

**To:** Cabinet  
**Date:** 11 March 2020  
**Report of:** Head of Planning Services  
**Title of Report:** CIL Charging Schedule Review- withdrawal from examination

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To consider withdrawal of the CIL Draft Charging Schedule Review from examination.
<b>Key decision:</b>	Yes
<b>Cabinet Member:</b>	Councillor Alex Hollingsworth, Planning and Regulatory Services
<b>Corporate Priority:</b>	A Vibrant and Sustainable Economy Meeting Housing Needs Strong and Active Communities A Clean and Green Oxford An Efficient and Effective Council
<b>Policy Framework:</b>	Corporate Plan 2016-2020
<b>Recommendations:</b> That Cabinet resolves to:	
<ol style="list-style-type: none"> <li><b>Withdraw</b> the CIL Charging Schedule review from examination; and</li> <li><b>Continue</b> to apply the existing CIL Charging Schedule whilst the process to review it is re-started in the context of the CIL Regulations as updated in September 2019.</li> </ol>	

<b>Appendices</b>	
Appendix 1	Risk Assessment
Appendix 2	Cabinet Report 29 May 2019
Appendix 3	Response to initial Examiner's Questions

## Introduction and background

- The Community Infrastructure Levy (CIL) is a planning charge on new development to help the funding of infrastructure. The City Council is the charging authority for CIL in Oxford and the levy is set in the CIL Charging Schedule adopted on 21<sup>st</sup> October 2013. It sets the level of charge and the types of developments that are

liable for CIL. The principle behind CIL is that most development has some impact on infrastructure and should contribute to the cost of providing or improving infrastructure. The Charging Schedule is informed by viability testing.

2. At a Cabinet meeting on 23<sup>rd</sup> January 2018 the City Council undertook to review the CIL Charging Schedule. A consultation took place on the preliminary draft charging schedule beginning on 2<sup>nd</sup> October 2018, and on the draft charging schedule beginning on 1<sup>st</sup> November 2018. Following agreement from Cabinet on 29<sup>th</sup> May 2019 the Draft Charging Schedule was submitted to the Secretary of State on 3<sup>rd</sup> June 2019, which marks the start of the examination process. The hearing had been scheduled to begin on 10<sup>th</sup> March 2020 for 1 or 2 days, which follows on from the Local Plan Inquiry as is normal practice.
3. It must be noted that during the period after consultation and submitting the review of the charging schedule for examination the CIL regulations had further amendments made to them (September 2019). Significant implications of these changes to the regulations were becoming clearer. Internal discussions were taking place regarding the possibility of withdrawing from the examination.
4. An initial set of questions from the Examiner was sent to the Council on 8<sup>th</sup> January 2020 and the City Council response is published on the website (Appendix 3). Responding to these questions, which are asked in the context of the amended CIL Regulations that came in to force after submission of the Schedule, prompted officers to further consider that it would be appropriate to withdraw from examination of the CIL Charging Schedule to allow time to reflect on the best approach in the context of the new regulations. The existing CIL Charging Schedule would remain in place and continue to be applied during this period of reflection.
5. Officers wrote to the Examiner on 31<sup>st</sup> January 2020, following an initial call to the programme officer earlier that week. This letter explained that officers were to take a report to Cabinet to recommend withdrawal from the CIL examination. On the 29<sup>th</sup> January 2020 the Examiner sent his formal Matters, Issues and Questions (MIQs), which would form the basis of matters to be discussed at the hearing session, this was after internal discussions had already taken place regarding possible withdrawal from the CIL examination.
6. Officers requested in their letter to the Examiner that the examination and associated hearing session (scheduled for 10<sup>th</sup> March) be postponed to allow time for Cabinet to consider this report, The Examiner has agreed to postpone the examination until 3<sup>rd</sup> April 2020.

## **Key considerations in withdrawal of the CIL Charging Schedule Review from Examination**

### Revision of the CIL Regulations

7. Amended CIL regulations came into force in September 2019, subsequent to the submission of the CIL Charging Schedule to the Secretary of State for examination. Withdrawing this review from examination (under Regulation 18 of the CIL Regulations 2010 as amended) would allow the City Council time to take account of recent regulatory changes comprehensively, working with key stakeholders.
8. The amendments to the former CIL regulations lift some of the previous restrictions relating to the use of section 106 of the Town and Country Planning Act 1990 (S106) that existed if CIL was in place. The revised regulations (and in particular the

deletion of regulation 123) now allows local planning authorities to collect more than five contributions through planning obligations to fund the same infrastructure project or type of infrastructure. Prior to the amendment in the regulations local planning authorities could not use more than five S106 contributions to fund a single infrastructure project. The revised regulations also now allow contributions from CIL and S106 planning obligations to be used on the same piece of infrastructure or infrastructure type, which was not allowed previously (where the infrastructure was identified by the charging authority to be funded or partly funded by CIL on a list published under reg. 123). These revisions accordingly remove what can be a barrier to delivery of infrastructure. This is pertinent in Oxford where multiple large developments often directly relate to the same infrastructure project

