

**To:** Full Council

**Date:** 17<sup>th</sup> December 2012

**Report of:** Head of City Development

**Title of Report:** Community Infrastructure Levy (CIL) Draft Charging Schedule

## Summary and Recommendations

**Purpose of report:** Seeks approval to publish the Community Infrastructure Levy Draft Charging Schedule for consultation and subsequent submission for Examination.

**Key decision?** Yes

**Executive lead member:** Councillors Ed Turner and Colin Cook

**Report approve by:**

**Legal:** Michael Morgan

**Finance:** Nigel Kennedy

**Policy Framework:** The CIL Charging Schedule will produce a 'tariff-based' approach or levy for new development that is intended to make a significant contribution towards the provision of infrastructure to support new development. It will play a key role in supporting development consistent with the policies and themes in the Core Strategy, and Corporate Plan objectives.

**Recommendation(s):** Council is asked to:

1. approve the CIL Draft Charging Schedule for consultation under Regulation 16 of the Community Infrastructure Levy Regulations 2010 (amended 2011 and 2012);
2. approve the CIL Draft Charging Schedule for submission to the Secretary of State under Regulation 19 of the Community Infrastructure Levy Regulations 2010 (amended 2011 and 2012) ;
3. authorise the Head of City Development to make any necessary editorial corrections to the document before publication and submission; and
4. approve a CIL instalments policy to facilitate CIL implementation.

## Background to the Community Infrastructure Levy (CIL)

1. CIL is a new non negotiable levy on development that local authorities can choose to charge in their area to help fund infrastructure to support new development. It is calculated on £ per square metre of new floor space generated by most new development.
2. In 2010, the Government introduced CIL as the preferred mechanism for securing developer contributions towards infrastructure to support growth in an area. The regulations which introduced CIL also require planning obligations to be scaled back to cover only site-specific obligations and affordable housing.
3. From April 2014, tariff based approaches to S106 planning obligations and the pooling of 5 or more planning obligations for each infrastructure project apart from affordable housing will not be allowed.
4. Statutory guidance advises that the *'examiner should approve the charging authority's draft charging schedule if a charging authority has complied with the requirements of the Act and the regulations, used appropriate available evidence, and it's proposed CIL rate (or rates) are informed by and consistent with the evidence and the proposed CIL rate (or rates) would not put at serious risk the overall development of the area'*.
5. The introduction of CIL must be justified by a demonstrated infrastructure funding gap and the CIL rates must be set based only on the overall economic viability of development in the city. CIL rates should not be based on pursuing policy outcomes or the pressure on infrastructure from different developments. In fact, CIL breaks the link between a specific development site and the provision of infrastructure.
6. The City Council cannot use policy reasons to justify a zero charge, artificially low or high charges or different charges for different areas. A zero rate can only be justified if there is evidence demonstrating that the particular development type cannot withstand a CIL charge on economic viability grounds.
7. CIL viability evidence is applied at broad strategic level. It does not look at the specifics of a particular development proposal but applies assumptions which best attempt to reflect development realities in Oxford.
8. We are awaiting government advice in the form of amended CIL regulations. These will set the parameters for a proportion of CIL (the 'meaningful proportion') to be made available to Parish Councils and Neighbourhoods for infrastructure schemes in their areas. Once these are known, we will be able to inform Members but they are not discussed in this report.

9. Once a CIL charging schedule is in place, the City Council will be required to publish a list of the infrastructure intended to be funded by CIL (Regulation 123 list). The City Council will not be able to secure Section 106 contributions for infrastructure that it proposes to fund through CIL. This is to avoid double charging and to provide confidence on infrastructure funding to the community, developers, investors and infrastructure providers.
10. CIL Regulations 2010 as amended in 2011 and 2012 contain the process by which CIL is introduced. It requires consultation on a Preliminary Draft Charging Schedule followed by a Draft Charging Schedule. This report seeks approval for a Draft Charging Schedule and sets out the CIL charges the City Council is intending to apply for consideration at an independent examination.
11. Although this report is mainly concerned with the CIL Charging Schedule, it is important that Members are aware of the task ahead to secure its implementation. Setting up the processes to engage and work with infrastructure providers such as the County Council ahead of the adoption of the Charging Schedule will help ensure that CIL is implemented as soon as possible following its adoption.

### **Consultation on the CIL Preliminary Draft Charging Schedule**

12. The City Council's Preliminary Draft Charging Schedule was agreed by City Executive Board on 4<sup>th</sup> July 2012 and published for consultation on 13<sup>th</sup> July 2012. The consultation ended on 24<sup>th</sup> August 2012.
13. The level of evidence and information provided in July 2012 was commensurate to the preliminary draft stage of CIL charges. We received 29 responses from 27 organisations and 2 individuals. The responses received and scheduled summary of responses are available on the Council's website. The main issues raised related to:
  - a) the level and appropriateness of the evidence accompanying the charging schedule (infrastructure and viability evidence);
  - b) the proposed rates in the charging schedule;
  - c) concerns from BMW that the £20 CIL charge proposed for industrial development in Oxford does not reflect the economic viability issues faced by industries in the city. Other neighbouring authorities where BMW also runs operations are proposing to apply zero rate for such development types and this could impact on future investment decisions within the UK;
  - d) the effect on viability of not introducing CIL payments in instalments;
  - e) the effect of not introducing CIL relief on economic viability grounds under Regulations 55-57;
  - f) the combined effect of CIL and S106, and the application of CIL and S106 on major sites which require timely delivery of infrastructure;
  - g) the circumstances under which CIL charges will be applied and reviewed.

