

Environment and Transport Select Committee
31st May 2012

Interim report of the Community Infrastructure Levy (CIL) Task Group

Purpose of the report: Policy Development and Review

This interim report sets out the recommendations made to date by the Community Infrastructure Levy (CIL) Task Group

Introduction

1. This report sets out the recommendations of the Community Infrastructure Levy (CIL) Task Group. This Task Group arose out of the Section 106 / CIL Task Group, which provided an interim report to the Environment and Transport Select Committee on the 30th June 2011.
2. The Task Group was set up in order to consider issues surrounding developer contributions and the review was structured around the following three questions:
 - i) Current position and learning around developer contributions.
 - ii) How can the county council improve its procedures with district and borough partners around the collection and allocation of Section 106 monies, and better inform Members of the process and outcomes, and
 - iii) What does the county council need to do to develop effective plans for the Community Infrastructure Levy in conjunction with its district and borough partners?
3. The first report of the Task Group considered questions i) and ii) and since then the Task Group has moved on to consider question iii). The terms of reference for the Task Group were reviewed and a refined Scoping Form agreed in November 2011 (attached as Annexe A).
4. This is an interim report as work to develop arrangements for the introduction of CIL is ongoing and further Member engagement and scrutiny will be required.

Background to the Scrutiny Review

What is CIL?

5. The Community Infrastructure Levy is a charge levied on new buildings and extensions to buildings according to their floor area. It is a mechanism for collecting and pooling contributions from developers to help pay for the infrastructure needed to support development. All Surrey's districts and boroughs are expected to implement CIL over the next two years and, for most situations, it will replace the current Section 106 Contributions (S106) regime. (Clarification of the limited uses of S106 contributions following the introduction of CIL is provided at Annexe C).

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6. CIL is seen by the government as an incentive for communities to accept growth. Whilst CIL seeks to ensure developers pay more towards the cost of infrastructure it must do so without harming the overall viability of development in an area.
7. One of the key differences between CIL and Section 106 contributions is that the monies collected are not linked to site-specific agreements. The monies can, therefore, be used flexibly and creatively to meet local and strategic infrastructure needs. As a consequence, one of the challenges is to decide how to prioritise the spending of CIL receipts in conjunction with other funding streams.
8. It is anticipated that CIL receipts will raise over £20 million per year for Surrey by 2016/17¹. This figure is based on current planned housing growth which in Surrey is estimated to be approximately 2600 new dwellings per year. According to latest figures house building is proceeding in Surrey at above this rate despite the national downturn in the construction industry. Should the rate of build reduce in future years then, of course, CIL income will fall but the consequent demand on infrastructure should also be less.
9. It is therefore vital that joint decisions are taken around how CIL receipts are spent to enable the county council, and other infrastructure providers to sensibly plan ahead. Additional background to CIL is provided in the briefing note attached as Annexe B.
10. CIL is charged on the net increase in gross internal floorspace². This means that any existing floorspace to be demolished, in whatever use, will need to be discounted. Thus a town centre redevelopment which involves the demolition of 2000 m² of floorspace and a new 3000m² building will only be liable to pay the CIL for the additional 1000m².
11. The charging authorities are the local planning authorities (in Surrey the districts and boroughs) and they set a CIL charge per m². This can vary between uses and also geographically depending on the economic viability of development. Not all uses will be liable to pay the CIL.
12. The money can be used to fund a wide range of infrastructure that is needed as a result of development. This includes transport schemes, schools, libraries, hospitals and other health and social care facilities, parks, green spaces and leisure centres.

Evidence Considered

13. To date the Task Group has held five meetings and has considered the following evidence:
 - i) Outline presentation on CIL by Surrey County Council Officers
 - ii) Feedback from CIL Member Seminar 28/11/11

¹ This figure is based on current planned housing growth and does not include CIL income from other sources such as retail. Potential income is discounted to take account of affordable housing (no CIL charge) and existing buildings being demolished.

² There is a threshold of 100 m² below which the levy is not charged except for residential development where any new dwelling is liable to pay of whatever size.

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- iii) Summary of Progress of the Joint Officer Group. Mark Behrendt, Principal Planning Officer, Elmbridge Borough Council, and Guy Davies, Senior Policy Development Officer, Reigate and Banstead Borough Council attended this and participated in the subsequent Task Group meetings.
- iv) CIL Risk Register
- v) Breakdown of S106 monies per district/borough area

- vi) Discussion with Developers and Consultants:
 - Chris Tinker – Regeneration Chairman, Crest Nicholson
 - Mark Eshelby – Property Developer, Latchmere Properties Limited
 - Brian Woods – Managing Director, WS Planning & Architecture
 - David Codling – CIL Consultant - Head of Property, Roger Tym & Partners
- vii) Presentation regarding the Developer Contributions Database System.
- viii) CIL Process Map for decision making and joint working.
- ix) CIL Project Update (March 2012)
- x) Draft Discussion Paper – Improving Joint Delivery of Infrastructure

Issues Considered

Focus of the Task Group

- 14. From an early stage the Task Group identified two areas as being of particular concern, notably:
 - i) Governance
 - ii) The impact of CIL on the viability of development.
- 15. The Task Group has focused its work to date on these two key areas of concern, and as a result, the Task Group has not yet considered all of the areas of consideration identified within the scoping form.

Engaging with Developers and Planning Consultants

- 16. To consider the potential impact of CIL upon the viability of development the Task Group invited a mixture of property developers, planning consultants, and a specialist consultant on CIL implementation to a meeting of the Task Group. A helpful and productive discussion was held between Members, Witnesses and Officers and a number of key concerns were raised.

Viability

- 17. The Planning Consultants and Developers present were concerned that CIL could 'wipe out' the profitability and therefore the viability of some developments within Surrey. Particular emphasis was placed on the viability of low-margin brownfield sites, as it was considered that they typically had a very high cost of land purchase.

