

<b>Subject:</b>	<b>Community Infrastructure Levy – Publication of Draft Charging Schedule and Draft Regulation 123 List</b>		
<b>Date of Meeting:</b>	<b>8 March 2017</b>		
<b>Report of:</b>	<b>Executive Director, Economy Environment &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Clare Flowers</b>	<b>Tel: 01273 290443</b>
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<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

1.1 This report seeks approval to publish a Community Infrastructure Levy (CIL) Draft Charging Schedule (DCS) in accordance with Regulation 16 of the Community Infrastructure Levy Regulations 2010 for consultation and formal submission for examination provided no further substantive changes are required. The report also seeks approval to publish the draft Regulation 123 List, which sets out a framework of citywide infrastructure types suitable for CIL funding, for a six week formal consultation.

**2. RECOMMENDATIONS:**

2.1 That the Committee notes the results of the Preliminary Draft Charging Schedule CIL Consultation 2017 Report (Appendix 4) and subsequent recommendations arising from the CIL Viability Assessment Addendum (February 2018) (Appendix 3).

2.2 That the Committee agrees to publish the Draft Charging Schedule (Appendix 1) in accordance with regulation 16 of the Community Infrastructure Levy Regulations 2010 (as amended), for six weeks formal consultation, and to authorise the Head of Planning to make any necessary minor editorial/grammatical amendments to the Draft Charging Schedule prior to consultation.

2.3 That the Committee agrees to submit this published Draft Charging Schedule for examination in accordance with regulation 19 of the Community Infrastructure Levy Regulations 2010 (as amended) unless substantive modifications are required whereupon a Statement of Modifications would be produced and brought to this committee prior to publication.

2.4 That the Committee agrees to publish the draft Regulation 123 List, which sets out a framework of infrastructure which may be funded from the levy (Appendix 2), for a period of six weeks formal consultation and to authorise the Head of

Planning to make any necessary minor editorial/grammatical amendments to this list prior to consultation.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 In September 2016 ED&C Committee resolved that work commence on a CIL charging schedule for Brighton & Hove, noting that a key stage was to 'Publish a PDCS for consultation following committee resolution'.
- 3.2 In September 2017 this Committee resolved to carry out a consultation exercise on a PDCS in accordance with the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations), which was carried out between 13 October and 10 December 2017. That consultation process is now complete and has informed the preparation of the DCS. Comments and responses are analysed within the Consultation Report, attached as a Background Document.

#### **Summary of consultation responses from the PDCS**

- 3.3 The PDCS consultation received 48 responses: 25 from residents/individuals; 7 from community organisations; 6 from public bodies/authorities and 10 from business organisations/developers.
- 3.4 Responses stating charges were too high, manageable or too low were received in roughly equal proportions. Interest was shown in the future neighbourhood portion of levy spending.
- 3.5 Two key issues were identified from the consultation responses. These were in relation to the approach taken for Purpose Built Student Accommodation (PBSA) and level of charge; and the approach to Strategic sites. These issues warranted further consideration and assessment of viability evidence underpinning the proposed charging schedule.
- 3.6 In terms of PBSA, further work has been undertaken. An addendum to the CIL Viability Assessment (Appendix 3) has reviewed PBSA rates in relation to charging levels and location. The addendum findings support alignment of CIL charging rates with residential development on a citywide basis. Due to the absence of affordable housing requirements, it is considered that aligning the PBSA rate should equate to the proposed residential zone one charge.
- 3.7 Strategic sites – A further review of viability evidence in relation to strategic development sites, as defined by CIL guidance, has been undertaken. Viability evidence demonstrates that variance from the standard CIL charge is justified due to abnormal costs of two strategic site developments relating to Brighton Marina Inner Harbour and the King Alfred Leisure Centre/RNR allocated in City Plan Part One. The Inner Harbour site is considered strategic on the basis of the amount of housing being proposed (1000 units). The infrastructure required to deliver the site, such as an underlying podium structure; an upgrade of sea defences; and utilities result in abnormal costs that demonstrate a significant viability deficit. The King Alfred site is also considered strategic, providing new indoor public wet and dry sports facilities for the city. Evidence, including the recent Housing Investment Fund marginal viability bid, indicates there are

abnormal costs and significant viability issues with delivery of this development. As CIL charging rates should not undermine the delivery of the City Plan, these two strategic sites have been included in the DCS with a nil charge. S106 obligations will still apply to either site where directly related and necessary to development, providing there is no overlap with the infrastructure set out in the Regulation 123 List.

### **Proposed CIL rates set out in the DCS**

3.8 The proposed levy rates indicated in the table below are based upon the findings of the CIL viability study and its update.

