

**Report of: Director of City Development**

**Report to: Executive Board**

**Date: 14th December 2011**

**Subject: The Community Infrastructure Levy - Background information, the Leeds context, and consultation response to the Government's draft regulations for reform**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	All Wards
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Is the decision eligible for Call-In?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Summary of main issues**

1. The Government is consulting on the 'Community Infrastructure Levy; Detailed proposals and draft regulations for reform' from 10<sup>th</sup> October until 30<sup>th</sup> December 2011. This report sets out the City Council's proposed response.
2. The CIL regulations involve the scaling back of S106 obligations so that they are primarily used for on-site mitigation only. The pooling of funds towards infrastructure delivery will in future be through CIL. The government is concerned to ensure that developers are not charged twice for the same type of infrastructure.
3. The key issues and questions relevant to Leeds are based around the following points:
  - The implementation of neighbourhood funds.
  - The 'meaningful proportion' percentage of the CIL to be passed to the community.
  - Requiring authorities to report more openly and regularly on receipts and expenditure.
  - Allowing the CIL receipts to be used to provide affordable housing.
4. Work on the development of the Community Infrastructure Levy (CIL) for Leeds is in the very early stages. A broad background to the CIL and its implementation in Leeds is also provided in order to set out the issues for the above consultation document and

to gain consensus for Officers to take this work forward, and includes resource costs to be incurred to establish the CIL in Leeds.

5. The report also addresses the recommendation of Scrutiny Board on the proportion of CIL that should go to local communities, previously considered at Executive Board on 2 November.
6. It is concluded that a CIL scheme for Leeds should be progressed as a matter of urgency. Most of the reforms to CIL are welcomed in giving greater flexibility. However, given uncertainties over the scale of CIL receipts, the fundamental need to support strategic infrastructure and the range of competing pressures for funds it is not considered appropriate to support the Scrutiny recommendation.
7. Developing a CIL scheme for Leeds will be a complex undertaking. There will be a need for further reports to Executive Board as work on the Charging Schedule and other aspects of the scheme progresses.

## **Recommendations**

Executive Board is recommended to:

- 1 Note the background information relating to the implementation of the Community Infrastructure Levy in Leeds.
- 2 Agree the development of a Community Infrastructure Levy Charging Schedule as a matter of priority and approve the necessary funding set out in paragraph 4.4.2 of this report
- 3 Approve the response to the Government's proposals for reform of the Community Infrastructure Levy as set out in section 3 of this report and in the questionnaire attached at Appendix 1.
- 4 Confirm that it is not considered appropriate to accept the Scrutiny Board recommendation on the "meaningful proportion" for local communities for the reasons set out in this report.
- 5 Agree that this report be circulated to Town and Parish Councils for information.

## **1. Purpose of this Report**

- 1.1 The Planning Act 2008 established powers to create a Community Infrastructure Levy, and the Community Infrastructure Levy Regulations (April 2010 and April 2011) used these powers to allow a charging authority to levy a charge on the owners or developers of land that is developed, so that they contribute to the costs of providing the infrastructure needed to support the development of the area.
- 1.2 The Scrutiny Board Inquiry on Housing Growth recommended on 10<sup>th</sup> October 2011 that Executive Board support the introduction of the Community Infrastructure Levy (CIL) in Leeds. Scrutiny also recommended that there should be agreement that a significant proportion (80%) of the income to be raised through the CIL be ring fenced for the benefit of local communities, with the balance being directed into a general fund to support City and LCR projects. Executive Board considered the Scrutiny recommendations on 2<sup>nd</sup> November 2011 but did not agree the 80% proposal. The response to Executive Board pointed out that such a proposal runs counter to the purpose behind the CIL, which specifically seeks to loosen the present link between a development and the infrastructure it funds, in order to fund strategic level infrastructure. The Executive Board requested a further report on this issue to its December meeting.
- 1.3 It was also noted that the Government has recently published a consultation paper on new draft regulations for the CIL (10<sup>th</sup> October 2011) which includes the issue of the 'meaningful proportion' to be passed to local communities. This proposal arises directly from the Localism Bill now nearing completion of its progress through Parliament. The previous report to Executive Board suggested that the Council will need to review its position in the light of emerging regulations and as part of the development of a Leeds CIL scheme.
- 1.4 The Government consultation runs until 30<sup>th</sup> December 2011. This report therefore outlines the background and purpose of the CIL, and how it could relate to the Leeds context. It also sets out the suggested response to the consultation on the draft Regulations, which addresses the issue of local funding raised by Scrutiny Board. The main purpose of this report is for Executive Board members to consider and agree the City Council's response.

## **2.0 Background information**

### **What is the Community Infrastructure Levy?**

- 2.1 The Community Infrastructure Levy (CIL) is a tariff system that local authorities can choose to charge on new developments in their area by setting a Charging Schedule. The CIL Regulations initially came into force in April 2010 with minor amendments made in April 2011. The CIL derives from the Planning Act 2008, with the most recent changes arising through the Localism Bill.
- 2.2 The CIL aims to support and incentivise sustainable growth, because it will directly meet some of the infrastructure needs created by new growth. It must be spent on such infrastructure, but the draft regulations now allow a proportion to go to projects that directly benefit those communities where the growth is located. The incentive

for business is that it should provide more certainty and confidence than the current S106 system that is subject to case by case negotiation.

