

### COMMUNITY INFRASTRUCTURE LEVY

#### GREETINGS TO ALL FROM NEPHELOKOKKYGIA!\*



Now is the time of year that we receive those annoying postcards from those who are away from the "daily grind" enjoying themselves. So, on 5 August, the development community got something to think about from Housing and Planning Minister Caroline Flint, when she announced further details of the Government's plans for the proposed Community Infrastructure Levy (CIL).

CIL originally emerged as an alternative means of securing funding from new development for new infrastructure such as roads, schools, hospitals and community facilities following the demise of the ill-conceived Planning Gain Supplement (PGS). It was included in the Planning White Paper in May 2007 and now forms Part 11 of the Planning Bill. The CIL Policy Document consolidates a number of statements that

have already been made subsequently and contains more information on how CIL will be set, paid and spent.

#### **Spending CIL - Infrastructure Delivery**

CIL is designed to provide *additional* funding to allow authorities to "better support and unlock growth to help deliver infrastructure needed to support the development of their area". The Planning Bill makes clear that CIL may only be spent on infrastructure needs arising as the result of new development contemplated by the development plan. It is not designed to remedy existing infrastructure deficiencies. This seems reasonable in theory, although it remains questionable how this will be enforced in practice.

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The proposed definition of 'infrastructure' for the purposes of CIL should be "wide enough to enable local authorities to decide what infrastructure is appropriate for their local areas." It includes using CIL revenues to fund 'demand management' measures that might prevent the need for new or more costly infrastructure from arising. Could this mean contributions future public transport provision or cycle infrastructure on the basis that it is deemed "sustainable" and/or based on a premise that its provision this might curtail usage of private vehicles and thereby obviate or offset the need for future road infrastructure?

It is also claimed that the CIL can assist in the funding - and delivery - of major infrastructure that might be sub-regional in nature and/or benefit more than one local authority area. The Government clearly envisage local authorities working together to pool contributions from CIL in order to deliver sub-regional infrastructure. In this regard the Government is clearly convinced that CIL can make a significant contribution to future infrastructure provision and provide a more predictable source of funds than existing S106 arrangements.

Similarly the Government believes that the ability to use CIL will enable public sector bodies such as the Regional Development Agencies to provide "forward funding" for future infrastructure that could be reimbursed from future CIL income streams. However, the Policy Document openly concedes that "estimates as to how much CIL will raise are heavily dependent on the number of local authorities that elect to charge CIL, and the rates that they charge."

The Government clearly knows how it would like to spend the revenues from CIL but appears to have little idea about how much it might actually raise!

### Setting CIL

All authorities who prepare development plans will have the power to charge CIL - this includes district and unitary authorities, the Mayor of London and London Boroughs, the National Park Authorities and the Broads Authority in England, and county councils, county borough councils and the National Park Authorities in Wales. Authorities will potentially be empowered to introduce CIL from 2009 - although this will require draft Regulations to be published this year.

CIL will be discretionary. Charging authorities can choose whether or not to implement CIL and the level to propose when setting the charge. The Minister has therefore insisted that the introduction of CIL will not result in any "big bang" change for the development industry.

In order to be able to charge CIL there must be an up to date development plan in place. Having identified the overall scale, type and general location of new development in any area this will then inform the level and location of supporting infrastructure required - the "infrastructure planning process". The requirement to undertake this process is now a key part of the 'evidential base' now required by PPS12 to demonstrate 'soundness' in any LDF.

Any authority considering levying CIL must also prepare a draft Charging Schedule. This should allocate the proposed amount to be raised from CIL

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to each main class of development envisaged by the plan.

In formulating the Charging Schedule, Authorities will need to ensure that CIL should not be set at such a level that risks the delivery of its development plan. The document insists that if development is rendered unviable by the level of charge proposed, then this could have implications for the soundness of the infrastructure planning process underpinning the development plan, and vice versa. What remains unclear is how any 'infrastructure planning process' can be deemed sound in the first place if the only way it can be delivered is through CIL meeting prospective funding shortfalls.