18. In response to this concern, officers advised that;
- CIL is charged only on the net increase in floorspace (see para 9 above), and that many brownfield sites would, as a result, pay significantly less or even nil CIL.
 - The higher development costs of brownfield as opposed to greenfield sites is often exaggerated – not least because greenfield sites will often require significant new infrastructure.
 - CIL charges can in any event be reviewed at any time. In practice most authorities that have adopted a CIL charge have suggested they will review in 2 or 3 years time to reflect experience and any changes in economic circumstances.
19. As a result of the discussion, the Task Group felt that Surrey County Council should support district and borough councils in assessing the impact of various CIL rates on development economics to ensure that the proposed levy would not impact on development viability. It was suggested that a common approach to assessing viability across the County, would reduce overall cost and improve the robustness of individual CIL proposals. This support is now being offered and provided with support from CIL consultants.

Flat Rate versus Variable Charges

20. Whilst the witnesses felt that, in principle, CIL could work in Surrey, there was concern that flat rate CIL charges across different types of land and development could significantly hinder the viability of certain types of development.
21. The merits of having variable geographic charging rates within boroughs for CIL were subsequently discussed and it was felt that this could be beneficial. However, Officers and the CIL Consultant advised as follows
- Differential rates can be set but have to be justified in terms of variations in economic viability across broad geographic areas.
 - It is wise to avoid unnecessary complexity at the outset and to ensure that the system will work.
 - Reigate and Banstead Borough Council had undertaken an exercise to consider the potential implications of CIL on viability in the borough. In recognition of the importance of viability they had considered worst case scenarios in terms of the impact of CIL on development viability. In doing so they had examined the highest land value areas in the Borough to test how much CIL charge they could contribute before their viability would be harmed.
 - Setting up a complicated variable charge system could incur additional costs at examination and may be open to accusations of State Aid.
 - Larger houses in more affluent areas would in any event incur a greater levy since CIL is charged per square metre (for example, perhaps £10,000 for a standard 3 bed house and £50,000 for a large 5/6 bed detached at a fixed rate of £125 per sq m)

22. It remains to be seen if any Surrey districts and boroughs will set differential rates across geographic zones within their boundaries. The only borough to publish a draft charge, Elmbridge, has set a single rate for each use type. Other, larger boroughs and districts, may introduce differential rates.
23. CIL rates will inevitably vary across Surrey with each district and borough responsible for setting its own charge. With only one borough publishing a draft charge to date it remains to be seen how great these variations will be from borough to borough.

'Breaking the Link' with Communities

24. The Developers were concerned that the direct link between development and specific local infrastructure, which exists under S106, might be broken following the introduction of CIL, and that this could undermine their discussions with local communities.
25. As a 'meaningful proportion' (minima and maxima still to be confirmed) of CIL receipts must be allocated to neighbourhood forums or Parish Councils, developers felt that it would be helpful to have a means of engaging with local communities in order to determine what infrastructure and services were desired on a site-specific basis. It was suggested that local groups compile a priority list of what they want, to which developers can refer.

Cash Flow

26. The witnesses expressed concern that, if CIL payments were required upon the commencement of building works, that this could have a knock on implication for their cash flow, which was dependant upon the sale of the completed properties. Cash flow is extremely important to developers, particularly on larger sites, and they felt that the introduction of staggered payments, which Councils are able to implement, would be beneficial.

Capacity for Consultation

27. A key concern expressed by the witnesses was of the ability of the industry to engage with local authorities on consultations. It was claimed that even large-scale developers would only have perhaps two or three staff with sufficient capacity to engage with Councils on matters such as CIL.
28. It was suggested therefore, that the county council could play a role in bringing the key players in development together on a yearly (or perhaps twice yearly) basis along with the district and borough councils, in order to discuss mutual issues of interest and concern, in a forum type event. This would be an opportunity to flag up forthcoming issues across the districts and boroughs and build stronger relationships. It might increase the likelihood of the developers responding to consultations on issues such as CIL.

Governance

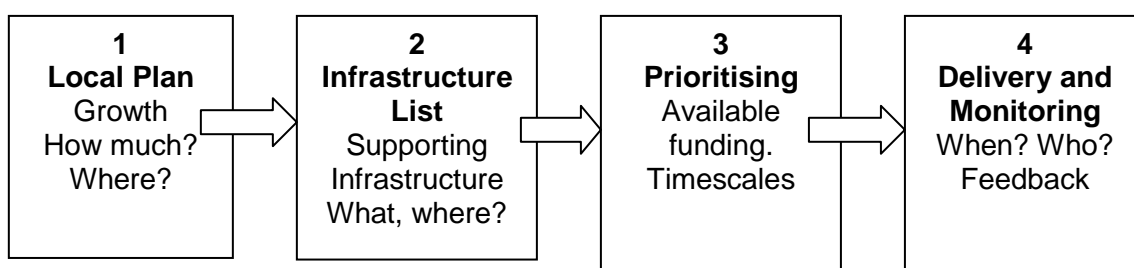
29. The Task Group gave considerable focus to the issue of governance, and in order to illuminate their research, were keen to look at examples of best practice from across the country. While there are several examples of Unitary or Metropolitan Borough Councils that have successfully implemented CIL, it became apparent that it is not so straightforward for two-tier areas.

30. Members recognised that CIL will be led by district and borough councils. As the charging and collection authorities, they are ultimately the decision makers over the prioritisation and allocation of CIL receipts. However, the County Council has a key role to play as a provider of strategic infrastructure such as highways, schools and waste disposal.

Need for effective Joint Working

31. Acknowledging the complexity of implementing CIL within a two-tier context, members tasked officers with drawing up a process map setting out key decision making stages in delivering infrastructure on a two-tier basis. The process map was based on the 4 relatively distinct stages set out below. These tend to be the focus for key decisions and this reports sets out the key findings of the Task Group with regard to each stage.