- 2.3 The CIL Regulations have also changed the use of S106 planning obligations. From April 2014 it will no longer be possible to secure S106 financial contributions for District wide requirements such as greenspace, transport schemes and education facilities, and this is already becoming more difficult due to changed regulations.

#### **What types of developments are charged?**

- 2.4 The CIL will be charged at a rate of £ per sq metre and applies to all development of new buildings that people normally use. The CIL does not apply to development for charitable purposes or for affordable housing (which under current regulations will continue to be provided as at present through S106). It also does not apply to developments under 100 sqm, unless they are for housing. Developments that already have outline planning permission prior to the CIL being adopted will not be liable. It only applies to the net increase of floorspace in cases of redevelopment or change of use.
- 2.5 A CIL charge has to be based on evidence of viability. This may mean that a zero rate is set for specified types of development or geographical areas. However, it is not possible to set a zero rate as an incentive to development in the absence of clear viability evidence. Once the CIL is adopted, it can only be waived for individual developments in very exceptional circumstances, hence the need to specify the types of development or locations where it will not be viable to charge the CIL.

#### **How is the Charging Schedule developed?**

- 2.6 Authorities wishing to charge the levy must produce a Charging Schedule setting out the levy's rates in their area. Charging Schedules are a new type of document within the folder of documents making up the Local Development Framework.
- 2.7 Authorities should use the infrastructure planning that underpins the Core Strategy to identify a selection of infrastructure projects that are likely to be funded by the CIL. This allows identification of the total infrastructure funding gap that the Levy is intended to support, having taken account of the other sources of available funding. It is very important to note that the CIL is not intended to fully meet this funding gap, and the wide range of other funding sources will continue to be necessary.
- 2.8 The CIL rate or rates must not put at serious risk the overall development of the area. Authorities must therefore use a range of detailed viability evidence to strike an appropriate balance between providing sufficient infrastructure funding, and the potential effects of the Levy upon the economic viability of development as a whole across the District.
- 2.9 Authorities must consult local communities and stakeholders on their proposed CIL rates. The first stage is the Preliminary Draft of the Charging Schedule, although the Regulations do not specify how or for how long authorities should consult on this. A Draft Charging Schedule must then be formally published for

representations for a period of at least four weeks. The Draft Charging Schedule will then be subject to public examination and, if approved by the Inspector, the final Schedule must be approved by resolution of full Council before being adopted.

### **How is the CIL spent and monitored?**

- 2.10 A very separate but essential aspect of the CIL workstream is to set up and maintain ongoing spending, assessment, and monitoring. The CIL can be spent on a very wide interpretation of infrastructure, including maintenance, as long as it is required as a result of new growth and not to remedy existing deficiencies. There are clear links to neighbourhood planning and the localism agenda where communities have a say in setting their own priorities. There is also the need for co-operation with neighbouring authorities and the wider City Region in order to investigate a CIL contribution towards cross-boundary strategic infrastructure.
- 2.11 Discussions with senior officers of the authorities across the Leeds City Region have indicated support for working collaboratively through the City Region Partnership in the development and implementation of their CILs. With regard to pooling of CIL revenues to pay for sub-regional infrastructure, all authorities agree that any such strategy would need to be proportionate and fair and reflect the distribution of benefits of the proposed infrastructure projects.
- 2.12 Governance and spending and decisions on funding priorities need to be addressed in the wider Council democratic context, and for instance, the asset management programme. Preparation of governance and priority setting needs to be done alongside the drafting of the CIL so that as soon as the Inspector approves the final charging schedule, the Council can start collecting the levy. Infrastructure delivery planning for the Core Strategy (which takes into account other departments' and external stakeholders' infrastructure plans) will be a key element in setting priorities. There will also need to be administrative procedures in place to enable the relevant departments to collect and enforce the CIL, likely to be undertaken alongside Council tax and/or business rates.

### **What are the links with Section 106 Planning Obligations?**

- 2.13 The CIL is intended to provide infrastructure to support the development of an area rather than to make individual planning applications acceptable in planning terms. As a result, S106s will still have an important role in mitigating on-site or very local impacts.
- 2.14 In order to ensure that individual developments are not charged for the same infrastructure items through both S106s and the CIL, the authority publishes on its website a list of infrastructure projects or types of infrastructure which may be funded by the CIL. This is called the Reg123 List. A S106 contribution cannot then be required towards the same item on the List. S106s can still be used to fund a specific item of infrastructure (if not on the List), but there is a limit of five separate obligations which can be pooled for this purpose, as it is intended that the CIL becomes the main mechanism for pooled contributions.

