**LDF PMB and MAG Combined Group**

**Core Strategy Workshop 11 – January 18th 2012**
**Proposed Community Infrastructure Levy**

**Report by Jean Marshall – Spatial Policy Team Leader**

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## Purpose

To receive the report by Consultants on the "Community Infrastructure Levy (CIL) Evidence Base" in the context of the recommendation by Project Management Board to proceed with a CIL based approach to obligations in future taken at Workshop 8 on 29th September 2011. This recommendation was made in considering the Consultant's, Baker Tym's, first concluded report on the Approach to Developer Contributions. It is also to draw Members attention to the fact that the CIL Evidence Base report is in fact the Viability and Marketing Assessment required of Authorities in formulating a charging schedule (required for CIL). The report will make recommendations in relation to proceeding with a Charging Schedule and in particular the implications for such of the Viability and Marketing conditions currently within South Somerset and will present a slightly revised project plan to that in the Approach to Developer Contributions report for delivery of a concurrent Charging Schedule to reflect linkages to the Core Strategy process and practical matters.

## Recommendation

That the Project Management Board

1. note the contents and findings of Baker/Tym Consultant's report Community Infrastructure Levy Evidence Base" (Appendix A)
2. note the resources that are being put into place to move towards CIL concurrently with the Core Strategy as recommended at PMB 8 and to endorse the proposed project plan forward in an amended timescale reflecting linkages with the Core Strategy programme and including a Member Workshop on CIL in early February. (see amended project timescale attached at Appendix B)
3. endorse the conclusions below to the effect that the emerging Charging Schedule sets differential rates of CIL (for both residential and non residential development), based on the findings of the CIL Evidence base (Appendix A) as amended with further evidence and argument within this report, with the 35% affordable housing target maintained as the Council's priority where practical,

    i. CIL rate of £150/sqm for each qualifying residential dwelling be set for all developments except within the identified Chard and Yeovil Urban Extensions
    ii. A CIL rate of £32/sqm be set for new residential dwellings within the Yeovil Urban Extension (and continue to seek affordable housing at 35%)
    iii. A CIL rate of £100/sqm be set for new residential dwellings within the Chard Urban Extension/Chard Eastern Development Area (and seek affordable housing at a rate of 15% to maintain viability)
    iv. A CIL rate of £200/sqm be set for new large format retail development (of over 2,500sqm gross floorspace)
    v. A CIL rate of £0/sqm be set for all other development

4. Endorse the recommendation to introduce an affordable housing supplement on small sites of 5 dwellings or less and a subsequent amendment to policy HG4 on affordable housing (subject to confirmation by oral report on 18th January on the practicalities of an affordable housing supplement policy)*

5. Note the ability to establish a charge for the collection and administration of the Levy to be taken from Levy return of up to 3% for the collection and an undetermined amount for administration. The responsibility for setting this charge and its level should be deferred to a future Member Working Group proposed to deal with maintenance of the IDP database and for establishing priorities for infrastructure funding (see associated report on IDP)
6. Note the representations received on the Planning Obligations policies of the draft Core Strategy and that these do not raise issues that counter the representations of the Consultants in relation to CIL.

*Members are asked to note that further work is being carried out with regard to viability and affordable housing on small sites (1-5 dwellings), which will be finalised by 18th January and will be orally reported.

**Background**

The group will recall that at their meeting (PMB/MAG 8) on 29th September 2011 consideration was given to an interim report from Consultants' Bakers/Tym recommending that work should proceed towards a CIL Charging Schedule alongside the emerging Core Strategy. The notes of that meeting indicate that .

***PMB/MAG Agreed – The CIL must run concurrently with Core Strategy and resources found and all the recommendations of the consultants in this approach to Development Obligations be endorsed***

For convenience the list of recommendations from the report considered at PMB/MAG workshop 8 on "Approach to Developer Contributions" is attached at Appendix C

This current report should be considered in light of those decisions made and reflects the updated position on both the project plan and process for moving towards introduction of a CIL and sets out the findings of the final draft version of the document the "CIL Evidence Base" which is a separate viability report to the Infrastructure Delivery Plan itself. The CIL Evidence Base sets out the implications of differing levels of potential levy on the viability of a variety of types of developments and locations, and how these developments and locations might therefore support a Community Infrastructure Levy.

The two reports on "Approach to Developer Contributions" previously considered (recommendations summarised in appendix C) and the "Community Infrastructure Levy Evidence Base" (as attached as Appendix A) set out the structure and methodology for guiding the Council in its approach to collecting monies towards the funding of infrastructure in the future. The consultants Baker/Tym carrying out the Infrastructure Delivery Plan (IDP) work were asked to consider how best to achieve any funding shortfall identified from the IDP for the delivery of infrastructure. The current draft Core Strategy has indicated that a planning obligation approach will be used until such time as a charging schedule under the Community Infrastructure Levy (CIL) can be derived and the consultants were asked to consider how robust the current approach is and to provide a methodology for moving towards adoption of CIL. In doing so the consultants have had regard to the fact that CIL is optional and

have provided advice on the advantages and disadvantages of adopting a CIL or not doing so and recommend adoption of CIL as quickly as possible. This recommendation has been considered at PMB Workshop 8 and endorsed to present to District Executive in February.