Key decision-making stages in infrastructure delivery



Stage 1 - Local Plan

32. Through its Core Strategy, each district and borough will set out its plans for growth. The County Council’s role is to ensure the necessary supporting infrastructure, primarily transport and education, is identified. Without an up to date Local Plan districts and boroughs will not be able to identify supporting infrastructure and therefore to set a charging schedule for CIL. The table below sets out the current progress with core strategies and the programme for adopting CIL

Borough/ District	Core Strategy adoption	CIL Adoption
Elmbridge *	July 2011	July 2012
Epsom and Ewell *	July 2007	September 2014
Guildford	Summer 2014	Summer 2014
Mole Valley *	Oct 2009	March 2014
Reigate and Banstead	Dec 2012	May 2013
Runnymede	Dec 2013	Summer 2014
Spelthorne *	Feb 2009	March 2014
Surrey Heath *	Feb 2012	July/August 2013
Tandridge *	Oct 2008	December 2013
Waverley	Oct 2013	April 2014
Woking	Sept 2012	Dec 2012

* Core strategy already adopted

Stage 2 - Infrastructure List

33. Members felt that the County needed to be clear about its role as a provider of strategic infrastructure and also in providing a strategic overview. It is therefore important that the county council ensures its infrastructure requirements are clear and robust and made available to districts and boroughs. This is being done with transport and education plans being shared with districts and boroughs to enable them to produce CIL charging schedules.
34. A database is being developed that will include all potential infrastructure schemes from the local level to strategic. It will be capable of being interrogated by location and by using different costs and scheme characteristics. It will be available in spatial/map-based format and open to public scrutiny and comment. This resource will inform the setting of delivery priorities and will enable consideration of all funding sources including S106 and CIL contributions.

Strategic Overview

35. The Task Group feels that there should be a joint CIL body which considers important infrastructure issues on a county-wide basis involving all of the district and borough councils, and Members. This need not be limited to CIL and this function could form part of a broader body considering matters relating to infrastructure provision. The Surrey Leaders Group is currently leading on this issue through the 'Surrey Future' joint initiative.

Stage 3 - Prioritising

36. Members acknowledged that there is a need for joint working between the CIL charging authorities and the County Council, in order to establish priorities for infrastructure development and decide upon the allocation of CIL receipts towards infrastructure projects. Effective partnership working and engagement will provide districts/boroughs and the county council with a coordinated and focused approach to infrastructure provision.
37. Whilst considering options for joint working on CIL, Members looked at both relevant examples from other authorities, a summary of which is provided as Annexe D, and possible joint working and joint decision making structures, a summary of which is provided as Annexe E.
38. The Task Group felt that focusing on changes to formal structures or arrangements was not necessarily important. What was more important was that joint working arrangements enable both a local and a strategic overview of the priorities for new and improved infrastructure.
39. Having considered various possibilities for joint working and decision making, the Task Group concluded that there was no single governance model which stood out as being the single best approach, and felt that Surrey County Council should continue to work with districts and boroughs to agree appropriate arrangements for each area.

Role of Surrey County Council Local Committees

40. The Task Group felt that Local Committees have a key role to play within CIL. Members acknowledged that there is currently a Public Value Review underway regarding the Community Partnerships Service and that this could potentially have an effect on the role of Local Committees in the future.

41. With this in mind, Members felt that in their current form, Local Committees were not suitable as joint decision making bodies for CIL, as it was considered that any joint decision making body would most likely need to comprise of Executive Members from the district/borough and county Councils.
42. From the County perspective it was felt that Local Committees had a key role to play in terms of being consulted on CIL issues such as the CIL Infrastructure Schedule.

Stage 4 - Delivery and Monitoring

43. Once schemes are prioritised it is important that they can be implemented and progress monitored. This is especially important because the districts and boroughs will be required to keep a public record of CIL income and how it is spent. Officers are already working towards a process which will ensure timely delivery building on the work of the S106 Rapid Improvement Event.

Suitable Alternative Natural Greenspace (SANG)

44. An additional concern that was explored by the Task Group was in relation to SANG. Alternative green space is required for any new housing within 5km of any site forming part of the Thames Basin Heath Special Protection Area for birds. This is a particular issue for boroughs towards the west of the county. The Task Group expressed concern that CIL receipts would be used to fund SANG.
45. Members were concerned that this might pose a big burden on CIL receipts in these areas and that this could limit the impact which CIL would otherwise have on funding mitigating infrastructure in these areas. The Task Group concluded that it should ask Officers and the Cabinet to note the concern of the Task Group over this issue and investigate and quantify its potential impact.

Link between CIL and S106

46. The Task Group was advised that in some cases involving major developments, Section 106 agreements would be retained in order to provide site-specific necessary infrastructure. In such cases, these pieces of infrastructure would not be able to be included in a CIL infrastructure schedule. Additional information regarding the link between S106 and CIL is provided as Annexe C.
47. Thus on a larger site, say of 100 dwellings, it will still be possible to ensure certain essential and site-specific infrastructure is provided through a S106 agreement. This could be, for example, a junction improvement, cycle facilities or play space. Affordable housing will also still be secured through a S106 agreement. CIL would still be collected and used to address wider impacts of this and other development but could not be used for any infrastructure covered by the S106 agreement. S278 agreements are not covered by the CIL legislation and can still be used to secure highway improvements.

Developer contributions database

48. The Task Group received a presentation regarding the development of the Developer Contributions database system. This database will include all potential infrastructure schemes, from the local level to strategic. It will be capable of being interrogated by location and by using different costs and scheme characteristics. It will be available in spatial/map-based format and open to public scrutiny and comment. This resource will inform the setting of delivery

priorities and will be capable of being used for any funding source including S106 and CIL contributions.