14. Following consultation, officers together with Jones Lang Lasalle (JLL) and CBRE, who carried out the viability work for the City Council, analysed the comments received. No evidence was put forward at this stage which would undermine the overall suitability of the evidence used for the purpose of introducing a CIL charge.
15. Nevertheless, a number of stakeholders expressed concerns regarding the key assumptions used in the viability model, the understanding of the development market in Oxford and the use of CIL alongside S106 agreements. These stakeholders acknowledged the consultation was at a preliminary draft stage and some requested further discussions prior to the preparation of the Draft Charging Schedule and its evidence. Officers held meetings with some of these stakeholders prior to the drafting of the Draft Charging Schedule.
16. The representations received and subsequent engagement with stakeholders do not justify changes to the CIL Charging Schedule but helped to gain an insight into the challenges faced by those developing in the City and a greater understanding of how to approach CIL implementation so that CIL becomes a long term investment in infrastructure for the benefit of all.
17. CIL implementation processes will need to be developed to actively engage with industry and commerce in the city and ensure that the right infrastructure is provided when and where is needed to support their operations.
18. Developments under D1 use (non residential institutions) comprise a wide range of uses from conference centres and clinics to museums and schools. Some of these developments constitute infrastructure supporting growth in the city and many of the providers will have a charitable status and could apply for CIL relief. However, this is not the case for all organisations providing D1 uses, and during CIL implementation the City Council will need to consider working with infrastructure providers such as the County Council to ensure that CIL charges do not preclude the delivery of infrastructure that CIL is intended to fund.
19. The preliminary draft charging schedule built on the economic viability evidence supporting affordable housing policies in the Sites and Housing Plan to establish CIL rates. Consequently, a number of the representations received related to the objections to Sites and Housing Plan or were based on the same grounds.
20. CIL residential viability evidence has been updated to reflect additional viability work undertaken for the Sites and Housing Plan.

## The proposed Draft Charging Schedule

21. The CIL charges provide a simple and cohesive set of charges where most development contributes to the provision of infrastructure. The proposed CIL Charges are recommended to proceed from the Preliminary Draft to the Draft Charging Schedule as shown below.

<b>Development type</b>	<b>Rate/m2</b>
A1 Shops	£100
A1 out of centre shops	£100
A2 Financial and professional services	£100
A3 Restaurants and cafés	£100
A4 Drinking establishments	£100
A5 Hot food takeaways	£100
B1 Business	£20
B2 General industrial	£20
B8 Storage or distribution	£20
C1 Hotels	£20
C2 and C2A Residential institutions and Secure Residential Institution	£20
C3 Dwellinghouses*	£100
C4 Houses in multiple occupation	£100
Student accommodation	£100
D1 Non-residential institutions	£20
D2 Assembly and leisure	£20
All development types unless stated otherwise in this table	£20 standard charge
*C3 includes self contained sheltered accommodation <u>and graduate accommodation</u>	

22. Appendix 1 contains the CIL Draft Charging Schedule consultation document. The table of Draft CIL charges above (Draft CIL Charging Schedule) is listed under paragraph 22 of the consultation document.

23. The infrastructure funding gap contained in the Aggregate Infrastructure funding gap background paper estimates that there is likely to be a funding gap of £198.089m up to 2021/22 and £ 415.231m to 2026.

24. The charges proposed for Oxford will not generate a CIL revenue to cover all the identified infrastructure funding gap. The aggregate funding gap following CIL receipts is estimated at some £174m.

<hr style="border: 1px solid black;"/> Estimated aggregate funding gap to <b>2021/22</b> <b>£198.089m</b>
-
Estimated CIL income to <b>2021/22</b> <b>£23.802m</b>
=
Residual funding gap <b>2021/22</b> <b>£174.287m</b> <hr style="border: 1px solid black;"/>

25. The infrastructure evidence list supporting the Preliminary Draft Charging Schedule has been updated to reflect consultation comments. Infrastructure projects are ever evolving and a wider review of all projects, cost and funding sources will be carried out following the Draft Charging Schedule consultation to provide the most up to date information for CIL's submission stage.

**CIL implementation and supporting information**

CIL payment in instalments

26. In view of the acknowledgement in the viability evidence and the representations received, Members are recommended to consider the provision of a policy allowing payments in instalments once CIL charges are implemented. A policy is proposed for consideration in Annex 3 of the Charging Schedule.

27. The draft policy intends to help viability of development proposals while maintaining cash flow for infrastructure delivery. It allows for payments within 4 equal payments over the period of 1 year following commencement of development for those developments liable to pay £200,000 or more.

CIL relief on viability grounds and other discretionary relief

28. It is recommended that the City Council does not offer discretionary relief. The system has inbuilt flexibility allowing for in kind contributions and negotiation of on site S106 contributions including affordable housing which can be explored in the cases of demonstrable viability risks rather than eroding the certainty that CIL intends to bring about.

Combined effect of CIL and S106, and the application of CIL and S106 on major sites which require timely delivery of infrastructure

29. A combined SPD revising the existing Planning Obligations and Affordable Housing SPDs will be adopted and implemented alongside CIL. This SPD will make clear what infrastructure is to be covered by CIL and what will still be required through planning obligations.

**Timeframe for adoption and stages**

30. The stages and timeframe for the adoption of a CIL Charging Schedule are:

<b>Stage</b>	<b>Date</b>
Consultation on Draft Charging Schedule (6 weeks)	11 <sup>th</sup> January 2013 -22 <sup>nd</sup> February 2013
Submission for examination	March 2013
Examination Hearings	June 2013 (estimated)
CIL adoption	October 2013

## **Consultation approach**

31. The Preliminary Draft Charging Schedule will be published for consultation through a variety of means which are likely to include:

- Notifying all adjoining Parish Councils, the County Council, and adjoining Districts (Consultation bodies);
- Notifying all those who participated in the Preliminary Charging Schedule consultation and any other local agents, developers, landowners, solicitors, relevant voluntary organisations, and infrastructure providers in the Council Local Plan consultation list;
- Notifying the Local Enterprise Partnership;
- Publishing a notice in the Oxford Times and on the Council's Website;
- Making consultation material available at the Central Library (Westgate) and the contact centre at St Aldates Chambers;
- Making consultation material available in the Council's website, and
- Holding a stakeholders workshop during the consultation process.

