# Developer Contributions Consultation response form

If you are responding by email or in writing, please reply using this questionnaire pro-forma, which should be read alongside the consultation document. You are able to expand the comments box should you need more space. Required fields are indicated with an asterisk (*)

This form should be returned to
developercontributionsconsultation@communities.gsi.gov.uk

Or posted to:

Planning and Infrastructure Division
Ministry of Housing, Communities and Local Government
2nd floor, South East
Fry Building
2 Marsham Street
LONDON
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**By 10 May 2018**

**Your details**

| | |
|---|---|
| First name* | |
| Family name (surname)* | |
| Title | |
| Address | |
| City/Town* | |
| Postal Code* | |
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Are the views expressed on this consultation your own personal views or an official response from an organisation you represent?*

**Organisational response**

If you are responding on behalf of an organisation, please select the option which best describes your organisation.*

**Trade association, interest group, voluntary or charitable organisation**

If you selected other, please state the type of organisation

Click here to enter text.

Please provide the name of the organisation (if applicable)

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# Reducing Complexity and Increasing Certainty

**Question 1**

Do you agree with the Government's proposals to set out that:

i. Evidence of local infrastructure need for CIL-setting purposes can be the same infrastructure planning and viability evidence produced for plan making?

**Yes, this is sensible.**

ii. Evidence of a funding gap significantly greater than anticipated CIL income is likely to be sufficient as evidence of infrastructure need?

**Yes. This is likely to be the case for every single local authority in England.**

iii Where charging authorities consider there may have been significant changes in market conditions since evidence was produced, it may be appropriate for charging authorities to take a pragmatic approach to supplementing this information as part of setting CIL – for instance, assessing recent economic and development trends and working with developers (e.g. through local development forums), rather than procuring new and costly evidence?

**Yes. However, the examiner of the CIL charging schedule would need to be pragmatic too, in the face of potential objections from landowner/developer interests if the new evidence suggests a higher CIL rate than previously proposed could be justified.**

**Question 2**

Are there any factors that the Government should take into account when implementing proposals to align the evidence for CIL charging schedules and plan making?

**It is important that, if the proposed alignment of the collection of evidence with Local Plans is implemented (which the DCN strongly supports), the next**

**logical step is taken, which is to allow the contemporaneous submission and examination of a Local Plan and a proposed CIL charging schedule. This could lead to considerable cost savings through reduced duplication (of e.g. external experts, inspectors etc). Relevant legislation, policy and/or guidance should be changed to this effect.**

## Ensuring that consultation is proportionate

**Question 3**

Do you agree with the Government's proposal to replace the current statutory consultation requirements with a requirement on the charging authority to publish a statement on how it has sought an appropriate level of engagement?

**Yes, this is sensible. The more onerous the engagement processes, the longer it takes and the greater the chance of values changing is (thus creating pressure for yet more consultation).**

**Question 4**

Do you have views on how guidance can ensure that consultation is proportionate to the scale of any charge being introduced or amended?

**The two should not be directly linked. Instead, the guidance should simply recognise that the consultation should be proportionate to the significance of the change. For example, the introduction of CIL for the first time would normally require more detailed and longer consultation than a relatively straightforward amendment to part of a CIL charging schedule (for example). The use of developer fora should be strongly encouraged here.**

## Removing unnecessary barriers: the pooling restriction

**Question 5**

Do you agree with the Government's proposal to allow local authorities to pool section 106 planning obligations:

i. Where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106?

**Yes**

ii. Where significant development is planned on several large strategic sites?

**Yes**

**Question 6**

i. Do you agree that, if the pooling restriction is to be lifted where it would not be feasible for the authority to adopt CIL in addition to securing the necessary developer contributions through section 106, this should be measures based on the tenth percentile of average new build house prices?