Ongoing Scrutiny /Member Engagement

49. The Task Group recognises the progress made in implementing CIL to date and praises the work of officers across the Surrey Local Authorities in implementing CIL, particularly through the work of the Joint Officer Group. Annexe F provides an overview of the work of the Joint Officer Group
50. However, there is still a lot to do in order to implement CIL in Surrey and this report acknowledges that there is still a significant role to be played by Scrutiny and Members in shaping and overseeing this process, particularly as the emphasis moves towards the effective joint funding and delivery of infrastructure.

Findings of the Review

51. To date the Task Group has made a number of conclusions and these are set out below as key findings:

- Finding 1: Effective joint working at officer and Member level between Surrey County Council and district/borough councils on CIL is essential. Joint decision-making would support strategic and effective decisions about infrastructure provision.
- Finding 2: Local Committees, as currently constituted are not suitable as joint decision-making bodies for CIL, but should be engaged within the CIL process from an early stage, and could play a key consultative role in terms of considering infrastructure schedules.
- Finding:3: Officer working processes and engagement on CIL should be similar across Surrey's authorities in order to reduce bureaucracy and complexity.
- Finding 4: The Joint Officer Working Group has been successful to date and has a crucial role to play, therefore, it is important that its work continues.
- Finding 5: No single governance model stands out as being the single best approach, and Surrey County Council should work with districts and boroughs to agree appropriate arrangements for each area.
- Finding 6: The Joint Officer Working Group should pay attention to the progress and success of other two tier authorities in implementing CIL.
- Finding 7: Decision making and governance arrangements for CIL need to achieve a balance between enabling a local and strategic overview, and input from Parish/Town Councils.
- Finding 8: Decision making on CIL cannot be taken in isolation from other forms of infrastructure funding and prioritisation. This includes major sites where S106 agreements will be used in conjunction with CIL. Strategic level decision making is necessary for this and therefore this decision should sit with the Cabinet. Oversight of these decisions should rest with the Council Overview and Scrutiny Committee and Environment and Transport Select Committee.

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- Finding 9: Many Developers only have limited capacity to engage with Local Authorities on issues such as CIL consultations. Surrey County Council could address this by hosting a regular Developer / Member summit, where key players within the Development industry can discuss issues of mutual concern and interest with Members, the county council and district/ borough councils.
- Finding 10: The Task Group is concerned about the potential impact which SANGS could have on CIL receipts and feel that this potential risk should be investigated and quantified.
- Finding 11: CIL is still at an early stage of implementation in Surrey and the Environment and Transport Select Committee should consider the ongoing role to be played by Members in the implementation of CIL within Surrey, as part of the wider work to improve infrastructure planning, funding and delivery. This could be through continuing the work of the Task Group, or establishing a more informal Member Reference Panel.
- Finding 12: It is important that a clear framework is drawn up for how SCC will handle CIL and how it will interact with Districts and Boroughs.

Financial and value for money implications

52. It is envisaged that CIL could raise up to £20m per year across Surrey, and the spending of these receipts on infrastructure provision will need to be prioritised in cooperation with District and Borough authorities, and in conjunction with other sources of infrastructure funding.

Equalities Implications

53. Surrey County Council is not the CIL setting or collecting authority and any equality issues will need to be considered by the districts and boroughs. However, where the county council prepares infrastructure strategies and plans then the requirement for a strategic equalities impact assessment will need to be considered.

Risk Management Implications

54. The Task Group considered that there are two significant risks with CIL, firstly, that charging CIL could inhibit the viability of development and reduce the overall level of development taking place. This risk could be managed by ensuring proposed CIL charges were supported by evidence of the continuing viability of development and by engaging with the development industry.
55. Secondly, in a two-tier area the efficient planning and delivery of important infrastructure could be compromised. Hence joint working is important at officer level with the setting of shared priorities by members.

Implications for the Council's Priorities

56. The additional income provided by CIL will help support a strong and competitive economy in Surrey and ensure growth is accommodated in a sustainable way. More specifically it will help improve the county's roads and provide more school places

Recommendations:

- i) That the Cabinet considers and notes the findings of the Task Group
- ii) To continue to work with districts and boroughs in order to consider how we might make decisions about infrastructure priorities in a two tier area.
- iii) To consider how to engage with the Development industry to enable discussions at member and officer level around issues of mutual concern and interest. This could include hosting events open to developers and all districts and boroughs.
- iv) To recognise the Task Group's concern about the potential impact of SANGS on CIL receipts, and investigate and quantify this risk and report back to the Select Committee.
- v) To endorse and oversee the joint work on viability across Surrey now being supported by the County Council to provide a consistent approach to assessing viability in different parts of the County in order to reduce public sector costs, make CIL charging levels easier to defend at examination and ensure that development remains viable.
- vi) That the Environment and Transport Select Committee consider the ongoing role to be played by Members in effective infrastructure planning across Surrey with particular emphasis on the effective use of CIL receipts.
- vii) The Task Group praises the work of the Joint Officer Working Group and asks the Cabinet to recognise the importance of effective joint working on CIL, and continue the work of the group.

Next steps:

The Task Group requests that the Environment and Transport Select Committee considers the role of scrutiny and Member engagement in CIL on an ongoing basis.

Report contacts:

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Paul Druce – Principal Infrastructure & Agreement Officer
Paul Sanderson – Planning Policy Manager (CIL)

Members of Task Group

Mark Brett-Warburton – Chairman
Chris Norman
John Furey (*Left Task Group upon appointment as Portfolio Holder for Transport and Environment on the 7th March 2012*)
Pat Frost (*Attended the final two meetings of the Task Group in the place of John Furey*).