## **Level of risk**

32. Not delivering CIL by April 2014 would have a detrimental effect on the amount of funding the Council would be able to raise to deliver infrastructure priorities.

33. Charges applied by other local authorities are not a matter for the Oxford CIL Charging Schedule but nevertheless, the application of zero charges in adjoining local authorities for office, industrial or some other development types could be seen by investors as incentives to move or develop a site outside the Oxford administrative boundary.

34. If a particular proposal is affected by demonstrable viability risks, the CIL charges cannot be reduced. This is because it is a fixed non-negotiable levy. The Government is likely to state in forthcoming advice the level of affordable housing on a site should be reduced in the light of non-viability of a development contributing to CIL.

35. Please refer to Risk Register in Appendix 2.

## **Climate change/ environmental impact**

36. CIL is a levy not a policy, and its charging schedule is a brief financial document which does not require a Sustainability Appraisal. Nevertheless, funding raised through CIL could fund or top fund environmental infrastructure to address climate change or promote environmental improvements.

## **Equalities impact**

37. Officers assessed potential equalities impact of the emerging CIL charges during the Preliminary Draft consultation in July 2012 and scoped the need for a full Equalities Impact Assessment (EqIA).
38. It is considered that a full EqIA is not necessary given that the CIL charging schedule does not create direct equalities impacts. Nevertheless, the implementation of CIL could have potential impacts on the funding of projects by certain groups such as those in the voluntary sector. These organisations will continue to be included in the consultation process to CIL adoption.

## **Financial implications**

39. The internal mechanisms and process for both the collection and distribution of CIL are in the process of being developed in line with the timeframe for adoption.
40. The draft charging schedule has been set so as to ensure the balance required for sustainable development is achieved. The charges nonetheless can be reviewed and the City Council will use its ability to revise CIL charges going forward to respond to economic and market changes for the benefit of the City and all its associated stakeholders.
41. It is expected that the staffing costs of administering CIL will be covered by CIL receipts. Legislation allows up to 5% of CIL receipts to be used for this purpose. Start up costs should also be covered by CIL receipts.
42. Given that the City Council will assume responsibility for prioritising the CIL infrastructure funding for identified developments within the City it is essential that positive and continuous dialogue with our commissioning partners is undertaken so that the overall planning, funding and ultimate delivery of capital infrastructure developments within Oxford, part funded by CIL occur on time, on budget and to the highest quality.

## **Legal implications**

43. Officers consider that the relevant statutory procedures have been met during the preparation and consultation on the Preliminary Draft Charging Schedule.
44. It is considered that the JLL and CBRE viability studies provide suitable evidence and the proposed charges in the Draft Charging Schedule strike the 'appropriate balance' between the desirability of funding infrastructure from CIL and its potential impact on the economic viability across the area required in CIL Regulation 14.



**List of background papers:**

City Executive Board Report Preliminary Draft Charging Schedule 4<sup>th</sup> July 2012

CIL Preliminary Draft Charging Schedule, July 2012

Aggregate funding gap and infrastructure evidence list

CIL Screening Equalities Impact Assessment (EqIA)

These papers are available in Community Infrastructure Levy page in the City Council's website.

<http://www.oxford.gov.uk/PageRender/decP/CommunityInfrastructureLevy.htm>

**Appendix 1** – CIL Draft Charging Schedule (Annex 3 contains Instalments Policy)

**Appendix 2** – CIL Risk register

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## Appendix 1 – Draft CIL Charging Schedule consultation document

### Introduction

- 1 In 2010 the Government introduced the Community Infrastructure Levy (CIL) as the preferred mechanism for securing developers contributions towards infrastructure to support growth in an area. The regulations<sup>1</sup> which introduced CIL also require planning obligations to be scaled back to cover only site-specific obligations.
- 2 This document is a consultation paper on Oxford City Council’s Draft Charging Schedule issued following consideration of the responses and issues raised at the Preliminary Draft Charging Schedule consultation stage in July 2012.
- 3 The proposed Draft Charging Schedule is presented in paragraph 22 below. The rest of the document provides background information to the charging schedule.
- 4 The next key stages to adoption of CIL by the City Council are outlined in the table below:

Stage	Date
Consultation on Draft Charging Schedule (6 weeks)	11 <sup>th</sup> January 2013 - 22 <sup>nd</sup> February 2013
Submission for examination	March 2013
Examination Hearings	June 2013 (expected)
CIL adoption	October 2013

### What is CIL?

- 5 The Community Infrastructure Levy is a tariff in the form of a standard charge on new development, which in Oxford will be set by the City Council to help the funding of infrastructure. It is intended to supplement, or top up, other sources of funding to widen infrastructure delivery.
- 6 Most development has some impact on infrastructure and should contribute to the cost of providing or improving infrastructure. The principle behind CIL is for those who benefit financially from a planning permission to pay towards the cost of funding the infrastructure needed to support development.
- 7 CIL will improve Oxford City Council’s ability to mitigate the cumulative impacts on infrastructure from most developments; unlike the current system of planning obligations which tends to affect mainly larger developments. Being charged on a per square metre basis, CIL charges will be proportional to the scale of the development.
- 8 In investing in the infrastructure of the area, CIL is expected to have a positive economic effect on development in the medium to long term.

