

Mayor & Cabinet		
Report Title	Community Infrastructure Levy Preliminary Draft Charging Schedule	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Head of Planning & Head of Law	
Class	Part 1	Date: 6 June 2018

1. Summary

- 1.1 The Community Infrastructure Levy (CIL) is a levy that local authorities can choose to charge on new development in their area, and which was introduced by the Planning Act 2008. The detailed implementation of CIL is set out in the Community Infrastructure Levy Regulations 2010 (as amended). Local authorities must spend the levy on infrastructure needed to support the development of their area, which can include a wide range of infrastructure such as schools, hospitals, roads, open space, and leisure facilities.
- 1.2 In order to charge CIL, the Council must produce a Charging Schedule which identifies the rate (or rates) for different types of development. In setting the rates for CIL, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments.
- 1.3 The Council adopted its current CIL charging schedule in 2015 based on viability evidence that was produced in 2012. Since that time there have been significant changes in values across the borough. Furthermore, projections made for the five year housing land supply in Lewisham shows a continued strong delivery of housing, supported by an ambitious programme of infrastructure investment and regeneration, including the arrival of the Bakerloo Line Extension. This will likely underpin continued strong value growth in the borough.
- 1.4 The rates proposed in the initial consultation version of the Council's proposed new Charging Schedule ('The Preliminary Draft Charging Schedule 'PDCS') (attached at Appendix A), have been informed by viability evidence prepared by consultants specialising in this work. This evidence is captured in the 'CIL Viability Review Report' (attached at Appendix C).
- 1.5 In accordance with the requirements of the CIL Regulations and associated guidance, a number of other documents support the PDCS including a 'Draft Community Infrastructure Levy Infrastructure Delivery Schedule' (attached at Appendix B) and an 'Affordable Housing Delivery and Planning Obligations Report' (attached at Appendix D).
- 1.6 A minimum of two consultations on a new Charging Schedule are required by the Regulations, first on a PDCS and then on a Draft Charging Schedule ('DCS'). Following this, an examination in public is required and then the Charging Schedule can be adopted by the Council if adoption is recommended by the examiner. The following provides an indicative timescale:

Action	Dates
Consultation on PDCS	23/7 – 3/9
Consideration of responses received	3/9 – 17/9
Consultation on DCS	24/9 – 5/11
Consideration of responses received	5/11 – 3/12
Examination in Public	January 2019
Mayor and Cabinet/Full Council	March 2019
Adoption	April 2019

- 1.7 As part of the CIL review, amendments are also proposed to the Instalments Policy (attached at Appendix F) to reduce the threshold from £500,000 to £100,000 in line with the Mayor of London's CIL Instalments policy.

2. Purpose

- 2.1 To provide the Mayor and Cabinet with the information needed to approve the PDCS for public consultation.

3. Recommendations

- 3.1 The Mayor (to the extent that it is an executive function) is recommended to:

1. Approve the PDCS for public consultation and recommend that the Full Council do the same.
2. Note the Draft CIL Infrastructure Delivery Schedule, CIL Viability Review Report, Affordable Housing Delivery and Planning Obligations Report and Equalities Analysis Assessment.
3. Delegate authority to the Executive Director, Resources and Regeneration to:
 - Approve any minor changes to the text and format of the PDCS and supporting documents prior to consultation;
 - Approve minor modifications to the PDCS and supporting documents following public consultation;
 - Where no material modifications are required to the proposed Charging Schedule following the consultation on the PDCS, approve the undertaking of a subsequent consultation on a DCS;
 - Where no material modifications are required following the consultation on the DCS, to approve the submission of the Council's proposed Charging Schedule and associated evidence base for public examination;

and recommend that Full Council do the same.

4. Note that if material modifications to the Charging Schedule following consultation on the PDCS are required, that approval to undertake a subsequent consultation will be referred to back to the Mayor and Cabinet and Full Council.
5. Approve the adoption of an updated Community Infrastructure Levy Instalments Policy and recommend that Full Council do the same.

4. Policy context

4.1 The contents of this report are consistent with the Council's policy framework.

4.2 The PDCS will contribute to the implementation of the Council's ten corporate priorities and will also play an important role in the implementation of the Sustainable Community Strategy ('SCS') (2008-2020) vision 'Together we will make Lewisham the best place to live, work and learn'.