The Charging Schedule is envisaged as a further document to be contained within Authorities' Local Development Frameworks (LDF). On the other hand, the Policy Document indicates that the Charging Schedule will not formally be part of the development plan. It will, however, be treated in the same way as development plan documents. It will be subject to "rigorous testing" (including a public inquiry before an independent person) and, following that inquiry, the report of the independent person will be binding upon the charging authority. What is remarkable is that, having received the report, the charging authority would not be under an obligation to adopt the final schedule. It could simply submit revised proposals to a fresh examination if it was unhappy with the independent person's proposed changes!

### **Calculation, Payment & Enforcement**

CIL due will be calculated in accordance with the Charging Schedule when a planning permission is granted - although payment (including any indexation) would not be due until commencement. Payment would typically be required within a fixed time from commencement. It is currently envisaged that there will be a 28 day 'payment window', but there may be potential for system of payment by instalments to assist cash flow - particularly for larger projects. Similarly where development is phased, it is expected that each phase could pay CIL separately.

### **Existing Planning Obligations**

The existing system of planning obligations under S106 of the Town & Country Planning Act 1990 will remain when CIL is introduced. Indeed, the Policy Document recognises that this remains the most appropriate mechanism to ensure that the specific impacts of any development can be mitigated. However, it also indicates that the Government is considering whether restrictions on the use of planning obligations should be made once CIL is introduced.

The Policy Document reiterates previous statements that the provision of affordable housing should continue to be provided through the existing system of negotiated planning obligations, and not through CIL.

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### Implementation

The Policy Document recognise that the introduction of CIL will demand new skills in local authorities. It states that

*"the Government will work with other organisations to ensure that staff have the necessary skills in good time to allow a smooth implementation of CIL."*

The problems most planning Authorities are already experiencing in delivering LDFs are well-known. The amount of additional work that is potentially required for those Authorities who may be intent on levying CIL is daunting. In this regard it is difficult to see how workable CIL proposals could be delivered in the short term.

### Chase & Partners Commentary

The Government clearly remains committed to the concept of CIL – despite all the concerns that have been raised about its workability.

Chase & Partners has long-standing concerns about how CIL (like PGS before it) could impact upon project viability and delivery. In our view it has all the hallmarks of a Development Land Tax for a new generation!

The Government insists that the proposals have evolved through discussions between the Minister, local authorities and developers. Indeed the Minister is convinced that that CIL will

*"provide a step change from the existing system of lengthy negotiated agreements, creating transparency, fairness and certainty for the development industry, and ensuring that CIL levels stimulate, rather than choke development."*

Our view is that introduction of CIL would create uncertainty - even in the most buoyant development market. The timing of these proposals, when the market is struggling to cope with deteriorating economic conditions and the impact the "credit crunch", is alarming. It reinforces our view that the Government appears oblivious to the impact CIL would have on the development community and its capacity to potentially undermine development in the future.

The Community Infrastructure Levy Policy Document can be downloaded from:

<http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy>

**If you would like to discuss the Policy Document and its potential implications for your activities please contact either Graham Chase or Huw Williams at Chase & Partners on the number below or email:**

[hpw@chaseandpartners.co.uk](mailto:hpw@chaseandpartners.co.uk)

\* Nephelokokkygia is not the name of one of the Government's proposed EcoTowns, but the place where, according to Aristophanes, Peisetairus and Euelpides decide to erect the perfect city. The rest of us would know it as Cloud Cuckoo Land – which is defined in Wikipedia as:

*"...an (unrealistically) idealistic state where everything is perfect...It also hints that the person referred to is naive, unaware of reality or deranged in holding such an optimistic belief."*

We at Chase & Partners hope the Minister and all at the DCLG who are working on CIL enjoy their break but hope they all return safely to us who live here in the real world world sometime very soon!

## 020 7389 9494

20 Regent Street, St James's, London SW1Y 4PH F: 020 7389 9456  
[www.chaseandpartners.co.uk](http://www.chaseandpartners.co.uk)