**No. The Government's own evidence on this (the academic study, published alongside this consultation, see here) is instructive. Paragraphs 6.3-6.12 of that study show very clearly that many authorities in lower-value areas find the pooling restrictions very unhelpful indeed in helping to deliver new housing. This supports the clear recommendation of the independent CIL Review Panel in 2016 (paragraph 161 iv) of this consultation report) that pooling restrictions should be lifted.**

**The DCN recognises that the CIL system has strengths and advantages, in particular in allowing development contributions from smaller sites to come forward in a way the S106 frequently does not allow. The advantages of CIL mean that, in many higher value areas, the decision to adopt CIL may be relatively straightforward in principle (although the costs and time of preparing and examining a CIL charging schedule can be considerable).**

**However, the proposed introduction of an exemption at an arbitrary "lowest 10% of new build house prices" threshold is strongly opposed by the DCN. No detailed analysis of the potential outworkings of this approach is offered in the consultation, and no examples are given. Any assessment of the new build prices would inevitably have to be broad-brush, probably at a whole-district level. This would not necessarily disclose considerable differences in land values across a district (places close to a major settlement or good transport connections could be much higher than remote rural towns and villages, for example).**

**Having this 10% threshold will adversely impact on areas where new house prices are low, but above this benchmark, and where (like virtually everywhere else) increased housebuilding is desired. These areas – which will include particularly some less prosperous coastal and rural areas in all regions of England – often have land values which are currently assessed as too low for CIL to be a viable proposition. Yet these local housing markets need strengthening, and a potentially useful tool (i.e. scrapping the S106 pooling restrictions) would be very unlikely to be available to these relevant local authorities as they would be above the arbitrary 10% "low new house price values" threshold.**

**At a time when the Government is rightly trying to drive up new housing completions through a variety of means, it makes no sense whatsoever to maintain an artificial restriction (on S106 pooling limits) which the evidence clearly shows is – at best – a hindrance to the delivery of new housing.**

**The S106 pooling restrictions should therefore be lifted completely, under all circumstances, and at the earliest possible opportunity.**

**There is a further pooling restrictions factor which has caused (and**

**continues to cause) considerable practical difficulties for a number of local authorities in England. Where new residential development might have an effect on a Natura 2000 site (i.e. a SAC or SPA), then in order to pass the requirements of the Habitats Directive (i.e. make the development acceptable), it is often necessary to developments to contribute to a monitoring and mitigation strategy (generally on an £x per house basis).**

**It is not always possible to know in advance precisely what mitigation measures will be the most appropriate – the monitoring strategy will disclose the most appropriate measures on an ongoing basis (with consultation with Natural England and the RSPB frequently necessary on the details). Authorities in a quite a number of locations in England – for example, those which fall partly within Thames Basin Heaths SPA (which covers parts of Hampshire, Surrey and Berkshire and 11 different local authorities) – frequently have had to try to find ingenious, but laborious, ways to "avoid" the pooling limit restrictions. Various approaches are practised, often necessitating considerable officer time and legal support (and sometimes facing challenge for developers), and this is a cause of very considerable frustration to many authorities…when there is a very simple solution.**

**DCN members therefore make a heartfelt plea to the Government: even if the DCN's compelling case for lifting all pooling restrictions is not accepted, please lift it in the very special circumstances of necessary HRA monitoring and mitigation for <u>all</u> authorities, CIL and non-CIL.**

ii. What comments, if any, do you have on how the restriction is lifted in areas where CIL is not feasible, or in national parks?

**See the answer above to question 6 (i). If the DCN's strong view on lifting the S106 pooling limits under all circumstances is listened to, this would become a non-issue for National Parks.**

**Question 7**

Do you believe that, if lifting the pooling restriction where significant development is planned on several large strategic sites, this should be based on either:

i. a set percentage of homes, set out in a plan, are being delivered through a limited number of strategic sites; or

**No**

ii. all planning obligations from a strategic site count as one planning obligation?

**Yes. These strategic sites would be logically defined in the Local Plan,**

**Question 8**

What factors should the Government take into account when defining 'strategic sites' for the purposes of lifting the pooling restriction?

**If the DCN's very strong view that the S106 pooling restriction should be scrapped immediately is not acted on, then the second option is preferred. Strategic sites are already identified in emerging Local Plans (where they are proposed), and the explicit identification would mean that this would be straightforward. Various DCN members already do this. For example, King's Lynn and West Norfolk BC identifies six strategic sites in its CIL charging schedule (see here) and has zero-rated them for CIL. It should be for individual LPAs to make the decision local about what it is a "strategic" site, but it would normally not be for fewer than 3-500 dwellings.**

**Question 9**

What further comments, if any, do you have on how pooling restrictions should be lifted?

