

## COMMUNITY INFRASTRUCTURE LEVY – DRAFT CHARGING SCHEDULE

Cabinet – 7 February 2013

Report of the: Deputy Chief Executive and Community and Planning Services Director

Status: For Consideration

Also considered by: Environment Select Committee – 15 January 2013

LDF Advisory Group – 31 January 2013

Council – 19 February 2013

Key Decision: No

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**Executive Summary:** The Community Infrastructure Levy (CIL) is a new mechanism for securing contributions from developers towards the provision of infrastructure that is required to support development. In order to begin charging CIL, SDC must prepare a Charging Schedule, which will set out what developers will need to pay in £ per sq m of new buildings and any variations by area or type of development. Following consultation between June and August 2012, responses to the consultation have been reviewed and additional work on the evidence base has been undertaken.

A Draft Charging Schedule (Appendix A) has been prepared and it is proposed that this is put to full Council to agree in February 2013. It is recommended that the proposed residential charges remain at £75/m<sup>2</sup> and £125/m<sup>2</sup>, based on the same charge areas previously consulted on. Proposed charges for supermarkets and retail warehouses continue to be at £125/m<sup>2</sup> but on the basis of additional viability evidence it is proposed that other retail uses are not charged CIL. If agreed, the Draft Charging Schedule would be published for interested parties to comment on and would then be submitted for independent examination. If found sound, it is likely that the Council would be in a position to adopt the Charging Schedule in late 2013 / early 2014.

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This report supports the key aims of a green environment and safe and caring communities of the Community Plan

**Portfolio Holder** Cllr. Mrs Jill Davison

**Head of Service** Group Manager Planning – Alan Dyer

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**Recommendation to Cabinet that it endorses the following recommendation to Full Council:**

- (a) That the Community Infrastructure Levy Draft Charging Schedule is agreed for publication and submission for independent examination.
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- (b) That the Portfolio Holder is authorised to agree minor presentational changes and detailed amendments to the Charging Schedule to assist the clarity of the document.
  - (c) That the consultation document is published on the Council's website and made available to purchase in hard copy at a price to be agreed by the Portfolio Holder.
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### **Reason for recommendation:**

To ensure that the Council is able to progress the CIL Charging Schedule in accordance with the Local Development Scheme and to continue to secure developer contributions for infrastructure.

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### **Introduction**

- 1 The Community Infrastructure Levy (CIL) is a new mechanism for securing contributions from developers towards the provision of infrastructure that is required to support development. In order to begin charging CIL, SDC must prepare a Charging Schedule, which will set out what developers will need to pay in £ per sq m of new buildings. Charges can be varied by area or type of development.
- 2 The Council consulted on a Preliminary Draft Charging Schedule between June and August 2012. Following this consultation, the Council has prepared and commissioned further evidence and considered the representations made during the consultation. As a result, some amendments have been made to the Draft Charging Schedule. If approved by Members, the Draft Charging Schedule would be published and submitted for examination. If found sound by an independent examiner, the Charging Schedule could be adopted by Sevenoaks District Council and CIL could be levied on developments granted planning permission after the charge comes into force.

### **Summary of Previous Consultation (Preliminary Draft Charging Schedule)**

#### Previously Proposed Charges

- 3 The Preliminary Draft Charging Schedule consultation document set out an initial proposal for the level that CIL could be set at. For residential development, these were £125/m<sup>2</sup> in some parts of the District and £75/m<sup>2</sup> in others (see Appendix A for the proposed areas). Retail was the only other form of development proposed to have a CIL charge levied on it. It was proposed that convenience stores of 280 sq m or more and retail warehouses would be charged £125/m<sup>2</sup> and all other retail development (in all A class uses) would be charged £50/m<sup>2</sup>.
- 4 These proposed charges were based on engagement with infrastructure providers and a CIL Viability Assessment, which, amongst other things, considered standard build costs, percentages of developers' profits, the impacts of the Council's affordable housing and sustainable construction policies and land values.

- 5 A nil charge was proposed for some uses, including offices, warehousing, hotels, residential care homes and agricultural buildings, because the Viability Assessment concluded that the development of units in those uses would be at a significant risk of not being viable if a CIL charge was to be levied.