4.3 The PDCS will provide funding and a system to help support the implementation of the SCS vision and all of the six strategic priorities, which are:

- Ambitious and achieving – where people are inspired and supported to fulfil their potential
- Safer – where people feel safe and live free from crime, antisocial behaviour and abuse
- Empowered and responsible – where people are actively involved in their local area and contribute to supportive communities
- Clean, green and liveable – where people live in high quality housing and can care for their environment
- Healthy, active and enjoyable – where people can actively participate in maintaining and improving their health and well-being
- Dynamic and prosperous – where people are part of vibrant communities and town centres, well connected to London and beyond

4.4 The PDCS will also contribute to the implementation of the Council's Corporate Priorities including:

- Community leadership and empowerment – developing opportunities for the active participation and engagement of people in the life of the community;
- Young people's achievement and involvement – raising educational attainment and improving facilities for young people through partnership working;
- Clean, green and liveable – improving environmental management, the cleanliness and care for roads and pavements and promoting a sustainable environment
- Safety, security and a viable presence – partnership working with the police and others and using the Council's power to combat anti social behaviour
- Strengthening the local economy – gaining resources to regenerate key localities strengthen employment skills and promote public transport
- Decent homes for all – investment in social and affordable housing to achieve the decent homes standard, tackle homelessness and supply key worker housing
- Protection of children – better safeguarding and joined up services for children at risk
- Caring for adults and older people – working with health services to support older people and adults in need of care
- Active, healthy citizens – leisure, sporting, learning and creative activities for everyone

5. Background

5.1 The CIL is a levy that local authorities can choose to charge on new development in their area. Local authorities must spend the levy on infrastructure needed to support

the development of their area, which can include a wide range of infrastructure such as schools, hospitals, roads, open space, and leisure facilities.

- 5.2 Since the introduction of CIL, Section 106 ('S106') planning obligations continue to be used, including to secure affordable housing, but they now have a more restricted role. Local authorities are now not able to pool more than five separate planning obligations to pay for one infrastructure item. The intention of the CIL Regulations is that S106 planning obligations should be used to secure site specific infrastructure which is needed to directly mitigate the impacts of development, whilst CIL is used to help deliver infrastructure to support the development of their area.
- 5.3 In order to charge CIL, local authorities (known as 'charging authorities' under the CIL Regulations) must produce a Charging Schedule which sets out the rate (or rates) for their levy. These rates must be supported by an evidence base including:
- An up to date development plan;
 - The area's infrastructure needs; and
 - An overall assessment of the economic viability of new development
- 5.4 The NPPG states that as background evidence, the charging authority should also provide information about the amount of funding collected in recent years from planning obligations. This should include information on the extent to which affordable housing and other targets have been met.
- 5.5 Once adopted, the levy is a non-negotiable charge on most new development that involves an increase of 100 square metres or more of additional floor space, or the creation of one or more new residential units. The charging authority can set one standard rate or it can set specific rates for different areas, types and scales of development.
- 5.6 Some types of development are exempt from paying the levy such as developments of less than 100 square metres that do not create a new residential unit. In addition, the CIL Regulations also allow exemptions to be claimed for self-build housing and residential annexes and extensions over 100 square metres. Developments by charities of buildings used for charitable purposes and affordable housing is also eligible for relief from CIL.
- 5.7 It should be noted that in London, the Mayor is also a charging authority. The Mayor introduced a CIL (known as 'MCIL1') to fund Crossrail in 2012. The Mayor's levy is currently £35 per square metre in Lewisham, with a limited number of exceptions. On 26 June 2017 the Mayor published for public consultation the Preliminary Draft Charging Schedule for MCIL2 which, if adopted, will increase the current rate in Lewisham to £60 per square metre. The Council collects this levy on behalf of the Mayor.

6. Review of the CIL Charging Schedule

- 6.1 The Council's current CIL Charging Schedule was adopted in 2015. The charging schedule sets out differing rates for residential and other uses. The CIL rates also vary by area, with two separate CIL zones defined in the Charging Schedule. The rates have been subject to indexation on an annual basis in accordance with the CIL Regulations.