- 2.15 As an example if the Reg 123 list includes funding for schools, then providing a school on-site, even where the scale of development warrants such provision, could not be done via S106 but only via CIL. It would however be open to an authority to accept a school/site as payment in kind either towards or as the whole of a CIL contribution. The only other option would be to make an exception in the Reg 123 list for a particular project so that it could then be secured by planning obligation. As part of the emerging CIL proposals it will be necessary to consider which if any projects would require infrastructure on such a scale that they are best dealt with through S106 obligations. Any such sites would still be subject to the 5 contributions limit.
- 2.16 It is of note that the infrastructure projects and types on the Reg123 List can be entirely different to those originally referred to in the CIL evidence at examination, and can be updated whenever necessary without needing consultation. This gives the authority the flexibility to address new, and changing, priorities.
- 2.17 The Regulations require specific monitoring of the CIL receipts and spending on an annual basis. The CIL Charging Schedule can be reviewed at any point, although this would require another public consultation and examination. As yet there are few monitoring examples from other authorities to learn from.

#### **How much could be charged in Leeds?**

- 2.18 The CIL can be set at different rates according to development type, to location, or a mixture of both, although the main aim is for it to be simple and easy to understand and apply. Any differences in rates must only be based on viability considerations, as determined through the collection of evidence. It should not be set so high that it will be at the margin of viability across the great majority of sites. The Government considers that if the CIL is set at a sensible rate, there will only be rare instances where the addition of the CIL is the tipping point which makes schemes unviable.
- 2.19 Only three authorities have been through Examination and received Inspectors' approval of their Charging Schedules, and only a small number of others have progressed to publishing a draft Schedule. Example Levy rates for new residential floorspace are Newark and Sherwood £45 - £75, the London Borough of Redbridge £70, Shropshire £40-£80, and Portsmouth £105. CIL collected from residential development is assumed to be the major income source.
- 2.20 It is the aim that the CIL would provide at least the level of revenue historically gained by S106 contributions (excluding affordable housing S106s which will continue to be provided as at present). A first aspect to consider is therefore a breakdown of S106 receipts by floorspace.
- 2.21 Based on recent planning permission data the Leeds District average S106 charge per dwelling unit was £2104. This equates to between £16 - £48 per sqm based on the range of dwelling sizes across the District. However, in reality a very wide range of S106 contributions applies depending on geography and size of scheme. The Leeds Economic Viability Assessment (DTZ 2010) examined the theoretical amounts which could be collected under the current S106 regime, across the range

of potential market positions, housing and scheme types, and geographical locations.

- 2.22 Translating this information for the purposes of the CIL, in the city centre although at £3 - £18 per sqm the individual S106 charge per sqm would be minimal, schemes generally deliver a high number of units and therefore the total contribution could be considerable, ranging from £40,659 to £284,610 (high density scheme), and from £69,325 to £475,490 (medium density). Outside of the city centre, the S106 range would be from £33 - £163 per sqm. Although these expected S106 receipts don't take into account detailed viability or S106 negotiations, and therefore can only be a proxy for a potential CIL, they do indicate that there is a fairly wide range at which the CIL could be set.
- 2.23 Relating solely to residential receipts, an estimate of potential CIL revenues in Leeds (based on available housing supply to 2028 rather than a predicted supply/housing target) is £10.75million per year at a residential rate of £50 per sqm, or £21.5 million per year at £100 per sqm. This is inevitably a very broad estimate until further detailed work is undertaken, and cannot be used as a firm basis of the rates which would be set, including that it does not assume any redevelopment of existing sites or conversions. However, the figures do include assumptions and calculations about geographic spread and differing percentages of affordable housing across the District, plus the very limited levels of viability in the City Centre and inner areas where it has been assumed that CIL could not be charged.
- 2.24 The Leeds Core Strategy indicates proposed levels of floorspace for some commercial uses across the District. However, without further viability evidence it would be inappropriate to estimate any potential CIL rate for most of these types of uses at this stage. It is also more likely that as new retailing and offices is generally directed into existing centres where schemes would be redevelopments, a CIL charge would have limited impact as it can only be charged on net increases in floorspace. It is also possible that a zero rate would be set for uses such as leisure and culture, hotels, and community uses.

### **Timetable**

- 2.25 Given the timescale to have a charging schedule in place at the latest by April 2014, and preferably as early as possible in order to maximise revenue for the District, work needs to be progressed as a matter of urgency. Initial project planning indicates that the CIL could be adopted in the first half of 2013, albeit this is highly dependent on resources.
- 2.26 The preparation of the CIL will require considerable technical work, consultation, and ongoing legal and financial advice, along with other specialisms. The Council already holds a wide range of data and studies which would form the basis of the viability evidence, but in particular it is recommended that consultants are engaged to inform the development of the charging schedule as detailed viability testing, costings, and market/agency view and analysis are required. The use of consultants would also make the standard setting more objective and therefore better able to withstand scrutiny at Examination. All authorities with published draft charging schedules have used consultants in such a role. The preparation of the CIL will need input from a wide range of partners on a project team alongside

Forward Planning and Implementation, for instance, officers dealing with S106s, Asset Management, Finance, other infrastructure providers both internally and externally, community representatives, and developers.