**Report**

Moving to CIL

In relation to the recommendation to move to a CIL, the work already carried out as part of the CIL evidence base has already undertaken and sets out detailed market and viability analysis and makes recommendations as to the possible rates of CIL that the Council could set. Whilst viability will move up and down over time the guidance on CIL makes it clear that the Council should set a rate of CIL based on the majority of proposed sites being viable at the time of adoption of the CIL charging schedule, not necessarily a rate at which all sites are viable. The CIL charge can be reset at any time by going through the legislative procedures providing it is based on new evidence so there is scope to reconsider the levels set through the correct procedures if the market fluctuates wildly but once set the rate of CIL is non negotiable. In reality, it is probable that the rate would not be reconsidered more frequently than every 3-5 years.

This is the fundamental difference between the S106 approach that we currently have in place whereby the level of planning obligation can be negotiated on a site-by-site basis with the Council having an existing Protocol of open book negotiations when development viability is presented as an issue. Once set the CIL levy is final and becomes payable on every site falling under the charging schedule. This gives a degree of certainty to the developer about the level of charge the Council will make for principally off site infrastructure. It must be remembered that on site infrastructure and that which is a direct result of a proposed development will still fall to be considered under S106 in addition to the CIL charge. Affordable housing will also continue to be covered by S106 although there is a current consultation being carried out by DCLG as to whether or not affordable housing should form part of CIL. Should this happen there will need to be a reconsideration of the reports as currently drafted.

The key principles of CIL were set out in paragraph 2.13 in the Consultants report on development contributions and are reproduced in Appendix D and it should be noted that the Council cannot adopt a CIL until its Core Strategy is adopted (but can do so virtually straight after provided the CS is found sound) and that CIL can be collected from all types of development within some size and tenure limitations. Differential rates can also be set provided there is reasoned justification for doing so. There are very clear strengths of moving to a CIL and the PMB/MAG have already agreed to support this approach at Workshop 8 in the light of the Approach to Developer Contributions report that set out the relative pros and cons of going to a CIL approach. In doing so there is the proposal to simplify the current suite of planning obligations policies to a single policy that will provide the continuing framework for S106 negotiations until a CIL is adopted. Although all the advantages and disadvantages of moving to a CIL have already been considered by PMB, it is important to emphasis that a significant benefit of CIL is that is can be charged on all new development (above certain thresholds) whereas S106 planning obligations are normally only applied to major developments, thus the amount of money which can be accrued for infrastructure is more fairly distributed across all growth, rather than relying on major development.

Timing and resourcing for Charging Schedule

The CIL charging schedule project plan set out in the Approach to Developer Contributions report and approved at Workshop 8 has been revised to reflect the need to run concurrently with the Core Strategy and to expand on the linkages between the Core Strategy and the Charging Schedule timetables. This revised Project Plan is attached at Appendix B. This identifies a series of stages to progress the CIL charging schedule but the work required for market appraisal and viability testing has effectively already been carried out by the consultants. It is therefore recommended that this be used for the first stage of formal consultation on the charging schedule i.e. the preliminary draft charging schedule (providing no further changes in legislation arise prior to publication of this draft - in particular reference to affordable housing).

As can be seen from the proposed timescale it is important that the Council makes an early decision to move to CIL. There are two consultations required for CIL and if the Council is to benefit from joint consultation on the Draft Charging Schedule alongside the Proposed Submission version of the Core Strategy, and thus be able to benefit from joint consultation and a consecutive examination on the Charging Schedule following the Core Strategy Examination, the second consultation needs to take place in May/June. In order to do so the Preliminary Draft Charging schedule would need to go out to consultation in March/April (4 - 6 weeks) and thus it is recommended that a report go to DX and to Full Council in February with the Preliminary draft consultation taking place immediately a move to CIL is endorsed.

The report to February DX would deal with the Consultants recommendations on Planning Obligations policy and the move to CIL, the representations made on these matters during consultation on the draft Core Strategy and the Consultants recommendations on the viability of development and prospective CIL rates. This would mean taking the issue of planning obligation policy and move to CIL out of sequence and early in relation to the rest of the Core Strategy policy and proposals. However there is good reason to do this in timetabling terms and in order to move quickly to a CIL, to avoid confusion in doing so and to improve the efficiency of the consultation and Examination processes ahead.

