

Chapter 1 – Fundamental design choices

Question 1: Do you agree that the existing CIL definition of 'development' should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – **Yes**
- Buildings which people do not normally go into - **Yes**
- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - **Yes**
- Structures which are not buildings, such as pylons and wind turbines. **Yes**

Please provide a free text response to explain your answer where necessary.

RESPONSE:

HDC agrees with the definition of development and supports the inclusion of permitted development in the scope of the Levy, particularly in the case of the conversion of office to residential.

Question 2: Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? [**Yes/No/Unsure**]. Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, HDC is strongly of the view that developers should continue to provide infrastructure that is incorporated into the design of the site. What communities want to see, first and foremost, is the delivery of key pieces of infrastructure, like schools and healthcare facilities, on site and before houses are built, rather than a payment to the local authority and delayed infrastructure delivery. HDC, like many planning authorities, is not responsible for the delivery of most infrastructure and often the fastest and most reliable route for securing the necessary infrastructure is through the direct delivery on site, by the developer and integrated into a scheme early on.

HDC welcomes a discussion on where the line between Levy funded and other types of infrastructure should be drawn. The consultation document itself acknowledges that *“what is considered as ‘integral’ infrastructure may vary, however, and depend on the size of the development and its on-site needs”* (para 1.16). This raises some concerns around situations where there may be resistance to the delivery of infrastructure which would previously have been costed into the build of a site to offset Levy payments also required. A mechanism to prevent this is required. If the purpose of the IL is intended to reduce the time, cost, and lack of transparency around the negotiation involved in the current process it may be helpful to draw up a list, not dissimilar to the Reg 123 list formerly employed under the CIL process. This list could be set at a national level, or locally and examined as part of the Infrastructure Delivery Statement. It is, however, important that any set definition is not so restrictive that it prevents the characteristics and constraints of individual sites being considered.

The use of “Delivery Agreements” to secure infrastructure which cannot be secured via planning agreements needs further clarification. It is unclear how these will be used in practice, and how they differ from masterplans, landscaping conditions, etc. There also needs to be further discussion around how these are used for offsite delivery, and in what circumstances this would be considered appropriate for green space. There is also an opportunity to clarify issues around land ownership and stewardship and ongoing maintenance as part of these delivery agreements.

Question 3: What should be the approach for setting the distinction between ‘integral’ and ‘Levy-funded’ infrastructure? [see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.

RESPONSE:

“Integral infrastructure” is defined as “on-site infrastructure needed to make a site liveable”. “Levy-funded infrastructure” is defined as “infrastructure that is required because of planned growth that will have a cumulative effect on an area”.

The current proposals suggest three potential methods of assessing whether mitigation should fall under the ‘integral’ or ‘Levy-funded’ category: a) establishing a set of principles in regulations or policy based on criteria such as how the site is designed; quality of development; who benefits from the development; whether the mitigation is for an individual/ multiple developments b) providing a “nationally set list” of types of infrastructure that are either ‘integral’ or ‘Levy-funded’ or c) a “locally set” list of ‘integral’/ ‘Levy-funded’ infrastructure.

HDC would like to see a mixture of suggested approaches **b) and c)** being used. HDC agrees that clarifying what is “integral” infrastructure and what is “levy-funded” infrastructure is crucial to ensure the process of securing infrastructure is not made more complicated and left open to negotiation. For this reason, HDC considers that a national list should be provided by the Government as a starting point in regulation or policy, however, local authorities should be able to examine this list and alter it where there is a beneficial reason for doing so locally. This would ensure local issues and characteristics could be considered across the stages of viability-testing, rate-setting, deciding what levy funds would be used to deliver, and how the flow of levy funds and infrastructure delivery would happen in practice.

Question 4: Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, under certain circumstances HDC considers that there should be some flexibility to use some Levy funding for non-infrastructure items. HDC has concerns over the widening of the scope of how the levy should be spent, particularly in a discretionary way and without clear guidelines on what is and is not within the intended scope. There is concern that funds being secured for much needed infrastructure might also be relied upon to subsidise services which would themselves benefit from a review of funding sources as opposed to being topped up via the IL. The consultation document makes clear this should not be for long-term funding and HDC questions the value of one-off payments that cannot themselves be tied back to some form of infrastructure.

However, HDC is of the view that there is clear benefit in land value capture being used to improve services more widely, both in terms of the community as beneficiaries but also in helping to make the benefits of development more obvious and tangible to local communities (e.g., community wardens/ management of open space). There is, however, the risk that if some of the Levy funding is used for non-infrastructure items and that this funding is temporary, there will be an expectation that the local authority would be required to continue the funding long-term. The Government would need to address this point in future guidance on the Infrastructure Levy.

