Report of	Meeting	Date
LDF Joint Officer Team	Central Lancashire LDF Joint Advisory Committee	23 June 2010

COMMUNITY INFRASTRUCTURE LEVY AND SECTION 106 PLANNING OBLIGATIONS

PURPOSE OF REPORT

1. To explain the main provisions of the Community Infrastructure Levy (CIL) and the proposed changes to Section 106 planning obligations powers.

RECOMMENDATION(S)

2. That the report be noted.

EXECUTIVE SUMMARY OF REPORT

3. There is now a new way of securing developer contributions to provide infrastructure that is separate from planning obligations negotiated under Section 106. The new government may replace CIL with some other tariff system but it is never the less informative to present the system now in force. The CIL regulations seek to reduce the role of Section 106 obligations (exactly how was the subject of a consultation started by the previous government) for capital infrastructure contributions particularly in respect of off-site and pooled payments.

4. Section 106 obligations are individually negotiated and the monies generated were intended to be spent on infrastructure directly related to the contributing development. CIL is a mandatory charge that can only be introduced following proper consideration of economic viability as well as being informed by an up to date development plan (such as a Core Strategy) and following consultation on and independent examination and approval of a charging schedule. CIL monies can be spent anywhere but only on infrastructure schemes the charging authority (and this will most often be the District Council) publicises it intends to resource. These will be projects derived from its infrastructure planning work and inevitably in two tier areas this will include functions discharged by the County Council as well other agencies.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

5. To bring to the matters to Members attention.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. To await detailed proposals from the new government on a levy or tariff approach.

BACKGROUND

7. After several years of various proposals for a new levy or tariff based approach to developer contributions the Community Infrastructure Levy (CIL) was brought into effect on 6 April 2010. This has the effect of reducing the scope of Section 106 provisions to avoid double charging for the same pieces of infrastructure. In March the government launched a consultation on how the changes in provisions will apply. The new government has indicated its intention to replace CIL. However the Conservative Party in its pre-election papers proposed a similar tariff based system so the CIL approach may well be indicative of what provisions are settled upon.

SECTION 106 PLANNING OBLIGATIONS

8. Planning obligations set out under S106 of the Town and Country Planning Act 1990 are flexible local tools that enable specific impacts of development to be mitigated, allowing local planning authorities to grant planning permission where it would otherwise be refused. Such obligations can require more than the provision of infrastructure, they can also secure the provision of affordable housing as part of a market housing development, require the provision of non-infrastructure mitigation works such as replacement wildlife habitat provision and impose other controls as to how a development is implemented such as phasing provisions.

9. Concerns have, however, been raised nationally about inconsistency in the use of planning obligations between different local authorities, a lack of transparency and of accountability in ensuring that contributions are used for the purposes for which they are sought. In addition, agreements can sometimes take too long to negotiate, often involving high legal costs, which can frustrate or delay development. These arguments, among others, led the previous government to legislate for a new system.

10. The original scope of acceptable uses of planning obligations is set out in Circular 5/05. In particular it provides five policy tests for assessing whether or not a planning obligation should be sought in connection with a particular development proposal.

    These are that a planning obligation must be:

    (i) relevant to planning;

    (ii) necessary to make the proposed development acceptable in planning terms;

    (iii) directly related to the proposed development;

    (iv) fairly and reasonably related in scale and kind to the proposed development; and

    (v) reasonable in all other respects.

11. Over time, however, the scope of planning obligations has been extended beyond their original intention largely as a result of various court judgements. The effect of these has been to extend the scope for which planning obligations may be sought, to include the types of more general contributions which the Community Infrastructure Levy (CIL) is intended to cover. As a result, local planning authorities can and have sought to maximise developer contributions through planning obligations in ways that do not appear to accord with the policy in Circular 5/05. The previous government's view was that, in the light of

the introduction of the CIL, it would not be appropriate that planning obligations should continue to be used in this way. It therefore proposed a new policy on planning obligations, which was designed to clarify the purposes of planning obligations.

12. CLGs stated position was that "planning obligations should aim to secure necessary requirements that facilitate the granting of planning permission for a particular development, while CIL contributions are for general infrastructure need". The new policy also puts tariff-style charges on a better statutory basis

13. The CIL regulations reformed planning obligations in three respects:

- putting the Circular 5/05 tests (to be summarised into three parts) on a statutory basis for development which are capable of being charged CIL.
- ensuring the local use of CIL and planning obligations does not overlap; and
- limiting pooled contributions towards infrastructure which may be funded by CIL.

Ensuring CIL and Planning Obligations do not overlap

14. Concerns have been raised, particularly by the development industry, that unrestricted use of planning obligations alongside use of CIL in an area could result in developments being asked to contribute towards a single item of infrastructure through both planning obligations and CIL. This could result in developers effectively being charged twice, which could significantly undermine the economic viability of developments.

15. Preventing generalised contributions towards indirect infrastructure requirements, obtained through the use of planning obligations, provides a very clear boundary between the use of planning obligations and CIL, as it removes the potential for planning obligations to be used for the same specific infrastructure items as CIL in a local area. If a piece of infrastructure is fully funded, whether through CIL or otherwise, it is not appropriate to also seek contributions to it through a planning obligation. Planning obligations should, therefore, only aim to secure necessary requirements that facilitate the granting of planning permission for a particular development, while CIL contributions are for general infrastructure need.