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Sources/background papers:

Annexe A – Scoping document
Annexe B – Additional Background Information on CIL
Annexe C – The relationship between the Community Infrastructure Levy and S106 planning obligations
Annexe D – Examples of Other Authorities
Annexe E – Possible joint decision making / joint working structures
Annexe F – Community Infrastructure Levy Joint County/Borough Officer Sub Group Summary and Progress.

Select Committee Task and Finish Group Scoping Document

The process for establishing a task and finish group is:

1. The Select Committee identifies a potential topic for a task and finish group
2. The Select Committee Chairman and the Scrutiny Officer complete the scoping template.
3. The Council Overview and Scrutiny Committee reviews the scoping document
4. The Select Committee agrees membership of the task and finish group.

Review Topic: Community Infrastructure Levy Task Group
Select Committee: Environment and Transport
<p>Relevant background</p> <p>At the meeting of the Environment and Economy Select Committee held on the 19th January 2011, it was decided that a task group should be set up to consider the way SCC and partner authorities manage the issue of developer contributions. The terms of reference for this review were focused upon problems surrounding Section 106 contributions, but also included a specific reference to consider:</p> <p><i>“What does the County Council need to do to develop effective plans for the Community Infrastructure Levy in conjunction with its District and Borough partners?”</i></p> <p>The initial terms of reference for the review envisaged that it would be conducted within two phases. In the first phase the issues and challenges surrounding S106 contributions were considered, which in part led to a Rapid Improvement Event (RIE) being held. One of the outcomes of this was confirmation of the need to implement a database system for managing current S106 contributions and both s106 contributions and CIL receipts in the future.</p> <p>It was envisaged that the second phase of the task group would be necessary to oversee the implementation of CIL as well as ensuring the RIE outcomes are successfully implemented.</p> <p>However, in recognition of the thoroughness of the RIE and in the light of the likely outcomes of the RIE it is now felt that the work of the task group would be more effectively spent on focusing upon the many significant challenges presented by the adoption of CIL by the LPA's. Some issues arising from the RIE will continue to be considered by the Task Group where they interrelate with the implementation of CIL.</p>

Why this is a scrutiny item

Originally the task group was established to investigate Member concerns regarding the effectiveness of SCC's methods for processing developer contributions under the Section 106 system. These concerns were considered by the RIE and are now being addressed by a range of suggested improvements including the creation of a shared database system to effectively process and monitor S106 contributions, both now and in the future, in addition to future CIL receipts.

CIL will become an important source funding for new local infrastructure. It is intended that CIL will be levied on all development over a certain size threshold, whereas currently Section 106 payments are typically limited to the larger scale developments. S106 contributions require the impact of that development upon infrastructure, to be mitigated, and includes the need for specified supporting infrastructure to be identified.

CIL requires no such link, and crucially, the receipts from CIL are intended to be pooled to fund infrastructure requirements which are more strategic in nature, although, as a result of the current consultation, local infrastructure requirements may also feature.

The Department for Communities and Local Government website lists the following reasons why Local Authorities should adopt CIL:

"Local authorities should introduce the levy because it:

- *delivers additional funding for them to carry out a wide range of infrastructure projects that support growth and benefit the local community*
- *gives them the flexibility and freedom to set their own priorities for what the money should be spent on - as well as a predictable funding stream that allows them to plan ahead more effectively*
- *provides developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment*
- *ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community and*
- *enables local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants"*

<http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructure/levy/>

The changes introduced by CIL include a number of significant challenges, which will require detailed consideration and consultation, which is why the task group has decided to focus upon the CIL regime.

<p>What question is the task group aiming to answer?</p> <p>The overarching question the task group is aiming to answer is:</p> <p><i>” What does the County Council need to do to develop effective plans for the Community Infrastructure Levy in conjunction with its District and Borough partners?”</i></p> <p>As part of this there are a number of key questions and issues which will require consideration, including:</p> <ul style="list-style-type: none"> • The rate at which CIL will be levied <u>and whether differential rates might be feasible.</u> <i>(this will ultimately be the responsibility of districts and boroughs but the County Council can provide support and advice).</i> • What SCC needs to do to implement effective partnership working with District and Borough Councils on CIL. • How should the allocation of CIL receipts between SCC and District and Borough Councils be decided? • How should the priorities be set for spending CIL receipts? • How can CIL receipts be most effectively used with other sources of infrastructure funding to provide value for money? • What the <u>monitoring and data tracking arrangements</u> for CIL should entail. • In cases where S106 remains necessary, what steps will be needed to ensure that S106 and CIL are effectively coordinated, integrated and successfully implemented? • How should SCC demonstrate its infrastructure requirements, and on what basis have these been assessed? • <u>What governance and decision-making arrangements are appropriate for CIL? Are Service Boards or Local Committees appropriate?</u>
<p>Aim</p> <p>To make necessary recommendations which help to achieve a smooth and successful transition to CIL and secure a reasonable proportion of the CIL receipts for the necessary infrastructure provided by the County Council.</p>
<p>Objectives</p> <ul style="list-style-type: none"> - To consider the challenges and obstacles posed by moving to CIL - To conduct evidence based scrutiny by involving stakeholders, partners and witnesses in the evidence gathering and consultation process. - To make recommendations to address the challenges and obstacles.
<p>Scope (within / out of)</p> <p>To consider challenges posed by the adoption of CIL. It may be necessary to consider some historic S106 issues insofar as they relate to the implementation of CIL, but the focus of the review is the work required for the move to CIL.</p>
<p>Outcomes for Surrey / Benefits</p> <p>CIL has many outcomes for Surrey. Handling CIL appropriately will be required in order to fund the infrastructure requirement for new development, without discouraging that development in the first place.</p>

Community Infrastructure Levy (CIL)

Update May 2012

Surrey County Council is supporting districts and boroughs to introduce CIL.

This is part of the development of a collaborative approach to the planning, funding and delivery of infrastructure using CIL and other funding streams.