Question 5: Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, HDC considers that local authorities should be expected to prioritise infrastructure and affordable housing needs before non-infrastructure items. If all infrastructure items required are completed, it may be appropriate for any unspent neighbourhood share to be spent to deliver locally required services. It is unclear how this would be expected to be managed at a local authority level. Further detail is required.

Question 6: Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent on? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, HDC considers that there is an important role for an element of the Levy to be spent on non-infrastructure items, as currently happens with the "Neighbourhood Portion" of CIL. This enables those areas with Neighbourhood Plans to spend CIL funds in a flexible manner. The new guidance should set out clearly how, under the Infrastructure Levy, this would work, and how local people would be able to spend a proportion of the funds raised through the Levy on important neighbourhood projects.

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? [high threshold/medium threshold/low threshold/**local authority discretion**/none of the above]. Please provide a free text response to explain your answer, using case study examples if possible.

RESPONSE:

HDC would prefer to adopt an approach which allowed thresholds to be tailored to suit local circumstances.

We agree that having as high a threshold as possible is preferable given the desire to reduce the need for complex and opaque negotiations on sites where other routes, particularly a core Levy routeway, are available. Using site size as a threshold is problematic however, given that an arbitrary numerical threshold does not necessarily reflect the complexity of a site or all circumstances in which the different routeways might be appropriate.

By way of example, in Horsham District there are likely to be sites which do not themselves generate the need for a school but will provide the land / building to meet the need generated cumulatively. Where a high or medium threshold is set (10,000 homes or 2,000 to 4,000 respectively) smaller sites (say 1000 homes) would not qualify for the infrastructure in-kind routeway. It is unclear what mechanism could then be used to secure the school or land in these circumstances.

We also feel there needs to be more guidance on how local authorities with a recently adopted Local Plan, or with no Local Plan, can set out expectations around how the three routeways are used. What transitional arrangements will there be?

Question 8: Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? Please provide a free text response to explain your answer.

RESPONSE:

HDC supports the retention of S106 agreements in certain circumstances, particularly for key infrastructure delivery, such as the provision of affordable housing. We consider that local and site-specific circumstances play a part in dictating where and when S106s might be the most appropriate way of securing infrastructure and that this is not necessarily dictated by site size.

Section 106 agreements are also used to secure the detail around affordable housing, (securing it in perpetuity, types, tenures, etc.). If the expectation is that these matters would

instead be secured by planning condition, this raises a whole host of possible issues/ potential problems.

HDC strongly advises that planning conditions are not relied upon for infrastructure delivery. A section 106 legal agreement provides the Council and the local community with certainty, at least for the first five years, that certain elements of infrastructure will be delivered. This is not something that can be guaranteed by conditions- especially given that developers would be able to amend/ appeal conditions, thus reducing the level of infrastructure they would potentially be providing.

Consideration should be given as to whether existing enforcement measures in respect of breaches of planning condition are robust enough to deter non-compliance compared with those that can be used if there is a breach of a section 106 obligation.

Para 1.44 states that *“the value of any contributions towards infrastructure will have to equal or exceed the value of what otherwise would be secured through a calculation of the infrastructure levy”*, however this *levy backstop amount* is itself subject to change depending on the final GDV of the site, meaning local authorities lack certainty on the final monetary value. This has the potential to add further complexity to this S106 negotiation process.

We require further information on the intended interaction between S106s and Delivery Agreements, including clear, detailed examples of how these may be used in practice.

Chapter 2: Levy rates and minimum thresholds

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, HDC agrees that the new Levy should capture value uplift associated with certain permitted development rights e.g. office (or agricultural) to residential conversions. The current situation, where significant numbers of new dwellings have been provided in many town centres across Horsham District, with developers providing no new infrastructure to accompany them, has led to considerable pressure being placed on existing town centre infrastructure. e.g. more road congestion/ pressure on school places/ and availability of GP appointments.

It should be the case that permitted development changes of use from office (or agricultural use) to residential should be required to provide infrastructure contributions in the same way that new residential floorspace is required to contribute through CIL, in local authority areas with adopted CIL Charging Schedules. That money should then be available for the provision of local infrastructure to mitigate the impact of new development.

However, HDC recognises that a lot of permitted development – e.g. commercial to commercial development does not produce such an uplift in the existing use value of a site and viability margins are very tight. It is therefore important that the new Levy is not introduced to such an extent that important business- to-business changes of use are made unviable.

