

Cheltenham Borough Council
Cabinet – 14 April 2015
Community Infrastructure Levy – Draft Preliminary
Charging Schedule

Accountable member	Councillor Jordan - Leader
Accountable officer	Tracey Crews – Head of Planning
Ward(s) affected	All
Key/Significant Decision	Yes
Executive summary	<p>Further to agreement by Cabinet on 18 June 2013 to progress preparation of a Community Infrastructure Levy (CIL) for Cheltenham, The Borough Council in collaboration with Gloucester and Tewkesbury councils appointed Peter Brett Associates to consider whether a CIL should be taken forward. The reports appended to this covering report explain the assessment undertaken and details the potential CIL rates. This has been developed into a Preliminary Draft Charging Schedule for consultation.</p> <p>The preparation of a CIL Charging Schedule will enable the Council to ensure that new development contributes proportionately to infrastructure provision to support development in the area.</p> <p>The development of a CIL supports delivery of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and the Cheltenham Plan. Consultation on a Preliminary Draft Charging Schedule allows the Council to collect the views of the community and development professionals operating in the borough, and allows further consideration of bringing in a CIL and outlines possible charging rates.</p>
Recommendations	<ol style="list-style-type: none"> 1. To endorse the Community Infrastructure Levy - Preliminary Draft Charging Schedule for public consultation. 2. Authorise the Head of Planning in consultation with the Leader of the Council to prepare the final consultation documents as required, based on the information in Appendix 2. 3. Authorise the Head of Planning to agree the date of consultation on the Preliminary Draft Charging Schedule with Gloucester and Tewkesbury Councils. 4. That a report is prepared following the consultation on the Preliminary Draft Charging Schedule and reported to a subsequent meeting of Cabinet. 5. Each Joint Core Strategy partner agrees to contribute £25,000 per authority to underwrite the set up costs of developing a CIL.

Financial implications	<p>The Community Infrastructure Levy Cabinet Report dated 18th June 2013 flagged that the statutory process involving formal consultation and public examination would have a financial impact in terms of both set up and on-going costs. Budgetary provision at this stage was not specifically set aside by the partner councils.</p> <p>The costs incurred in 2014/15 are £82,000 to date. A proportion of these set-up costs will be covered by the Homes and Communities Agency fund LSIF (Large Site Infrastructure Fund), and the Joint Core Strategy Reserve will be used to cover the balance of costs incurred in 2014/15.</p> <p>This will leave a depleted JCS Reserve as at 31st March 2015.</p> <p>Further to this, there are likely to be additional costs of c.£75,000 in 2015/16 whilst the process moves through the consultation and examination phases. To cover these costs a recommendation is made to seek approval for a £25,000 contribution per partner council.</p> <p>The Council will need to fund this from either the 2014/15 outturn position, provided an underspend is achieved, or at worst the expenditure will have to be met from general balances.</p> <p>Should CIL be adopted by the Council, as well as set-up costs, there will be an ongoing cost to administer the scheme. This will need to be fully understood and costed during the next stage of the project, giving consideration to the Regulations, which provide for Charging Authorities to use up to 5% of the annual CIL income to administer the system, as well as the opportunity to recover some of the set-up costs incurred up to 2 years prior to adoption.</p> <p>Contact officer: Nina Philippidis, Business Partner Accountant, nina.philippidis@cheltenham.gcsx.gov.uk, 01242 264121</p>
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<p>Legal implications</p>	<p>Under provisions within the Planning Act 2008 and the Community Infrastructure Regulations 2010 ("the CIL Regulations") a charging authority (District Council local planning authorities in two tier areas) may charge CIL in respect of certain development in its area. A charging authority which proposes to charge CIL must issue a Charging Schedule setting rates or other criteria by reference to which the amount of CIL in respect of development is to be determined.</p> <p>In setting the rates and other criteria the charging authority must use appropriate evidence and have regard to actual and expected costs of infrastructure and other actual and expected sources of funding for infrastructure. The charging authority (including in setting differential rates) must strike an appropriate balance between the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area and the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area.</p> <p>Subject to certain exceptions CIL must be applied to supporting development of its area by funding the provision, improvement, replacement, operation or maintenance of infrastructure (which may include infrastructure outside its area).</p> <p>The procedures to be followed by a charging authority proposing to begin charging CIL include the preparation of a Preliminary Draft Charging Schedule ("PDCS") for consultation. Under regulation 15 of the CIL Regulations, the charging authority must send a copy of the PDCS and invite representations from each of the consultation bodies (County Councils and local planning authorities whose area is in or adjoins the charging authority's area and parish councils in the charging authority's area).</p> <p>The charging authority must also invite representations on the PDCS from persons who are resident or carrying on business in its area and as the charging authority considers appropriate from voluntary bodies (some or all of whose activities benefit the charging authority's area) and bodies which represent the interests of persons carrying on business in the charging authority's area. The charging authority must make such arrangements as it considers appropriate for these representations under paragraph.</p> <p>The charging authority must take into account any representations made to it under regulation 15 before it publishes a draft of the charging schedule for examination.</p> <p>Contact officer: Cheryl Lester, Solicitor, legal.services@teWKesbury.gov.uk , 01684 272013</p>
<p>HR implications (including learning and organisational development)</p>	<p>No implications at this stage.</p>