**As stated in the answer to question 7 above, the DCN considers it imperative to lift the S106 pooling restrictions, under all circumstances, as soon as possible, but particularly for HRA monitoring and mitigation. This would help reduce barriers to the delivery of new housing in lower-value areas and would be a very low-cost way of doing this.**

**It is worth noting that the consultation draft implies that pooling is only an issue where significant development is planned. However, it can also be an issue for smaller scale development, such as where pooling could allow for the provision of meaningful areas of open space and play provision to be provided for developments which of themselves cannot provide on-site requirements**

## Improvements to the operation of CIL

**Question 10**

Do you agree with the Government's proposal to introduce a 2 month grace period for developers to submit a Commencement Notice in relation to exempted development?

**Yes, this would be pragmatic. However, it is important that this flexibility would not be abused, and so it should not become the "standard" that developers have two months to submit the Commencement Notice. The paperwork in association with the exemptions is very clear, and local authorities should not have to spend extra time and resources "chasing" recalcitrant payers.**

**Question 11**

If introducing a grace period, what other factors, such as a small penalty for submitting a Commencement Notice during the grace period, should the Government take into account?

**Having a small financial penalty would be sensible, and would help deter any potential abuse of the system. Developers should not get a second "bite of the cherry" here – once they have submitted one claim late, they should not be allowed to do so on subsequent sites, and they should be fined more substantially in these cases.**

**In order to simplify the Regulations, consideration should be given to a two-month grace for the submission of all commencement notices, not just where exemptions have been agreed. If 2 months was given for all commencement notices, but the date for payment remained 60 days from the commencement date, the "penalty" would be that those submitting late would have less time in which to pay the liability. Any penalty tends to have more impact on smaller developers due to the maximum surcharge of £2500.**

**Question 12**

How else can the Government seek to take a more proportionate approach to administering exemptions?

**In the DCN's view, the number of exemptions to CIL already reduces significantly the amount of CIL that can be raised from development, despite those dwellings still generating infrastructure needs. No further steps should be taken in relation to exemptions (other than a short grace period discussed**

**above), but relief should be removed for domestic extensions. This is predominantly an administrative exercise with no clawback provision.**

**Question 13**

Do you agree that Government should amend regulations so that they allow a development originally permitted before CIL came into force, to balance CIL liabilities between different phases of the same development?

**Yes.**

**Question 14**

Are there any particular factors the Government should take into account in allowing abatement for phased planning permissions secured before introduction of CIL?

**The amended regulations should be drafted very carefully to ensure that they do not inadvertently offer opportunities to abuse the abatement provision. For example, developers might choose to seek to re-shuffle affordable housing proportions across different phases of a development in an attempt to *reduce* overall CIL liabilities.**

**If the floorspace from a previous phase could be offset against future phases, this could create difficulties where the payment has already been paid i.e. on larger developments, the timing of payments relative to one phase could already have been paid and committed to infrastructure, and a proportion passed to the Parish Council. An abatement should not be available where payment has already been made.**

**Question 15**

Do you agree that Government should amend regulations on how indexation applies to development that is both originally permitted and then amended while CIL is in force to align with the approach taken in the recently amended CIL regulations?

**Yes, the DCN has no objections to this approach.**

# Increasing market responsiveness

**Question 16**

Do you agree with the Government's proposal to allow local authorities to set differential CIL rates based on the existing use of land?