- 6.2 Since the evidence base for the current CIL Charging Schedule was prepared, there have been significant changes to sales values and build costs across the borough. That evidence base has been updated through the preparation of the CIL Draft Infrastructure Delivery Schedule ('IDS') and CIL Viability Review report (see Sections 7 and 8 below).
- 6.3 The Draft IDS shows a funding gap of around £900 million. The CIL Regulations state that when deciding the levy rates, an appropriate balance must be struck between additional investment to support development and the potential effect on the viability of developments. In testing alternative CIL rates, the CIL Viability Review report sets out that relatively significant changes to the current CIL rates could be accommodated without significantly adversely impacting on viability.
- 6.4 Consequently, the Council proposes to revise the CIL charging schedule to increase the rate paid by developments as set out in Table 1 below.

Table 1: Current CIL rates, current CIL rates with indexation applied and proposed CIL rates.

Development type	Zone	Adopted rate	Indexed rate	Proposed rate
Residential C3 use class	Zone 1 ¹	£100	£112	£200
	Zone 2 ²	£70	£79	£125
B use classes	Whole borough	£0	£0	£0
All other uses	Whole Borough	£80	£90	£160

- 6.5 The Council's PDCS (attached as Appendix A) describes the rates proposed in more detail and includes a map showing the 2 charging zones.
- 6.6 Whilst CIL income is very difficult to project, it is estimated that the proposed rates could increase the total CIL income from £39 million to £68 million in today's terms (i.e. before indexation) up to the end of year 2022/23.

7. CIL Infrastructure Delivery Schedule

- 7.1 The Localism Act (2011) requires that in order to set a CIL charging schedule, the Council must use an appropriate evidence base to inform the proposed levy. The NPPG sets out that part of this evidence base is an IDS which sets out the projects in need of funding from CIL (either in part or entirely), the estimated cost of the infrastructure and the proportion of subsidy expected to be provided by CIL and other sources of funding.
- 7.2 The purpose of the IDS is to demonstrate the 'funding gap' between the infrastructure required and the amount of funding already secured or known. It is not a definitive programme of the Council's planned capital expenditure as this will evolve over time.
- 7.3 An assessment of the infrastructure required to support development in the borough was undertaken as part of the evidence base for the Local Development Framework in

¹ See PDCS attached as Appendix A

² See PDCS attached as Appendix A

2010. That assessment was reviewed and updated in 2011 to support the current CIL Charging Schedule and has been further updated to reflect the latest position and priorities and to include / exclude projects that are appropriate to receive CIL funding.

- 7.4 The resulting Draft IDS (attached at Appendix B) identifies a list of infrastructure projects that are required to support development that currently have a funding gap.
- 7.5 The Draft IDS identifies a funding gap of around £900 million that is required for infrastructure between now and 2026, therefore underlining an overwhelming need for the imposition of CIL on new development.

8. CIL Viability Review

- 8.1 CIL rates cannot be set to reflect the Council's infrastructure funding gap, rather the CIL Regulations clearly set out that the rates must be based on what development can viably afford. In setting the CIL rate, the Council must consider the appropriate balance between the desirability of using CIL to fund the cost of infrastructure required to support new development and the potential effects of CIL on the economic viability of development across the borough.
- 8.2 The Council commissioned consultants that specialise in this work to undertake a 'CIL Viability Review' to establish the rates that could be applied in the borough.
- 8.3 The CIL Viability Review tested generic development types that are expected to come forward across the borough as well as a number of selected 'Strategic Sites' which are considered important in delivering the local plan. The CIL Viability Review took account of all of the policy costs and requirements in the adopted Local Plan and concluded that relatively significant changes could be accommodated to the CIL rate without significantly adversely impacting on viability.
- 8.4 This viability evidence is intended to reflect the overall viability of development typologies (including a number of strategic sites) across the borough, and is not an assessment of individual proposals. It is intended to assist the Council in understanding the general viability of potential development sites to absorb a CIL charge across the borough, recognising that some developments will be unviable regardless of the CIL level set.
- 8.5 A copy of the Community Infrastructure Levy Viability Review Report is attached at Appendix C. The report provides a robust and evidenced assessment that underpins the proposed CIL rates and ensures a balance between CIL and the viability of developments coming forward in the borough.