Key risks	If the Council was not to adopt and implement a CIL the Council would not be able to collect developer contributions towards infrastructure costs to its full potential given the limited use of Section 106 planning obligations from April 2015.
Corporate plan Implications	By delivering infrastructure needed to support new development and mitigate against the impact of new development CIL would contribute to supporting objectives of the corporate plan.
Environmental and climate change implications	No implications at this stage of the drafting of a CIL for Cheltenham Borough. However the purpose of CIL is to collect the appropriate funds that will fund the infrastructure required arising from new development. Some of this infrastructure will have positive implications on the environment
Property/Asset Implications	No implications

1. Background

1.1 This report follows resolution by Cabinet on 18 June 2013 to progress the preparation of a draft Community Infrastructure Levy (CIL) Charging Schedule for Cheltenham together with investigating options for the delivery of strategic priorities which have implications beyond the administrative boundaries of Cheltenham Borough. This work was scheduled to be progressed during 2014 however resources were refocused on delivery of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy. Due to the time lapse between this and the previous report a refresh of role and purpose of CIL is provided.

1.2 CIL was introduced in the Planning Act 2008 with further information set out in subsequent Regulations. CIL is intended to be used for general infrastructure contributions whereas Section 106 obligations are for site specific mitigation. The introduction of CIL was a response to continuing concerns about the use of Section 106 obligations, including

- Lack of transparency,
- ineffective in providing for major infrastructure and the needs arising from cumulative development,
- have a disproportionate impact on larger developments, and
- most developments do not contribute.

The set charges and the legal obligation to pay a CIL where introduced are intended to bring much greater certainty and to capture a broader range of development to contribute.

1.3 CIL remains discretionary for the Local Planning Authority. However scaling back the use of Section 106 obligations is not discretionary and will have significant impacts for those local planning authorities deciding not to adopt CIL. In bringing forward the CIL regime the Government has clearly set out its intention that it expects all local planning authorities to fully understand the realities of economic viability. This report sets out the benefits of introducing CIL and scaling back on negotiation of Section 106 obligations.

1.4 CIL differs fundamentally from Section 106 obligations in that the funds collected are not tied to a specific development or the provision of specific infrastructure. Unlike infrastructure provided through Section 106 obligations, which must be necessary to mitigate the impact of a particular development and used only for that specific purpose, CIL funds can be used flexibly by the local planning authority to fund any infrastructure as defined within the regulations. They can be pooled freely (unlike Section 106 post April 2015) to fund infrastructure priorities and collectively between authorities towards larger strategic investments.