Question 10: Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy? Do you have views on an appropriate value threshold for qualifying permitted development? Do you have views on an appropriate Levy rate ‘ceiling’ for such sites, and how that might be decided?

RESPONSE:

HDC considers that the current figure for CIL-liable development (over 100 sqm) might be an appropriate starting point for including permitted development schemes within the new Levy. However, HDC is unsure, at this stage, and without having carried out any detailed viability work, what an appropriate Levy rate “ceiling” might be.

Question 11: Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development coming forward? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary, using case studies if possible.

RESPONSE:

Horsham District is a primarily rural District where, over the last 10 years, approximately 2/3 of housing development has occurred on greenfield sites and 1/3 on previously developed land.

The latest Viability Study for the local plan (July 2021) concluded that, due to the challenging nature of bringing forward brownfield land for development, only 10% affordable housing should be sought. This contrasts with non-strategic greenfield sites, where 45% was tested and found to be viable.

HDC agrees that there is a case for additional offsets from the new Levy, particularly in areas of the country with significant levels of brownfield land.

Question 12: The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

- Charging the Levy on final sale GDV of a scheme [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] **Unsure**
- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] **Unsure**
- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] **Unsure**
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] **Unsure**

RESPONSE:

In theory, HDC considers that the approach behind the introduction of this new Levy (by charging the Levy on the final sale GDV of a scheme) could lead to local authorities collecting more from this Levy than from the current dual S106/ CIL system. However, that is far from certain. HDC has serious reservations about how the new Levy will operate in practice.

In terms of the four bullet points, HDC is unsure on all 4 viz:

- HDC is unsure that charging the Levy on the final sales value of a scheme will work because it considers that in practice developers will find a way around delaying (or never building) the final dwelling of a scheme and therefore not becoming liable for any final uplift that might be owed.
- In addition, if the charge and payment are not finalised until final completion, then it becomes very difficult for a local authority (without going down the borrowing route) to "front load" infrastructure for a particular site. The local community has been very vocal over the last couple of years about how important it is that infrastructure is provided BEFORE the houses within a scheme are completed;
- HDC is unsure that the use of different Levy rates and minimum thresholds on different development uses and typologies will bring in additional revenue because the number of different rates needed for the new Levy may be so many, and generate so little additional revenue, that total revenue may not be that great;

- The idea of introducing “stepped” Levy rates appears so complicated, that it is considered impossible at this stage to say what impact that might have on the generation of revenue;
- And, while in theory, it might be possible to devise separate rates for floorspace that is subject to change of use and floorspace that it to be demolished and replaced, again it is considered too difficult to predict at this stage whether 2 separate rates would provide additional revenue over and above that currently collected under the current S106/ CIL system.

Question 13: Please provide a free text response to explain your answers above where necessary.

RESPONSE:

HDC considers that the introduction of the new Infrastructure Levy system, as currently proposed, represents a fundamental change from the current system of Community Infrastructure Levy and Section 106. This new system, as set out in the Government’s proposals, would undoubtedly require significantly more resources to manage and implement, due to its inherent complexity. There are, for example, 3 different points now proposed at which charging (and its associated valuation/ calculation) would be required. This leads to the likelihood of more errors/ disagreements between Councils and Developers on the final sum owed, and more of a chance of calculations being appealed.

HDC would also raise concerns about the nature of implementing such a fundamental change to the current infrastructure system – it is a system, which while not perfect, does deliver infrastructure for schemes. HDC considers that a number of tweaks to the system (e.g. requiring all payment on commencement of development) could improve the operation of the system, it fears that the new proposals would bring in such a fundamental change that the complexities and lack of “buy-in” from local residents (who would struggle to understand the new system) would set infrastructure planning back 10 or more years.

Chapter 3 – Charging and paying the Levy

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? [Yes/**No**/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

No. The process outlined in Table 3 is complex and creates both resource implications and financial risks for local authorities.

Stage 1- indicative liability

Under the CIL regime, liability is calculated after planning permission has been granted. The proposal that a developer be required to submit an indicative liability calculation with the planning application will have resource implications for the local authority. While the developer would submit the calculation, the local authority will need to assess it, (the rate applied, floor area measurements etc.) If an application is then refused, this process will have impacted on local authority resources but generated no liability.

Amendments during consideration of the application or after approval may change the final liability. A liability calculation should therefore be carried out either at the point planning permission is granted or before the development is commenced, when there is more certainty.

Calculating the liability would rely on the proposed floorspace but this would not be known in applications for outline planning permission. Where floorspace is known, the approach to measuring gross internal area should be set out clearly in regulations or guidance. Gross internal area continues to be the subject of CIL reviews and appeals, which create resource implications for all parties and lead to delays.