### Estimated Receipts

- 6 It was noted that the receipts that are generated by CIL are dependent on a number of factors, including:
- The amount of development that comes forward and where it occurs;
  - The amount of affordable housing (which is offered 100% relief from CIL) that is secured on development sites;
  - The size of dwellings built; and
  - The floorspace of existing buildings on development sites that have recently been in use (for 6 of the previous 12 months) as this is subtracted from the new floorspace to be developed when CIL is calculated.
- 7 As a very rough estimate, it was predicted that SDC may receive approximately £5-6 million over the period 2014 to 2026 (not adjusted for inflation). This does not take account of the percentages to be paid to town and parish councils.

### Infrastructure Requirements

- 8 A funding gap of approximately £24,000,000, before CIL receipts were taken into account, was identified against the cost of delivering infrastructure considered to be required by infrastructure providers. This included a scheme of approximately £13,000,000 for flood defence works in Edenbridge, proposed increases in primary and secondary school capacity in Sevenoaks District, transport schemes and leisure and community schemes proposed by SDC colleagues. The consultation document was clear that the list of schemes to be funded through CIL was purely indicative and stated that the Council did not have to definitively identify what CIL would be used to fund throughout the plan period in advance. This remains the case.

### **Representations on the Preliminary Draft Charging Schedule**

- 9 The following key points were raised during the consultation between June and August 2012:
- Some respondents objected to the proposal to charge £75/m<sup>2</sup> in some areas and £125/m<sup>2</sup> in others. This included some developers, who considered that the charge should be set at the lower level, and parish councils. Additionally, some parish councils suggested that different charging levels should be set at a more fine-grained level than wards. It should be noted that some parish councils supported the approach and more than half did not respond.
  - Some developers that responded suggested that the CIL charge would make the developments that they are undertaking, or are likely to undertake, unviable. Other developers did not object to the proposals.

- Representatives of major supermarket companies objected to the proposal for different charges between large and small retail units.
- Infrastructure providers stressed the need for their schemes to be funded through CIL to ensure that they are available to support development. Some town and parish councils proposed additional schemes for inclusion in the CIL Infrastructure Plan. Infrastructure providers also wanted to see a commitment to updating the Infrastructure Plan regularly.
- Most respondents who commented supported the introduction of policies on payment in instalments. There was a more mixed response to the question on whether the Council should offer relief in exceptional circumstances and for investment developments by charities.

10 Summaries of each comment raised and a proposed response can be found in Appendix B.

### Proposed Draft Charging Schedule

11 It is proposed that the Council should publish for comment and then submit to independent examination a Charging Schedule with the following charges:

Development Type	Area A	Area B
Residential (C3 use class)	£125 per sq m	£75 per sq m
Supermarkets and superstores(1) primarily selling convenience goods(2)	£125 per sq m	
Retail warehousing(3)	£125 per sq m	
Other forms of development	£0 per sq m	

(1) Superstores/supermarkets are shopping destinations in their own right (of 500 sq m of sales floorspace or more) where weekly food shopping needs are met and which can also include non-food floorspace as part of the overall mix of the unit.

(2) Convenience goods: Food and non-alcoholic beverages, Tobacco, Alcoholic beverages (off-trade), Newspapers and periodicals, Non-durable household goods.

(3) Retail warehouses are large stores (of 500 sq m of sales floorspace or more) specialising in the sale of household goods (such as carpets, furniture and electrical goods), DIY items and other ranges of goods, catering for mainly car-borne customers.

12 Areas A and B are set out on the map included within the Draft Charging Schedule (appendix A). These areas are the same as those proposed during the Preliminary Draft Charging Schedule consultation.