1.5 Following legislation in 2008, CIL came into effect in April 2010. It allows local authorities in England and Wales to raise funds from development. Charges are levied on new development and are payable when development commences or at staged payments after the commencement of development (if an instalments policy is adopted). The charges are set by the Local Planning Authority, who is called the Charging Authority, should Cheltenham choose to adopt CIL then the charging authority will be Cheltenham Borough Council. The money can be used to contribute to, or to help lever in investment for, a wide range of infrastructure that is needed to support new development.

- 1.6 The Council must spend the CIL income on infrastructure. CIL can fully fund or provide a contribution to the infrastructure needed to facilitate growth and to deliver the development strategy. It is unlikely that CIL will, on its own, fully fund the entire necessary infrastructure within the area and therefore gap funding will need to be secured.
- 1.7 Charging authorities need to strike an appropriate balance between the need to capture funds for infrastructure and the potential effects of the CIL rates upon the economic viability and delivery of development, taken as a whole across its area. The economic evidence on the potential to capture potential land value forms the basis for deriving CIL charges. Viability is tested at a district wide level in setting CIL rates, compared to site by site negotiation under Section 106. It is expected that CIL will capture more of the land value uplift that results from development than Section 106 contributions are able to capture.
- 1.8 There is a defined process for preparing a CIL including an independent examination to test the rates and robustness of the evidence. The process for preparation and approval of the Charging Schedule is set out in legislation (Planning Act 2008 part 11 and the Community Infrastructure Levy Regulations 2010 (as amended)). This involves evidence gathering, consultation and testing at a public independent examination. Once approved, the Charging Schedule does not form part of the development plan but does support it.
- 1.9 The Preliminary Draft Charging Schedule, the output of this report, outlines possible charging rates of CIL. This does not commit the Council to having a CIL or a particular rate at this stage, but allows the Borough Council to collect views of the community and development professionals operating in the Borough. This reflects guidance set out in the national planning practice guidance which sets out that "Charging authorities should seek early engagement with local developers, others in the property industry and infrastructure providers when preparing their charging schedules".

2. What is Infrastructure?

- 2.1 Before considering the detail of CIL it is worth defining what is meant by the term infrastructure. This is broadly defined in the Planning Act 2008. To establish parameters infrastructure can be split into 3 broad categories.
 1. **Physical infrastructure** e.g. highways, transport links, cycleways, energy supply, water, flood alleviation, waste management
 2. **Social infrastructure** e.g. education, health, social care, emergency services, art and culture, sport halls, community halls, faith, crematoria
 3. **Green infrastructure** e.g. parks, woodlands, play areas, public open space
- 2.2 Under the legislation affordable housing is not classed as infrastructure and therefore CIL monies generally cannot be spent by the charging authority to fund affordable housing. This puts the onus on local planning authorities to fully understand the realities of costs related to both CIL related infrastructure and affordable housing. Discussion about what is an appropriate balance between the provision of affordable housing and the provision of infrastructure is an important one, comments received through the consultation on the Draft Preliminary Charging Schedule will inform the ongoing conversation about striking the right balance.

3. CIL Versus Section 106 obligations

- 3.1** As noted above the Council has a choice whether to introduce CIL or not. A key influencing factor in considering CIL is that after April 2015 the Council will be unable to pool Section 106 contributions where there have been five or more Section 106 contributions, since April 2010, toward any named project or named type of infrastructure. In practice this means that Section 106 will continue to apply to site specific mitigation measures and on site elements (such as on site open space, affordable housing, play areas, etc.), but the use of Section 106 for pooled contributions (such as major transport or leisure facilities, etc.) will be severely restricted. In general it is proposed that site specific measures, including providing a safe and acceptable means of access to a public highway, will continue to be secured through Section 106 obligations. A summary of the advantages and disadvantages of CIL and S106 are set out in tables 1 and 2 below.