9. For example, the changes in regulations present different opportunities for the delivery of infrastructure projects, particularly those needed to support larger developments. The differing infrastructure needs of large sites has been something that the Council has been alert to when preparing the CIL review, as set out in the Cabinet paper from May 2019 and in the officer response to the Examiner’s initial questions. However, the limited information on site specific costs for these sites, alongside the previous restrictions on use of S106 planning obligations under the previous regulations, acted as a constraint on what could be justified in terms of how the larger sites were provided for in the revised CIL schedule. The amended CIL regulations provide a greater opportunity to explore different ways of funding infrastructure need from large sites.

Options for the CIL draft Charging Schedule review

10. Officers consider that the two realistic options are to continue with the examination or to withdraw from the examination to give time to re-consider the CIL Charging Schedule review. The pros and cons of both of these options are shown in the table below. Withdrawing from the examination is the recommended option.

Option	Pros	Cons
Continue with examination on Revised CIL Charging Schedule	A revised CIL will be put in place more quickly.	<p>It would not allow time to comprehensively consider the implications of the new CIL regulations including the</p> <p>removal of pooling restrictions on strategic schemes and thus the most appropriate way forward for Oxford in terms of funding infrastructure required to deliver development.</p> <p>Would not allow any changes to CIL rates with regard to small residential developments in light of the changes to the Local Plan that remove the requirement for them to contribute to affordable housing.</p>

<p>Withdraw from examination and re-start review</p>	<p>There would be time for proper consideration of the best way to deliver infrastructure schemes to support strategic sites and development generally in light of the amendments to the Regulations.</p> <p>It would offer the opportunity to consider alternative approaches which would give more certainty to infrastructure delivery.</p> <p>The adopted CIL charging schedule would remain in place so there would be no impact as business as usual will continue in the meantime.</p>	<p>Further evidence on infrastructure and sites would need to be gathered and tested in the context of the new regulations.</p> <p>Another period of consultation would be required in respect of a new revised charging schedule.</p>
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### Recommendation

11. Cabinet is asked to consider the officer recommendation to withdraw the CIL Charging Schedule Review from Examination. The reason for this recommendation is to allow time to take into account the implications of the revised CIL Regulations which is a material change in circumstances that occurred after the Draft Charging Schedule was developed and submitted for examination.

### **Environmental Impact**

12. There are no environmental implications arising from this report.

### **Financial implications**

13. There are limited financial implications from this report. Withdrawal of the CIL Charging Schedule review from Examination would negate the impending costs involved with the examination. The City Council will be liable for some payments to the Planning Inspectorate for the Examination, even after withdrawal of the schedule. It is considered that the benefits of taking account of the material change in national regulations outweighs the minimal short term costs.

14. The recommended approach involves continuing to apply the existing adopted CIL Charging Schedule, so there are no financial implications at this as we have not forecast the new CIL for expenditure in the capital programme and all commitments are based on receipts to date and not reliant on any future money from a revised rate.

15. Following proper consideration by officers a recommendation will be brought back to Cabinet for consideration about progression of a new CIL review. The financial implications of a future revised schedule will be clearly set out as part of that report.

### Legal issues

16. The Community Infrastructure Levy (“CIL”) is a charge which can be levied by local authorities on new development in their area. CIL only applies in areas where a local authority has consulted on, and approved, a charging schedule which sets out its levy rates and has published the schedule on its website.
17. The Community Infrastructure Levy Regulations 2010 set out the procedure for implementing CIL in a local authority’s area. These Regulations have been amended by the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 as referred to in paragraph 3 of the report.
18. There are considered to be no legal issues with the recommended approach because it involves continuing with the status quo in terms of CIL.

### Level of risk

19. A risk assessment has been undertaken and the risk register is attached (Appendix 1). All risks have been mitigated to an acceptable level.

### Equalities impact

20. There are no equalities impacts arising from this report.

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**Background Papers:** None

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