## Residential Charges

- 13 The CIL Viability Assessment concludes that in certain parts of the District a charge of no more than £75 per m<sup>2</sup> can be levied without putting development at significant risk of being non-viable. However, in other areas a charge of £125 per m<sup>2</sup> could be charged without making development non-viable. Wards have been categorised into areas that can sustain charges of £75 per m<sup>2</sup> and £125 per m<sup>2</sup>. Ward boundaries have been used because information on average house prices and average house prices per m<sup>2</sup> are readily available at that level. In reality, house prices will vary street by street or even by sides of street but it is not considered possible or to be in accordance with Government guidance to set charges on such a basis.
- 14 On the basis of the evidence available, it is considered that the two options open to the Council to achieve a sound charging schedule are:
- 1) To propose charges of £75 and £125 per m<sup>2</sup> for residential development based on ward boundaries as proposed by the CIL Viability Assessment.
  - 2) Propose a single charge of £75 per m<sup>2</sup> for residential development across the whole District.
- 15 Both schemes are considered to be technically sound, on the basis of evidence available, and each has distinct advantages and disadvantages. Whilst the two charge approach can lead to charging boundaries that do not relate to obvious distinctions in viability, such as between Eynsford and Farningham, it is forecast to allow SDC to levy approximately an additional £1 million over the period 2014-2026 (£5-6 million). The single charge approach would be more simplistic but would lead to less money being available to spend on infrastructure (£4-5 million). The two charge approach does not mean that less money will be available from SDC to spend on infrastructure in areas with lower charges as funds do not have to be spent in the area of the District in which they are collected. There is, therefore, a financial benefit of having the two charge approach for all areas which accommodate development. However, it is uncertain what impact this would have on the money passed to town and parish councils.
- 16 Given the significant infrastructure funding gap identified in the Draft Infrastructure Plan (see para 22, below), it is recommended that the two charge (£75 and £125 per m<sup>2</sup>) approach is taken forward in the Draft Charging Schedule in order to maximise the receipts. A comparison with sound charging schedules and proposed charges in neighbouring/nearby authorities is presented in Background Paper 6.
- 17 Following representations, further advice has been sought from the Council's viability consultants to consider whether housing for older people in Use Class C3 would be viable if it were to be subject to the proposed residential charges. It is not considered that any changes to the previously proposed charges are required, with it continuing to be proposed that this use is charged the same as 'regular' market housing.

## Retail Charges

- 18 The Preliminary Draft Charging Schedule proposed different charges for stores selling convenience goods of less than 280m<sup>2</sup> of sales floorspace and those of 280m<sup>2</sup> or more. As they have in Sevenoaks District, supermarket companies have objected to a split between large and small retail in Charging Schedules across the country. Recent examinations have confirmed that differentiating between different types of retail use is not prohibited by the CIL regulations, as the supermarket companies have claimed, subject to local authorities having sufficient evidence to justify the charge. Advice has been sought from the Council's viability consultants as to whether additional viability evidence is required on this issue. On the basis of this additional evidence, it is considered that requiring CIL on retail developments such as supermarkets and retail warehouses is sound and should be carried forward in the Draft Charging Schedule. However, following further evidence gathering, proposed definitions of these uses include thresholds of 500m<sup>2</sup> rather than 280m<sup>2</sup>, as previously proposed.
- 19 The Council's viability consultants were also asked to consider whether town centre comparison retail would be viable if a CIL charge were to be levied on it. Their assessment indicated that it would not. It is, therefore, proposed that retail developments other than supermarkets/superstores and retail warehouses are not charged CIL.

## Forecast Receipts

- 20 On the basis of the same assumptions previously considered (see para 6, above), it is still forecast that the proposed CIL charges will generate approximately £5-6 million over the period 2014 to 2026 to be spent on infrastructure to support development.

## Infrastructure Planning

- 21 A Draft Infrastructure Plan was published alongside the Preliminary Draft Charging Schedule to provide an indication of the schemes that may be required to support development. The Planning Policy Team has continued to engage with infrastructure providers, including KCC, SDC teams and town and parish councils, to identify schemes that they consider are necessary to support development and could be funded through CIL. A number of changes have been made to the Draft CIL Infrastructure Plan following the consultation on the Preliminary Draft Charging Schedule and on-going engagement, for example:
- Revising the proposed flood defence scheme in Edenbridge, including reducing the estimated funding gap from £13,000,000 to £3,500,000, on the basis of further engagement with the Environment Agency. This funding gap results from the identification of the EA's current preferred option, which it is estimated would cost approximately £4,500,000, and its estimate that approximately £1,000,000 could be available from Flood Defence Aid in Grant for the scheme;
  - Including a calculation of the financial contribution (approx. £1,250,000) needed to meet the needs of new pupils that would be required to travel out

of the District to attend secondary schools, on the basis of further engagement with Kent County Council. KCC has not identified how this need will be met and this is an issue on which there will need to be on-going engagement, which may result in further changes to the funding gap. This is in addition to funding for additional school secondary places at existing schools in the District (which has been estimated to cost approx. £3,000,000); and

- The addition of new schemes proposed by town and parish councils during the consultation period.

