COMMUNITY INFRASTRUCTURE LEVY
CONSULTATION ON DETAILED PROPOSALS AND DRAFT REGULATIONS

A response by the Royal Town Planning Institute to
The CLG consultation, October 2009

RTPI
mediation of space · making of place

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1. Introduction

The Royal Town Planning Institute (RTPI) is the leading professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 22,000 members who serve in government, local government and as advisors in the private sector.

This document responds to the Government's consultation document for the *Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy* published in July 2009. This follows our response to the much criticised Planning Gain Supplement[1] (PGS) tax proposals which were withdrawn in favour of a 'plan-based' system. The RTPI has advocated for such a move since the PGS was first proposed and consulted with Government on plan-based alternatives and the current proposal to introduce a Community Infrastructure Levy (CIL) is broadly welcomed by the Institute.

The response has been formed drawing together internal consultations and the results of meetings with members, including formal debates within the RTPI Planning, Policy and Practice Committee[2], the RTPI Cymru Policy & Research Forum, and input from the RTPI National Association of Planning Enforcement (NAPE). A workshop to discuss the draft regulations was also convened by the joint RTPI and CIH Planning for Housing.[3] Comments submitted to the RTPI by its members have also contributed to this response.

[1] See the RTPI response to the Planning Gain Supplement, Feb 2007
[2] 1st October 2009
[3] 29th September 2009

2. Response in Principle

The RTPI supports the principle of capturing increases in land values arising from the grant of planning permission in order to secure funding for infrastructure directly and indirectly related to the development of the land. CIL has the potential to be an effective and fair means to ensure timely contributions in this regard.

The proposed CIL retains the most direct link between development plans, identified infrastructure needs and costs and eventual infrastructure levy liability. It is right that developers receive a transparent demonstration of the purpose to which their CIL payment is put and the relationship between their payment and infrastructure needs generated by their development proposal, through the preparation of a local infrastructure plan and programme.

It also enables continued individualised section 106 or equivalent fund collection for special cases but ensures that these must have a 'best practice' and a development plan policy basis to continue.

While the RTPI is supportive of CIL in principle, a number of concerns are raised with regard to the detail of its implementation – see consultation questions response below. Some matters of principle also require further attention, as follows.

A key concern is with the credibility of CIL as proposed regarding:

- its relationship with other sources of funding for infrastructure;
- the relationship of the charged development with the infrastructure provided;
- the implications of reduced CIL charges for certain types of development meaning that other developments will have to make up the shortfall;
- the relationships with direct requirements still to be secured through s106, with affordable housing requirements, and with provision 'in kind'.

Whilst the regulations will apply to both England and Wales, the RTPI notes that the draft regulations have been written with a focus on England, including the evidence and justification for the introduction of the CIL. In some cases reference has been made only to English evidence, and no reference has been made to Welsh evidence where it exists; for example studies to value planning obligations. This raises questions as to the evidence to support the application of the CIL in Wales, particularly in its current form and whether it has been designed to take into account the different planning system and the context in which it will operate in Wales. Any policy, guidance and regulations need to be written with genuine reflection of the two planning systems and the different national planning policy.

The Institute suggests that, if CIL is to be introduced in Wales, then it would be more expedient, and certainly less confusing, to do so using separate regulations and guidance, preferably through the Welsh Assembly Government, that takes proper account of the planning context in the Principality.

S106 is the responsibility of Welsh Ministers as part of the Devolution settlement – the RTPI cannot support a mechanism which undermines this. This is a fundamental point.

As a result, the following RTPI response is in two parts: the first section deals with England and the second section highlighting specific issues concerning Wales.

There remains concern in many quarters that the introduction of CIL may be limited due to viability concerns, both in the boom period and more obvious in the current recession. CIL may therefore be a hindrance in bringing forward development. S106 is a far more flexible tool which is applied well in many authorities (admittedly its application could be improved in some areas). The current proposals insist that CIL is optional, but with a scaling back of S106, it is in effect compulsory.

There are issues about resourcing the implementation of the CIL, especially in Wales. If CLG are taking this forward on an England and Wales basis, they should resource this work on an England & Wales basis. There is concern that the Welsh Assembly will not have the resources to fund this; LPAs certainly do not.

3. Response to consultation questions

Chapter 2. Delivering infrastructure with CIL

1. **Do you agree with the proposal that the draft CIL regulations do not define 'infrastructure' further?**

   Yes – the RTPI is of the view that the CIL charging authority is able to identify what is appropriate local infrastructure for their area to achieve local responsiveness. However, there is a potential danger that the courts will undoubtedly be called upon to settle disputes about the definition of appropriate infrastructure.

