

North Tyneside Council

Report to Cabinet

Date: 14 August 2017

ITEM 6(b)

Title: Publication of Draft Community Infrastructure Levy Charging Schedule and Draft Planning Obligations Supplementary Planning Document

Portfolio(s): Housing and Transport

Cabinet Member(s): Councillor John Harrison

Report from Service Area: Environment, Housing and Leisure

Responsible Officer: Phil Scott – Head of Environment, Housing and Leisure **Tel: (0191) 643 7295**

Wards affected: All Wards

PART 1

1.1 Executive Summary:

Cabinet on 13th February 2017 approved for consultation a Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule: a charge that can be levied against development to support the provision of infrastructure.

The Authority now needs to consider a CIL Draft Charging Schedule to be published for consultation and submission to the Secretary of State. In addition the Authority needs to review its priorities for infrastructure delivery and the specific infrastructure that would be funded by monies raised through CIL.

Alongside the introduction of CIL and following adoption of the North Tyneside Local Plan 2017, it is also important that the Authority updates its guidance for the collection of other Planning Obligations through a review of the Planning Obligations Supplementary Planning Document (SPD). The Draft Planning Obligations SPD is proposed for publication and consultation alongside the CIL Draft Charging Schedule.

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the responses received to the Community Infrastructure Levy Preliminary Draft Charging Schedule consultation;
- (2) approve publication of the Draft Infrastructure Schedule (Regulation 123 List) to be funded through the proposed Community Infrastructure Levy;
- (3) approve the Community Infrastructure Levy Draft Charging Schedule for publication and formal consultation;
- (4) authorise the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport, the Cabinet Member for Finance and Resources, the Deputy Mayor and the Head of Law and Governance to:

- i) make additional (minor) modifications to the Community Infrastructure Levy Draft Charging Schedule following formal consultation,
 - ii) submit the Community Infrastructure Levy Draft Charging Schedule with additional modifications to the Secretary of State,
 - iii) make any further additional and major modifications necessary to the Community Infrastructure Levy Draft Charging Schedule during its examination, and
 - iv) undertake required public engagement arising as a result of additional and major modifications if made to the Community Infrastructure Draft Charging Schedule as a result of (3)iii above)
- (5) approve publication of the Draft Planning Obligations Supplementary Planning Document for public consultation.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 17th July 2017.

1.4 Council Plan and Policy Framework

The Local Development Scheme sets out the timetable for the production of the Authority's Local Plan and its other supporting documents. Collectively, these are key mechanisms to delivering a number of the objectives of the "Our North Tyneside Plan", including:

- Our people will be listened to, and involved by responsive, enabling services;
- Our places will be great places to live, and attract others to visit or work here;
- Our economy will grow by building on our strengths and having the right skills and conditions to support investment; and
- Our partners include police, fire and rescue, NHS, the voluntary sector, schools and businesses.

A further range of adopted policy documents and strategies highlight key principles that should drive the Authority's approach to infrastructure delivery. The strategic context establishes in particular commitment to sustainable growth to meet the needs of the Borough and region; enhancement of our environment; support for active lifestyles, health and wellbeing; and delivery of high quality and affordable housing:

- ***The North Tyneside Local Plan 2017:*** a framework for growth and development to 2032 and providing the justification for seeking developer contributions. The adoption of the Local Plan is one of the indicators of success in the 'Our North Tyneside Plan'
- ***Housing Strategy 2016 to 2021 'A Great Place to Live':*** setting objectives to achieve 'More and better homes', 'Great places to live', 'Better housing, better health and wellbeing', and 'Better homes, more independence'.
- ***Transport Strategy 2017 to 2032 'North Tyneside on the Move':*** principles for transport to 'improve health, safety, wellbeing and environmental sustainability', 'support economic growth', 'improve connectivity', 'enable smart choices for all, and 'manage demand'.
- ***The Joint Strategic Needs Assessment:*** highlights a range of issues and outlines health inequalities within different areas and between residents in North Tyneside.

- **Joint Health and Wellbeing Strategy:** key challenges highlight health inequalities and consideration of health and wellbeing in decision making and development processes.
- **The North East Strategic Economic Plan (SEP):** Prepared by the North Eastern Local Enterprise Partnership (LEP), the SEP establishes regional priorities for growth and will help inform investment decisions for the LEP and North East Combined Authority.
- **Authority Investment Plan:** Infrastructure needs and priorities for delivery should be aligned with current and future iterations of the Investment Plan.

