

# Developer Contributions Consultation response form

If you are responding by email or in writing, please reply using this questionnaire proforma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterisk (\*)

This form should be returned to  
[developercontributionsconsultation@communities.gsi.gov.uk](mailto:developercontributionsconsultation@communities.gsi.gov.uk)

Or posted to:

Planning and Infrastructure Division  
Ministry of Housing, Communities and Local Government  
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**By 10 May 2018**

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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?\*

### **Organisational response**

If you are responding on behalf of an organisation, please select the option which best describes your organisation.\*

### **Other (please specify)**

If you selected other, please state the type of organisation

Chartered learned society and professional body

Please provide the name of the organisation (if applicable)

Royal Town Planning Institute

## Reducing Complexity and Increasing Certainty

### Question 1

Do you agree with the Governments' proposals to set out that:

- i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?

**Yes**

- ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?

**Yes**

iii Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?

Yes, but the reference to “procuring new and costly evidence” would not be appropriate in the formal guidance. As allowed under existing guidance, it should still be up to the charging authority to decide whether to procure evidence or formulate it ‘in-house’ and external procurement is not necessarily “costly”. The focus should be on a robust evidence base, proportionate to the changes in market conditions since evidence was produced.

### Question 2

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

Whilst the alignment of evidence for CIL Charging Schedules and Local Plans is already possible, the commitment to this possibility is welcome. Welcome the statement in paragraph 93 of the consultation document that guidance will “make

clearer that there are benefits to preparing CIL charging schedules alongside plans, but that it is not necessary to do so".

## Ensuring that consultation is proportionate

### Question 3

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?

**No**

### Question 4

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

Whilst we support this general principle, we are concerned that removing the two statutory stages of consultation and replacing them with a statement on "appropriate engagement" may lead to uncertainty over what is required and a greater risk of legal challenge. We consider that removing the first stage of consultation, the Preliminary Draft Charging Schedule, and keeping the second stage, the Draft Charging Schedule, would be proportionate, maintain certainty on what is expected and reduce risk of legal challenge. Although not strictly required, many Councils set out what consultation would be expected for CIL Charging Schedules in Statements of Community Involvement (SCI), which benefits the local resident and business community in knowing what to expect. Maintaining a Draft Charging Schedule stage would assist in Councils setting out clearly what consultation would be expected. The CIL Review Questionnaire published in November 2015 included the question "Should partial reviews (e.g. types of use or location) be possible?". We consider that allowing in legislation and having an explicit statement from the Government supporting partial reviews of CIL Charging Schedules would also help meet the objective of speeding up reviews and ensuring consultation is proportionate.

## Removing unnecessary barriers: the pooling restriction

### Question 5

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:

- i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?

**Yes**

- ii. Where significant development is planned on several large strategic sites?

**Yes**

**Question 5 continued:**

The first criterion in the consultation document appears to be missing from this response form, which is "Where the local authority is charging CIL". We agree that where the local authority has a CIL Charging Schedule in effect, the section 106 pooling restrictions should not apply.

**Question 6**

- i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices?

**No**

- ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

This approach seems complicated to have to demonstrate in each relevant Council to determine whether a regulatory restriction applies or not – it may be better to simply remove the section 106 pooling restrictions altogether.

**Question 7**

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

- i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or

See below at 7 ii

- ii. all planning obligations from a strategic site count as one planning obligation?

Both approaches to this appear overly-complicated. It may be better to simply remove the section 106 pooling restrictions altogether.

**Question 8**

What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

See above response to Question 7ii.

### **Question 9**

What further comments, if any, do you have on how pooling restrictions should be lifted?

Removing the section 106 pooling restrictions across the board would be simpler and more effective. Section 106s already have to pass the statutory 'tests' which remove any risk of Councils mis-using section 106s for unnecessary pooling.

## **Improvements to the operation of CIL**

### **Question 10**

Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

RTPI do not have a view on this.

### **Question 11**

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

[Click here to enter text.](#)

### **Question 12**

How else can the Government seek to take a more proportionate approach to administering exemptions?

A more proportionate approach would be to provide consistency in the regulations and guidance on social housing, charitable and self-build relief and exemption – currently there are nuanced differences in procedures between all of these which add to complexity.

### Question 13

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?

RTPI does not have a view on this.

### Question 14

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

Allowing abatement for phased planning permissions secured before the introduction of a CIL Charging Schedule may add more complexity to CIL Liability calculations. It may also be seen as unfair as developers will be able to get the benefit of credit floor space against developments which are not even CIL liable. If the government wishes to allow an abatement in this circumstance, there should also be a CIL Liability.

### Question 15

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

RTPI does not have a view on this.

## Increasing market responsiveness

### Question 16

Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?

Yes

### Question 17

If implementing this proposal do you agree that the Government should:

- i. encourage authorities to set a single CIL rate for strategic sites?

Yes, but for clarity, the guidance should either *require* authorities to set a single CIL rate for strategic sites or not, rather than just "encourage". The latter would mean that some authorities may still set a single rate, but there would be

uncertainty from an authority, developer and examiner perspective on what evidence is required to justify going against the government's 'encouragement'.

ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites?

**No**

iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?

**No**

iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

We are generally supportive of the general principle of capturing the uplift in land value from an existing use value to the proposed use value for CIL. But this approach would significantly complicate the evidence base for, and setting of, CIL Charging Schedules and would significantly complicate and slow down the calculation of CIL for each chargeable development. This would not provide up-front certainty and transparency which CIL was originally designed to deliver. If this proposal is brought forward, the Government should make clear that it is optional for a Council to use such an approach and is free to instead continue with the existing approach of basing CIL charges only on proposed use values rather than including existing use values. Uplift in land value created when planning permission is granted can already be tested and captured as part of viability work supporting section 106 agreements for infrastructure and affordable housing contributions.