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<sup>1</sup> Regulations 2010 on legislation.gov.uk website <http://www.legislation.gov.uk/uksi/2010/948/contents/made>  
Amended Regulations 2011 on legislation.gov.uk website  
<http://www.legislation.gov.uk/uksi/2011/987/contents/made>

## CIL and S106s

- 9 Unlike S106, the levy is to provide infrastructure to support the development of an area, not to make individual planning applications acceptable in planning terms. It breaks the link between a specific development site and the provision of infrastructure and thus provides greater flexibility for delivery of infrastructure when and where it is needed.
- 10 Section 106 agreements and Section 278 Highways Agreements will continue to be used to secure site-specific mitigation and affordable housing. In some instances, S106 agreements may be used in large development sites needing the provision of their own specific infrastructure for which delivery may be more suitably dealt with through S106s.
- 11 Once CIL is in place, the City Council will be required to publish a list of the infrastructure intended to be funded by CIL (Regulation 123 list). The City Council will not be able to secure Section 106 contributions for infrastructure that they propose to fund through CIL. This is to avoid double charging and provide confidence on infrastructure funding to the community, developers, investors and infrastructure providers.

<b>Circular 05/05 five tests:</b>	<b>R122(2) of CIL Regs 2010 scaled back S106</b>
1. Relevant to planning;	Applies whether CIL in place or not
2. Necessary to make development acceptable;	←
3. Directly related to the proposed development;	←
4. Related in scale and kind;	←
5. Reasonable in all other respects;	S106 restricted to the regulation of development (site specific mitigation).  From April 2014, unlawful to pool more than 5 contributions for same infrastructure

- 12 A combined SPD revising existing Planning Obligations and Affordable Housing SPDs will be adopted and implemented alongside CIL. This SPD will make clear what infrastructure is to be covered by CIL and what will still be required through planning obligations.

## CIL justification

- 13 Oxford City Council has complied with the requirements under Part 11 of the Planning Act 2008, and CIL Regulations 2010, when deciding on a CIL rate. We have done this by demonstrating the use of *'appropriate available evidence to inform the draft charging schedule'* (Section 211 (7A)). It also *'must aim to strike what it appears to be an appropriate balance between'*:

- the desirability of funding infrastructure from CIL, and

- 'the potential effect (taken as a whole) of the imposition of CIL on the economic viability of development across its area' (Regulation 14)

14 The term 'taken as a whole' indicates that economic viability evidence is used to show that CIL rates can be borne by most development across Oxford. It does not mean that CIL rates can be borne by each and every development.

15 The Aggregate Funding Gap background paper (November 2012) provides details of the infrastructure needed to support future growth in the city based on growth levels set out in the Core Strategy (2011) and draft Strategic Housing Land Availability Assessment (SHLAA), 2012. This paper estimates that there is likely to be a funding gap of £ 198.16m up to 2017 and £ 415.35m to 2026.

Likely cost of infrastructure to <b>2021/22</b> <b>£224.624</b>	Likely cost of infrastructure to <b>2026</b> <b>£441.766m</b>
-	-
Funding from sources other than CIL <b>£26.43m</b>	Funding from sources other than CIL <b>£26.43m</b>
=	=
Aggregate funding gap to <b>2021</b> <b>£198.194</b>	Aggregate funding gap to <b>2026</b> <b>£415.33m</b>

16 The City Council needs to ensure that CIL charges are set at a rate which does not put the overall development of the city at risk. Jones Lang Lasalle (JLL) and CBRE viability studies informed the level of appropriate CIL charges against their economic viability impact.

17 Viability evidence takes into account market conditions and development costs as well as existing requirements on developers in the city such as affordable housing. This informed the proposed set of charges which are robust but leave a reasonable level of headroom to respond to potential individual development circumstances.

18 The charges proposed for Oxford will not generate a CIL revenue to cover all the identified infrastructure funding gap. CIL is a means to 'top-up' infrastructure funds in the city and the CIL charges have been set to strike the balance required in CIL Regulation 14 above.

<b>Changes between Draft Charging Schedule</b>	Aggregate funding gap to <b>2021/22</b> <b>£198.194m</b>	<b>Preliminary Draft and</b>
	-	
19 The City Council's Charging Schedule consultation on 13th the endorsement of Board on 4th July	Projected CIL income <b>2021/22</b> <b>£23.802m</b>	Preliminary Draft was published for July 2012 following the City Executive 2012. We received
	=	
29 responses from 27 organisations and 2 individuals.	Residual funding gap <b>2021/22</b> <b>£174.392m</b>	

20 The representations received and subsequent engagement with stakeholders did not justify major changes to the CIL Charging Schedule. However, we have made some changes and provided additional information as set out in the table overleaf.

<b>The Preliminary Draft Charging Schedule, July 2012</b>	<b>Draft Charging Schedule, January 2013</b>
CIL charges	Addition of graduate accommodation to explanatory note on explanation of C3 use class
Supporting information	Draft instalments policy Clarification regarding changes introduced by CIL Regulations Amendments 2012 ( Parts 2, 3, 5, 6, 7, 8 and 12) which came into force on 29 <sup>th</sup> Nov 2012. Further information regarding the relationship of CIL and S106, CIL exemptions and CIL liable development
Evidence	Amendments to CIL residential viability evidence to incorporate viability evidence undertaken as part of the Sites & Housing Plan examination

### charging authority

21 Once CIL is adopted, Oxford City Council will be the charging authority for the purpose of Part 11 of the Planning Act 2008 and CIL Regulations 2010 as amended in 2011 and 2012.