1.5 Information:

Background

- 1.5.1 The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008 and came into force through the Community Infrastructure Levy Regulations 2010. It is a charge which enables funds to be raised from new developments to provide supporting infrastructure. Monies raised through CIL can help pay for strategic and local infrastructure such as highways improvements, schools, flood mitigation, leisure facilities and other community facilities to ensure the Borough grows sustainably.
- 1.5.2 Presently, the Authority seeks infrastructure contributions via Section 106 agreements (s106s) set out within the Planning Obligations Supplementary Planning Document (SPD) (LDD8, 2009).
- 1.5.3 CIL and s106 will operate in parallel within the Borough but there can be no ‘double charging’. In other words, a s106 agreement could not be used to secure the same infrastructure items that the Authority has agreed would be funded by the CIL.

The Infrastructure Needs

- 1.5.4 The supporting evidence to the Local Plan includes an Infrastructure Delivery Plan (IDP) for the Borough and proposed Strategic Allocations at Murton Gap and Killingworth Moor. The IDP Update 2017 considers the future infrastructure requirements arising from anticipated growth and proposed development and has informed the assessment of requirements in setting out the CIL.
- 1.5.5 Preparation of the IDP has included consultation with internal and external consultees involved in the delivery and management of local infrastructure. Potential infrastructure projects are identified across a broad range of infrastructure / service areas that include:
- Affordable homes
 - Biodiversity
 - Health and Sports
 - Roads and Sustainable Transport
 - Digital Connectivity
 - Waste Collection and Disposal
 - Parks, Equipped Play, Allotments
 - Education, Employment and Training
 - Flooding and Sea Defence
 - Street Cleaning
 - Culture, Art, Public Realm and Regeneration
 - Community Services & Facilities
- 1.5.6 The IDP Update 2017 outlines further details of the Borough’s infrastructure needs and categorises each project as either:
- Critical projects that must be delivered for development to avoid substantial harm.
 - Important projects that would have a significant role in ensuring sustainability.
 - Desirable projects that could benefit the Borough’s overall resilience to growth.

- 1.5.7 The infrastructure proposed within the IDP may be delivered via CIL, site specific planning obligations or external public and private funding opportunities that may arise and deliver specific projects in full or supplement any developer contributions that are secured.
- 1.5.8 In accordance with Regulation 123 of the Community Infrastructure Levy Regulations 2010 ('The Regulations'), Authorities must publish a list of the infrastructure to be funded through the CIL known as a "Regulation 123 List". Without such a list, the Regulations assume that all infrastructure would be collected through CIL and the Authority would not be able to collect any s106 monies. The Regulation 123 list is determined by the Authority after consultation and it may be amended at any time following appropriate local consultation.
- 1.5.9 Appendix 1 sets out a Draft Regulation 123 List to be published alongside publication of the Draft CIL Charging Schedule. The Infrastructure identified in the draft 123 List has been identified based upon overall scale and strategic nature and capacity to support delivery of the Authority's key priorities around education, health and wellbeing, and sustainable travel.

The Community Infrastructure Levy

- 1.5.10 The process for preparation and adoption of Community Infrastructure Levy (CIL) is included at Appendix 2. Cabinet at its meeting of 13th February 2017 approved the first step by agreeing a Preliminary Draft Charging Schedule for consultation. This consultation concluded on 7 April 2017. A total of 9 responses were received from a mixture of residents, house builders, business and stakeholders. A full schedule and officer response to all the comments received is included at Appendix 3.
- 1.5.11 Once adopted the CIL imposes a flat rate and non-negotiable charge for all 'qualifying' developments. Developments exempt from the CIL include affordable housing relief (where the housing is rented or shared ownership) and any schemes proposed by charitable institutions. For CIL purposes affordable housing does not include most forms of discounted market housing.
- 1.5.12 The CIL is a flat rate financial charge per square metre that Local Authorities may choose to levy on a range of developments that result in an internal gross floor area of over 100m² or the creation of a new home. The whole floor space is charged not just the area over 100 square metres.
- 1.5.13 The CIL monies can be spent on any infrastructure deemed necessary to support growth across the Borough, but as noted at paragraph 1.5.8, the infrastructure priorities to be funded through the CIL must be set out in a list, known as a "Regulation 123 List".
- 1.5.14 The CIL offers greater flexibility as to how, when, where and what monies can be spent by the Authority in contrast to s106s which are tied to mitigating the direct impacts of the specific development. In addition the Regulations prevent Local Authorities from pooling funds from more than five s106 agreements to support a single infrastructure project or type of infrastructure.
- 1.5.15 Landowners are ultimately responsible for paying the charge; developers can take on this liability however the liability runs with the land which is why it is registered as a land charge. The charge is usually payable on commencement of development and this will be detailed in the payment schedule as part of the CIL documents.