Once a Levy charging schedule is adopted, the assumptions it is based on could become outdated over time. There is no requirement to submit a valuation when calculating liabilities, however a Levy liability calculated at the beginning of the application process based on an adopted Charging Schedule could differ greatly from a final Levy liability based on a valuation at the end of the process.

There should therefore be scope to allow a developer to provide a valuation, and for a local authority to require one, in certain circumstances, such as where it is anticipated that assumptions are no longer reflective of the current position. In addition, authorities should be able to seek an independent view on developers' valuations, paid for by the developer, where they think that costs in certain valuations have been hidden.

Requiring developers to assume liability before planning permission is granted would make it easier for local authorities to pursue the relevant parties in the event of non-payment.

Stage 2 – provisional liability

At Stage 2 the developer can initiate payment of the provisional Levy liability before occupation of the development however this would be optional and is therefore not guaranteed. Levy income may therefore not be received until completion of the development meaning Levy-funded infrastructure provision would be retrospective unless local authorities borrow against projected future Levy income.

As set out in the second bullet above to Q12, this late payment would leave Councils in the unenviable position of having an infrastructure burden e.g. having new homes constructed and the children from those homes not having a school to attend, or health facility to visit.

This places risk on local authorities (which would also need to borrow on behalf of County Councils and other infrastructure providers) and who may therefore be unwilling to do so. Borrowing by the local authority would also reduce the amount of funding available for infrastructure as there will be a cost to that borrowing.

The local authority should also be able to request payment of the provisional Levy prior to occupation.

Occupation restrictions and the local land charge should not be removed until the entire Levy has been paid. If local authorities are to be expected to borrow against future projected Levy income, then robust enforcement measures should be in place at all stages of the process to deter developers from avoiding payment.

The term 'completion' is not defined but any definition will need to ensure that developments are unable to avoid completion as a means of avoiding payment.

Stage 3 – final adjustment payment

There is a further risk that local authorities will need to pay back overpayments to the developer, reducing willingness to borrow against future Levy receipts, delaying delivery of infrastructure.

Developers may seek to avoid paying the final payment, particularly if the incentive provided by a local land charge has been removed.

The local land charge should not be removed until the final adjustment payment has been made.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes. Payment should be made before completion, either on commencement or prior to first occupation. This would better align with the infrastructure need generated by a development and would overcome the need for local authorities to borrow against projected Levy income.

These payment triggers are easier to monitor for local authorities, and conditions could be used to require commencement and occupation information from developers.

Question 16: Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

No. A local land charge should be applied at the point planning permission is granted or liability is first calculated and should only be removed once all the required Levy has been paid.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/**Disagree**/ Strongly Disagree/Unsure]

RESPONSE:

Disagree. Keeping the local land charge in place until the provisional Levy liability has been paid will help prevent non-payment up until that point, but it will not prevent avoidance of any final Levy payment. Requiring payment of the Levy before a development can be occupied, accompanied by robust enforcement measures set out in regulations, would be more effective.

Question 18: To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

RESPONSE:

Agree. As developers can initiate payment at an earlier stage, the local authority should also be able to request early payment in certain circumstances, for example, to provide a particular item of infrastructure without the need to borrow against future Levy receipts.

However, this would carry risk for the local authority as accepting payment of a provisional liability may result in the need to pay back any overpayment if a final adjustment calculation is later carried out. This may impact on the local authority's willingness to deliver infrastructure.

Question 19: Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? **Yes.** Please provide a free text response to explain your where necessary.

RESPONSE:

Yes.

- 1) Where there is an identified and critical need for a particular item of infrastructure.
- 2) If the local authority considers the developer is avoiding paying the Levy.

Question 20: Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions [Yes/No/**Unsure**]. Please provide a free text response to explain your answer where necessary.

RESPONSE:

Unsure of the role of valuations as the consultation does not insist on a valuation being submitted at any stage. Once a Levy Charging Schedule is adopted, the assumptions it is based on could become outdated over time. If there is no requirement to submit a valuation when calculating liabilities, a liability calculated at the beginning of the application process based on an adopted Charging Schedule could differ greatly from a final Levy liability based on a valuation at the end of the process.

Requiring a valuation at the final liability calculation stage would ensure the gross development value of the development is reflective of the updated position. However, it is not clear who would undertake any valuations and this may have implications for local authority resources.

Chapter 4 – Delivering infrastructure

Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/ Disagree/**Strongly Disagree**/Unsure].

Please provide a free text response to explain your answer where necessary.