### Draft Charging Schedule

22 CIL will be charged in pounds sterling (£) at differential rates according to the type of development set out in the schedule below:

### The CIL rates

<b>Development type</b>	<b>CIL Rate/m<sup>2</sup></b>
<b>A1 Shops</b>	£100
<b>A1 out of centre shops</b>	£100
<b>A2 Financial and professional services</b>	£100
<b>A3 Restaurants and cafés</b>	£100
<b>A4 Drinking establishments</b>	£100
<b>A5 Hot food takeaways</b>	£100
<b>B1 Business</b>	£20
<b>B2 General industrial</b>	£20
<b>B8 Storage or distribution</b>	£20
<b>C1 Hotels</b>	£20
<b>C2 and C2A Residential institutions and Secure Residential Institution</b>	£20
<b>C3 Dwellinghouses*</b>	£100
<b>C4 Houses in multiple occupation</b>	£100
<b>Student accommodation</b>	£100
<b>D1 Non-residential institutions</b>	£20
<b>D2 Assembly and leisure</b>	£20
<b>All development types unless stated otherwise in this table</b>	£20 standard charge

**C3** includes self contained sheltered accommodation and graduate accommodation  
See Annex 1 for reference to Use Classes guide

### CIL liability

23 Development liable for CIL payment comprises:

- Development that creates 100m<sup>2</sup> or more of new build floor space measured as Gross Internal Floor Area (GIA).

- Development of less than 100m<sup>2</sup> new build GIA that results in the creation of one or more dwellings.
- The conversion of a building that is no longer in lawful use.

24 Liability to pay CIL on qualifying developments applies whether development requires planning permission or is enabled through permitted development orders (General Permitted Development Order, Local Development Orders, Neighbourhood Development Orders, Enterprise Zones)<sup>2</sup>

### CIL exemptions

25 CIL charges will not be levied on:

- Development that creates less than 100m<sup>2</sup> of new build floor space measured as GIA and does not result in the creation of one or more dwellings.
- Buildings into which people do not normally go, or only go to perform maintenance<sup>3</sup>.
- Buildings for which planning permission was granted for a limited period.
- Affordable housing, subject to an application by a landowner for CIL relief (CIL regulation 49).
- Development by charities for charitable purposes subject to an application by a charity landowner for CIL relief (CIL regulation 43).

26 A charging authority can choose to offer discretionary relief to a charity landowner where the greater part of the chargeable development will be held as an investment, from which the profits are applied for charitable purposes (CIL regulation 44).

27 It can also choose to offer exceptional circumstances relief (CIL regulation 55) on the basis of an unacceptable impact on the economic viability of a development, and where the exemption of a charitable institution from liability to pay CIL would constitute State aid (CIL regulation 45) and would otherwise be exempt from liability under regulation 43.

28 In Oxford City discretionary relief is not available under any of Regulations 44, 45 or 55.

### Calculating the chargeable amount

29 The City Council will calculate the amount of CIL chargeable in accordance with regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended in 2011 and 2012). Refer to Annex 2 for an extract of this regulation.

30 The relevant rate (R) for each development type is shown in the Charging Schedule above and the Gross Internal Area (GIA) is measured and calculated in accordance with the Royal Institute of Chartered Surveyors (RICS) Code of Measuring Practice. Annex 4 sets out an extract of RICS code.

31 The chargeable amount will reflect inflation by being index linked to RICS' Building Cost Information Service 'All-in Tender Price Index'.

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<sup>2</sup> Regulations 5 and 9 of the Community Infrastructure Levy Regulations 2010 as amended in 2011 and 2012

<sup>3</sup> Regulation 6 (2) of the Community Infrastructure Levy Regulations 2010

32 Amended CIL Regulations 2012 mean that for Section 73 applications to vary an existing planning condition, CIL will only be payable upon any increase in chargeable floorspace from the section 73 application/permission<sup>4</sup>.

### **Netting off existing floor space**

33 In certain circumstances, where a development includes the demolition of an existing building, the existing Gross Internal Area (GIA) can be deducted from the proposed floorspace. These deductions in respect of demolition or change of use will only apply where the existing building has been in continuous lawful use<sup>5</sup> for at least six months in the 12 months prior to the development being permitted.

34 Oxford City Council may deem the Gross Internal Area (GIA) of a building to be zero where there is not sufficient information, or no information of sufficient quality, regarding the GIA of an existing building or whether it is in lawful use.

### **Who assumes the CIL liability?**

35 Once planning permission is granted, CIL regulations encourage any party, (such as a developer submitting a planning application, or a landowner), to take liability to pay the CIL charge. CIL liability runs with the land. If no party assumes liability to pay before development commences, land owners will be liable to pay the levy.

### **When is CIL payment due?**

36 CIL payment is due within 60 days of the commencement of development. For some developments, instalments may be permitted in accordance with the City Council's Instalments policy. Annex 3 of this document sets out an Instalments Policy. This will not be part of the CIL Examination but informal comments on the draft policy are welcomed.

### **Payments in kind**

37 In circumstances where the liable party and Oxford City Council agree, payment of the levy may be made by transferring land. The agreement cannot form part of a planning obligation, must be entered into before the chargeable development is commenced<sup>6</sup> and is subject to fulfilling the following:

- the acquired land is used to provide or facilitate the provision of infrastructure within Oxford;
- the land is acquired by Oxford City Council or a person nominated by Oxford City Council;
- the transfer of the land must be from a person who has assumed liability to pay CIL;
- the land has to be valued by an independent person agreed by Oxford City Council and the person liable to pay CIL;
- 'Land' includes existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over the land.