### **3 Main issues**

3.1 As noted above, there are a number of key issues set out in the Government's CIL consultation document. The headings below include a brief summary of each issue, the specific questions asked by the Government, the City Council recommended response, and some further bullet points to explain the recommendation.

#### **3.1.1 Neighbourhood Funds – Passing a proportion to the community**

- The Government considers people are more likely to accept and support new development if they are satisfied that it is meeting the demands that it will place on their area and see that their communities will benefit, or at least not suffer, as a result. Channelling resources close to where development takes place will help change attitudes towards development, particularly when neighbourhoods see that the needs arising from development are being directly met and with meaningful control over the funds placed with the community itself. It will give local authorities and their communities the means and flexibility to manage the impacts of new development and ensure that they share in the benefits of growth.
- The government therefore propose that a 'meaningful proportion' of the CIL will be passed onto locally elected councils, i.e. in Leeds this is parish and town councils.
- Where no parish council exists, the authority would retain the funds and should engage with their communities in determining how to spend those receipts. This includes setting the geographical areas within which that proportion should be spent.

**Q1.** Should the duty to pass on a meaningful proportion of levy receipts only apply where there is a parish or community council for the area where those receipts were raised?

**Q2.** Do you agree that for areas not covered by a parish council, statutory guidance should set out that charging authorities should engage with their residents and businesses in determining how to spend a meaningful proportion of the funds?

**City Council Recommendation 1: The proposal to only pass on the contribution to elected and accountable bodies seems sensible. Authorities such as Leeds already have area management arrangements in place that could become the vehicle for engagement and spending in non-parished areas. Statutory guidance on community engagement would be too onerous. Local authorities should be left free to engage as they see fit, with a duty to ensure that funds are spent on the community's behalf.**



**The “meaningful proportion” should relate to the total received across the district as a whole rather than the amount received in any locality. This should then be distributed to all communities where growth is occurring in proportion to the scale of growth in any given year. Otherwise communities where growth is to take place but where a zero CIL rate is applied would receive no funding. The ability to distribute funds in this way should be clarified in the regulations.**

- Only half of the Leeds District is covered by existing parish or town councils (31 in total), and these are mostly the freestanding towns and rural areas. The majority of the urban area does not have such elected bodies in place. Whilst under the Localism Bill Neighbourhood Forums may be designated in non-parished areas this may not provide universal coverage and may happen over many years. Even where such bodies are established they will not be elected and accountable in the same way as town and parish councils. Furthermore under the Localism Bill these bodies would only be designated for 5 years at a time, whereas income and spending decisions will occur over much longer timescales. It would therefore seem sensible in non-parished areas to rely on existing area management arrangements where elected members are ultimately accountable.
- The method of the Council determining spending through community engagement to a certain extent reflects how existing S106 contributions and other neighbourhood funding is currently considered for spending. This is considered to work well, although there would need to be a greater level of involvement and consultation relating to setting local infrastructure priorities than at present. It is likely that this could be undertaken through existing Area Management mechanisms or similar. National statutory guidance on consultation would therefore be unnecessary and in addition would not take into account the range of processes and consultation mechanisms which are already in place across different authorities across the country.
- A matter not apparently covered in the consultation is how to reward communities where growth will occur (e.g. through housing development) but where for viability reasons a zero or very low rate of CIL is charged. If this “community incentive” is to operate in an equitable way then the meaningful proportion needs to relate to the funding pool as a whole and should then be distributed at the same rate across the district in proportion to the scale of growth in that locality irrespective of the CIL rate applying in that area. Otherwise communities with modest growth but a high CIL rate would be well rewarded but communities with significant growth could receive nothing towards the cost of community infrastructure projects. It is not clear that this is the government’s intention and whether the regulations as currently drafted allow for such arrangements.

### 3.1.2 Neighbourhood Funds – the ‘meaningful proportion’ percentage

- The Government will specify the set minimum percentage of receipts from development in an area to be passed to that area/spent in that area. No percentage figure has been proposed as an indication. The level must be sufficient to give neighbourhoods a meaningful contribution to meeting the impacts of development in their area, balanced with the central purpose of the CIL which is to ensure that the costs of providing the infrastructure necessary to support new development are met by that development.
- In order to ensure an inappropriately high amount is not passed to communities, a payment cap per house is also proposed, see Section 3.1.3.

Q3. What proportion of receipts should be passed to parish or community councils?

**City Council Recommendation 2: As a minimum it would be appropriate to set a low percentage, perhaps 5-10% as the ‘meaningful proportion’ as it would always be open to authorities to increase this if local circumstances and priorities made this appropriate. This would take into account the overriding need for the CIL to fund strategic infrastructure, that councils should have flexibility over their spending decisions, and that they could still choose to spend the CIL in locally affected areas as necessary.**

- One of the aims of the CIL is to help pay for strategic infrastructure necessary as a result of cumulative development, which does not get funded under the current S106 system as it is not directly attributable to specific developments. This is the sort of funding currently obtained through S106 for such uses as off-site greenspace, public transport and education. These requirements will still exist and there are major infrastructure projects to which CIL may need to make a significant contribution. These include NGT (£250m), the flood alleviation scheme (Phase 1 - £75m, full scheme £180m), a City Centre park (£40m), park and ride facilities and major repairs to the Inner Ring Road amongst others. Such schemes and the replacement for the pooled S106 funds that we have collected under the current system are what CIL was originally intended to deliver. Allocating a high % to be passed to local areas would be at odds with these intentions and could frustrate the Council’s ability to bring forward these major initiatives. This is most certainly true at the level suggested by Scrutiny Board.
- It should also be noted that the costs of these major schemes and the replacement for pooled contributions will form the basis for the Council’s Charging Schedule. These are the things that the Council will have to establish as necessary to support growth and which it is therefore reasonable to fix the charge against. It would be perverse in these circumstances if the great majority of the funding received did not go to deliver the very projects that the Council has said are essential.