- 22 As a result of the changes that have been made, the identified funding gap has been reduced to approximately £19 million in the Draft Infrastructure Plan. The Draft Infrastructure Plan is 'Background Paper 3' to this report and a summary is provided in the 'Summary of Evidence and Proposals' document (appendix C). Engagement on infrastructure projects will continue through the process of preparing the CIL Charging Schedule.
- 23 Suggestions of indicative projects that could be undertaken by SDC have previously been put forward by SDC teams. These include the possible redevelopment of Whiteoak Leisure Centre, providing community development services to integrate new residents into the District, outdoor gym facilities and new and/or improved Youth Zone vans and services. Unless these schemes are prioritised above all others, CIL will meet only a very limited percentage of the funding gap identified for SDC schemes.
- 24 The Council does not need to specify the projects on which it will spend CIL receipts at the outset. This can be determined on the basis of local priorities when receipts are received. The list of infrastructure projects previously identified in the Draft Infrastructure Plan should, therefore, only be treated as indicative. All schemes in the draft Infrastructure Plan have been categorised into:
- 'potential strategic schemes for CIL funding', which are those schemes considered to support the broad distribution of development proposed in the Core Strategy and have been used to identify the funding gap;
  - 'potential local schemes for CIL funding', which are those schemes that town and parish councils would like to see developed and are likely to be appropriate uses of the CIL receipts to be paid directly to them; and
  - 'other schemes', which are schemes where more information is required, a commitment from the responsible organisation is required, or the scheme is not an appropriate use of CIL.
- 25 The Council does, however, need to identify the types of infrastructure that it expects to fund through CIL and that which it expects to continue to seek contributions for / provision of through planning obligations / s106 agreements, following changes to Government guidance in December 2012. This is intended to ensure that developers are able to identify how each approach will be used and that they will not be charged twice for the same infrastructure. Only draft lists need to be provided at this stage and the Council is able to identify broad

categories of infrastructure rather than specific projects. The following are the proposed lists:

To be funded through CIL (not in order of priority):

- Transport schemes except for site-specific access improvements;
- Flood Defence schemes;
- Water quality schemes;
- Schools;
- Health and social care facilities;
- Police and emergency services facilities;
- Community facilities;
- Green infrastructure except for site-specific improvements or mitigation measures; and
- CIL administration.

To be funded/secured through s106 agreements/planning obligations (not in order of priority):

- Site specific access improvements (these could also be secured through s278 of the Highways Act 1980 in some circumstances);
- On-site open space, for example children's play areas;
- Site specific green infrastructure, including biodiversity mitigation and improvement;
- On-site crime reduction and emergency services infrastructure, for example CCTV or fire hydrants; and
- Site specific Public Rights of Way diversions or impact mitigation.

26 The Government's view is that the Community Infrastructure Levy should support and incentivise new development by placing control over a 'meaningful proportion' of the funds raised with the town/parish council where development takes place. It has announced that 15% of the CIL receipts associated with a development (capped at £100 per existing council tax dwelling) will be paid to the town and parish councils in areas without neighbourhood plans and that 25% will be passed to town and parish councils in areas with neighbourhood plans (without a cap). The Government is still to publish revised regulations to introduce this but it is expected that they will be published in Spring 2013. It is not necessary to delay the submission of the Charging Schedule until these are published.

## Implementation

27 The June 2012 consultation document sought views from stakeholders on a number of the issues that the Council will need to address in implementing CIL. This included consultation questions on whether the Council should offer relief from CIL in exceptional circumstances, for investment developments by charities (as opposed to development of facilities to be used for charitable purposes, which are already exempt) and whether it should introduce an instalments policy. Policies on these issues do not need to be set out at the time that the Council adopts the Charging Schedule and do not need to be subject to Examination. It is, therefore, recommended that the Council continues to keep these issues under

review, as more authorities implement charging schedules, and that a final decision is not made on these issues at this stage.