RESPONSE:

The Infrastructure Levy Technical Consultation sets out that infrastructure can be forward funded by local authorities borrowing against future Levy proceeds, including borrowing funds from the Public Works Loan Board. There are several concerns and challenges that the Council foresees with such an approach.

Horsham District Council is a lower-tier authority, with West Sussex County Council as the upper-tier authority holding the responsibility for the delivery of essential infrastructure such as education, highways and waste disposal. As a district council, we have little responsibility or control over the delivery and management of key infrastructure in our District. This structure of local governance can create challenges in bringing forward much needed infrastructure and some of these issues have been borne out with the introduction of CIL.

CIL and these IL proposals have increasingly been shifting the emphasis from the delivery of infrastructure to the collection of monies to support infrastructure delivery. However, Levy funds collected do not automatically equal infrastructure delivery on the ground and there are complexities around the governance procedures for the spending of levy funds.

For two-tier authorities such as Horsham District Council, and in the context of these proposals, we would effectively be borrowing against future levy receipts and passing the money to other organisations with the expectation of infrastructure delivery. We have little control in this scenario but would be assuming a large amount of financial risk. Given increasingly pressured local authority budgets this is a significant concern, and we are doubtful that these proposals will enhance infrastructure delivery over and above the current system of infrastructure funding via Section 106 and CIL.

Question 22: To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [**Strongly Agree**/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Specified upfront payments should be made available for key infrastructure requirements such as education, highways and healthcare facilities where there is an identified and acute need. Specified upfront payments of this nature could also be directed towards county councils to overcome any issues in accessing levy funding in two tier local authority areas.

Question 23: Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy?
[Yes/No/Unsure] Please provide free text response to explain your answer where necessary.

RESPONSE:

The Council is concerned around how workable the Infrastructure Levy proposals as currently drafted are. As currently drafted, we consider them to be convoluted and contain a complex set of review mechanisms. Within the existing system of infrastructure funding, via Section 106 and CIL, the greatest proportion of developer contributions is spent on affordable housing with a smaller share spent on infrastructure such as highways, education and healthcare facilities. Given the aspirations set out in the consultation proposals, which identify that the Government is committed to securing as least as much affordable housing through the Infrastructure Levy, plus the indication of a widening of what the Levy can be spent on to include non-infrastructure items, the Council is concerned that this will have the unintended consequence of meaning less money would be available for infrastructure than under the current system.

It is further considered that spending on non-infrastructure priorities could erode the linkages between development and direct infrastructure provision which, itself, could further erode acceptance by local communities for schemes to come forward in their areas. There is concern that these IL proposals, which monetise infrastructure delivery processes further, create greater risks for the delivery of infrastructure to be slowed or not achieved at all.

Additional mechanisms to ensure the timely delivery of infrastructure could include payment of an indicative liability at commencement rather than completion which would offer greater

assurance to all stakeholders and reduce the long-term financial risks to the local planning authority. Several of Horsham District Council's current and emerging strategic site allocations, delivering thousands of new homes, are large-scale urban extensions which are expected to be built out over multiple phases, well beyond 10 years. The Council is therefore concerned around how workable these proposals are for such large-scale proposals and query whether IL payments could be made on completion of phases, rather than the whole development, or some other appropriate mechanism for long build-out periods.

There is also concern around the 'test and learn' long transition phase over 10 years, particularly because lenders may, in effect, reduce the availability of funding for development where IL is in force compared with areas that have not yet adopted the IL. Bespoke mechanisms or possible incentives to address this potential imbalance are recommended to be incorporated into the IL Regulations.

Question 24: To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/Agree/**Neutral**/Disagree/Strongly Disagree] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Whilst a local authority can liaise with infrastructure providers, research and plan for infrastructure delivery and determine the priorities for its delivery, in consultation with key stakeholders, ultimately there can be no certainty in this process.

By its very nature, development and the delivery of infrastructure is dependent on a vast array of different inputs that are beyond the control of the local planning authority. For example, infrastructure providers' budgetary constraints, differing timescales or project plan aspirations, the impact of market forces or lending/funding decisions and unexpected delays to site delivery (say, because of archaeological or remediation issues) can all affect how and when infrastructure is delivered. The Council agrees that transparency is essential and local planning authorities should clearly set out their spending plan priorities, however, certainty cannot be guaranteed.

Question 25: In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

RESPONSE:

Whilst it is acknowledged that the Executive Summary attached to the consultation material states that the new levy will be “more streamlined”, the Council fails to see how any Infrastructure Delivery Strategy document or accompanying processes will be more streamlined than the documents local authorities are currently required to produce. Given the references in the consultation material to the fact that the new IL will, in part, be based on the current CIL system, the Council does not consider that a new system resembling CIL will be in any way “streamlined”.