2. **Is any further reporting required for CIL?**

   No - The CIL reports could form an annex to the annual Local Development Document Report which is required each December. Alternatively CIL could be reported with development control performance.

   The RTPI supports charging authorities to use existing monitoring and reporting mechanisms to report on CIL. This will not only minimise additional administrative burdens on time, but also enable direct linkages in England with the LDF reporting in conjunction with the Annual Monitoring Report in December.

   A standard template for reporting provided by the government could be a useful way of ensuring consistency across charging authorities whilst still offering flexibility in what information is collected. One way to ensure adequate and relevant information is reported on would be to highlight areas where mandatory information is required (for example that which is described in the regulations) and another section where option information could be collected, which may assist in building a robust evidence base for future revisions of the charging schedule.

Format of Reports

3. **(a) Is the 1 October deadline for reporting on the previous year's activity sufficient for local planning authorities?**

   As suggested above, the RTPI believe it would be beneficial for reporting CIL in conjunction with other annual reporting for LDFs in December.

   (b) Will this timescale enable developers and local communities to understand how CIL revenue has been applied?

   See above comments.

General

4. **Do you have any comments on any other matters raised in chapter 2 which are not covered by the questions above?**

No

Chapter 3. Setting the CIL Charge

Charging Authorities

5. **Are there any circumstances where a CIL charging authority would not be able to fulfill its charging authority functions effectively?**

   It has been suggested that, while in Greater London the regulations allow for a two-tier system, this is not the case in Shire authorities, where the district council is a charging authority and the county is not, despite being a major infrastructure provider. The RTPI does not believe that both tiers of authorities should have charging powers. It is recognised that London can be argued to be a special case, but generally speaking, the RTPI considers that proper infrastructure planning and a robust CIL charging schedule from a single charging authority should offer sufficient security to infrastructure providers.

6. **(a) In deciding whether to use the power at section 207 of the Act, should the Government apply different criteria?**

   Yes

   (b) Which functions should a joint committee perform?

   Joint Committees should have the ability to become CIL charging authorities as the reason for joining together is to take a holistic approach to planning the provision of infrastructure in their area.

Differential Rates

7. **Do you agree that differential rates should be based only upon the economic viability of development?**

   The RTPI considers that economic viability is but one factor in setting differential rates. These rates should also consider the likely demand on existing and future infrastructure based on the use of development. For instance, an employment area where there is likely to be fewer employees than say an office tower block, the demand on the cost and type of infrastructure will be smaller. Similarly, residential areas are likely to demand different types of infrastructure (such as education and recreation facilities) than those in enterprise and commercial zones). This is not about ring-fencing CIL income for infrastructure akin to the immediate area (as S106 will still deal with this), but attributing infrastructure demand and associated cost to use.

   There is also a need to be sensitive to local circumstances and to continue to support the re-use of brown field sites, which are often more costly to bring forward than similar greenfield sites. A "zone" based approach would, however, make it difficult for a thematic based approach to be adopted (for example on the basis of Greenfield/brown field definition or development sector).

Metrics

8. **Do you agree that CIL charges should be based on a metric of pounds per square metre?**

   Yes - CIL is about impact and this is primarily related to human activity, it appears logical to use this metric in most cases. However, there is concern that certain activity generating developments do not relate purely to floor space, for example, theme parks and caravan parks (residential and holiday). The use of the Building Regulation definition would also preclude demountable buildings, for example prefabricated buildings. Ancillary buildings are likely to be excluded as are large scale prefabricated offices (see mineral and dock developments). The definition could result in changes in design to avoid CIL payment.

9. **Would prefer to have a choice of charging metrics, and if so, can you suggest what and how the system could accommodate this choice without undue complexity and unfair distortions?**

   Yes - There is a need to capture non-floorspace activities. For example, theme parks could be charged on projected visitor flow and caravan parks on number of static pitches and size of caravan. It is important to capture CIL from such developments as they require, for example, roads and flood defences as much as any other development. A simple charging schedule based on the fees regulations could be an alternative method.

10. **Do you agree with the Government's proposal to apply the charging metric to the gross internal area of development or do you think there are advantages to levying CIL on the gross external area?**

    Yes - As CIL is about impact of human activity, then useable floor space (i.e. gross internal area), where the metric is based on floorspace, is logically the criterion to be used.

11. **Do you agree that CIL should be levied on the gross development, rather than the net additional increase in development?**

    No. The RTPI consider that it is important to help incentivise the recycling of previously developed land. However, because the mix of uses in the resulting redevelopment may be different from that of the existing redevelopment, we consider that the amount of CIL payable should be calculated on the basis of the difference between the CIL for the total redevelopment and the theoretical CIL value of the existing development.