9. Process for Preparing a CIL

- 9.1 The process for preparing a CIL involves a number of stages which are identified below:
 - 1. Consultation on a preliminary draft charging schedule
 - 2. Consultation on a draft charging schedule
 - 3. Submission of the draft charging schedule to an independent examiner, consultation on any post-submission modifications and examination-in-public.
 - 4. Receipt of the examiners' report and adoption of CIL
- 9.2 The Council is currently at the first stage of the process in terms of revising the existing CIL charging schedule. The PDCS sets out the initial revised proposals for the CIL

rates for consultation. A further consultation on the DCS is anticipated in late 2018 with an examination in public of the revised draft charging schedule anticipated in early 2019. Adoption (subject to receiving a favourable report from the examiner) is currently anticipated in April 2019.

10. Modifications to the Charging Schedule following Consultation

- 10.1 Section 3 above recommends that the Executive Director of Resources and Regeneration is authorised to approve minor modifications to the PDCS and DCS before reporting to Full Council and following consultation and approve the referral of the proposed Charging Schedule for examination.
- 10.2 Minor modifications include any changes made for accuracy and clarity such as changes to terminology or formatting, and updates to the IDS, and includes changes to the rates of 10% or less. Substantial (or material) amendments will be referred back to the Mayor and Cabinet for approval.

11. Adopting a new Instalments Policy

- 11.1 Approval is being sought to make minor amendments to the Council's CIL Instalments Policy.
- 11.2 The main change to the Instalments Policy is to amend the monetary threshold at which payment can be made in two instalments. Currently, if the amount payable to the Council exceeds £500,000 then payment can be made in two instalments. It is proposed to reduce this threshold to £100,000.
- 11.3 The reason for the proposed change is to reflect the change to the Mayor of London's CIL Instalments policy in respect of the Mayor of London's CIL. The change, which took effect on the 1st January 2018 was proposed to assist Small and Medium Sized Enterprises (SMEs) in paying the levy.
- 11.4 The CIL Regulations set out that an instalment policy must state -
- (a) the date on which it takes effect, which must be no earlier than the day after the instalment policy is published on the website;
 - (b) the number of instalment payments;
 - (c) the amount or proportion of CIL payable in any instalment;
 - (d) the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due; and
 - (e) any minimum amount of CIL below which CIL may not be paid by instalment.
- 11.5 A copy of the proposed Instalments Policy is attached at Appendix F. If approved for adoption, the Instalments Policy will be published on the Council's website and made available at our offices for inspection.

12. Legal Implications

- 12.1 Part 11 of the Planning Act 2008 provides for the introduction of CIL. That Act, as amended, together with the CIL Regulations 2010 as amended, provides the statutory framework for CIL and sets out the statutory requirements for producing a Preliminary Draft Charging Schedule and for changing its instalments policy

- 12.2 The report sets out the stages for adopting a new charging schedule and how the Council is meeting the legal requirements for doing so, as set out in the CIL Regulations.
- 12.3 If members approve the adoption of an updated CIL instalments policy the CIL Regulations prescribe how the change is to be published and is to be made available for public inspection.

13. Crime and disorder implications

- 13.1 There are no direct crime and disorder implications arising from this report.

14. Equalities implications

- 14.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a public sector equality duty which covers the following nine protected characteristics: age; disability; gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 14.2 The Council must in the exercise of its functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 14.3 The Council's Comprehensive Equality Scheme for 2016-20 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 14.4 An equalities analysis was undertaken as part of the preparation of the council's existing CIL charging schedule. This has been updated to reflect the changes proposed in the PDCS. In accordance with the Equality Act 2010, the analysis considers the potential impacts of the charging schedule on those groups identified within the Act as having protected characteristics.
- 14.5 There are no major concerns that have been identified regarding equalities and the overall principles of revising the CIL rate, however, three minor concerns have been identified.
- 14.6 Of minor concern is the process by which developments are made exempt from paying CIL and the Council should take care that any exemptions are applied in accordance with the CIL Regulations and that any 'exceptional circumstances relief' is decided solely on economic viability and no other reason to ensure that no group or sector of the community is disadvantaged.
- 14.6 A further minor concern is how the income from CIL is applied. The money generated through CIL must be spent on infrastructure to support new development in the borough such as schools, hospitals, roads, open space, and leisure facilities. Improved provision of such infrastructure is generally expected to have a positive impact on all people who live, work and visit the borough. The Council will, however, need to ensure

that the process for spending funds raised through CIL is fair and does not discriminate or negatively impact on any particular group or sector of the community. Equalities impacts are also assessed by relevant Council service areas who deliver infrastructure, therefore it is anticipated that the provision of new and improved infrastructure will take any equalities impacts into account during delivery.