Table 1 - Adopting a CIL

Advantages	Disadvantages
<ul style="list-style-type: none"> • Gives certainty to developers and others about costs • Payable by the majority all new development which relies on the infrastructure – not just the larger schemes • CIL is not limited by negotiation and does not have to relate to the development • Local communities receive a set proportion of CIL • Flexibility - the Borough Council has greater control over how and when CIL is spent as compared to Section 106. • Mechanism for supporting growth (and be seen to be supporting growth) • Ability to predict income stream 	<ul style="list-style-type: none"> • It is not negotiable

Table 2- Continuing with a Section106 based approach

Advantages	Disadvantages
<ul style="list-style-type: none"> • more development value may accrue to the landowner • good for site specific mitigation 	<ul style="list-style-type: none"> • negotiated on a case by case basis • fewer developments contribute toward infrastructure (on average only about 6% of all planning permissions (across the country) pay for the cost of infrastructure) • less money is available for pooled infrastructure • s106 agreements can be renegotiated after planning permission is approved to remove or reduce contributions • if not spent within a defined time period s106 can be claimed back

3.2 The CIL Regulations 2010 introduced into law three tests for planning obligations that are capable of being charged CIL. Section 106 obligations must be:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonable related in scale and kind to the development

3.3 Whilst these tests are a consolidation of the Circular 05/05 advice, they are now a legal requirement in respect of development that may be charged the levy giving them much greater force. The statutory status of these tests now brings a much greater need to demonstrate that the terms of any Section 106 are lawful and such agreements are now subject to greater scrutiny in terms of their lawfulness.

4. Setting up a CIL

4.1 In order to set a CIL, we need:

- Evidence on the infrastructure funding gap.
- Evidence on the viability of development.

4.2 An Infrastructure Delivery Plan was prepared in 2014 as part of the evidence base for the Joint Core Strategy. It clearly shows that a funding gap exists between what is needed and the currently identified funding. As such this procedural requirement is satisfied and it demonstrates that CIL would make a positive contribution to help facilitate the infrastructure delivery of the borough.

4.3 To develop evidence on viability specialist consultants were engaged (District Valuer Services) to carry out a viability assessment for the Joint Core Strategy and an initial assessment of viability for CIL. This is available to view via the following link <http://www.gct-jcs.org/PublicConsultation/EINF-Evidence-Infrastructure.aspx> . The two stages of this work cover viability assessments of:

- A range of typologies of types and scale of development.
- The Strategic Allocations as set out in the Joint Core Strategy.

4.4 The viability assessments identify the potential development value that can be generated from development within Cheltenham and demonstrate that there is scope to introduce a CIL within the Borough.

5. Preliminary Draft Charging Schedule

5.1 Peter Brett Associates have been engaged as specialist consultants on development plans and CIL to assess the viability evidence and to suggest an appropriate Preliminary Draft Charging Schedule for Cheltenham taking into account a number of factors, including the requirement that any proposed CIL rate does not undermine the viability of proposed development.

5.2 The purpose of this report to Cabinet is to gain agreement to take the Preliminary Draft Charging Schedule to consultation. Following consultation officers and the retained consultants will take into account comments made before drawing up another version of the charging schedule called the Draft Charging Schedule for further consultation. A CIL rate is proposed for development within the Borough and separate CIL rates are also proposed the Joint Core Strategy strategic allocations. The Preliminary Draft Charging Schedule is provided at Appendix 2, a summary of proposed CIL rates are provided in tables 3 and 4 below.

5.3 The viability work conducted by DVS and the interpretation by Peter Brett Associates, provides the following recommendations for CIL within Cheltenham. The following amounts are represented as a £ per square metre value.

Residential development

For the residential sites in Cheltenham the recommended CIL rate is set against an affordable housing rate of 40% on sites of 11 and over. As per the National Planning Practice Guidance it is assumed a zero rate of affordable housing for sites of 10 and under.

Table 3: Proposed residential CIL rates

		Recommended CIL
Generic sites	Cheltenham 10 dwellings and under	£110
	Cheltenham 11 dwellings and over	£70
Strategic Sites	A5 North West Cheltenham	£110
	A6 South Cheltenham/ Leckhampton	£500

Other forms of development

- 5.4** In addition to residential uses a number of other uses have been tested. With the exception of retail uses, all other uses were found to have insufficient headroom to levy a charge.