Limiting Section 106 pooled contributions and tariff approaches

16. Planning obligations have often struggled to contribute effectively to large infrastructure requirements, or infrastructure needs which are caused incrementally through the cumulative impact of a number of developments. This can result in either the first or last developer in an area contributing disproportionately to the cost of the infrastructure required in that area, because their development was the 'tipping point' for the need for a piece of infrastructure, while others make a low contribution or no contribution at all.

17. In Circular 5/05, the Government sought to address this issue by encouraging the use of pooled contributions and standard charges. Because tariff type approaches spread the burden more fairly and evenly, and result in a more predictable flow of income, they are likely to be better at dealing with this difficulty.

18. It follows, however, from the need to ensure no overlap between CIL and planning obligations that The Government considers that section 106 of the Town and Country Planning Act 1990 is no longer a suitable basis for generalised pooled charges or tariffs in light of the introduction of CIL.

19. An important part of the argument in favour of introducing CIL has been that the process for establishing a CIL will involve greater transparency, public involvement and testing,

compared to the use of tariffs through planning obligations. The Government has specifically responded to calls from the development industry to ensure that the testing of local CIL proposals is equivalent in its depth to that applied to development plans. This represents a higher standard than for tariff schemes.

20. Secondly, even when a planning obligation is sought on the basis of a 'tariff' in a development plan, such a tariff is a policy only and therefore is ultimately always subject to negotiation, even if the developer contribution policy is presented as a clear fixed 'tariff'. When adopted by a local authority, CIL will be a mandatory charge for most types of development. This clearly empowers the local authority to require the specified payment. This in turn better enables delivery of the objective of tariff schemes that more developments would contribute to mitigating the cumulative impact of development. A mandatory basis for collection provides greater certainty and predictability of income for the authority, but also has benefits for developers in that a more effective level playing field is created between different developers as to what they will pay.

COMMUNITY INFRASTRUCTURE LEVY

21. The overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partly) by owners or developers of land.

22. The regulations permit charging authorities (the Mayor of London, London Borough Councils, Unitary Authorities and District and County Councils) to charge the Levy for "chargeable development". The development in question must involve a building, otherwise it cannot be charged CIL

23. Each charging authority will decide whether or not they would like to charge CIL and will set their own rates expressed as pounds per square metre of net additional increase in floor space. To adopt CIL a charging authority must publish a draft charging schedule (a menu of charges) for public consultation. The charging schedule is subsequently reviewed by an independent examiner who can accept the schedule as submitted, modify it or reject it outright. The process is similar to that involved in producing a LDF development plan document and in fact the charging schedule sits within the LDF.

24. The initial stage of preparing a charging schedule focuses on determining the CIL rate(s) and consulting on these. When a charging authority submits its draft charging schedule to the CIL examination, it must provide 'appropriate available evidence' on economic viability and infrastructure planning (as background documentation for the CIL examination).

25. The government expected that charging authorities would implement CIL where their 'appropriate evidence' includes an up-to-date development strategy for the area in which they propose to charge. It is for the local authority to decide whether the adopted development plan for the area is sufficiently up-to-date to implement CIL. However, the guidance is that this development strategy should normally be set out in a draft or adopted Core Strategy.

26. Where authorities opted for CIL, there would need to be a whole new set of governance arrangements for the collection and spending of the funds. The responsibility for both collection and expenditure rests with the CIL authority, but some if not most of the expenditure would be for other agencies' projects, particularly in two tier areas. There would need to be very clear and transparent corporate processes for administering the funds. This should include collaboration with partners in allocating and prioritising spending.

27. The infrastructure planning process and the resultant delivery programme underpinning the CIL charging schedule would form the basis for allocating CIL spending. Authorities

would need to be able to demonstrate to the public and to developers that CIL has been spent in accordance with the regulations.

28. The regulations provide a wide definition of the types of infrastructure that can be funded by CIL, including roads and other transport facilities, flood defences, schools and other educational facilities, medical facilities, sporting and recreational facilities, and open spaces. It is these types of infrastructure to which these restrictions to use of planning obligations apply in order to avoid the opportunity for double charging.

29. Infrastructure or services that are not capable of being funded by CIL include other types of infrastructure, such as affordable housing, or other services and as CIL infrastructure may only be funded by capital receipts, revenue payments towards any infrastructure items, such as maintenance payments, are not able to be funded through CIL receipts. Use of planning obligation contributions for services or infrastructure which fall outside of the possibilities for CIL funding will remain unaffected by this particular reform.

30. A charging authority should set out its intentions for how CIL monies would be spent on the authority's website. If a charging authority did not set out its intentions for use of CIL monies then this would be taken to mean that the authority was intending to use CIL monies for any type of CIL infrastructure, and consequently that authority could not seek a planning obligation contribution towards any such infrastructure.

31. The way in which pooled contributions may be sought via planning obligations must be determined based upon whether the contribution is intended towards (a) infrastructure that is capable of being funded by CIL, or (b) items that are not capable of being funded by CIL

32. Developer contributions towards affordable housing will continue to be made through Section 106 planning obligations. These enable affordable housing contributions to be tailored to the particular circumstances of the site, and crucially, enable affordable housing to be delivered on-site, in support of the policy of mixed communities.

Background Papers			
Document	**Date**	**File**	**Place of Inspection**
Communities and Local Government – New Policy Document for Planning Obligations – Consultation Paper	March 2010	-	Lancastria House, Preston Civic Offices, Leyland Union Street Offices, Chorley County Hall, Preston

Report Author	**Tel**	**Email**	**Doc ID**
Julian Jackson	01772 536774	Julian.jackson@lancashire.gov.uk	JAC Report June 10 – CIL & S106