<b>Use</b>	<b>Location</b>	<b>Levy (£/sq. m)</b>
<b>Residential - applies to C3 and C2 use classes</b>  <b>Zone areas are shown on Map in Appendix 1</b>	<b>Zone 1</b>	<b>175</b>
	<b>Zone 2</b>	<b>150</b>
	<b>Zone 3</b>	<b>75</b>
<b>Strategic Sites rate</b>	<b>Brighton Marina Inner Harbour; King Alfred Leisure Centre/RNR site</b>	<b>0</b>
<b>Purpose Built Student Accommodation</b>	<b>City Wide</b>	<b>175</b>
<b>Retail – Larger format – Retail warehousing / Supermarkets</b>	<b>City Wide</b>	<b>100</b>
<b>Other shopping units development</b>	<b>City Wide</b>	<b>50</b>
<b>All other development uses</b>	<b>City Wide</b>	<b>0</b>

3.9 Changes made to the PDCS are the inclusion of a Strategic Site rate for two identified sites, also reflected in the Draft Charging Schedule map, and a new rate for Purpose Built Student Accommodation which has been reduced from £250 to £175 per square metre (in accordance with the additional viability evidence).

### **Publishing, Consultation and Submission of the DCS and relevant evidence**

3.10 The statutory requirements to publish and consult on the DCS are set out in Regulation 16 of the CIL Regulations. The Regulations state that the DCS, the relevant evidence and a statement of the representations procedure (Appendix 4) should be publicised for a statutory minimum period of 4 weeks. To ensure good practice, it is recommended that the inspection of the DCS and the Viability Study Addendum should be open for a period of six weeks during which time representations may be made which will be considered by an independent examiner. The documents will be made available on the council's Consultation Portal and will also be sent to consultees.

3.11 Following the publication of and consultation on the DCS any further proposals to substantively modify this document would require a Statement of Modifications in

accordance with Regulations 11 and 19 of the CIL Regulations and this would be brought back to this Committee for further agreement.

- 3.12 The next stage is submission of the DCS, a statement of representations together with any modifications and supporting background documents such as the Infrastructure Delivery Plan (IDP) to an examiner, in accordance with Regulation 19 of the CIL Regulations.

### **CIL funding and Infrastructure provision**

- 3.13 A draft Regulation 123 List has been prepared. This document is a proposed high level framework of strategic infrastructure which is suitable to be funded in part or in full by the levy. This list has been drawn from the Infrastructure Delivery Plan (IDP), which identifies infrastructure required to support development in the City Plan. It should be noted that developers should not pay twice for the same infrastructure provision through s106 obligations and CIL; known as 'double dipping' and which is prohibited by Regulation 123.
- 3.14 A Regulation 123 list can be reviewed and amended separately to the charging schedule. The charging authority should ensure that any changes are clearly explained and subject to appropriate local consultation.
- 3.15 The IDP must demonstrate a funding gap between the cost of the infrastructure and monies available to provide this infrastructure. This funding gap justifies the collection of a CIL, and will be submitted as background evidence for the examiner to consider.

### **Scaling back s106 planning obligations**

- 3.16 On introduction of CIL, there requires a concurrent scaling back of s106 obligations to items of necessary infrastructure directly related to a development as set out in Regulation 122 of the CIL Regulations. The DCS sets out which current areas of s106 contributions are proposed to be scaled back and which contributions are to remain secured via s106 obligation. Affordable housing will continue to be secured through s106 and the CIL Viability Study has factored this in.
- 3.17 The DCS makes clear that the methodologies used to calculate the remaining s106 contribution areas are to continue as set out in the updated Developer Contribution Technical Guidance (March 2017).

### **Next Steps for CIL**

- 3.18

#### Indicative Timetable for approval of a CIL Charging Schedule

<b>Date</b>	<b>Key Stage</b>
Late March 2018	Publication of DCS and draft regulation 123 list
June 2018	Submission of documents and information to the Examiner

Oct/Nov 2018	Publication of the Examiner's recommendations
Jan-March 2019	Following this committee's resolution, submit CIL Charging Schedule for approval by a resolution of Full Council

3.19 Following an examination in public, the examiner will publish recommendations to approve, modify or reject the proposed Charging Schedule. The examiner's recommendations, including any modifications and an update to the wording and commentary of the Development Contribution Technical Guidance to reflect the scaling back of s106 obligations, will be brought back to this Committee for agreement to endorse the Charging Schedule prior to submitting to Full Council for approval.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

4.1 All rates in the published and submitted DCS should firmly reflect the recommendations of a robust evidence base. All documents will be scrutinised at an examination. Necessary changes have been made to the agreed PDCS due to consultation responses indicating that further appraisal was required. If the evidence base is not appropriately observed by the DCS it may be rejected at examination, or the examiner may require further evidence or clarification, all of which will delay the implementation of CIL.