Indexation

12. **Should authorities be required to index CIL charges?**

    Yes - To remain robust CIL must be indexed.

13. **(a) Should indexation be based on a national index to provide simplicity, consistency and a readily understood index.**

    As a general principle, the RTPI believes that nationally-agreed standards are the best way to achieve simplicity and consistency, and to avoid unnecessary duplication of effort and costly research and defence of proposals by local authorities. However, it may be

appropriate to allow for local variations to be applied where an authority or groups of authorities can justify a departure. Regulations or guidance should set out circumstances under which this would be appropriate.

(b) Alternatively, should charging authorities be allowed to choose different indices in different places?

See response to CQ13(a). In addition, in preparing the national index, Government should consider whether there are regional variations in construction costs, etc. that might justify variations in the index.

14. **Do you agree with the Government's proposed choice of an index of construction costs?**

    Yes - The cost of infrastructure is due to construction rather than other indices which are primarily retail based.

15. **Are you content with indexation taking place to the point of the grant of planning permission or would you prefer charges to be indexed to the point when development commences?**

    No - Much can change in 3 years or longer if the time period condition is varied. There is an argument that payment 28 days after the granting of permission would provide certainty, however, this would create difficulties if the development did not go ahead.

16. **Do you think it is right to apply the index on an annual basis or do you see advantages in applying it monthly?**

    Monthly is too short-term as the potential for variations is high; a trend is more appropriate. Recent fluctuations in steel prices have demonstrated the high volatility of monthly prices.

17. **Do you agree that charging authorities should be able to index their charges from 1 January each year (taking the November index)?**

    Yes

Charging schedules Procedures

18. **Do you agree with the Government's proposal to allow joint charging schedule/development plan examinations?**

    Yes - Charging schedules must be based on infrastructure needs linked to development plan implementation, therefore this is a logical step. It is considered that Joint Committees should also be charging authorities due to the relationship with the Core Strategy and Infrastructure Plans.

19. **Do regulations or guidance need to cover any additional matters relating to joint examinations?**

    This should be kept under review.

20. **Should the CIL examiner be able to modify a draft charging schedule to increase the proposed CIL rate?**

    Yes - Without the ability for the examiner to make a "judgement" the process may become too protracted.

    In the event outlined in section 3.123 where a CIL rate poses serious risk to viability, the RTPI suggests that in addition to the proposed mechanism for an inspector to modify the CIL that they also consider the demand/cost of infrastructure that the development would require, and how the funding gap will be made up given a reduced CIL.

General

21. **Do you have comments on any other matters raised in chapter 3 which are not covered by the questions above?**

    With regard to section 3.111, The RTPI acknowledges that there may be cases where a charging authority needs to withdraw their draft schedule however, it should be made clear that in this event, the charging authority has sufficient alternative development contributions mechanisms in place to eliminate any risk of a gap in infrastructure funding (e.g. an existing S106 policy).

    The RTPI believe that the minimum requirement for consultation on charging schedules should be consistent with that stipulated for other consultations of a similar nature; in this case that would be the 6 weeks stipulated in para 3.78. However, in line with current good practice on community engagement and consultation, the RTPI strongly suggest that guidance should indicate that charging schedules be consulted with the community for at least 8, and preferably 12 weeks. In all cases, LPAs must be encouraged to apply as a minimum standards set for similar consultations in their SCI (which will not necessarily account for this particular type of consultation). Charging schedules and associated evidence base is likely to be complex and the minimum 6 weeks will probably be inadequate for communities and affected businesses to appreciate the technical nature of the schedule.

    With regard to section 3.129, there is an outstanding issue surrounding any transition of arrangements from S106 to CIL where a developer has engaged in pre-application discussions with a charging authority. The final regulations should clarify this.

    Section 3.133 proposes open ended charging schedules to minimise market distortion however, schedules will be based on the infrastructure plan as part of the core strategy, which do envisage planning horizons and therefore an end date. It would be sensible for the charging schedule to be allocated an end date, and ensure schedules are revised. This can be through minor reviews on an annual basis and major reviews in line with the review on the LDF thus, continuingly extending the end date based on the planning horizon.

Chapter 4. Paying CIL

22. **(a) Do you agree with the chosen definitions of building, planning permission and 'first permits'?**

    No

    (b) If not, what changes would you wish to see that strike the right balance between simplicity, fairness and minimising distortions?