Putting these comments aside, the information that the Council considers is required to identify infrastructure needs is expected to be broadly like the work local authorities currently undertake to identify infrastructure requirements as part of their Infrastructure Delivery Plans.

Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Yes, but in a focused way

The planning system touches communities in a variety of different ways with decision makers often required to consider an array of topics and grapple with complex issues and the competing desires of stakeholders for opposing outcomes. Key to ensuring a strong planning system is creating an inclusive process as part of any decision-making process. However, consultation cannot be a tick-box exercise and any planning process that asks for the views of the community must robustly demonstrate that these views have been heard.

Planning plays a central role in the delivery of infrastructure to serve new and existing development. However, infrastructure delivery can be complex, involve multiple different partners, who are often working to differing timescales and project delivery plans. Add to this the often-cited complaints from local communities around poor infrastructure delivery or increased pressure on existing services and facilities when development is proposed in their area.

The Council is concerned that consulting the local community on the contents of an Infrastructure Delivery Strategy could risk disappointment and disenfranchisement from a process that is sometimes unable to address some of the aspirations of local communities, given the complexity of infrastructure planning in England. To put this into a local context,

Horsham District has seen significant development in recent years, meeting not only our own identified housing needs, but also contributing to the unmet needs of the wider sub-region. The hospitals that serve Horsham residents are some distance away and the need for additional hospital capacity is often raised as a key issue in response to Council consultations. Meeting this aspiration is unlikely to be achievable by the Council and local hospital trusts without significant Government intervention, but this is something not readily accepted by the local communities when faced with increased pressure for housing delivery.

Therefore, any consultation that asks for the views of the local community will need to be focused and framed within set parameters, identifying any limitations and explaining clearly how the views of the local community will be used to develop the Infrastructure Delivery Strategy. One potential benefit would be to reach a common understanding amongst the role of some larger settlements in providing some infrastructure for smaller villages and towns, and how infrastructure can best be provided to support all communities.

Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general 'integral' infrastructure requirements **Not included**
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy **Included**
- Prioritisation of infrastructure and how the Levy will be spent **Included**
- Approach to affordable housing including right to require proportion and tenure mix **Not included**
- Approach to any discretionary elements for the neighbourhood share **Not included**
- Proportion for administration **Included**
- The anticipated borrowing that will be required to deliver infrastructure **Included**
- Other – please explain your answer Please see above for what the Council considers should be included or not
- All of the above

RESPONSE:

Whilst the Council expects that the Infrastructure Delivery Strategy will detail all the above requirements, the spending plan should only focus on the remaining funds available to be spent on infrastructure (plus associated costs).

For example, if 'integral' infrastructure requirements are those that are site-specific to enable the successful functioning of a site and are secured via planning conditions or targeted planning obligations in the form of 'delivery agreements' then they are not necessary to the

spending plan because the infrastructure will be delivered on-site and there is no option for the value of this to be 'spent' on any other infrastructure.

The Infrastructure Delivery Strategy should set out clearly the total value of contributions generated by the levy and provide a breakdown of how the contributions are apportioned for example, through the delivery of affordable housing in-kind, the neighbourhood share or integral infrastructure. However, the spending plan should only detail the remaining funds, associated costs and projected borrowing. Taking this approach will provide a much more accurate and transparent picture of monies available to fund the infrastructure needs of the area and enable a more targeted approach to the prioritisation of the funds.

Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other – please explain your answer
-

RESPONSE:

As previously identified, Horsham District Council is a lower-tier authority working with West Sussex County Council as the upper-tier authority and we share a strong working relationship, undertaking a collaborative approach to planning for the infrastructure needs of the local area. Despite this, issues around the current CIL system are emerging.

The Council's CIL Governance is reliant on our emerging Infrastructure Delivery Plan, however the impact of water neutrality along with Government's announcements around reforms to the Planning system have impacted the progression of our Local Plan Review.

Consequentially, these circumstances have unexpectedly led to an inability to spend CIL funds fully and effectively. These circumstances are not unique to Horsham District Council, and one widely reported example is that of Gloucestershire County Council indicating it may sue its district councils because of an inability to access much needed infrastructure funding.

Creating a mandatory IL system could further create a risk for disagreements between county councils and lower tier district and borough councils around Levy monies without the proper protections in place. Even under the current CIL system there are examples across the Southeast of England where county councils are now requiring contributions for projects that

are intended to be CIL funded because they cannot access the required funding within the necessary timescales.