- In addition, and unless the regulations are changed as suggested in the response on Q1, some areas which are zero rated for the CIL would not generate any direct funding, meaning there would be no funding for local projects. Setting a high % meaningful proportion means there would again be much less in remaining funds for the Council to spend in such areas.
- It is also important to remember that this % is not the total amount of Levy which would be spent by the Council in local areas. CIL will need, for instance, to provide funding towards schools and green space provision/enhancement to replace S106 funding. This will clearly need to be spent, as now, in locations where growth has put pressure on existing facilities. In the case of greenspace funding there is no reason why the existing arrangements for agreeing priorities with ward members should not remain in place.
- Another factor that should be borne in mind is the existence of other funding arrangements under which local ward members and /or localities have access to funds for use within their local areas. These include:

Area Wellbeing – where Area Management Committees award funds to projects which support the Area priorities. In 2011/12 £1.8m is allocated for this.

Members Improvement in the Community & Environment (MICE) – where each Member can recommend grant awards for local projects from an annual allocation of £2.5k per Member.

Ward Based Initiatives – for Members to progress minor capital projects within their Wards. Of the funding made available under the scheme, approximately £300k is still available.

Capital Receipts Incentive Scheme – this is a new scheme to be introduced in April 2012 under which a proportion of new capital receipts can be retained locally for investment in local priorities.

Neighbourhood Pride – the Council is considering the introduction of a Neighbourhood Pride scheme with effect from 2012/13 which is intended to support the continuing regeneration and renewal of inner city terraced neighbourhoods in the City; complementing the integrated locality working agenda.

- CIL is about gap funding but has to be set at a level that doesn't simply reflect the infrastructure bill and which is adjusted to take account of viability. In simple terms the demands on the fund are likely to far outstrip the amount generated. As well as strategic infrastructure and the needs of communities there is also the potential for some of the CIL to be used to fund City Region or sub-regional infrastructure. Early work to achieve a £1 billion West Yorkshire Transport Fund identifies CIL as a potential source of funding. It is also likely that a range of other services will see CIL as a means of dealing with the pressures created by growth. For example, the Council has recently received a request from the West Yorkshire Fire and Rescue Service that

they receive a share of any Leeds CIL to deal with the additional demands that growth places on their services.

- Setting a high % as the “meaningful proportion” for communities would not provide local authorities with much flexibility to direct spending. Figures of 5-10% have been proposed from recent Planning Officers Society and Leeds City Region officer meetings, although there is a recognition that any figures are as yet not based on evidence. Given that the scale of funding that might be generated is uncertain and the wide range of competing funding requirements it would be inappropriate to settle on a proportion for local communities at this stage.
- It is suggested that the ‘meaningful proportion’ set by Government should therefore be low, as local authorities can always choose to use more for this purpose as well as directing spend from CIL on schools, open space and other essential facilities to the communities where growth is taking place. This would provide local authorities with greater flexibility and align with the localism agenda. Marginal areas may be at risk of insufficient funding for strategic infrastructure if it is at a higher level.

### 3.1.3 Neighbourhood Funds – Capping Payments

- The draft proposals suggest a per household cap (based on the number of Council tax dwellings) on the amount of money which must be passed to a Parish Council each year, in order to provide a safeguard against situations where significant funding is generated from development in a sparsely populated area.

**Q4.** At what level should the cap be set, per council tax dwelling?

**City Council Recommendation 3: Support the setting of a cap per council tax dwelling as a method to ensure equal provision of the CIL. To determine the level the Government should consider costs of providing local infrastructure items and assess these against housing figures. The cap will need to be low if it is to have any effect, particularly given the potential for phased CIL payments.**

- In order to provide sufficient funding for strategic level infrastructure as discussed above, and to target spending at where it is most needed, it is considered that a cap should be set.
- At the present time in Leeds it is very premature to assess the locations where the majority of the CIL will be generated and the level of expected CIL receipts in each parish. This makes setting a specific cap figure difficult, with any such figure not based on evidence. A good method for the Government to consider is therefore to investigate the generic costs of creating a range of local level infrastructure items, e.g. play facilities, road junction improvements or pedestrian crossings etc. Costs could then be correlated against the average numbers of council tax properties in parished areas to determine a reasonable figure. Council tax properties per parish in Leeds range from 76 in Ledsham and 99 in Walton, to 4203 in Kippax. Properties

in the four town council areas range from 4913 in Wetherby to 14,112 in Morley.