1.5.16 The CIL Draft Charging Schedule and associated mapping identifying the variation in CIL rates across North Tyneside is attached at Appendix 4 of this Report.

The Planning Obligations Supplementary Planning Document (s106 Agreements)

1.5.17 A review of the existing Local Development Document 8, the Planning Obligations SPD, is required to ensure the Authority's approach to seeking s106 is aligned with the North Tyneside Local Plan 2017. Publication of the Planning Obligations SPD alongside preparation of the CIL Draft Charging Schedule would ensure the Authority's approach to seeking s106 agreements is aligned the use of the CIL and provides transparency for consultees on the overall approach to seeking developer contributions.

1.5.18 The Planning Obligations Supplementary Planning Documents (SPD) outlines the requirements and process for securing s106 agreements. In contrast to CIL, that can meet the Borough wide impacts of growth, s106 agreements must address specific planning impacts of a scheme.

1.5.19 The Planning Obligations SPD provides an important guide for applicants when submitting proposals for development and enables the Authority to demonstrate a consistent approach to seeking such obligations.

1.5.20 The funding secured by s106 agreements will reflect the actual cost of infrastructure required due to the impact of the scheme, and the economic viability of development, including the cost to the scheme of any CIL payments.

1.5.21 The Draft Planning Obligations SPD proposed for publication and consultation is attached at Appendix 5 of this Report.

The value of potential developer contributions from CIL and s106 Agreements

1.5.22 Based upon analysis of the Local Plan housing trajectory to 2032 there are approximately 10,300 homes still requiring planning permission and therefore potentially subject to developer contributions. Having reviewed the nature and location of sites included within the housing trajectory it is projected that the total revenue secured through CIL and s106 would be approximately £78m.

1.5.23 Delivery of affordable housing is a key priority for the Authority that must be delivered by new development. As the Regulations specifically exclude affordable homes as a type of infrastructure that could be support by CIL, the delivery of the Authority's requirement for 25% of new homes to be affordable must therefore be secured through s106 agreements and is addressed through the Planning Obligations SPD. The Local Plan seeks affordable housing provision on the site of the application in all but exceptional circumstances. Given these specific factors relating to affordable housing the analysis of infrastructure costs and funding in this Report does not include affordable homes.

The economic viability of proposed CIL and s106 developer contributions

1.5.24 An update to the Authority's Area Wide Viability Assessment has been undertaken to assess the impact of CIL and estimated s106 charges upon development. In addition the average contribution from potential developments has been tested to consider the impact of developer contributions upon the economic viability of development. The Authority cannot impose a CIL charge that would render development in the Borough unviable, when all potential costs for development are taken into account.

1.5.25 The estimated pool of developer contributions from CIL and s106 agreements of £78m has been tested through a further update to the North Tyneside Area Wide Viability Assessment.

Other sources of funding for Infrastructure

- 1.5.26 In addition to CIL and s106 agreements, planning applicants may also be required to undertake improvements to the Borough's highway through conditions attached to planning decisions. Such conditions are enabled through the use of s278 agreements, which enable developers to undertake works to adopted highways. The value of such works makes can result in significant investments in the Borough's road infrastructure.
- 1.5.27 Meanwhile, beyond developer contributions, potential funding to deliver infrastructure will arise through a variety of sources in addition to developer contributions. This may include specific grants and support from regional and national funds through investment by organisations such as the Environment Agency or Highway's England. Investment from private companies may also take place such as Northumbrian Water Ltd. Meanwhile the North East Local Enterprise Partnership and North East Combined Authority will also provide opportunities for investment that would support the infrastructure needs of the Borough.

1.5.28 The next steps

Community Infrastructure Levy

- 1.5.29 Statutory consultation on the Community Infrastructure Levy Draft Charging Schedule is proposed for a period of four weeks. Following conclusion of this consultation any responses received must be considered by the Authority and submitted, along with the Draft Charging Schedule, to the Secretary of State. The Secretary of State will then appoint an independent Inspector to carry out an examination in public upon the proposed CIL charge.
- 1.5.30 Table 2 sets out the anticipated key stages in preparation of the CIL.