    The RTPI questions whether it is appropriate for large Permitted Development schemes to be applicable for CIL. It is considered that this would be very difficult to identify and administer, and would not meet the "simplicity" criterion. There is also a question of consistency: if a form of development has an impact that would require the provision of infrastructure to mitigate, then logically there is a question as to whether it should be permitted development in the first place.

    If CIL is to be used to raise money to provide infrastructure required to support all development, then these developments requiring flood defences or having significant road impacts must be captured. If they are not captured the burden will fall on other CIL paying developments. There is concern over Certificates of Lawful Development and permitted changes of use over the Use Class Order which could result in the enabling charges which can intensify use, for example B8 to B2.

23. **(a) Do you agree with our approach to when CIL is chargeable on outline and reserved planning permissions.**

    Yes

    (b) If not, what changes would you wish to see that deal fairly with these types of permissions?

    N/A

Exemptions and Discounts

24. **(a) What are your views on the principle of providing a reduced rate of CIL for affordable housing development?**

    Housing development has the same, or similar, demands on infrastructure regardless of its tenure. If there are differences between the impact of affordable and market housing, then these could be identified and evidenced through the charging scheme – however, there would be no guarantee that the charge for affordable housing would be lower. While it could be argued that the provision of affordable housing is an intervention into the market, so some form of support is required, CIL is theoretically chargeable on the uplift in value of land resulting from a development, not on the develoment itself. If affordable housing benefits from a reduced CIL rate, this benefit may be passed on to the landowner.

    Ultimately, one of the solutions to the affordable housing problem in Britain may be a "tenure neutral" approach to housebuilding, the implementation of which would be frustrated by a differential approach to CIL for affordable housing. This issue requires

further debate.

(b) What do you think the likely consequences of providing such a discount might be?

The key issue is the resulting funding gap for infrastructure that is needed as a result of the affordable housing, and the question of who gets to pay for it in the long term.

There is also a question as to whether the affordable housing provider will necessarily reap the benefit of the discount, as the value of the land may have been agreed long before the proportion of affordable housing has been settled. The likelihood is that the benefit of the discount will be passed on, in whole or in part, to the landowner.

25. **If the Government were to provide a reduced rate of CIL for affordable housing development, do you think that the proposed definition of affordable housing is workable in practice?**

    Yes

26. **If the proposed definition provides a workable basis for any reduced rate of CIL for affordable housing, should CIL relief for charities building affordable housing be applied according to this definition or according to whether it fulfils the charity's charitable purposes?**

    All affordable housing should be considered in the same light.

27. **(a) Should LCHO properties where receipts from staircasing are recycled for additional affordable housing, not be subject to any clawback?**

    Responses to this question should be taken in the context that the RTPI does not support a differential CIL for affordable housing. If a differential CIL is applied, then yes, such LCHO properties should not be subect to clawback.

    (b) if LCHO properties where receipts are not recycled are subject to clawback of the CIL discount, should there be a time limit up till when staircasing to full ownership would invoke clawback?

    Yes (but see above).

    (c) How should such a clawback operate?

    As a mortgage is normally 25 years this should be the clawback period.

28. **Is 7 years an acceptable time period for clawback to operate over?**

    No - As staircasing Is often set over a mortgage period it would appear 25 years would be more appropriate.

29. **Is it reasonable to ask a claimant to submit an apportionment of liability in this way?**

    Yes

30. **Do you agree that it is best not to have a special procedure for developments that have difficulty in paying the advertised rate of CIL? If not, how could it be done in a way that is fair, non-distortionary and not open to abuse?**

    If discounts are specified some developers will work to achieving the exemption level.

The Liable Party

31. **Do you agree with the Government's proposals for liable parties and assumption of liability?**

    Yes

Collecting CIL

32. **Are these timescales for the transfer of CIL revenue from the collecting authority to the charging authority the right ones?**

    Yes

Payment of CIL in kind

33. **Do you think that the final regulations should provide for the payment of CIL in-kind?**

    This must be examined very carefully. S106 agreements for the mitigation of on-site infrastructure demand should remain part of the negotiated S106. CIL should generally cover all other infrastructure improvements.

    However, where a piece of infrastructure set out in an LPA's infrastructure plan can be delivered on-site as part of a development, then there would appear to be a case for in-kind payment, especially where it would be difficult otherwise to identify an appropriate site for the infrastructure to be provided.

34. **If you think they should, can you suggest how CIL could be paid in-kind without incurring the difficulties outlined above?**

    The "difficulties outlined" are mainly concerned with the perception of possible inequities arising from in-kind provision. Perceptual issues are often the hardest to overcome, whatever the benefits of a particular case. It may be that the only way around this issue is for the CIL payment to be made as "normal", and then the appropriate proportion effectively paid back, with safeguards, to deliver the on-site infrastructure.