The Council supports all the above recommendations to ensure that county councils can effectively influence the identification of Levy priorities. In addition, it may be necessary to create further mechanisms that are built into the Infrastructure Levy regulations to ensure county councils are able to access required funding for essential infrastructure such as schools and key transport improvements.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answers where necessary.

RESPONSE:

The Council agrees that it is possible to identify infrastructure requirements at the local plan stage and this is something which is already undertaken via the preparation of Infrastructure Delivery Plans as part of local plan development. Infrastructure requirements continue to evolve throughout this Local Plan work and beyond but are also dependent on the engagement of infrastructure providers. Strengthening the role of Planning in infrastructure delivery and the requirements for infrastructure providers to respond to local authorities in their infrastructure planning work will be one of the key ways to build on what is already in place.

It should be noted that local authorities do not have direct control over most infrastructure that is provided over the lifetime of a particular development. The IDP must be flexible, so as to highlight to local communities what would happen should a certain piece of key infrastructure (e.g. a primary school) NOT be required for a particular reason over the lifetime of the Local Plan, in a particular location.

In addition, it would be helpful if the Government were to clarify in Guidance strict timescales for Infrastructure Providers to respond to local authorities' IDPs. It is important that timely responses on infrastructure matters are made and that plan making and IDP preparation are not unduly held up.

Chapter 5 – Delivering affordable housing

Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/**Unsure**] Please provide a free text response to explain your answer where necessary.

RESPONSE:

The new “right to require”, as set out in the consultation documents, will enable local authorities to set out the proportion of the Levy that they want delivered as affordable homes and what proportion they want delivered as cash. The developer will be obliged to deliver these apportionments, thus protecting “policy compliant levels of affordable housing”.

In theory, there is no way for a developer to negotiate a lower amount of on-site affordable housing provision. However, the method in the Government’s proposals for calculating the limits to the “right to require” in paragraphs 5.5 – 5.15 appear very complicated. In addition, the liabilities are linked to the final Gross Development Value of a scheme, so the amount of affordable housing required could be reduced.

While this appears as a way of protecting the level of affordable housing that a Council requires, and avoids the risk of a downward negotiation, the Consultation paper makes no reference to the fact that a fixed amount of on-site affordable housing could well lead to reduced infrastructure provision elsewhere on a scheme.

Question 31: To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

RESPONSE:

HDC agrees that local authorities should charge a highly discounted/ zero-rated infrastructure Levy rate on high percentage/ 100% affordable housing schemes. The significant issue for the delivery of affordable homes is the need to gain land at low cost to provide homes at below market value. The continuation of similar arrangements to the current system where 100% schemes are exempted would allow this to be achieved. However, residents of such proposals would still need to access infrastructure which would need to be paid for. Therefore, this mechanism may limit the total number of affordable homes which could be delivered through this funding mechanism without significantly impacting on existing infrastructure. Ultimately, a balance will need to be struck to ensure adequate delivery of both affordable housing and new infrastructure to support development.

Question 32: How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

RESPONSE:

In HDC's experience, the amount of infrastructure that is normally delivered alongside registered provider-led schemes is minimal. The most typical piece of infrastructure, which is delivered, are electric car charging points.

However, where a Registered Provider is providing a mixed scheme (some market, as well as affordable dwellings), there is the opportunity for a wider range of infrastructure to be provided within a scheme.

Question 33: As per paragraph 5.13, do you think that an upper limit of where the 'right to require' could be set should be introduced by the government? [Yes/**No**/unsure]

Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [Yes/**No**/unsure]. Please provide a free text response to explain your answer where necessary.

RESPONSE

HDC does not consider that the Government should set an upper limit of where the "right to require" could be set should be introduced. HDC would prefer that the limit of where the "right to require" is set should be left to the discretion of the local authority, so that HDC is able to track where this is happening and how often, so that the Council can keep track of any housing stock that is lost.

Paragraph 5.13 of the consultation document references how in some rural areas, it is not uncommon for affordable housing to constitute the entirety of contributions from developers. In Horsham District, affordable contributions certainly constitute a large proportion of all developer contributions. That is another reason why local authorities should be left to decide for themselves where to set the upper limit.

Chapter 6 – Other areas

Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? [Yes/No/Unsure?]

RESPONSE:

Yes, and additional guidance should be provided as to how areas without a parish council can more easily benefit from the Neighbourhood Share.

Question 35: In calculating the value of the Neighbourhood Share, do you think this should **A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues)**, B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary.

RESPONSE:

The value of the neighbourhood share should be no less than would be secured under the CIL regime.

