a proportion to be paid to the County Council be agreed.

**Question 2 – Do you agree or disagree with the Council's proposed CIL rates for residential development? Please explain your reasons for agreeing or not agreeing, and provide evidence in support of your case if available.**

It is acknowledged that different parts of East Cambridgeshire have different viability challenges. However, it should be noted that the costs to the County Council of providing services and infrastructure are generally uniform across the District. For example the cost of providing a new school in Littleport would be the same as providing a new school in Ely.

However, given viability issues, the County Council supports these rates subject to a review on an annual basis to address the viability gap and appropriate proportions of CIL revenue being agreed for County Council services.

**Question 3 – Do you agree or disagree with the Council's proposed CIL rates for retail development? Please explain your reasons for agreeing or not agreeing, and provide evidence in support of your case if available.**

It is acknowledged that the infrastructure required from this type of development, such as new roads and/or junctions, or public transport subsidy can be significant.

The County Council accepts this rate on the condition that it is reviewed on an annual basis.

**Question 4 – Do you agree or disagree with the Council's proposed CIL rate for other development? Please explain your reasons for agreeing or not agreeing, and provide evidence in support of your case if available.**

It is acknowledged that other development may have an impact on the transport and highway network for example. However, in the interests of supporting economic growth in the District, the County Council accepts this rate at present. As per the other rates, it should be reviewed on an annual basis.

We look forward to also working closely with our partners in East Cambridgeshire on governance of CIL and how we can best support you in this regard, including the regular review of priority projects, ideally on an annual basis into the future

Early discussions on priorities and what proportion of CIL is expected to contribute towards delivery of priorities is needed, and in particular in relation to Transport and Education. These two areas have been identified as the largest infrastructure costs in terms of infrastructure needed to support delivery of the Local Plan. Therefore it will be important to ensure that CIL contributes towards these costs proportionately to support the delivery of the local plan.

## APPENDIX B

### ECDC Draft Instalments Policy

The CIL Regulations set a default for full payment of CIL within 60 days of commencement of development. However, the Amendment Regulations (2011) allow the Charging Authority to adopt an Instalments Policy, whereby payment is permitted over longer periods. This approach can help to mitigate the impact of payments and assist development viability.

This [Draft] Instalments Policy sets out the District Council's [proposed] approach to the staging of CIL levy payments. It will come into effect on [insert date].

The 'commencement date' referred to in the table below is the date set out in the 'Commencement Notice' supplied by the developer under Regulation 67

Amount of CIL liability	Number of instalments	Payment periods and amounts
Less than £40,000	1	Full payment within 60 days of the commencement date
£40,000 to £100,000	2	25% payment within 60 days of the commencement date, 75% within 360 days of the commencement date
More than £100,000	3	25% payment within 60 days of the commencement date, 50% within 360 days of the commencement date, 25% within 540 days of the commencement date