To do this we are working closely with districts, boroughs and county services

Background

CIL is a new charge on development. It allows councils in England and Wales to raise funds for infrastructure to support an area's development. Once set it is not negotiable but can be reviewed when economic circumstances change. In Surrey, it is anticipated that CIL receipts will raise over £20 million per year by 2016/17.

A project team leads this work at the county council reporting to a joint officer steering group (attended by lead districts and boroughs).

CIL rates and Viability

Before a council can begin raising cash through the levy, it must publish a charging schedule. Charging schedules set out levy rates for different types of development and any geographic variations. The levy is a charge per square metre of net additional floorspace.

CIL seeks to ensure developers pay an appropriate amount towards the cost of infrastructure in a fair and consistent way. However, it must be set at a rate which does not harm the overall viability of development in an area. Hence CIL will be set at a relatively conservative level so that it is unlikely to be a deciding factor in

determining whether or not a scheme is undertaken.

The Boroughs of Elmbridge and Reigate & Banstead have already undertaken viability assessments to help set an appropriate CIL rate. These two boroughs, the county council and our consultants are now working together to support other districts and boroughs to do the same.

The National picture

A growing number of local authorities have adopted CIL charging schedules or published draft schedules. These show a high level of consistency in terms of the types of development being charged and the level of rate set.³

Progress in Surrey

All Surrey's districts and boroughs intend to introduce a levy. Elmbridge Borough is a formal 'front runner'⁴ and anticipates charging from Autumn this year. Woking Borough also intends to begin charging later this year with Reigate & Banstead in Spring 2013. All other districts and boroughs are expected to follow in 2013 or early 2014.

³ For a 'live' summary of all local authority CIL charges see:

<http://www.planningresource.co.uk/Business/article/1121218/CIL-Watch-whos-charging-what/>

⁴ A CIL lead authority supported by the Government

Progress by Elmbridge Borough

Elmbridge Borough Council published a CIL Draft Charging Schedule in April 2012. The council aims to submit the schedule by the end of May with an examination by an independent inspector over the summer. The borough anticipates generating income of approximately £2.5m per year from the levy by 2014.

Elmbridge Borough's proposed levy:

- £125 per m² for residential dwellings
- £125 per m² for larger retail
- £50 per m² for smaller retail
- No charge for other developments

Infrastructure requirements

Before introducing CIL, planning authorities need an up to date Core Strategy which shows the scale and location of proposed development over the next 15 – 20 years. They then need to assess the infrastructure required to support this growth and the gap in available funding. The CIL project team is working to provide each authority with evidence of the necessary transport and education infrastructure. For example, transport evidence includes high-level schedules of schemes and packages of schemes with indicative costs.

Views from the development industry

So far the development industry has expressed little interest in the introduction of a new levy on development. This may change as the industry becomes more aware of CIL. CIL also has benefits for the industry, particularly in providing much more certainty around scheme costs.

In January 2012 the CIL Member Task Group invited a small group of developers

to discuss their perspective on CIL. There was some concern that CIL would be yet another cost that could harm viability but equally a level of uncertainty about how CIL would work. There is a desire to continue such discussions on both sides.

Spending CIL

Districts and boroughs will collect CIL. The County Council is working with them to consider how we can best work together at officer and political level to deliver the infrastructure needs of each area. This includes looking at how we currently spend S106 contributions and how we can use a web based GIS database to support prioritisation and delivery.

Member and councillor engagement

So far three seminars introducing the principles and benefits of CIL have been held - at County Hall, Reigate Town Hall and Guildford Civic Offices. These were well attended and open to both County members and district and borough councillors.

They provided an opportunity to ask questions of a joint officer panel and CIL consultants. Further member engagement is planned as the project progresses.

Questions?

Frequently asked Questions

<http://www.pas.gov.uk/pas/core/page.do?pageId=1242969>

Debunking CIL charging setting myths:

<http://www.pas.gov.uk/pas/core/page.do?pageId=1252937>

For further information please contact:

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The relationship between the Community Infrastructure Levy and S106 planning obligations

The levy is intended to provide infrastructure to support the development of an area, rather than to make individual planning applications acceptable. So in some individual cases, there may still be site-specific infrastructure measures that should be required before planning permission is granted. Some of these requirements may be financed through the levy but some may not and, therefore, the Government considers there is still a legitimate role for development specific planning obligations secured through section 106 agreements.

However, in order to ensure that planning obligations and the levy can operate in a complementary way the CIL regulations⁵ scale back the way planning obligations operate. Limitations are placed on the use of planning obligations in three respects:

Putting the Government's policy tests on the use of planning obligations, set out in Circular 5/05 *Planning obligations*⁶, on a statutory basis for developments which are capable of being charged the levy;
Ensuring the use of the levy and planning obligations does not overlap; and
Limiting pooled contributions from planning obligations towards infrastructure which may be funded by the levy

1 Making the Circular 5/05 *Planning obligations* tests statutory

The regulations place into law the Government's policy tests on the use of planning obligations. These tests clarify the purpose of planning obligations in seeking only essential contributions to allow the granting of planning permission, rather than more general contributions which are better suited to use of the levy.

From 6 April 2010 it has been unlawful for a planning obligation to be taken into account when determining a planning application for a development that is capable of being charged the levy, even where the levy is not in operation, if the obligation does not meet all of the following tests:

- (a) **necessary** to make the development acceptable in planning terms;
- (b) **directly related** to the development; and
- (c) **fairly and reasonably related in scale and kind** to the development.

For all other developments (i.e. those not capable of being charged the levy), the National Planning Policy Framework (NPPF) will apply. The NPPF has superseded Circular 5/05 and reiterates the above tests as government policy but without the statutory basis for compliance.