4.2 As noted by ED&C in 2016, without an agreed CIL Charging Schedule, the provision of required city infrastructure will be undermined due to s106 pooling restrictions introduced in April 2015.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

5.1 Adopted BHCC Statement of Community Involvement (SCI) (2015) sets out how the council will consult when preparing CIL. The SCI has been prepared in accordance with the key principles of the Community Engagement Framework.

5.2 CIL Charging Schedule preparation sets a minimum two formal stages of consultation at PDCS Stage and Draft Charging Schedule (DCS) Stage. If a Statement of Modification is published this will be subject to a further four week consultation at formal submission stage in accordance with Regulation 11 of the CIL Regulations.

5.3 The DCS has been amended as a result of the first formal consultation upon the PDCS. Representations made in relation to this DCS will be submitted to an external examiner in accordance with the Planning Act 2008 (as amended) and the CIL Regulations. Anyone that has made representations on the DCS or any Statement of Modifications may request to be heard by the examiner.

5.4 The draft Regulation 123 list sets out a framework of infrastructure to be provided through CIL funding. This will be subject to six weeks formal consultation and will support the DCS.

- 5.5 The consultation report and statement attached as a background document to this report sets out representations and the council's response to the PDCS consultation in full.

## **6. CONCLUSION**

- 6.1 This report recommends that the findings and recommendations of the CIL Viability Assessment Addendum (February 2018) are noted; that the charging schedule rates and zones map of the DCS are agreed; and the DCS document is approved to be published and consulted upon for a six week consultation period then submitted to examination as required under the CIL Regulations 2010 (as amended). It is considered that the proposed rates in the DCS, which have been reviewed in response to the PDCS consultation, strike the right balance between securing additional infrastructure investment to support development and development viability in terms of overall delivery of the City Plan.
- 6.2 This report recommends that the draft Regulation 123 List is agreed for publication and six weeks formal consultation to support the DCS.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 The staff time and consultation costs arising from the report recommendations will be met from existing revenue budgets within the City Development and Regeneration department.
- 7.2 Once a scheme is implemented, there will be ongoing costs connected with advising developers of their liability, collecting, monitoring, reporting and enforcing the scheme. An impact assessment by the Department for Communities and Local Government from 2011 estimated that the annual ongoing cost of the scheme to a local authority outside of London will be up to £0.076m.
- 7.3 CIL regulations allow charging authorities to use up to 5% of CIL receipts on expenses in connection with the initial set-up and ongoing operation of the CIL scheme. Consideration has therefore been given to the costs of administration in setting rates to maximise cost recovery.
- 7.4 The current forecast value of receipts the council may receive from the implementation of the CIL is £2 million per annum over the plan period to 2030. However income from S106 contributions will reduce as a consequence. It is anticipated that overall the income from CIL contributions will be at least the same as current S106 contributions.
- 7.5 CIL receipts will be a potentially important source of income for funding infrastructure in the City, however consideration has also been given to ensure that the charges are compatible with the aims and objectives of the council.

Finance Officer Consulted: Gemma Jackson

Date: 06/02/18

Legal Implications:

- 7.6 The statutory background to the report's recommendations is found in the body of the report.
- 7.7 It is not considered that the report's recommendations raise any adverse human rights implications.

Lawyer Consulted:

Hilary Woodward

Date: 13/02/2018

Equalities Implications:

- 7.8 An equalities impact assessment will be prepared alongside the CIL Charging Schedule. Income raised from CIL will go towards funding infrastructure necessary to support new development and communities.

Sustainability Implications:

- 7.9 Income raised from CIL will go towards funding infrastructure necessary to support new development and communities and should therefore have a positive impact in terms of sustainability incomes

Any Other Significant Implications:

- 7.10 Corporate / Citywide Implications  
Implementation of CIL will help to deliver the policies and objectives of the City Plan and other agreed strategies in the city.

**SUPPORTING DOCUMENTATION**

**Appendices:**

- 1. Draft Charging Schedule (March 2018)
- 2. Draft Regulation 123 List
- 3. CIL Viability Assessment Addendum (2018)
- 4. Statement of Representations Procedure

**Documents in Members' Rooms**

- 1. None

**Background Documents**

- 1. Preliminary Draft Charging Schedule CIL Consultation 2017 Report (March 2018)

2. CIL Viability Addendum Appendices Combined (2018)
3. City Plan Part One
4. Infrastructure Delivery Plan Update 2017, Annex 2 to the City Plan
5. Developer Contributions Technical Guidance 2017
6. Statement of Community Involvement 2015