- The cap would also need to correlate with the meaningful proportion itself, as there would be no point in setting e.g. a 10% proportion if the cap means that in reality the amount which could be provided within many areas would be 5%.
- The Draft Regulations state clearly that the cap shall not be exceeded. However, Councils could still spend their own proportion of the CIL in such areas, even if the cap had been reached. This indicates that setting a low cap should not harm local infrastructure provision.
- The Government's CIL consultation document states that the receipt cap is per year but the Regulations themselves do not, and so this reference should be added.

### 3.1.4 Reporting – AMR and Parish Council reports

- The Council's Annual Monitoring Report is to include income and expenditure of CIL receipts, in order to maintain levels of accountability and transparency.
- Parish Councils also have a statutory requirement to report on levy funding and spending, although this is not intended to be onerous.

**Q5.** Do you agree that the proposed reporting requirements on Parish Councils strike the right balance between transparency and administrative burden?

**Q6.** Draft regulation 19 (new regulation 62A(3)(a)) requires that the report is to be published on the council's website, however we recognise that not all parish or community councils will have a website and we would welcome views on appropriate alternatives.

**City Council Recommendation 4: Support reporting financial details in AMR and Parish Council reports, which will demonstrate progress with both LDF proposals and associated infrastructure priorities. Two thirds of Parish Councils in Leeds have their own website, and reports of other Parish Councils and non-parished areas could be hosted on the Leeds City Council website.**

### 3.1.5 Reporting – Parish Council spending

- Parish Councils will not be required to produce their own list of items for expenditure, or to only spend their proportion on items on the authority's published list (the Reg123 List).

**Q7.** Do you agree with our proposals to exclude Parish Councils' expenditure from limiting the matters that may be funded through planning obligations?

**City Council Recommendation 5: Agree it is important for the meaningful proportion to spent on infrastructure chosen by the community, rather than be set by the local authority.**

- As long as reporting requirements are up to date and there are good working relationships between the Council and parish councils/representatives in non-parished areas, then it is unlikely that S106 Agreements would be sought for items which have already been provided, and double counting would be rare.
- However, it is unclear what sanctions, if any, might apply if parish councils do spend the money on infrastructure which does not support the growth of the area, i.e. to remedy existing deficiencies, or on items which are not considered to be infrastructure. This greater flexibility is another reason why a relatively low level for the “meaningful proportion is appropriate.

**3.1.6 Reporting – Administrative Costs**

- Currently, the CIL Regulations allow for charging authorities to use up to 5% of the CIL collected in the first three years to pay for administrative expenses in relation to its set up and maintenance, and 5% of the ongoing receipts after the third year to pay for its continuing administrative costs. Effectively therefore, the initial set up costs can be borrowed against the future income stream.
- It is now proposed to remove the 5% cap of CIL receipts able to be retained by the authority for administrative costs, including in setting up the levy and in engaging with communities.
- Authorities will be required to set out in the AMR how much of the receipts have been applied to administrative costs.

**Q8.** Do you agree with our proposals to remove the cap on the amount of levy funding that charging authorities may apply to administrative expenses?

**City Council Recommendation 6: Agree the 5% administrative expenses cap should be removed as the authority should be able to recover all costs concerning the CIL’s set up and maintenance. This does need to be balanced against the need to use the receipts effectively in order to provide the necessary infrastructure, but the reporting requirements should ensure this is transparent and efficient.**

**3.1.7 Allowing CIL receipts to be used to provide affordable housing**

- S106 obligations already provide an appropriate mechanism to deliver affordable housing. However, there are circumstances where on-site provision may not be the most effective or efficient means. Therefore, asks for views on providing local authorities with an option to use the CIL to deliver affordable housing where there is robust evidence that doing so

would demonstrably better support its provision and offer better value for money.

**Q9.** Do you consider that local authorities should be given the choice to be able if they wish to use Levy receipts for affordable housing?

**Q10.** Do you consider that local authorities should be given the choice to be able if they wish to use both the Levy and planning obligations to deliver local affordable housing priorities?

**City Council Recommendation 7: Local authorities should be given the choice to use CIL receipts for affordable housing if they so wish. However, the CIL should not be the sole mechanism for providing affordable housing.**

- Affordable housing commuted sums at present are subject to very strict clauses as to their spending and timescales, and spending of the monies is necessarily reactive. Increasing the choice in provision and payments for affordable housing is highly beneficial and therefore it would be valuable to gain increased flexibility in spending through also using the CIL. It would be helpful to have a funding source to call on as opportunities arise.
- Affordable housing (and other S106 requirements) are often subject to negotiation at the planning application stage on grounds of viability, and the introduction of the fixed CIL rate will mean that affordable housing remains one of the few factors which will still be open to negotiation. Following the introduction of the CIL it is likely that in some instances developers will seek a reduction in affordable housing due to CIL requirements on viability grounds, even though across the District the CIL would have been set to take affordable housing targets into account. It is therefore reasonable to be able to use some of the CIL receipts to spend on affordable housing provision, especially where only low levels of provision are otherwise achieved.
- However, it is not agreed that CIL should be the sole mechanism. On site provision of affordable housing through S106 is still the preferred approach and likely to produce more affordable housing and with greater certainty over delivery. The ability to use CIL would provide a useful addition.