Table 2: Community Infrastructure Levy Programme

Cabinet 14 th August 2017	Draft Charging Schedule and Regulation 123 List for consultation and future submission to the Secretary of State.
Public Consultation 25 th August to 25 th Sept 2017	Statutory four week public consultation on Draft Charging Schedule.
Submission to Secretary of State October 2017	Following public consultation and review of proposed Charging Schedule, submission to Secretary of State for examination.
Examination and Adoption October 2017 to March 2018	Examination programme and receipt of Inspector's Report dependent upon Planning Inspectorate. Cabinet to adopt final CIL Charging Schedule.

Planning Obligations Supplementary Planning Document

- 1.5.31 When statutory engagement is undertaken on the CIL, the Planning Obligations SPD will also be published for consultation. As a supplementary planning document, the SPD will not be subject to the same formal process as CIL. This means following consultation the SPD will not require submission to the Secretary of State for examination. However, it is probable that the draft SPD will be provided as a supporting document to inform consideration of the Authority's proposed CIL by a Planning Inspector.

1.5.32 The responses received during consultation will be considered and any further changes made before completing the final Planning Obligations SPD. This final Planning Obligations SPD will be presented to Cabinet for adoption.

Infrastructure Delivery – strategic priorities and governance

1.5.33 Further consideration is needed to support the ongoing management of CIL and s106 funding to enable:

- Administration and management of the infrastructure projects on the Reg. 123 List and remaining critical, important and desirable infrastructure.
- Effective strategic co-ordination of developer contributions with potential additional sources of funding.

1.5.34 This may require a designated body to oversee developer contributions funding – either via existing management structures in the Authority or creation of a specific board. The specific arrangements for this will be presented to Cabinet when the final CIL Charging Schedule is proposed for adoption.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Agree with the recommendations as set out at paragraph 1.2 of this report.

Option 2

Decline to approve the recommendations in paragraph 1.2 of this Report and request the Head of Environment, Housing and Leisure in consultation with the Cabinet Member for Housing and Transport and the Head of Law and Governance to review the proposed Regulation 123 List, Draft Charging Schedule, and / or Draft Planning Obligations SPD.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Option 1 is recommended for the following reasons:

The development of a CIL Charging Schedule would enable the Authority to ensure that new development contributes proportionately to strategic infrastructure provision. The charging schedule set out is set at a level that reflects the priority infrastructure the Authority can best deliver via the mechanism of CIL payments and has been tested as economically viable.

Changes to the role of s106s now limit the pooling of contributions for the infrastructure needed to support new development making introduction of a suitable CIL Charging Schedule vital to infrastructure delivery.

Without the introduction of CIL it will only be possible to pool a maximum of five s106 planning contributions for an item or type of infrastructure, thus reducing the Authority's ability to ensure that new development contributes proportionately to infrastructure provision and would present a missed opportunity to collect contributions and provide benefits to these areas.

1.8 Appendices:

Appendix 1: Draft Infrastructure Schedule (Regulation 123 List), August 2017
Appendix 2: The Process for Introducing Community Infrastructure Levy
Appendix 3: Preliminary Draft Charging Schedule Consultation Report
Appendix 4: Community Infrastructure Levy Draft Charging Schedule
Appendix 5: Draft Planning Obligations Supplementary Planning Document

1.9 Contact officers:

Jackie Palmer, Planning Manager (0191 643 6336)
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Alison Campbell, Senior Business Partner (0191 643 7038)

1.10 Background information:

The following background information has been used in the compilation of this report and is available at the office of the author:

1. The Town and Country Planning Act, 1990
2. [Planning and Compulsory Purchase Act 2004.](#)
3. [Planning Act 2008.](#)
4. [Localism Act 2011](#)
5. [Town & Country Planning \(Local Planning\)\(England\) Regulations 2012.](#)
6. [The Community Infrastructure Levy Regulations 2010 \(as amended\)](#)
7. [The North Tyneside Local Development Scheme Cabinet Report \(October 2016\)](#)
8. [North Tyneside Local Plan Pre-Submission Draft \(2015\)](#)
9. [Community Infrastructure Levy: Preliminary Draft Charging Schedule Cabinet \(February 2017\)](#)
10. [North Tyneside Preliminary Draft Charging Schedule, February 2017](#)
11. [Infrastructure Delivery Plan, Update 2017 and Infrastructure Delivery Schedule](#)
12. [North Tyneside Area Wide Viability Assessment](#)

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The staff, printing and other costs to consult on the Draft Charging Schedule for CIL and Draft Planning Obligations Supplementary Development Plan will be met from within the existing Authority budgets.