⁵ The CIL Regulations 2010 & 2011(amendment)

⁶ Now superseded by the NPPF

2 Ensuring the use of the levy and planning obligations does not overlap

The regulations restrict the use of planning obligations to ensure that individual developments are not charged for the same items through both planning obligations and the levy. Where a charging authority sets out that it intends to fund an item of infrastructure via the levy then that authority cannot seek a planning obligation contribution towards the same item of infrastructure.

A charging authority may publish, on its website, a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by the levy (The Reg 123 List – see below). A charging authority can at any time update its published list of infrastructure projects or types of infrastructure. It may consider it expedient to update this list as its infrastructure priorities change over time. The process of updating the list is separate to the formal process of reviewing its charging schedule.

The Regulation 123 List

So called because it is a discretionary provision under Regulation 123(2), and a conveniently easy number to remember, this list is intended to prevent double charging via S106 for items to be funded from CIL.

There are two important things to note regarding this list:

1. It is discretionary – you don't have to produce one (but there is a catch – see below); and
2. It can be revised at any time (see above).

There are different ways of approaching the Reg 123 List:

- Not to have a list – but in this case this would imply that you intend to fund all infrastructure via CIL and you therefore couldn't use S106 for any infrastructure
- You could specify infrastructure types. For example you could specify transport infrastructure. You could not therefore use S106 for transport infrastructure but you could use it for other types of infrastructure such as education.
- You could be specific. For example stating that CIL will be used to fund a specific primary school. You could not then use S106 to part fund the school but you could use S106 on other forms of infrastructure. Or you could specify which pieces of infrastructure will not be paid for through CIL, for example by including education infrastructure in the list but excluding a specific Primary School (perhaps in a growth area).

3 Limiting pooled section 106 contributions

Once a CIL charging schedule is adopted, or from 6 April 2014, the regulations restrict the use of planning obligations for pooled contributions towards items that may be funded via the levy. The levy is the government's preferred vehicle for the collection of pooled contributions.

Pooled S106 contributions may be sought from up to five separate planning obligations for an item of infrastructure that is not intended to be funded by CIL. The limit of five also applies when contributions are sought for types of infrastructure, such as education and transport. In assessing whether five separate planning obligations have already been entered into for a specific infrastructure project or a type of infrastructure, local planning authorities must look over agreements that have been entered into since 6 April 2010.

If there are already more than five pooled S106 contributions sought for a single piece of infrastructure at the time of CIL adoption, or 6 April 2012, whichever is the sooner, then these obligations remain valid but no further obligations for that piece of infrastructure may be sought.

For provision that is not capable of being funded by the levy, such as affordable housing, local planning authorities are not restricted in terms of the numbers of obligations that may be pooled, but they must have regard to the wider policies set out in Circular 5/05 *Planning obligations*.

Section 278⁷

The limitations on pooling planning obligations (Reg. 123) do not apply to section 278 agreements. They apply to section 106 agreements. Authorities can combine both s278 and CIL monies to fund improvements to the strategic road network.

⁷ Where a development requires works to be carried out on the existing adopted highway, an Agreement needs to be completed between the developer and the County Council under Section 278 of the Highways Act 1980. Examples of such works could be the construction of new access/junction improvement of the highway/junctions, or safety related works such as traffic calming or improved facilities for pedestrians and cyclists.

Under the Section 278 Agreement, the County Council may provide the works at the developers expense, or may allow the developer to provide the works directly, subject to an approval and inspection process.

Examples of joint working

Essex County Council/Colchester Borough Council

This proposal includes a Decision Making Body comprised of Members and very senior officers of the two authorities and an Advisory Body comprising of officers of the two authorities. The Decision making body would be formally accountable to the two authorities' Cabinets. The two bodies would meet at least twice a year and would look in detail at the detailed programme for spending of CIL in Colchester for the next period. The Advisory body would make proposals in a report each six months which could be accepted, amended or rejected by the Decision Making Body.

Cambridgeshire County Council

The County Council and districts will put a 'Memorandum of Understanding' (MoU) in place which will be signed by both the County and District, and any other service providers who will receive CIL money. The priorities are currently being discussed between Officers, but ultimately, the priorities and proportions will need to be approved by Members, and is likely to change over time.

Greater Norwich Development Partnership (GNDP)

The GNDP comprises of a five authorities including districts and county. Authorities under the GNDP have produced a joint Core Strategy along with a Local Investment Plan and Programme (LIPP). The proposals for CIL is that a proportion of the CIL money will be pooled into a shared strategic pool to support the delivery of key strategic infrastructure highlighted within the LIPP. The GNDP is asking for a 55-60 percent total of the total CIL revenues received. The remainder of the CIL is proposed to be split in the following manner with 5% to go to local neighbourhood and 35-40% to go to district council.

Wycombe District Council

Wycombe District Council will be looking to implement a bidding process from the services who wish to secure funds from CIL. This process will occur annually where various services set out a 5 year programme with each project requiring a business plan and will be assessed against certain criteria. An officer group will meet regularly in order to evaluate the projects at an early stage. The council see a role for their Strategic Partnership to enable greater stakeholder involvement in the process and through a Cross Member Scrutiny Group to enable County Members to have a role within the decision making process.

Derbyshire County Council

Derbyshire County Council have produced a countywide Infrastructure Plan which identifies key priorities for delivering growth over the next 20 years. The Infrastructure Plan identifies costs along within Delivery Schedules that identify where and when a project will be delivered; estimated costs, potential sources of funding, and funding gaps; and key delivery partners. The schedule sets out planned projects which the County Council considers are priorities that should be delivered in the medium or longer term and are required to support the future development and growth of Derbyshire.