### **3.1.8 Affordable Housing – local plans to set out the proportion split between CIL and S106**

- Views are invited on the appropriate balance or combination between the CIL and S106 obligations to best support the delivery of affordable housing. For example, permitting a combination of the mechanisms to be used whereby local authorities set out where they would wish to collect affordable housing contributions from planning obligations, such as key sites where on-site delivery is viable and essential. For the remainder of their area, affordable housing could be funded with Levy contributions. Local authorities could then be clear on their intended approach and ensure this is reflected in their charge setting process.

- We would welcome views on requiring local authorities to set out clearly in local plans the approach they will take to collecting contributions for affordable housing under the levy and/or planning obligations, and the anticipated level of contribution and delivery through each.

**Q11.** If local authorities are to be permitted to use both instruments, what should they be required to do to ensure that the choices being made are transparent and fair?

**City Council Recommendation 8: Strongly oppose requiring the proportions and anticipated delivery of affordable housing to be set out in the local plan, as it would not give the necessary flexibility to best promote the provision of affordable housing in Leeds, and contradicts the purpose of allowing the CIL to be spent on affordable housing. It would not support the affordable housing policy in Leeds. It would also slow progress on the Local Development Framework.**

- The choice to use CIL to pay for affordable housing (alongside S106s) should be for the authority to decide, and to prioritise against other infrastructure projects.
- The CIL could not be set in a simple and equitable manner across the District if some sites were planned in advance to provide on-site affordable housing but others to provide affordable housing solely through the CIL. On-site delivery of affordable housing is essential, and S106 already allows council's to take a commuted sum for off-site provision where this is the most appropriate solution.
- Requiring spending mechanisms to be set out in local plans would delay the Local Development Framework timetable, and no consideration has been given as to how authorities with adopted local plans would meet this requirement.
- The CIL in Leeds will be set at a rate(s) which takes into account the need to also provide affordable housing on site. CIL would be most helpful as a means to top up provision levels given the likely level of delivery compared to the scale of need.

### **3.1.9 Affordable Housing – Pooling of Contributions**

- The limit on pooling only five Section 106 contributions was created because the levy offers a fairer, more transparent and certain arrangement. However, the Government does not want the rules on limits of pooled contributions to have a detrimental effect on the provision of affordable housing.

**Q12.** If the Levy can be used for affordable housing, should affordable housing be excluded from the regulation that limits pooling of planning obligations, or should the same limits apply?

**City Council Recommendation 9: Affordable housing should be excluded from the pooling limits which apply to the rest of S106 contributions.**



- The provision of affordable housing in relation to developer contributions from a private scheme is normally on-site, undertaken through individual S106s for each site. Pooling considerations would therefore not apply in the majority of cases. However, in the instances where a commuted sum is provided instead of on-site delivery, it would not be reasonable for there to be a cap on the pooling as the current S106 pooling mechanism should continue.

### **3.1.10 Adding new Development Orders to the list of developments that may be liable to a charge**

- The Localism Bill introduces new provisions to allow for planning permission to be granted through Neighbourhood Development Orders, including Community Right to Build Orders. It is proposed that the CIL will also be charged on development commenced under these Orders (after 2013). This will ensure fairness and remove potential distortion, as these types of development will also have an impact on infrastructure.

**City Council Recommendation 10: Adding new Development Orders to the list of developments that may be liable to a charge is reasonable, and would align with existing similar proposals for CIL charging on permitted development where it meets the criteria.**

## **4. Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The consultation on the detailed proposals and draft regulations for reform has been subject to national public consultation since 10<sup>th</sup> December and the deadline for representations is 30<sup>th</sup> December 2011.
- 4.1.2 As discussed at Section 1.2, Scrutiny Board considered the ‘meaningful proportion aspect’ to the community element of the CIL in relation to their Inquiry into Housing Growth, and Executive Board in response requested further consideration of this matter in relation to the Government’s wider consultation.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Bringing forward the CIL in Leeds will enable the Council to direct spending on necessary infrastructure items, give more choice in priority setting for spending to local communities, and balance out the costs and benefits of development across the District. It is therefore considered that it is a beneficial mechanism to help promote equality which would be improved if the government recognises the Council’s concerns for those communities where little or no CIL funding will be generated.
- 4.2.2 The Government’s proposed changes to the CIL Regulations may have some potential implications for equality and diversity, and cohesion and integration, particularly around the provision of affordable housing, and in potentially disadvantaging communities which do not benefit from being parished areas. However, with the range of multiple questions posed and no clear steer on a number of details, it is difficult to ascertain exactly what the implications might be.

4.2.3 In preparing this report due regard has been had to equality and diversity issues and a screening assessment has been carried out. Council will ensure that whichever proposals in the Government's consultation document become the final Regulations, that decisions and priorities enacted by the Council will be in the interests of equality and diversity.