**Yes. This could be a powerful tool to enable LPAs to better capture the uplift value of greenfield land post-permission. However, this is likely to be resisted**

**strongly by many landowners and some developers, who currently benefit from the significant increase in value that can occur post-allocation or permission. In the short- and possibly medium-term, this could lead to a reduction in land being brought forward for development as some landowners attempt to "sit it out" and wait for a more favourable land taxation regime.**

**So in order to be effective, such a measure would need to be accompanied by enhanced powers of compulsory purchase, to enable LAs to acquire allocated/permitted land which was not coming forward in a timely way. In its response to *Building the Right Homes in the Right Places,* the DCN also proposed the concept of a "contract to develop" – if the developer does not keep their side of the "contract" and build out to time, the LPA should be able to acquire the site and/or bring forward another allocated site in its place.**

**The Government will be well aware of the Letwin Review, and the current review into Land Value Capture by the HCLG Committee. Before finalising any plans to revise CIL in this potential direction, the Government should wait to see the outcomes/recommendations of these studies and then consider them in detail.**

**Question 17**

If implementing this proposal do you agree that the Government should:

i. encourage authorities to set a single CIL rate for strategic sites?

**Yes. In many such cases, for the reasons given in the consultation document, the most appropriate rate for such sites may well be £0 – the S106 system is more flexible in such scenarios.**

ii. for sites with multiple existing uses, set out that CIL liabilities should be calculated on the basis of the majority existing use for small sites? Yes/No

**Yes.**

iii. set out that, for other sites, CIL liabilities should be calculated on the basis of the majority existing use where 80% or more of the site is in a single existing use?

**Yes – this is pragmatic.**

iv. What comments, if any, do you have on using a threshold of 80% or more of a site being in a single existing use, to determine where CIL liabilities should be calculated on the basis of the majority existing use?

**It is a sensible proportion to use, at least as a starting point (particular circumstances may militate in favour of a bespoke i.e. S106/zero CIL approach). However, there are likely to be challenges in establishing the extent of different uses, the implications of the extent of the "planning unit" and whether uses are lawful or whether they have been abandoned. The definition of "lawful use" differs in the current CIL regulations to the PPG and this could create difficulties in different definitions for the establishment of the relevant CIL rate and subsequently establishing which floorspaces can be offset from liability calculations**

**Question 18**

What further comments, if any, do you have on how CIL should operate on sites with multiple existing uses, including the avoidance of gaming?

**Anti-gaming measures will clearly be necessary. Site owners/developers should be required to detail the site's history over the past five years when making/proposing an application. In a similar way to certificates of lawful use applications, which are assessed on the balance of probability, it should be for the LPA to judge whether it thinks recent use changes on the site (e.g. demolition of buildings) have been made primarily as a CIL mitigation strategy. If this is the case, then the amount of CIL 'relief' sought should not be successful.**

## Indexing CIL rates to house prices

**Question 19**

Do you have a preference that CIL rates for residential development being indexed to either:

a) The change in seasonally adjusted regional house price indexation on a monthly or quarterly basis; OR

**No**

b) The change in local authority-level house price indexation on an annual basis

**No. The existing Building Cost Information Service is not perfect, but is probably the best data there is. The existing BCIS index should be retained for residential and non-residential use, although the Ministry may wish to try and negotiate a rate for the use of this Index by all CIL authorities.**

**However, if the Government does not accept this, approach a) changes too rapidly and would run a significant risk of changing values for a site which is taking some time to progress through the planning system – in other words, the viability of a site could change frequently. The greater certainty of using an annual index (option b) is considered by the DCN to outweigh the more responsive regional-level figures.**

**Question 20**

Do you agree with the Government's proposal to index CIL to a different metric for non-residential development?

**Unsure. The existing Building Cost Information Service is not perfect, but is probably the best data there is. The existing BCIS index should be retained for residential and non-residential use, although the Ministry may wish to try and negotiate a rate for the use of this Index by all CIL authorities.**

**Question 21**

If yes, do you believe that indexation for non-residential development should be based on:

i. the Consumer Price Index? OR

**No**

ii. a combined proportion of the House Price Index and Consumer Prices Index?

**Yes. CPI is far too crude a measure to use, and its direct links to non-residential development are far from clear to discern. A mixture of HPI and CPI is therefore asserted to be more sensible.**

**Question 22**

What alternative regularly updated, robust, nationally applied and publicly available data could be used to index CIL for non-residential development?

**No other suggestions.**

**Question 23**

Do you have any further comments on how the way in which CIL is indexed can be made more market responsive?

**No other suggestions.**

# Improving transparency and increasing accountability

**Question 24**

Do you agree with the Government's proposal to?

i. remove the restrictions in regulation 123, and regulation 123 lists?