The risk of waiting until Full Council endorse the Core Strategy, currently provisionally in April, is that the charging schedule would not dove tail into the programme for the Core Strategy and would trail some 2-3 months behind due to the two consultations necessary. There is also the risk that any delays in the charging schedule may result in the data and viability analyses carried out by the consultants becoming out of date. Early consideration of this one issue will not prejudice consideration of the rest of the Core Strategy representations.

It would seem appropriate to undertake the Member Workshop (promised as part of the Consultant's submission to do the IDP and CIL work) after receipt of the Consultant's reports and especially the Approach to Developer Contributions and the CIL Evidence Base and before Member consideration of the reports at Full Council in February. The workshop would be the opportunity to supplement that undertaken by the Planning Advisory Service on the same date as the Project Management Board meet to consider this report, 18th January. It would serve to explain CIL in more detail to members prior to their consideration of the specific report on CIL, explain why CIL consideration has come in advance of the wider Core Strategy and the IDP, explain the linkages to the IDP and set out the likely timescale for further active consideration of prioritisation of funding and the potential wider Member involvement in this.

There are resource implications of proceeding with a concurrent Charging Schedule alongside the Core Strategy as previously indicated (PMB/MAG Workshop 8 29th September). The principal of extending the secondment of the Spatial Policy Team Leader to the end of March 2013, to address the need for 1 expert officer exclusively working on the Charging Schedule as recommended by the Consultants in the Approach to Developer funding Report, is agreed in principal and funding can be found (coming from HPDG). The need for administrative support recognised in the Consultants report is felt best supplied, given its uneven requirement throughout the year, from the existing planning admin team with additional funding to backfill in any period when the needed administrative support comes when the team is fully committed on Development Management or other matters. An appropriate sum can be set aside from the same source of moneys (HPDG). A verbal update will be given on progress on these matters.

Charging levy rates

In terms of the proposed levels of CIL which could be charged, Appendix 1 of the Consultant's report (Appendix A) sets out the notional viability appraisals which have been undertaken for both residential and non residential development and these will form the basis of data for the preliminary charging schedule. Whilst the overall amount which may be derived from a CIL will vary from that shown, given that it cannot be charged on extant consents and will not be chargeable until adoption, estimated at Spring 2013, the principles and methodology set out are robust. The figures quoted indicate the amounts that could be derived with the current proposed levels of residential and non-residential growth as set out in the Core Strategy and with the current levels of residual development that would be liable for CIL.

*Residential rates and viability*

Section 4 of the CIL Evidence Base report sets out the findings of testing various typologies of development which are likely to come forward over the plan period. The biggest factor affecting viability of sites is the proportion of affordable housing to open market housing. Table 4.1 identifies the various models tested and it can be seen that with the policy requirement for 35% affordable housing (assuming this remains separate from the CIL), all development types with exception of the urban extensions proposed at Chard and Yeovil remain viable with a CIL rate set at £100/sq.m.

The urban extensions, by their nature as greenfield developments, generate larger infrastructure costs and are found not to be viable with a full 35% affordable housing and a CIL at £100/sq.m and in particular the additional costs of "eco-town standards" for the Yeovil Urban Extension renders this unviable. There is therefore a choice to be made as to whether to:

a) maintain a single rate of CIL for all qualifying residential development and to reduce the levels of affordable housing achieved in the two urban extensions or
b) have a differential rate of CIL in the two urban extensions in recognition of their significant infrastructure costs and maintain the 35% affordable housing requirement in line with policy or

If Option a) is chosen it is indicated that the proportion of affordable housing that could be achieved at a Yeovil Urban Extension (YUE) if CIL remains at £100/sq.m is 25% and at Chard Urban Extension is 15%. This would also mean that eco town standards could not be achieved in the Yeovil Urban extension as a minimum of 30% affordable housing is required under these standards. If Option b) is chosen and the

35% affordable housing rate is maintained across all appropriate development, this would currently indicate a CIL rate of £32/sq/m at Yeovil and £0 at Chard would be viable.

In addition, option b can be developed into a further option presented within the report that indicates that a higher rate of CIL could be supported at a rate of £150/sq.m for sites of all sizes apart from the two largest (Yeovil UE and Chard).

It is considered that the Council should seek to maximise both CIL returns and affordable housing provision within the crucial constraint of site(s) viability. In relation to the above options the Consultants were requested to provide an assessment of returns from CIL based on the housing trajectory underlining their IDP. The assessments were made for the 3 basic options presented above and this is set out at appendix E. Whilst this shows that the Council receive most CIL with the straightforward CIL rate of £100/ sqm it is considered that the Council will receive the best result in relation to both CIL returns and affordable housing provision if the third suggested option above be pursued i.e. £150/sq m for all sites apart from the Yeovil Urban extension where 35% affordable housing will mean £32/sq m to retain viable sites and £0/sq m for Chard. This is the recommendation from the Consultant's report although presented without reference to the cumulative value of potential CIL fund collection and is considered one that should be endorsed in the main. A modification to this recommendation in relation to Chard to enable some financial provision for infrastructure coming forward from the Chard site would point to £100/sqm contribution from CIL at the expense of a lower affordable housing provision of 15% in the current market and this is a recommended variation to the Consultant's conclusion.