Possible Joint Working / Joint Decision Making Bodies

Joint Decision Making Structures

As outlined under the governance section of the report, the Task Group considered several possible structures in which joint working or joint decision-making could be implemented for CIL. The Task Group felt that no single option stood out as being the single best approach and that Surrey County Council should continue to work with Surrey's district and borough authorities to agree appropriate arrangements for each area. A summary of the structures considered is provided below:

- **Joint Public Sector Board (PSB) -**

A PSB is a non-statutory body set up with the agreement of the agencies involved. The purpose of a PSB is to provide all partners involved an opportunity to discuss priorities and opportunities within their area. To work best Public Sector Boards should comprise senior politicians/officers who can bring the necessary authority.

The Greater Norwich Development Partnership (GNDP) is a form of Public Sector Board, which was set up by five authorities to deliver greater partnership working. In addition, Reigate and Banstead Borough Council and Surrey County Council established a PSB in February 2011. Other boroughs are considering this option.

- **Local Strategic Partnerships (LSPs)**

LSPs are non statutory organisations that bring together Local Authority representations and stakeholders to ensure a 'joined up' approach to the planning of provision of services. All local authorities in Surrey have at some point established LSPs although some Districts/Boroughs have now disbanded them. Wycombe District Council sees their LSP as a platform for greater stakeholder involvement within infrastructure delivery.

The Task Group felt that Local Strategic Partnerships were not ideally suited for involvement in CIL as they involved a very large number of partner organisations, which might not be conducive to effective outcomes, and several in Surrey had been disbanded.

- **Local Committees**

Local Committees currently decide on local services and functions delegated to them from Cabinet within a framework of agreed performance standards and budgets. The future role of Local Committees is being reviewed as part of the Community Partnerships Team Public Value Review, which is looking at options of further devolving decision making to the local level.

The Task Group acknowledged that Local Committees, as currently constituted, are not joint decision making bodies for the purposes of CIL. However, it was felt they could play a key consultative role in CIL, and that this could be through the Committees considering infrastructure priorities and schedules at an early stage.

- **Memorandum of Understanding (MoU)**

A MoU is a statement of commitment for partners to work together on particular issues or in a particular way. A MoU can be a statement of good intent for partnership working or a tool for actioning the partnerships work. It is a non-formal agreement and therefore is not legally binding. Cambridgeshire County Council is looking to use this option with districts and other infrastructure service providers.

The Task Group discussed the merits of such a set up and it was felt that MoUs could potentially be a useful tool to clarify expectations and obligations between Districts/Boroughs and the County with regard to CIL.

- **Service Level Agreement (SLA)**

A SLA is a formal partnership agreement that is legally binding where the parties involved concur to share liabilities and responsibilities for services collected or supplied. It is a contract that defines the parameters for the delivery of a service for the benefit of parties involved.

- **Joint Officer Advisory Group**

The use of joint officer groups can help to coordinate resources and provide a joined up approach to delivering infrastructure. It ensures that not only consultation between both organisations occurs but that further cooperation and co-ordination can be developed. Essex County Council and Colchester Borough Council will set up a Joint Officer Advisory Group to make proposals each six months and prioritise infrastructure.

Community Infrastructure Levy Joint County/Borough Officer Sub Group Summary and Progress

Background

The Joint Officer group comprises officers from all 11 districts and boroughs and the County Council. Others are invited as appropriate including consultants Roger Tym & Partners. Its inaugural meeting was in July 2011

This is essentially an information sharing and support group. Its outcomes will be valuable in terms of improving the overall robustness of the approach to CIL in Surrey and saving officer time and money. It is discussing ways to work together to tackle many of the issues of joint interest for example with regard to member engagement and viability assessments.

The Group meets on a quarterly basis. So far it has met on four occasions plus one consultant led workshop in September

At the first meeting in July 2011 it was agreed that the following issues should be the main focus for the group's business:

- a) Infrastructure delivery planning - – justifying the need for CIL by identifying a funding gap between the infrastructure considered necessary to support planned development, and likely availability of mainstream funding
- b) Viability. Ensuring districts and boroughs are equipped to defend the level of charge set through the production of viability assessments.
- c) The Charging Schedule – sharing information on likely charging levels.
- d) Regulation 123 Notices
- e) Administering CIL – processes to monitor, collect and enforce CIL receipts; mechanisms for reporting in accordance with regulatory requirements; distribution and spend
- f) Governance Arrangements - agreements and processes for apportionment of CIL receipts and mechanisms to ensure money spent on agreed priorities
- g) Shared Infrastructure Planning – ensuring CIL cash can be combined with other funding sources and spent in the most effective way to deliver priorities
- h) Learning from other areas
- i) Issues relating to the Thames Basin Heaths Special Protection Area

Summary of joint activities supported by the group:

In addition to being a valuable focus for sharing information, the CIL group is involved in the following joint activities:

Member engagement

Through County-wide member seminars:

28 February 2012 – Reigate

- Intro by David Hodge
- Approx 40 members from RBBC, E&E, Mole Valley and local SCC
- Presentations: Roger Tym & Partners, Guy Davies (Reigate & Banstead) and Dominic Forbes (Surrey CC)
- Q&A session

6 March 2012 – Guildford

- Approx 30 members from Guildford, Woking, Surrey Heath and local SCC
- Same presentations
- Q&A session

These were based on the Surrey County Council seminar given in November 2011, and all appear to have been well received by members who attended.

Surrey CC Officer Steering Group:

The chair of the PWG sub group and a representative from Elmbridge Borough attend monthly meetings at County Hall on behalf of the group. This provides a valuable district/borough perspective and helps ensure the County Council led CIL project work is providing the right support to boroughs and districts.

Assessing the impact of CIL on development viability:

Half-day workshop at Reigate, 29 March 2012

- Roger Tym & Partners presentation followed by Q&A
- Precursor to Surrey CC offer to fund half day sessions on viability for individual B&Ds.

Half-day sessions now arranged with Tandridge, Reigate & Banstead and Woking. Others to follow. This will ensure that the level of charge set by each borough and district can be supported with robust and consistent evidence across Surrey and therefore less likely to be open to challenge from the development industry.