Table 4: Proposed Non residential CIL rates

	Recommended CIL
Any Retail uses	£150
Any Office uses	£0
Any Industrial uses	£0
Care Homes	£0
Student Accommodation	£0
Hotels	£0
All other forms of development not previously listed	£0

6. Relationship of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy to CIL

- 6.1** Peter Brett Associates are assessing the scope to introduce a CIL within each of the Joint Core Strategy Councils (Gloucester, Cheltenham and Tewkesbury). In delivering a Joint Development Plan, it is expected that, if the three Councils each adopt a Charging Schedule, that they will be aligned to deliver the best contribution toward infrastructure to support new development.
- 6.2** Sites proposed in the development plan have to be viable and deliverable and are tested through a viability assessment which is also part of the technical evidence for the Joint Core Strategy. Both the CIL and the Joint Core Strategy use the same background material. The Inspector at the Joint Core Strategy Examination will want to know whether the Plan is deliverable and viable, and what the impact on deliverability would be if infrastructure funding is not available. The evidence provided in the appendices to this report will support the Joint Core Strategy examination.

7. Public Consultation

- 7.1** If all three JCS Councils agree to move forward with public consultation on a Preliminary Draft Charging Schedule for their area, it is proposed that the public consultations on each of the three separate Charging Schedules be co-ordinated. The JCS Councils are working together to align the dates of consultation, these dates are yet to be confirmed. Consultation will be for 6 weeks.

8. Infrastructure List

- 8.1** The infrastructure list is a list of infrastructure projects or types of infrastructure that the charging authority, by publishing on its website, intends will be, or may be wholly or partly funded by CIL. Once a charging authority's first charging schedule has taken effect a planning obligation may not constitute a reason for granting planning permission for development to the extent that the obligation provides for the funding or provision of infrastructure within its infrastructure list - or where no such list has been published any infrastructure. Therefore, in order to preserve an ability to provide for specific infrastructure to continue to be dealt with by planning obligation after the adoption of a Charging Schedule, the Council will also need to prepare a list, prior to the adoption of its Charging Schedule, setting out the types of infrastructure that it intends will be, or may be, funded wholly or partly by CIL. CIL cannot then be used as well as Section 106 to collect funds for the same piece of infrastructure.
- 8.2** The Council has produced a list of projects, as required by CIL Regulation 123 which suggests at this stage how CIL monies could be used to cater for the anticipated level of growth in the area. This list sets out what infrastructure projects or types of infrastructure the Council may decide will be, or may be, funded wholly or partly by CIL. This is intended to ensure that developers are not asked to fund the same infrastructure via both Section 106 and CIL and the Infrastructure List can be reviewed as priorities in the area change.
- 8.3** The inclusion on the list of an infrastructure project or type of infrastructure does not represent a commitment by the Council to provide that project or type of infrastructure either with or without funding from CIL. The only function of the list is in relation to the future use of Section 106 agreements and to avoid any perception of double charging to developers. The infrastructure list gives an indication of the categories of infrastructure currently intended to be funded by CIL or other means. The list can be reviewed on a regular basis, for example annually, to ensure that it remains up to date. A draft of the Regulation 123 list is provided in Appendix 2.

9. Neighbourhood Funds

In accordance with the Community Infrastructure Levy (Amendment) Regulations 2013 a specific proportion of CIL receipts would be passed to Neighbourhood Funds. Therefore, in locations with an adopted Neighbourhood Development Plan, 25% of CIL receipts are to be used or passed to local communities to help fund local infrastructure in the location of the chargeable development. In all other locations 15% of CIL receipts are to be used or passed to local communities, subject to annual total limits as defined within the CIL Regulations. In parishes, the relevant proportion of CIL will be passed to Parish/Town Councils. In non-parished areas, the Council will engage with the relevant communities to determine how CIL is spent. In addition to funding the provision, improvement, replacement, operation or maintenance of infrastructure, these proportions may also be used to fund anything else that is concerned with addressing demands that development places on that area.