- 14.7 The final minor concern identified, is that the CIL Regulations 2010 (as amended) require that 15% of the CIL funds collected are spent on local priorities, or 25% where an area has a Neighbourhood Plan. The Council's proposal to have two charging zones may result in some areas generating more CIL receipts than others due to both the higher charge in zone 1 of the revised Charging Schedule and due to the quantum of development that is likely to come forward in different areas of the borough. The Council is aware of these inherent disparities of CIL and will continue to utilise other funding sources to provide infrastructure and support for all areas of the borough. It should also be noted that CIL funding is used to help deliver 'strategic infrastructure' (i.e. infrastructure that will benefit the entire borough) and therefore any infrastructure will be delivered wherever it is required, for the benefit of the borough as a whole.
- 14.8 Ultimately, CIL is a mechanism intended to raise money to fund infrastructure that will contribute to sustainable development in the borough. In this sense, the adoption of the revised CIL should have an overall positive impact on the various equalities groups. A copy of the full Equalities Analysis Assessment is attached at Appendix E.

15. Environmental implications

- 15.1 Environmental issues are at the heart both of the planning process and the delivery of supporting infrastructure. The CIL Regulations set out that charging authorities must spend the levy on infrastructure needed to support the development of their area. It is likely that over time environmentally beneficial infrastructure projects will receive funding from CIL.

16. Financial Implications

- 16.1 This report concerns the chargeable rate of the Council's Community Infrastructure Levy. The Levy allows local authorities in England and Wales to fund infrastructure by charging on new developments, based on the size and type of the new developments in their area. The money raised can be used to support growth by paying for a wide range of infrastructure that is needed as a result of new development.
- 16.2 Lewisham Council's CIL has applied to liable developments granted on or after 1 April 2015, and the Council has collected £9.3m of levy payments up to 31 March 2018.

17. Conclusion

- 17.1 The Mayor is recommended to:

1. Approve the PDCS for public consultation and recommend that the Full Council do the same.
2. Note the Draft CIL Infrastructure Delivery Schedule, CIL Viability Review Report, Affordable Housing Delivery and Planning Obligations Report and Equalities Analysis Assessment.
3. Authorise the Executive Director, Resources and Regeneration to:

- Approve any minor changes to the text and format of the PDCS and supporting documents prior to consultation;
- Approve minor modifications to the PDCS and supporting documents following public consultation;
- Where no material modifications are required to the proposed Charging Schedule following the consultation on the PDCS, approve the undertaking of a subsequent consultation on a DCS;
- Where no material modifications are required following the consultation on the DCS, to approve the submission of the Council's proposed Charging Schedule and associated evidence base for public examination;

and recommend that Full Council do the same.

4. Note that if material modifications to the Charging Schedule following consultation on the PDCS are required, that approval to undertake a subsequent consultation will be referred to back to the Mayor and Cabinet and Full Council.
5. Approve the adoption of an updated Community Infrastructure Levy Instalments Policy and recommend that Full Council do the same.

18. Background documents and originator

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Planning Act	2008	Laurence House	Strategic Planning	Sarah Wilks	No
Community Infrastructure Levy	2010	Laurence House	Strategic Planning	Sarah Wilks	No
Localism Act	2011	Laurence House	Strategic Planning	Sarah Wilks	No
National Planning Policy Framework (NPPF)	2012	Laurence House	Strategic Planning	Sarah Wilks	No
Planning Obligations Supplementary Planning Document	2015	Laurence House	Strategic Planning	Sarah Wilks	No
CIL Charging Schedule	2015	Laurence House	Strategic Planning	Sarah Wilks	No

If you have any queries on this report, please contact Sarah Wilks, Strategic Planning, 3rd floor Laurence House, 1 Catford Road, Catford SE6 4RU, telephone 020 8314 2251.

Appendix A: Community Infrastructure Levy Preliminary Draft Charging Schedule

Appendix B: Background Paper – Draft Community Infrastructure Levy Infrastructure Delivery Schedule

- Appendix C:** Background Paper – Community Infrastructure Levy Viability Review Report
- Appendix D:** Background Paper – Affordable Housing Delivery and Planning Obligations Report
- Appendix E:** Background Paper – Equalities Analysis Assessment
- Appendix F:** Community Infrastructure Levy Instalments Policy