Payments by installments

35. **(a) Should payment by instalments be provided for in the final CIL regulations in addition to the ability to pay CIL by phases of development?**

    Yes, 28 days is a very short timeframe for the payment of CIL.

    (b) How should the instalments be structured?

    Payments should either be paid on the commencement of each full or reserved matters permission or in-line with an approved phasing scheme.

36. **Do you agree that payment on account should not be provided for in the final CIL regulations?**

    Yes.

Duty on the authority to remove the local land charge upon request

37. **Should the collecting authority be under a duty to remove the charge automatically on payment of the full CIL liability?**

    Yes. It serves no purpose to retain a charge on the land charges schedule once the amount required has been paid.

Enforcement of CIL liabilities

38. **Should the draft regulations be amended to require collecting authorities to have to issue a warning to liable parties (in writing and possibly by posting a warning on the site in question) before being able to impose a late payment surcharge?**

    Although the requirements would be set out clearly in the initial notification, it is good practice to issue a warning before embarking on more formal procedures. There should be no harm in enshrining such a warning in regulations.

39. **Are the means of recovering CIL debts sufficient or would further methods, such as the ability to impose attachment of earnings orders, be helpful?**

    The means of recovering debts would be more complex if it included attachment of earning orders. It is considered the proposed land charge mechanisms are sufficient.. However, the estimates of the percentage of developers who will pay on time is considered optimistic in the extreme.

40. **Should the Government provide for specific enforcement measures in regulations to allow collecting authorities to penalise and deter breaches of the conditions for relief?**

    Yes, considered essential that there be specific powers which prevent developers not satisfying condition precedents in order to not formally commence development and presumably therefore not be liable for CIL payment. Maybe a Stop Notice which could deal with none compliance with conditions and be followed by a CIL stop notice if necessary

would be less complicated.

Compensation

41. Is a bespoke compensation regime required for CIL where enforcement action is inappropriately taken or would the Ombudsman route suffice?

While the Ombudsman procedure may well be sufficient for this, the RTPI would support a bespoke compensation regime to prevent the need for protracted investigations, challenges and the inevitable clarification of such matters through the courts. It is important that there is clarity in this matter from the start.

General

42. Do you have any comments on any other matters raised in chapter 4 which are not covered by the questions above?

The RTPI has some concerns about the process and requirements for the enforcing authority where payment is overdue. It seems onerous for LPAs to have to display site notice warning of a CIL stop notice on the land, and then again when the notice is served and yet again when the CIL is paid. It may be more appropriate that the existing Stop Notice procedure should be followed, thereby requiring only one notice to be displayed on the land. Additional onerous requirements such as proposed may result in LPAs being less likely to take such steps even when warranted due to lack of resources.

Whilst it is accepted that a warning may be advised, there seems less need for the notice to be displayed on site? The same applies to the position when payment is made.

The need to copy the liability notice to landowners will potentially result in a cost to LPAs which will not be recouped.

Where CIL is payable in Permitted Development it is unclear how this would be workable. The comments raised in paragraph 4.31 appear vague and place the emphasis on publicity rather than giving any practical solutions to this inevitable problem.

Although regular reference is made to the use of existing enforcement powers to deal with unauthorised development prior to CIL being liable, it is not clear how does would effect development which is unauthorised but does not warrant formal enforcement action due to lack of expediency. One interpretation would be that the need for the payment of CIL alone could make such action expedient by definition. This issue would again lead to potential injustice as there is no requirement for planning consent to be obtained and therefore benefit may be gained from failing to do so (unless this in itself could justify formal enforcement action?).

With regard to the concern expressed in section 4.28, the RTPI considers that the phasing of development means that the demand on infrastructure is phased as well; therefore it is right that CIL payments are linked to this demand.

Chapter 5. Planning obligations and other powers

43. **What do you think about the Government's proposal as set out in draft regulation 94 to scale back the use of planning obligations?**

    The RTPI agrees with this proposal in principle. The detail of the regulations should clearly articulate what can be attributed to S106 agreements.

    Long-term developments should be allowed to progress on the basis of existing legal agreements (planning obligations) as to change circumstances in mid flow would create uncertainty. Secondly, the transition period should be based upon the ability of authorities to complete local development documents and related infrastructure plans. It is therefore suggested that existing agreements are honoured for the duration of the project, and that charging authorities are required to phase out planning obligations that could be replaced by CIL within two years of the adoption of the relevant core strategy, or upon adoption of the charging schedule.