The "Affordable Housing Threshold Viability Study (May 2010) carried out by Fordham provided advice to the Council of viability of small sites in the provision of affordable housing. This identified that sites of 5 and less could not afford to provide affordable housing and therefore it is unlikely that they could carry both a CIL charge and affordable housing. This has been substantiated in principle by the CIL Evidence base work. In the interests however, of equity of contribution and in recognition that smaller sites might be unaffordable at full rates of affordable housing provision alongside the CIL charge but affordable at some smaller level of affordable housing contribution further work has therefore been commissioned. Baker /Tym Consultants have been tasked to see if an additional affordable housing supplement could be obtained alongside CIL from these small sites. If it were demonstrated that such an additional payment towards affordable housing provision could be achieved whilst maintaining general viability of small sites there would need to be an appropriate amendment to the affordable housing policy. This would take the form of an additional policy sentence at the end of the Policy along the following lines

"small sites below the threshold for full affordable housing contribution will be expected to pay an affordable housing contribution of commuted sum equivalent to 5% affordable housing provision on site. This would be over and above the relevant standard CIL contribution"

The consultants are expected to report on the findings of this further work on an affordable housing supplement immediately prior to 18th January so the suggestion above will be subject to the outcome of this report and an oral update will be presented for full consideration on this issue at the Project Management Board meeting.

*Non-residential Viability*

As can be seen from sections 2 and 5 of the Consultant's report, there are a considerable number of non-residential use classes that have been tested with CIL and these have a significantly different viability. Of those uses tested the conclusion is that with the present market conditions the only uses which would be viable and could support a CIL charge are A1 retailing in particular, retail warehouses and large format retailing. Although the Core Strategy does indicate growth in retailing for both comparison and convenience goods over the plan period, it is difficult to predict what scale of shop units will be provided but it would be appropriate to set a CIL rate for those types of retail, which are viable. The report suggests various options, such as setting a CIL rate at £300/sqm for supermarkets and £200/sqm for large format retail, a 0 CIL rate for all other retailing, a low rate of £100/sqm for all other retailing and a variable rate with £200/sqm for large format retail and £0/sqm for smaller format retailing. It advocates a figure of £200/sqm in order to avoid putting smaller more conventional retail developments in town centres and elsewhere at risk for undue cost. The £200/sqm is advocated in order to retain headroom for changes in value and retain a sensible risk of avoiding putting the larger format developments also at risk. This recommendation is considered one that should be endorsed for the reasons set out.

For both positive CIL rates proposed (residential and large format retail) the approach chosen is riskier than some of the alternative options presented by virtue of seeking differential rates at higher value. It is felt however that the consultant's work clearly points to these values being reasonable and hence they should be pursued. The Consultant has suggested a further appraisal round to double check the higher levy charge proposal of £150/sqm at a cost of £1,100 and with a delivery time of 10th February and members view on this is suggested.

Collection and administration of CIL

The CIL funds require to be collected and properly administered. The regulations allow for up to 3% of CIL returns to be used for collection and a now undetermined percentage (previously 5% in earlier draft regulations). It is felt that these details on how to collect and administer in an efficient and cost effective way can best be taken forward by a Member Project Group over the coming months and indeed best allied with similar further work required to prioritise funding and maintain and develop the infrastructure database that are considered in the associated report on Infrastructure Planning in South Somerset (the IDP) to be presented to the Project Management Board concurrently with this report.

Representations on Planning Obligations and CIL

The comments set out in appendix F form the responses to the Planning Obligations policies SS7-SS9 of the draft CS and its supporting text. The vast majority of comments relate to the need to ensure adequate provision is made for infrastructure through the use of planning obligations (S106). At the time of the Draft Core Strategy the new regulations for moving to CIL had only just been introduced and therefore the officer comments have been made in light of the greater restrictions now placed on the use of S106s and the requirements of the Council to produce an IDP to support the Core Strategy. Some comments on specific infrastructure have come from stakeholders who have then subsequently fed into the IDP. In addition, some comments have been made about moving to a tariff or roof tax approach and CIL would be similar to this and create more certainty for the developer. Viability of development is also raised and will need to be tested as part of CIL.

There are no specific representations in relation to adopting CIL and therefore the consultant's recommendations can be assessed as they stand, as there are no material issues raised by representees. There is some support for a single planning obligation policy in the interim as recommended by the consultants.  Concerns about viability of development are of course addressed directly by the CIL Evidence Base report, which is a formal Viability Assessment in essence.