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<sup>4</sup> Regulation 9 of the Community Infrastructure Levy Regulations 2010 as amended in 2012

<sup>5</sup> 'For the purposes of this regulation a building is in use if a part of that building has been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development' (Regulation 40(10) of the Community Infrastructure Levy Regulations 2010)

<sup>6</sup> Regulation 73 of the Community Infrastructure Levy Regulations 2010

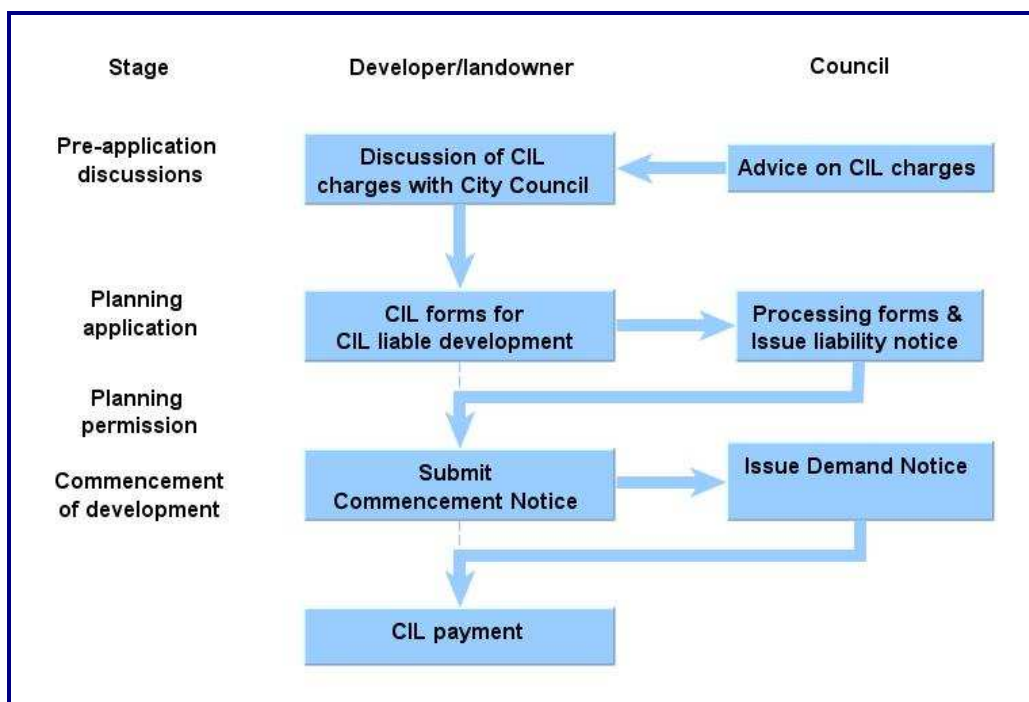
### How will CIL be collected?

38 Oxford City Council is the collecting authority for the purpose of Part 11 of the Planning Act 2008 and CIL Regulations 2010 (as amended by Regulations 2011).

39 When planning permission is granted, Oxford City Council will issue a liability notice setting out the amount payable, and the payment procedure.

40 In the case of development enabled through permitted development orders, the person(s) liable to pay will need to consider whether their proposed development is chargeable, and to issue Oxford City Council a notice of chargeable development.

41 The diagram below illustrates a summarised version of the collection process.



### What happens once CIL is adopted?

42 CIL will be taken as a material consideration in planning decisions if it is material to the application (S143 of the Localism Act).

43 Development will be liable for CIL when:

- Development permitted by a 'general consent' (including permitted development) commences on or after 6th April 2013; or
- Planning permission is granted through a decision notice or appeal decision on or after the date of publication of a CIL Charging Schedule for that area.

44 Development will not be liable for CIL when:

- Planning permission was granted before the CIL Charging Schedule is published.
- Outline planning permission was granted before publication of the CIL Charging Schedule, but the approval of reserved matters / phases is made after publication of the CIL Charging Schedule. In this instance, the approval of reserved matters / phases does not trigger a liability to pay CIL.



- 45 A liable person can request a review of the chargeable amount by the charging authority within 28 days from the issue of the liability notice. CIL Regulations allow for appeals on:
- the calculation of the chargeable amount following a review of the calculation by the City Council.
  - disagreement with the City Council's apportioned liability to pay the charge.
  - any surcharges incurred on the basis that they were calculated incorrectly, that a liability notice was not served or the breach did not occur.
  - a deemed commencement date if considered that the date has been determined incorrectly.
  - against a stop notice if a warning notice was not issued or the development has not yet commenced.
  - a person aggrieved by the levy (or attempt to levy) can appeal to the Magistrates Court.

### **How will CIL be spent?**

46 CIL revenue will be spent on the infrastructure needed to support development in Oxford. Once CIL is adopted, Oxford City Council will publish on its website a list of infrastructure projects or types of infrastructure to be wholly or partially funded by CIL. This list will be known as the Regulation 123 list.

47 Oxford City Council will publish annual reports showing, for each financial year:

- How much has been collected in CIL;
- How much has been spent;
- The infrastructure on which it has been spent;
- Any amount used to repay borrowed money;
- Amount of CIL retained at the end of the reported year.

48 It is the Government's intention to allow for a proportion of CIL to be passed to Parish Councils and Neighbourhoods. The City Council will amend the CIL charging schedule in line with any such changes that may occur through new CIL Regulations once announced by the Government.

### **Administration fee**

49 Oxford City Council will use 5% of the CIL revenue to fund the administration costs of the Levy.

## Annex 1- Guide to Use class Order definitions

The following list is based on the Government's guide to Use Classes as shown in their planning and building regulations online resource 'The Planning Portal'. It is not a definitive source of legal information.

- **A1 Shops** - Shops, retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices (but not sorting offices), pet shops, sandwich bars, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes.
- **A2 Financial and professional services** - Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices.
- **A3 Restaurants and cafés** - For the sale of food and drink for consumption on the premises - restaurants, snack bars and cafes.
- **A4 Drinking establishments** - Public houses, wine bars or other drinking establishments (but not night clubs).
- **A5 Hot food takeaways** - For the sale of hot food for consumption off the premises.
- **B1 Business** - Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area.
- **B2 General industrial** - Use for industrial process other than one falling within class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste).
- **B8 Storage or distribution** - This class includes open air storage.
- **C1 Hotels** - Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels).
- **C2 Residential institutions** - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.
- **C2A Secure Residential Institution** - Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks.
- **C3 Dwellinghouses** - this class is formed of 3 parts:
  - C3(a) covers use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
  - C3(b): up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for

people with learning disabilities or mental health problems.