44. **Do you think the wording of the five tests as set out in draft regulation 94 is appropriate? Is each of the five tests meaningful and workable in practice, or could any be expressed in a better way?**

    The RTPI agrees that while the transposition of the Circular 5/05 tests into legislation is necessary and appropriate in relation to CIL, the suggested deletion of criteria (a) and (e) is acceptable for the reasons given: in addition, relevance to planning and reasonableness would have been tested through examination of the charging schedule.

45. **Do you think that a transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to the Circular 5/05 tests. If so what should it be and why is such a period required?**

    Yes - See response to Question 43.

46. **Do you agree that a scale back of planning obligations as set out in draft regulation 94 should apply universally across England and Wales regardless of whether a local authority has a CIL or not?**

    No. The introduction of CIL must relate to the ability of potential charging authorities to adopt charging schedules. Effectively the application should be two years after core strategies are adopted.

    Furthermore, CIL is promoted as optional, but the scaling back of s106 powers could effectively make it compulsory. This reduces local communities' ability to determine what means of securing funding for infrastructure is appropriate in their area, and commits small authorities with few infrastructure needs to the process of CIL even if it is unnecessary.

    Finally, application to both England and Wales must be considered in the context of the different systems applicable in Wales – see section 4.

47. **Should a scale back of the use of planning obligations go further and prevent the future use of planning obligations for pooled contributions and tariffs?**

    Yes - If CIL is to be the system for funding infrastructure and especially cross boundary infrastructure, then it would be inappropriate for two systems to be operating alongside each other.

48. **Do you think the Government's proposal to provide an additional legal criterion to restrict the use of planning obligations to address planning impacts 'solely' caused by a CIL chargeable development is workable in practice? If not, please state why not. Can you think of an alternative which would have the same or similar effect?**

    No - If the chargeable development criterion is to remain there are a number of types of developments which have wider implications on infrastructure that are currently not captured. For example, holiday caravan parks - such matters should therefore be left for local consideration.

49. **What transitional period, beyond the commencement of CIL regulations in April 2010, would be required to restrict use of planning obligations to mitigate impacts 'solely' caused by CIL chargeable developments?**

    See response to Question 43.

50. **Do you agree that a restriction of planning obligations to prevent their use for pooled contributions or tariffs should apply universally across England and Wales regardless of whether a local authority has a CIL or not?**

    As highlighted in our Wales response in section 4, there are some fundamental issues with regard to how CIL is proposed to operate in both England and Wales.

51. **What transitional period in London do you think would be required before a scale back of the use of planning obligations which prevented the use of pooled contributions and tariffs could take effect, to ensure a smooth transition from the existing to the new planning obligations regime, taking account for the need to use planning obligations for Crossrail purposes?**

    The RTPI considers that the transitional period for scale-back in London should be based on the adoption of core strategies or charging schedules as elsewhere in the country (see Q43).

52. **In revising Circular 5/05 in light of the introduction of CIL what further policy or areas of clarification do you think might be required with regards to the use of planning obligations?**

    Would planning obligations be allowed to cover adjoining land for the provision of related off-site works, for example drainage? It is also a concern that in re-drafting routing agreements matters could be lost as these are not geographically site specific.

53. **Do you think any additional further guidance (additional to a revised Circular 5/05) is required to support the use of planning obligations or CIL, and if so who would be best to provide it?**

    If further guidance is required, CLG should seek expert expertise of who will be engaged in the development and implementation of CIL. This could be made of organisations such as the Law Society, Planning Officers Society, the RTPI, RICS, BPF, Shelter, etc.

General

54. **Do you have comments on any other matters raised in chapter 5 which are not covered by the questions above?**

4. Nations Considerations

The draft CIL regulations have been written with a focus on England, including the evidence and justification for the introduction of the Community Infrastructure Levy (CIL). In some cases reference has been made only to English evidence, and no reference has been made to Welsh evidence where it exists for example studies to value planning obligations. This raises questions as to the evidence to support the application of the CIL, particularly in its current form, in Wales and whether it has been designed to take into account the different planning system and the context in which it operates in Wales. The principle of CIL is not rejected in Wales, in some cases it may be a useful tool, such as in areas of Cardiff, Newport and Swansea.

Question 1:
Infrastructure definition: The lack of clear and robust guidance as to what can be considered as 'Infrastructure' could lead pressure in Wales to include items. The Assembly Government should play a key role in defining this for Wales. There is the potential that it will create disparities between Local Authorities making arbitrary decisions about infrastructure, thus making development more attractive in one area than another.

Under the current proposals CIL will not apply to wind farms. Therefore there could be potential issues (if S106 is scaled back) in terms of securing community benefits (advocated under TAN8) and more crucially towards contributing to off-site highway improvements outside the Local Authority area, as S106 could only be used for impacts on site and directly related to the development. This aspect will need careful consideration when the S106 Circular in Wales is revised.