10. Preparation process

- 10.1** The key stages in the process for preparation and approval of the Charging Schedule is set out below:

Stage	Description
Preliminary Draft Charging Schedule	Document with initial proposals for the levy, for public consultation
Draft Charging Schedule	Amended levy, takes account of comments received on the Preliminary Draft & updated evidence, for public consultation
Submission to Independent Examiner	Council submits Draft Charging Schedule for examination
Examination	The Draft Charging Schedule is examined through a public hearing
Adoption & implementation	Council formally adopts the Charging Schedule and implements

11. Reasons for recommendations

- 11.1** Following detailed analysis of the implications of CIL following changes made via legislation and supporting regulations and testing of viability it can be demonstrated that CIL supports the Council in the delivery of infrastructure, particularly in light of the changes to Section 106 obligations which will limit pooling from April 2015. In order to progress consideration of CIL consultation needs to be undertaken of the Preliminary Draft Charging Schedule.

12. Alternative options considered

- 12.1** The Government has been clear through changes in legislation and key messages within the National Planning Policy Framework and national Planning Practice Guidance that it wishes to see a change from Section 106 obligations to the CIL regime. In particular restrictions on the pooling of Section 106 agreements means that if CIL is not taken forward the Council will be severely limited in the ability to draw together funds to deliver the appropriate level of infrastructure required to enable development within the borough.

13. Consultation and feedback

- 13.1** Consideration of the principles of CIL has been considered by the Planning and Liaison Member Working Group. Comments from this group have informed the analysis undertaken by Peter Brett Associates. A total of 3 presentations/discussions have taken place between the Planning and Liaison Member Working Group and Peter Brett Associates together with engagement with the CIL Co-ordination officer.
- 13.2** In addition to engagement with members a developer workshop was held September

2014 to consider assumptions for viability assessment. And consultation took place with Gloucestershire County Council officers on the draft Infrastructure List March 2015.

- 13.3** If the Preliminary Draft Charging Schedule is approved for consultation it is proposed to consult for 6 weeks (date to be confirmed).

14. Performance management – monitoring and review

- 14.1** Not relevant at this stage. However, if the Council chooses to implement CIL a governance approach will need to be put in place; this will include a process for the monitoring and review of CIL.

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Preliminary Draft Charging Schedule – Peter Brett Associates
Background information	<ol style="list-style-type: none"> 1. Stage 1 and Stage 3 Viability assessments of local development typologies/representative development schemes http://www.gct-jcs.org/PublicConsultation/EINF-Evidence-Infrastructure.aspx 2. Stage 2 Viability Testing of Notional Development Schemes, Allocated in the Pre Submission Joint Core Strategy http://www.gct-jcs.org/PublicConsultation/EINF-Evidence-Infrastructure.aspx 3. Joint Core Strategy, Submission version November 2014 http://www.gct-jcs.org/Documents/Publications/Submission/JCS-Submission-Version-November-2014a-corrected.pdf 4. Gloucester City Council, Cheltenham Borough Council & Tewkesbury Borough Council, Infrastructure Delivery Plan http://www.gct-jcs.org/PublicConsultation/EINF-Evidence-Infrastructure.aspx

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Council was not to adopt and implement a CIL the Council would not be able to collect developer contributions towards infrastructure costs to its full potential given the limited use of Section 106 planning obligations from April 2015.	M.Redman	25.03.2015	5	3	15	Reduce	<ul style="list-style-type: none"> Undertake consultation on the Preliminary Draft Charging Schedule Progress council consideration of CIL taking account of consultation feedback Undertake second round of public consultation Report to Council 	Spring 2016	T. Crews	Yes
Explanatory notes Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical) Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability) Control - Either: Reduce / Accept / Transfer to 3rd party / Close											