- C3(c) allows for groups of people, (up to six), living together as a single household. This allows for those groupings that do not fall within the C4 HMO definition, but which fell within the previous C3 use class, to be provided for i.e. a small religious community may fall into this section as could a homeowner who is living with a lodger.
- **C4 Houses in multiple occupation** - small shared dwelling houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom.
- **D1 Non-residential institutions** - Clinics, health centres, crèches, day nurseries, day centres, schools, art galleries (other than for sale or hire), museums, libraries, halls, places of worship, church halls, law court. Non residential education and training centres.
- **D2 Assembly and leisure** - Cinemas, music and concert halls, bingo and dance halls (but not night clubs), swimming baths, skating rinks, gymnasiums or area for indoor or outdoor sports and recreations (except for motor sports, or where firearms are used).
- **Sui Generis** - Certain uses do not fall within any use class and are considered 'sui generis'. Such uses include: theatres, houses in multiple occupation, hostels providing no significant element of care, scrap yards. Petrol filling stations and shops selling and/or displaying motor vehicles. Retail warehouse clubs, nightclubs, laundrettes, taxi businesses, amusement centres and casinos.

Source: Planning Portal <http://www.planningportal.gov.uk>

**Annex 2- Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended by Regulations 2011 and 2012)**

**PART 5  
CHARGEABLE AMOUNT**

**Calculation of chargeable amount**

**40.**—(1) The collecting authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.

(2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.

(3) But where that amount is less than £50 the chargeable amount is deemed to be zero.

(4) The relevant rates are the rates at which CIL is chargeable in respect of the chargeable development taken from the charging schedules which are in effect—

(a) at the time planning permission first permits the chargeable development; and

(b) in the area in which the chargeable development will be situated.

(5) The amount of CIL chargeable at a given relevant rate (R) must be calculated by applying the following formula—

$$\frac{R \times A \times I_P}{I_C}$$

where—

A = the deemed net area chargeable at rate R;

IP = the index figure for the year in which planning permission was granted; and

IC = the index figure for the year in which the charging schedule containing rate R took effect.

(6) The value of A in paragraph (5) must be calculated by applying the following formula—

$$G_R - K_R - \left( \frac{G_R \times E}{G} \right)$$

where—

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the development chargeable at rate R;

E = an amount equal to the aggregate of the gross internal areas of all buildings which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and

(b) are to be demolished before completion of the chargeable development; and

KR = an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which—

(a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use;

(b) will be part of the chargeable development upon completion; and

(c) will be chargeable at rate R.”

(7) The index referred to in paragraph (5) is the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institution of Chartered Surveyors (a); and the figure for a given year is the figure for 1st November of the preceding year.

(8) But in the event that the All-in Tender Price Index ceases to be published, the index referred to in paragraph (5) is the retail prices index; and the figure for a given year is the figure for November of the preceding year.

(9) Where the collecting authority does not have sufficient information, or information of

sufficient quality, to enable it to establish—

(a) the gross internal area of a building situated on the relevant land; or

(b) whether a building situated on the relevant land is in lawful use,

the collecting authority may deem the gross internal area of the building to be zero.

(10) For the purposes of this regulation a building is in use if a part of that building has been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development.

(11) In this regulation “building” does not include—

(a) a building into which people do not normally go;

(b) a building into which people go only intermittently for the purpose of maintaining or inspecting machinery; or

(c) a building for which planning permission was granted for a limited period.

(12) In this regulation “new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.

## Annex 3- Instalments policy

### Community Infrastructure Levy Instalments policy

www.oxford.gov.uk



This policy is made in line with regulation 69B of the Community Infrastructure Levy (Amendment) Regulations 2011 and 2012. Oxford City Council will allow the payment of CIL as outlined in points 1 and 2 below:

1. Where the chargeable amount is less than £200,000 the chargeable amount will be required within 60 days of commencement.
2. Where the chargeable amount is equal or more than £200,000 the chargeable amount will be required as per the following four instalments:

1 <sup>st</sup> instalment	2 <sup>nd</sup> instalment	3 <sup>rd</sup> instalment	4 <sup>th</sup> instalment
25%	25%	25%	25%
within 60 days	within 160 days	within 260 days	within 360 days

Commencement will be taken to be the date advised by the developer in the commencement notice under CIL Regulation 67.

This Instalments Policy takes effect on *[insert date]*

#### Notes

N1: When the City Council grants an outline planning permission which permits development to be implemented in phases, each phase of development is a separate chargeable development and the instalment policy will apply to each separate phase.

N2: This policy will not apply if:

- a) A commencement notice is not submitted prior to commencement of the chargeable development
- b) Nobody has assumed liability to pay CIL in respect of the chargeable development prior to the intended day of commencement
- c) Failure to notify the City Council of a disqualifying event before the end of 14 days beginning with the day the disqualifying event occurs
- d) An instalment payment has not been made in full after the end of the period of 30 days beginning with the day on which the instalment payment was due

#### Annex 4- How to measure Gross Internal Area

Oxford City Council will use the Royal Institution of Chartered Surveyors (RICS)'s Code of Measuring Practice to measure or check the Gross Internal Area (GIA) of a development and calculate or confirm its relevant CIL rate. The guide below is based on RICS' Code of Measuring Practice (6<sup>th</sup> edition, with amendments), the full Code of Measuring Practice is available in RICS website at <http://www.rics.org>

GIA is the area of a building measured to the internal face of the perimeter walls at each floor level.