### **4.3 Council Policies and City Priorities**

4.3.1 The CIL is already a process which local authorities can use, as supported by the CIL April 2010 and 2011 Regulations. The proposed changes to the regulations broadly reflects Council policies and city priorities in that it has an increased emphasis on community engagement, localism, specific spending in local areas, and an intent to increase the amount of affordable housing which can be provided.

### **4.4 Resources and Value for Money**

4.4.1 There are clear resourcing costs and constraints in terms of the work needed to set up the CIL in Leeds, including the recommendation to employ consultants for detailed viability testing. However, the government recognises that costs will be incurred and the regulations allow set up and administration costs to be reclaimed from future CIL receipts. It is difficult to be precise about the scale of costs likely to arise. In its Community Infrastructure Levy – Final Impact Assessment (Feb 2010) CLG set out a range of possible costs. Set-up costs are estimated as: viability testing £25-70k; consultation £10-20k; examination £30-40k; and printing £1.5k. This does not include any assessment of in-house staff resource costs. For an authority of the size and complexity of Leeds it can reasonably be assumed that costs will be at the upper end if not beyond indicative national averages.

4.4.2 It is therefore suggested that the Council make provision for initial costs of £150k and an additional £40k staff costs in order to progress a CIL charging schedule for Leeds. If early progress is to be made then some costs may be incurred in 2011/12. Most costs are likely to fall in 2012/13 and depending on consultation and the timing of Examination may carry over into 2013/14. These costs can be reclaimed from future CIL receipts. The costs do not cover any arrangements that may need to be put in place in advance of the introduction of CIL to address on-going monitoring and administration.

4.4.3 The CLG Assessment also recognises that there will be on-going costs in administering the system. These will include; advising developers of their CIL liability, collecting, monitoring, reporting and enforcing CIL. Enforcement will involve, issuing fines, serving a stop notice, debt recovery measures and prosecuting for persistent non-payment.

4.4.4 The implementation of the CIL in Leeds is expected to result in increased funding for strategic infrastructure across the District. The recommended responses to the Government's consultation document therefore reflect the need for this to be the main priority for the CIL, albeit that neighbourhood funds have a very important role to play in mitigating the local impacts of development and allowing communities to set their own priorities. The impetus to deliver the CIL as early as possible would therefore provide the most value for money.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 Once the Government adopts the Regulations the situation will become clearer as regards the meaningful proportion to be passed to local communities, and whether affordable housing can be paid for through the CIL. This will enable a better understanding in Leeds of how the CIL can progress and possible forecasting of receipts.

## **4.6 Risk Management**

4.6.1 If the Community Infrastructure Levy is not brought forwards in Leeds, then the Council is at risk of losing out on monies which under the present system are gained through the S106 mechanism, as this system will no longer be available. In addition, the introduction of the CIL is supposed to bring in a greater amount of infrastructure funding than at present, alongside wider benefits to incentivise development such as more certainty to developers, and more acceptance by local communities. In order to manage this risk it is recommended that Officers continue to work on the early stages of developing the CIL.

## **5 Conclusion**

- 5.1 CIL offers real potential to secure significant funding for infrastructure from a wider range of developments than at present. Being a fixed tariff it avoids the need for case by case negotiation and provides greater certainty for developers. As the ability to pool commuted sums will be limited after April 2014 it is important that the Council makes progress in developing a CIL charging schedule.
- 5.2 The proposal that a proportion of CIL receipts be made available to communities for local projects is to be welcomed and is entirely consistent with the emerging localism agenda. However, the recommendation of Scrutiny Board that this “meaningful proportion” should be set at 80% is not considered appropriate. As explained earlier in this report there is uncertainty about the scale of CIL receipts, but it is certain that infrastructure requirements will far outstrip available funds. CIL is primarily aimed at strategic infrastructure and a range of services are likely to seek a share of the funding pot , in addition to any community provision. Fixing the proportion at this stage is premature in the absence of a better understanding of the funding pressures and likely level of income.
- 5.3 Most of the proposed amendments to the CIL regulations can be supported for the reasons set out in this report. The flexibility to use CIL as well as S106 for affordable housing would be welcomed.

## **6 Recommendations**

- 6.1 Executive Board is recommended to:
1. Note the background information relating to the implementation of the Community Infrastructure Levy in Leeds.
  2. Agree the development of a Community Infrastructure Levy Charging Schedule as a matter of priority and approve the necessary funding set out in paragraph 4.4.2 of this report.

3. Approve the response to the Government's proposals for reform of the Community Infrastructure Levy as set out in section 3 of this report and in the questionnaire attached at Appendix 1.
4. Confirm that it is not considered appropriate to accept the Scrutiny Board recommendation on the "meaningful proportion" for local communities for the reasons set out in this report.
5. Agree that this report be circulated to Town and Parish Councils for information.

## **7 Background documents**

- 7.1 'Community Infrastructure Levy; Detailed proposals and draft regulations for reform.'

## **8 Appendices**

- 8.1 Appendix 1 - Questionnaire response to 'Community Infrastructure Levy; Detailed proposals and draft regulations for reform.'