**There is some sense in this approach. However, the question arises as to how observers (and planning officers) would necessarily know whether any potentially unlawful "double-dipping" (spending both S106 and CIL monies on the same piece of infrastructure) might take place without a Regulation 123 list.**

ii. introduce a requirement for local authorities to provide an annual Infrastructure Funding Statement?

**The DCN would not oppose this proposal, so long as the detailed requirements mean they would not be excessively onerous and bureaucratic to produce.**

**Question 25**

What details should the Government require or encourage Infrastructure Funding Statements to include?

**The elements included within paragraph 142 of the consultation document seem sensible, although it should be noted that certainty (particularly in relation to S106 income expected) will decline over the five-year period. It should be linked to the Infrastructure Plan (or similar) used to inform the production of the Local Plan (i.e. consideration of infrastructure to be provided by others, such as Highways England, water companies etc).**

**The Greater Norwich Growth Board's (annual) Five-Year Infrastructure Plan is suggested as an excellent example of best practice (see here).**

**Question 26**

What views do you have on whether local planning authorities may need to seek a sum as part of Section 106 planning obligations for monitoring planning obligations? Any views on potential impacts would also be welcomed.

**There is a compelling logic to monitoring S106 planning obligations in the same way as CIL (in other words, both impose costs on LPAs). Allowing a small proportion (say 5%, the same as CIL) to be spent on administration would be strongly supported by the DCN. Set at a low level, the effect on viability should be minimal.**

# A Strategic Infrastructure Tariff (SIT)

**Question 27**

Do you agree that Combined Authorities and Joint Committees with strategic planning powers should be given the ability to charge a SIT?

**Yes, the DCN would support this. However, an alternative arrangement, which would be more flexible than just raising money for a small number of defined pieces of infrastructure, would be for Combined Authorities and Joint Committees to "pool" their CIL and then prioritise infrastructure spending on**

**an annual basis (using a longer-term infrastructure plan as the base). This is the approach practised by the three Greater Norwich authorities (Broadland, Norwich and South Norfolk, working with Norfolk County Council), who had the ability to pool infrastructure (and borrow against future CIL income) agreed with Government through the Greater Norwich City Deal (which was signed in December 2013). See here for the most recent monitoring report (April 2017).**

**Question 28**

Do you agree with the proposed definition of strategic infrastructure?

**No. Whilst there is little wrong with either definition given as examples, there should be greater flexibility to allow a case-by-case basis to be used. As there would need to be consultation and examination of any proposed SIT, a looser definition should be used (perhaps encompassing both).**

**Question 29**

Do you have any further comments on the definition of strategic infrastructure?

**There should be flexibility in any SIT (or equivalent) to allow money to be aggregated with other funding sources (for example, from a water company or Homes England).**

**There should also be further clarification regarding what constitutes a "Combined Authority". Various LAs across England are working together on joint Local Plans and also jointly undertake the preparation of the Infrastructure Delivery Plan. It is considered appropriate that such joint plan-making bodies should be considered as a combined authority for the purposes of CIL.**

**Question 30**

Do you agree that a proportion of funding raised through SIT could be used to fund local infrastructure priorities that mitigate the impacts of strategic infrastructure?

**Yes**

**Question 31**

If so, what proportion of the funding raised through SIT do you think should be spent on local infrastructure priorities?

**This is impossible to say – it could only be assessed properly on a case-by-case basis, as each proposed SIT would be unique with a unique set of circumstances**

**Question 32**

Do you agree that the SIT should be collected by local authorities on behalf of the SIT charging authority?

**Yes, this is eminently sensible.**

**Question 33**

Do you agree that the local authority should be able to keep up to 4% of the SIT receipts to cover the administrative costs of collecting the SIT?

**Whilst 4% does not seem entirely unreasonable as a broad-brush figure, as above, the particular circumstances of each proposed SIT should be taken into account. There could conceivably be circumstances where a larger proportion might well be justified (perhaps a SIT covering a large number of authorities, for example).**

# Technical clarifications

**Question 34**

Do you have any comments on the other technical clarifications to CIL?

**No.**