Question 4:
Sub-regional funding: The proposals for working on a sub-regional basis are based on the English system. Wales does not have in place a statutory regional planning structure in order to robustly base regional and sub-regional infrastructure requirements. The Wales Spatial Plan sub-groups could provide a useful framework and forum for sub-regional collaboration, consultation and mediation in Wales.

Forward Funding: The proposals for supporting forward funding include only mechanisms operating in England. How will forward funding in Wales operate?

In-kind contributions: There are concerns about the relationship between CIL and in-kind contributions. Welsh planning policy encourages LPAs to seek on-site provision of infrastructure such as public open space, schools, community facilities and public art to ensure the delivery of sustainable communities. Implementing CIL in addition, will in effect be doubling developer contributions. This will cause difficulties in LPAs being able to negotiate on-site provision. This will be to the detriment of sustainable planning for communities. In-kind provision is an effective way of creating sustainable communities and this fact should not be undervalued.

Question 5:
The CIL consultation identifies the requirement for new skills and resources and an extensive, resource intensive, front loading of evidence base requirements and Examinations in Public (EIP) and for any subsequent reviews thereafter, onto LPAs, before a charging schedule can be introduced. The resource implications of holding a separate EIP in respect of CIL will be significant, as will the resource requirements of regularly reviewing the charges. It is not clear how the costs of

this work will be funded. Are monies going to be made available from Government to those LPAs who identify they want to charge CIL? Will LPAs be able to include the cost of producing a robust charging schedule within the schedule and recoup the costs through new development, as is currently the situation with S106?

The timescales with Local Development Plans (LDPs) in Wales do not fit with the CIL timetable; therefore the CIL will require a separate EIP from the LDP. This again has resource implication as the DCLG has explained that the CIL charging schedule must be open to examination, and the findings of the Inspectors, following the consideration of evidence will be binding on the Council. The proposals will therefore have implications for any LDP preparation and evidence gathering by authorities in Wales.

Question 6:
Wales does not have a system of Joint Committees and therefore a proposal for organising and agreeing sub-regional charging needs to be given further thought for application in Wales.

Question 10:
The proposal is to charge CIL at a flat rate per m2 of internal floor space. This would apply irrespective of the type of development, and more crucially who is providing it. The only proposed exception (at the moment) is for Charities. Therefore if a non charity RSL builds affordable housing in a rural or urban area where CIL has been introduced, then they will have to pay the charge. Thus making the cost of development more expensive, grant would not go as far, and fewer receipts could be recycled into providing more affordable units. Likewise if a developer has to build affordable housing on-site under a S106 agreement he could argue double counting, as not only would he have to pass those units over at a reduced price but he would also have to pay CIL on them. In the current economic conditions such 'double funding' could severely affect the viability of schemes. If the local education authority wishes to build a new school then CIL would have to be paid on that too – thus making schemes more expensive, and possibly creating issues in securing third party funding sources.

Question 21:
There is a possible issue in Wales over the status and appropriateness of existing evidence bases (paragraph 3.21). For example Environment Agency Wales's flood defence strategy and cost benefit analysis does not factor in the cost and value of new development. Therefore its focus is only on addressing existing deficiencies and not overcoming those additional infrastructure requirements that would enable new development to come forward.
Paragraphs 3.26 to 3.35 discuss infrastructure planning consistent with PPS 12; this is not applicable in Wales and therefore guidance should also be set out within the Welsh planning policy context.

LDPs in Wales and their requirements are markedly different to the LDF system in England. The Charging schedule proposed in the regulations is based on the LDF system.
Clearly it is best to set out both the local CIL and S106 policies and proposals in the LDP. This will add time to the process, as well as requiring funds to assess needs. However, the current LDP preparation processes underway should be assessing what the basic infrastructure requirements are for all development proposed in it and the LDP should therefore take account of schools, community buildings, open space, roads, sewers, waste disposal, etc. Agencies should be tuning into this requirement now.

Whilst the timescales for CIL do not fit with current LDPs, if there is a 5 year transition, it will fit with most 4 year reviews, which should not be so long winded. The main issue is the need to amend the schedule of infrastructure and not the whole LDP as circumstances change; a more structured form of SPG would suffice for updates (i.e. one that would require an independent hearing or inquiry) and may be a more appropriate mechanism in Wales.

The Welsh Assembly Government, the Wales Spatial Plan and the National Transport Plan should take a lead role in terms of defining essential infrastructure in local authorities, which would then be confirmed in an LDP.