- 28 However, on the basis of an initial review of the legislation, it is considered that there will be little benefit in offering relief in exceptional circumstances. This is due to the fact that there are stringent regulations governing when this relief can be offered and it is for the Council to ensure that any exemption is compliant with EU State Aid legislation. The offer of exemptions in exceptional circumstances is not comparable with the flexibility and negotiation that is available on the Core Strategy affordable housing policy (SP3) and it is anticipated that any policy that was introduced will be applied very rarely, if at all.
- 29 Exemptions for investment development by charities are unlikely to be required in Sevenoaks District as only residential and retail development will be liable to pay CIL under the proposed Charging Schedule and affordable housing is already offered 100% relief. It is considered that the infrastructure requirements resulting from the development of any market dwellings should be met, regardless of whether they are built by a charity. It is unlikely that a charity would undertake a major new retail development, as opposed to occupying a small existing but vacant unit, which would not be liable to pay CIL. It is, therefore, considered unlikely that a policy on offering relief for investment developments by charities will be required.
- 30 It is proposed that an instalment policy should be prepared to assist developers' cash flows and improve the viability of schemes.
- 31 The Planning Policy team is preparing an implementation plan that will help to explain the process of calculating and charging to developers, landowners, stakeholders, Council Officers and Members and the public. This will address issues such as monitoring processes and the prioritisation of infrastructure schemes. The implementation plan requires the involvement of a number of Council teams and will be brought to Members prior to the adoption of the CIL Charging Schedule.

### **Timetable**

- 32 The anticipated timescale for preparing the CIL Charging Schedule is as follows:

Consultation on draft Charging Schedule	March 2013 – April 2013
Submission of draft Charging Schedule for Examination	May 2013
Examination of draft Charging Schedule	Autumn 2013
Adoption of Charging Schedule	Early 2014

### **Other Options Considered and/or Rejected**

- 33 The Council could choose not to prepare a CIL Charging Schedule. However, this is likely to lead to less funding being secured for infrastructure required to support development. The Council would need to rely on using planning obligations, which

will have a more limited scope for securing contributions towards infrastructure after April 2014.

- 34 The Council could choose to propose a higher or lower CIL Charge, including £75 per m<sup>2</sup> for residential across the District. However, the proposed charge is based on evidence that it would not make the scale of development proposed in the Core Strategy unviable. There is a significant risk that a higher CIL charge would be found unsound by an independent Examiner. A lower charge, including a standard rate across the District, would mean that less money would be available to be spent on infrastructure to support development.

## Key Implications

### Financial

- 35 Budgetary provision has been made for the cost involved in preparing the Community Infrastructure Levy through the LDF budget. The CIL Regulations allow for the Council to use receipts secured through CIL to pay for its administration.

### Community Impact and Outcomes

- 36 The CIL Charging Schedule will assist the Council in securing contributions from developers to the provision of infrastructure required to support development.

### Legal, Human Rights etc.

- 37 The Draft Charging Schedule (included in the consultation document) will be consulted upon and submitted for examination in accordance with the relevant legislation and national policy.

### Equality Impacts

- 38 An Equality Impact Assessment of the CIL Charging Schedule has been carried out. It is set out as 'Background Paper 4' to this report.

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	The CIL Charging Schedule will help to fund infrastructure requirements for the local community surrounding any new development. This will have a positive impact on all aspects of the community, as the fund will help to address any deficiencies.
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	Yes	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		n/a

## Sustainability Checklist

- 39 The adoption of a CIL Charging Schedule will ensure that the Council can implement Core Strategy Policy SP9, which aims to ensure that development is supported by sufficient infrastructure. This is important in ensuring that development comes forward in a sustainable manner. CIL Charging Schedules do not need to be subject to a formal Sustainability Appraisal.

## **Conclusions**

- 40 The Draft Charging Schedule is considered to be based on a robust evidence base that shows that the proposed CIL charges are viable and required to provide infrastructure to support development. It has been produced following consultation with local stakeholders. It is recommended that the Charging Schedule is published and submitted for independent examination.

## **Risk Assessment Statement**

- 41 The Draft Charging Schedule has been prepared in accordance with national policy and legislation.
- 42 If the Draft Charging Schedule is not approved then the Council will not be able to prepare the Charging Schedule in accordance with the Local Development Scheme. This may lead to it being adopted after the restrictions on the pooling of planning obligations come into force (April 2014), which would mean that contributions from some developments towards necessary infrastructure would not be able to be secured during this time.

## **Appendices**

Appendix A – CIL: Preliminary Draft Charging Schedule: Consultation Document

Appendix B – Representations on the Draft Charging Schedule and proposed SDC response. (on website)

Appendix C – Summary of Evidence and Proposals (on website)

## **Background Papers:**

1. CIL Viability Assessment Report
2. CIL Viability Assessment Addendum
3. Draft CIL Infrastructure Plan
4. Equality Impact Assessment
5. An Introduction to the Community Infrastructure Levy
6. Comparison with sound charging schedules and neighbouring/nearby authorities (December 2012).

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