Including:

- Areas occupied by internal walls and partitions
- Columns, piers, chimney breasts, stairwells, lift-wells, other internal projections, vertical ducts, and the like
- Atria and entrance halls, with clear height above, measured at base level only
- Internal open-sided balconies, walkways, and the like
- Structural, raked or stepped floors are property to be treated as a level floor measured horizontally
- Horizontal floors, with permanent access, below structural, raked or stepped floors
- Corridors of a permanent essential nature (e.g. fire corridors, smoke lobbies)
- Mezzanine floor areas with permanent access
- Lift rooms, plant rooms, fuel stores, tank rooms which are housed in a covered structure of a permanent nature, whether or not above the main roof level
- Service accommodation such as toilets, toilet lobbies, bathrooms, showers, changing rooms, cleaners' rooms, and the like
- Projection rooms
- Voids over stairwells and lift shafts on upper floors
- Loading bays
- Areas with a headroom of less than 1.5m\*
- Pavement vaults
- Garages
- Conservatories

Excluding:

- Perimeter wall thicknesses and external projections
- External open-sided balconies, covered ways and fire escapes
- Canopies
- Voids over or under structural, raked or stepped floors
- Greenhouses, garden stores, fuel stores, and the like in residential

\* GIA is the basis of measurement in England and Wales for the rating of industrial buildings, warehouses, retail warehouses, department stores, variety stores, food superstores and many specialist classes valued by reference to building cost (areas with a headroom of less than 1.5m being excluded except under stairs) areas with a headroom of less than 1.5m being excluded except under stairs

## Appendix 3 - CIL Risk register



No	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk		
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1	Q 2	Q 3	Q 4	I	P	
					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner:  Mitigating Control: Control Owner:			☒	☒	☒	☒		
559	Successful challenge at independent examination by the development industry that the CIL charges are set too high	3	2	Lack of robust economic viability data	<p><b>Mitigating control:</b> Robust viability studies have already been commissioned but the commissioning of further viability testing may be consider if a convincing need is considered through the Draft consultation.</p> <p>Close working relationship with Corporate Assets which provide support and advise on land valuations to ensure information provided by consultants truly reflects local market conditions.</p> <p>Working with development industry as part of individual meetings with bodies such as HBF</p> <p>Preparing Stakeholders workshop as part of Draft consultation to identify areas of consensus and disagreements early in the process.</p> <p><b>Level of Effectiveness: M</b></p>	3	1	<p><b>Action:</b> The Head of City Development to agree the commissioning of further supplementary evidence if need arises <b>Action Owner:</b> Maria Garcia</p> <p><b>Mitigating Control:</b> In event that the evidence is robustly challenged, revise CIL timetable to allow a re-draft. <b>Control owner:</b> Michael Crofton-Briggs</p>	<p><b>Outcome required:</b> All representations analysed and main issues identified to make decision if any amendments are needed to the Draft Charging Schedule.</p> <p><b>Milestone Date:</b> March 2013</p>							

No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk		
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1 ☒	Q 2 ☒	Q 3 ☒	Q 4 ☒	I	P	
					Mitigating Control: Level of Effectiveness: (HML)			Mitigating Control: Control Owner:			☺	☺	☺	☺		
560	From April 2014, S106 substantially scaled back. Not implementing CIL would result in a reduction in the level of developer contributions secured in future years.	3	3	Lack of robust evidence on infrastructure and/or economic viability  There is no time within the current CIL timeframe to allow for any eventualities.	<b>Mitigating control:</b> Scope the review of Planning Obligations and Affordable Housing SPD in the context of the emerging CIL to maximise remaining opportunities allowed for by the scaled back S106 regime. This will not provide effective mitigation for not having implemented CIL. <b>Level of Effectiveness: L</b>  <b>Mitigation control:</b> Provision of staff resources. Policy team may be able to release resources temporarily from other projects. <b>Level of Effectiveness: M</b>	3	2	<b>Action:</b> The Head of City Development in consultation with Executive Board Member to allow for SPD reviews on Affordable Housing and Planning Obligations  <b>Action Owner:</b> Maria Garcia  <b>Mitigating Control:</b> Help S106 officer on review of SPDs  <b>Control owner:</b> Michael Crofton-Briggs <b>Action:</b> The Head of City Development to make necessary decisions on priorities for the Policy Team's work <b>Action Owner:</b> Maria Garcia  <b>Mitigating Control:</b> Distribution of tasks at key project milestones such as consultation stages.	<b>Outcome required:</b> Successful Implementation of CIL by Autumn/Winter <b>Milestone Date:</b> Adoption of CIL by October 2013.							



No.	Risk Description Link to Corporate Obj	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk		
		I	P			I	P	Action: Action Owner:	Outcome required: Milestone Date:	Q 1	Q 2	Q 3	Q 4	I	P	
					Mitigating Control: Level of Effectiveness: (HML)			Action: Action Owner:  Mitigating Control: Control Owner:			☹	☹	☹	☹		
562	Reduction of affordable housing provision	3	3	If through the application process developers demonstrate that a proposal is unviable with CIL levy and S106 contributions, and with CIL being non negotiable, affordable housing may have to be negotiated down.	<b>Mitigating control:</b> Ensure residential CIL charges are set at a level which does not take the majority of development proposals to the margin of viability.  <b>Level of Effectiveness: M</b>	3	2	<b>Action:</b> Monitoring of CIL on a yearly basis and review of CIL charges to respond to changes in market conditions in Oxford.  <b>Action Owner:</b> Michael Crofton-Briggs  <b>Mitigating control:</b> Robust viability evidence has been produced to ensure that in general, sites will be viable with the CIL levy. Developers would be expected to produce robust viability evidence themselves before any reduction would be agreed.  <b>Action owner:</b> Maria Garcia								



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