Question 36: The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share in such areas?

RESPONSE:

HDC considers that it might be possible for Neighbourhood Forums to be set up to receive and spend the Neighbourhood Share in unparished areas. However, for these bodies to be able to do so would require them to be constituted properly within the local authority's constitution- and this would require additional resources for the local authority. It is considered that whatever body was set up, it would have to be funded adequately by the local authority and have a very clear long term governance structure.

Question 37: Should the administrative portion for the new Levy A) reflect the 5% level which exists under CIL B) **be higher than this equivalent amount**, C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary.

RESPONSE:

B) The administrative portion for the new Levy should be higher than that under the CIL regime. A simple CIL case has one point of calculation and one point of collection. The Infrastructure Levy is more complex with the potential for more calculations and the need to carry out assessment of valuations. If integral infrastructure is to be secured by condition, there will also be additional monitoring required.

Currently, section 106 monitoring fees are secured by deed. Delivery Agreements should therefore secure monitoring fees, or this cost should form part of the administrative portion of the new Levy.

Question 38: Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countrywide exemptions. How strongly do you agree the following should be retained:

- residential annexes and extensions; **Agree**
- self-build housing; **Strongly Disagree**

If you strongly agree/agree, should there be any further criteria that are applied to these exemptions, for example in relation to the size of the development?

RESPONSE:

We do not feel any further criteria should be applied to the exclusions of residential annexes and extensions from the Levy due to the lack of strain placed on infrastructure by these developments. We do, however, feel there is no justification for the exclusion of self-build development from the Levy. These developments still create a demand on local infrastructure and are developments that are very similar to any other market scheme. It is HDC's view that developers do see "self-build" housing as simply a way of constructing market houses without having to contribute a CIL payment.

Question 39: Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? [Yes/No/**Unsure**]. Please provide a free text response to explain your answer where necessary.

RESPONSE

It may be appropriate for local authorities to set their own rate relief criteria depending on local priorities and circumstances; however, we do not consider it necessary to set this nationally. It would be more effective to explore alternative ways of encouraging desirable development schemes, such as sustainable technologies, at a national policy level.

Question 40: To what extent do you agree with our proposed approach to small sites? [Strongly Agree/**Agree**/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Agree. These proposals include requiring reduced Levy rates to be charged on small sites (e.g. under 10 dwellings) and a local authority will not be able to require that a proportion of receipts are paid in the value of affordable homes. This approach is similar to the current approach of the Government in not seeking affordable housing contributions below 10 dwellings. It is an approach that HDC supports- it is vital that small sites (those under 10 dwellings) are viable and able to be brought forward for development, as they represent an important source of supply for the District.

Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

RESPONSE:

Horsham District is not a designated rural area, so it has never previously sought affordable housing below 10 dwellings.

Question 42: Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

RESPONSE: HDC agrees with the examples given in the consultation paper at paragraph 6.18 of publicly funded infrastructure (e.g. High Speed Rail 2), that publicly funded schools, hospitals and other medical facilities should be exempt from the new Levy. The Council does not have any additional forms of infrastructure that should be added to the list.

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

Disagree. The imposition of a local land charge is not always effective. The local land charge should not be removed once a provisional levy liability is paid and should instead only be removed when the Levy has been paid in its entirety. Occupation restrictions should also remain until the full Levy has been paid.

Agree that Stop Notices issued when no assumption of liability is in place will be a deterrent but disagree that this will prevent development commencing.

Agree that financial penalties should be increased.

Chapter 7 – Introducing the Levy

Question 44: Do you agree that the proposed ‘test and learn’ approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/Agree/Neutral/**Disagree**/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

RESPONSE:

HDC considers that the introduction of the Community Infrastructure Levy in 2010 (through the Planning Act 2008), alongside the system of Section 106 contributions was rushed- as evidenced by the fact that the Government has produced amendments to the CIL Regulations every year since.

HDC also considers that the changes proposed in the Infrastructure Levy Consultation document amount to a significant change to the current system of seeking developer contributions through the planning system. The Council questions whether it has the expertise in-house to be able to implement what appears to be a very complicated new system for infrastructure contributions. And, while the consultation paper talks about a ‘test and learn’ approach being used by the Government over an ‘extended period’, HDC would question whether this is practical, and how permissions would be treated before, during and after the introduction of such a new Levy.

Question 45: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? [**Yes/No/Unsure**]. Please provide a free text response to explain your answer where necessary.

RESPONSE:

The payment of levy on completion, rather than upfront could mean that residents with protected status do not have access to the local infrastructure that is necessary to meet their needs.