### **Question 18**

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

See response to question 17iv

## Indexing CIL rates to house prices

### Question 19

Do you have a preference that CIL rates for residential development being indexed to either:

- a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; OR

**No**

- b) The change in local authority-level house price indexation on an annual basis

**No**

### Question 20

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

Whichever mechanism the Government chooses, it should support making this freely and publicly available (avoiding the current subscription required at the moment) and for providing a fixed figure on a quarterly basis (avoiding the current situation where the figure can fluctuate within a quarter). Moving to a different measure would also result in very complex transitional cases for, say, section 73s or large phased developments where calculations may need to straddle the two systems of indexation over time, and so the Government should ensure that legislation and guidance includes clear and simple transitional measures for this.

### Question 21

If yes, do you believe that indexation for non-residential development should be based on:

- i. the Consumer Price Index? OR

See answer to Question 20

- ii. a combined proportion of the House Price Index and Consumer Prices Index?

See answer to question 20

### Question 22

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

We consider that, whilst not perfect, the existing measure of inflation through the Royal Institution of Chartered Surveyors (RICS) Building Cost Information Service (BCIS) All-in Tender Price Index (TPI) should remain. However, the Government should support a mechanism for making this freely and publicly available (avoiding the current subscription required at the moment) and for providing a fixed figure on a quarterly basis (avoiding the current situation where the figure can fluctuate within a quarter). Moving to a different measure of indexation would be likely to only have a relatively marginal impact on concluding CIL liabilities and not result in a huge benefit in terms of capturing uplift or harming viability. Moving to a different measure would also result in very complex transitional cases for, say, section 73s or large phased developments where calculations may need to straddle the two systems of indexation over time. If the Government can solve the problem of the existing BCIS measure being publicly-available and fixed for each quarter, the proposed changes are unnecessary and over-complicated.

### Question 23

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

No.

# Improving transparency and increasing accountability

## Question 24

Do you agree with the Government's proposal to?

- i. remove the restrictions in regulation 123, and regulation 123 lists?

**Yes**

- ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement?

**Yes**

## Question 25

What details should the Government require or encourage Infrastructure Funding Statements to include?

The RTPI supports the proposal in paragraphs 141-142 of the consultation document that the Infrastructure Funding Statement (IFS) would “provide a flexible tool to set out infrastructure priorities and delivery, and could provide a framework for improving communication with local communities about delivery of section 106 planning obligations. It will set out priorities for how a charging authority proposes to use CIL and, where possible, section 106 contributions for the coming five years. It will also be used to report on the choices charging authorities have made regarding how developer contributions from CIL and section 106 planning obligations over the previous year have been used”. Also support the footnote (65) which states the IFS “would provide a mechanism by which charging authorities can meet reporting obligations under Regulation 62 of the CIL Regulations 2010” and requests that this is the case to avoid duplication of work. The Government should also look at aligning the requirements for such reports / IFSs with the legal requirements for Authority Monitoring Reports (AMRs) to streamline the process and minimise duplication as much as possible. We consider that, to avoid further duplication, there should be an expectation that the IFS can relate to the latest infrastructure planning work published as part of Local Plans (often called Infrastructure Delivery Plans or IDPs) to help inform priorities. The proposed “open data format” is welcomed but the detail of this should be subject to consultation to ensure that Councils’ monitoring systems are able to provide the required information in a way which is automated as much as possible.

## Question 26

What views do you have on whether local planning authorities may need to seek a sum as part of Section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

We strongly support a statement from the Government on the need to seek financial contributions for monitoring section 106 planning obligations. Monitoring does take up significant time and resource to be done properly. New requirements such as the Infrastructure Funding Statement (IFS) to help improve communication with local communities will require such resource. Sometimes such monitoring fees can be challenged or called into question by developers and an explicit statement of legitimacy would be helpful. The Government may need to consider amending the statutory section 106 'tests' in legislation to ensure this is clear. Also understand that section 106 monitoring fees may also be sought under section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and the Government may wish to consider this as part of its preferred approach.

## A Strategic Infrastructure Tariff (SIT)

### Question 27

Do you agree that Combined Authorities and Joint Committees with strategic planning powers should be given the ability to charge a SIT?

Yes. Strategic planning powers should only be given where there is appropriate democratic accountability e.g. elected city region mayors. This devolution of strategic planning powers should encourage greater uptake of city region mayors.

The government's proposals for a Strategic Infrastructure Tariff (SIT) should not prejudice or amend the current operation of the MCIL, and should probably reflect it as much as possible, without the need for a completely separate regulatory regime.

### Question 28

Do you agree with the proposed definition of strategic infrastructure?

**Question 29**

Do you have any further comments on the definition of strategic infrastructure?

It should be made consistent with the definition in the NPPF, to be refined locally.

**Question 30**

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

No

**Question 31**

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

We consider it is better to keep SIT and local CIL separate. The whole point of it was to be simple.

**Question 32**

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?

Yes

**Question 33**

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT?

Yes

## Technical clarifications

### Question 34

Do you have any comments on the other technical clarifications to CIL?

A nationally consistent and adaptable CIL Calculator would be of great benefit to Councils and developers in calculating CIL liabilities and dealing with the many nuances of the regulations.