Question 25:
The proposal only refers to PPS3, which is applicable in England only. Reference needs to be made to Planning Policy Wales and the affordable housing TAN. The TAN may need updating for Wales and further clarification needs to be provided about the role of Low Cost Home Ownership affordable housing.

Question 43:
Responsibility for S106 lies with Welsh Ministers in Wales. However the proposals include a scaling back of S106 to prevent overlapping with CIL. We see this as a matter for the Welsh Ministers and not as part of this proposal. This would reflect a dangerous precedent for forcing changes to matters which are the responsibility of Welsh Ministers.
The origins of CIL have been based on benefiting large urban expansion projects and therefore little funding and a larger viability impact is likely to be felt in the majority of Wales, which is rural. This coupled with the scaling back of S106 may result in many Welsh LPAs actually being worse off in terms of being able to secure a proportion of the uplift in land value to address negative impacts of development.

Whilst the document stresses that CIL is not mandatory, the proposed restrictions that will be placed on the use of S106 introduces a big stick and will ultimately force the hand of many authorities, who have benefited through current tariff approaches secured via S106, whilst penalising those who are better off remaining under a S106 system. Thus the planning system could actually create a win: lose system rather than the win: win approach that the CIL system was originally advocating.

The concern is that this may force LPAs to adopt CIL when it is intended to be optional. Many LPAs already have successful procedures and policies to secure community infrastructure through S106 agreements and should therefore not be forced into adopting the CIL route.
If this is pursued, there will need to be a significant period of transition to ensure that it works.
It appears that there is a blurring of boundaries between what CIL should be sought and used for, and what are legitimate planning obligations, which is further complicated by the issue of in-kind contributions. It is clear that even with the introduction of CIL, there is an essential need for S106 agreements to persist, given their role in delivering in-kind on and off-site infrastructure to ensure that an application is acceptable.

Question 45:
It should be noted that Circular 5/05 is only applicable in England. However, most authorities in Wales do act within the 5 tests. In any event and to allow adequate transition, it should be at least 5 years to enable LPAs to adopt CIL, change their planning obligations procedures and policies, enable developers to make appropriate arrangements to adapt to CIL and ensure that the CIL is working in practice. The whole system must be kept under review to ensure it works effectively.

Both systems do need to co-exist and authorities should be allowed to adopt either mechanism or both mechanisms.

Question 46:
The introduction of CIL should be genuinely optional and where LPAs are already successfully using S106 to secure infrastructure, they should not be penalised by scaling back the existing planning obligations system. This would defeat the aims of introducing CIL. LPAs should be permitted to apply both regimes.

Question 47:
The introduction of CIL should be optional and where LPAs are already successfully using s106 to secure infrastructure, they should not be penalised by scaling back the existing planning obligations system. This would defeat the aims of introducing CIL in the first place. The use of planning obligation tariffs and pooled contributions would appear to be more legitimate than the proposals for CIL because they relate directly to the proposed development and its impacts where they are used correctly. All is needed is more up-to-date guidance to clarify to LPAs (especially in Wales) what is legitimate to seek through planning obligations. Pooled contributions are a useful mechanism to share the cumulative impacts of a development on a locality and should not be rescinded.

Question 48:
Why restrict the use of planning obligations to CIL chargeable development? There are occasions when s106 is required for other purposes, such as rescinding a previous planning permission or restricting the use of land, which may be relevant to types of planning permissions or developments which will not be covered by CIL. In addition, it is already known that uses of land will not be covered by CIL.

Question 50:
The introduction of CIL should be optional and where LPAs are already successfully using s106 to secure infrastructure, they should not be penalised by scaling back the existing planning obligations system. This would defeat the aims of introducing CIL in the first place. In particular, if LPAs decide not to adopt CIL they should retain the existing powers currently open to them – the legitimate place for such matters to be challenged is through the application / appeal process, policy development and EIP.

Question 52:
Welsh Office Circular 13/97 is 12 years old and does not reflect modern best-practice in England and Wales. It needs to be expanded to encourage LPAs to extract legitimate planning obligations from developments to mitigate their impacts and deliver community infrastructure. It needs to place more responsibility on developers to undertake appropriate viability analysis before committing to purchase development sites. It also needs to address the circumstances when LPAs may be flexible in applying planning obligations policies and tariffs. The Welsh Assembly Government will also need to amend parts of PPW and LDP Wales to set out some of the requirements for LDPs.

Question 53:
The Welsh Assembly Government needs to provide updated guidance in Wales, with or without the introduction of CIL. In addition LPAs will need to revise their own SPG and plan policies if CIL is introduced.