Introduction of CIL is not expected to have an impact upon the overall financial position of the Authority as the primary outcome is expected to be an adjustment in the collection of planning gain in terms of use of s106 and CIL in parallel. Upon final adoption of the CIL when the charging rates are set the potential financial implications will be considered.

2.2 Legal

The power to charge the CIL is contained within Part 11 (Section 205-225) of the Planning Act 2008 (“the Act”) and the Community Infrastructure Levy Regulations 2010 (as amended) (“the CIL Regulations”). The CIL is defined as an imposition of a charge, with the aim that the CIL is to ensure costs incurred supporting the development of an area can be funded (wholly or partly)

by owners or developers of land in a way that does not make development of the area economically unviable (Section 205(1) and (2) of the Act). Subject to certain exceptions, the CIL must be applied to supporting the development of the Authority's area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (which may include infrastructure outside its area).

The use of s106 agreements, guided by a Planning Obligations SPD, is originally established in Section 106 of the Town and Country Planning Act 1990. S106 agreements are tied to mitigating the direct impacts of the specific development and must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

The Local Plan and its supporting documents forms part of the Authority's Policy Framework and is required to be formulated and progressed in compliance with the requirements of the Policy Framework Procedure Rules at section 4.7 of the Authority's Constitution. The CIL and Planning Obligations SPD do not form part of the Local Plan and therefore does not require approval in accordance with the Policy Framework Procedure and can be agreed by Cabinet.

2.3 Consultation/community engagement

2.3.1 Internal Consultation

Policy direction has been taken from the Mayor and Cabinet on the preparation of CIL and the Infrastructure Schedule. Engagement has been undertaken with the Local Plan Steering Group (which includes the Deputy Mayor and Cabinet Member for Housing and Transport) for both the need for the CIL and the proposed timetable for taking it forward. The Planning Team have also held internal consultation with a range of officers currently engaged in collecting and spending s106 monies within the Authority such as in the Education and Highways teams to obtain views on the impact of collecting funds via s106 and the CIL.

2.3.2 External Consultation/Engagement

At this time only Newcastle City Council and Gateshead Council have an adopted CIL (November 2016) in the North East. Through the on-going duty to cooperate requirements, this Authority has and will continue to liaise with these authorities to ensure consistency in approach and implementation.

Consultation pursuant to Regulation 15 of the CIL Regulations 2010 was undertaken between February and April 2017 on the CIL Preliminary Draft Charging Schedule (PDCS). Under that Regulation, the Authority must send a copy of the PDCS and invite representations from each of the consultation bodies (local planning authorities whose area is in or adjoins the Authority area and Parish Councils in the Authority's area). The Authority must also invite representations on the PDCS from persons who are resident or carrying on business in its area and as the Authority considers appropriate from voluntary bodies (some or all of whose activities benefit the Authority's area) and bodies which represent the interests of persons carrying on business in the Authority's area. The Authority received 9 responses and a schedule of comments received is included as an Appendix with this report.

Publication of the Draft Charging Schedule will be subject to the same provisions as those undertaken for the Preliminary Draft Charging Schedule. All representation received at this stage will be submitted to the Secretary of State alongside the Authority's submitted Draft Charging Schedule.

2.4 Human rights

There are no human rights implications directly arising from this report.

2.5 Equalities and diversity

There are no direct implications arising from this report.

2.6 Risk management

The risks associated with the preparation and engagement on the Local Plan have previously been assessed. The risks identified have been added to the relevant risk register. They are being managed using the Authority's risk management process.

Failure to develop a CIL Charging Schedule would reduce the Authority's ability to ensure that new development contributes proportionately to infrastructure provision. Failure to adopt a CIL would mean that the Borough would be missing the opportunity to collect contributions and provide benefits to these areas. This would be further curtailed by the limitations associated with the pooling of s106s for the infrastructure needed to support new development.

2.7 Crime and disorder

There are no crime and disorder implications directly arising from this report.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head(s) of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy