

**Breckland Council Community Infrastructure Levy (CIL) Preliminary
draft Charging Schedule – Strategic Environmental Assessment (SEA)
and Habitats Regulations Assessment (HRA) Screening Opinion**

29th October 2012

Introduction

1.1 The purpose of this paper is to seek an opinion from the statutory bodies under Regulation 9(1) of The Environmental Assessment of Plans and Programmes Regulations 2004 on whether a Strategic Environmental Assessment (SEA) or Habitats Regulations Assessment is required for a Community Infrastructure Levy (CIL) Charging Schedule. The requirement for SEA is assessed under Regulation 9(1) of the Environmental Assessment of Plans and Programmes Regulations 2004. The requirement for an appropriate Assessment is set out at Regulation 102 of the Conservation of Habitats and Species Regulations (2010).

1.2 The Council is now seeking an opinion in respect of the above from the statutory bodies by no later than **3rd December** 2012.

Background to the Community Infrastructure Levy

1.3 The ability of Local Authorities to secure payments from development to provide infrastructure needed to support growth is currently by Planning Obligations under Section 106 of the Town & Country Planning Act 1990.

1.4 The Community Infrastructure Levy (CIL) Regulations came into force on 6th April 2010 (and were subsequently amended in April 2011) and set out how and when payments for infrastructure projects will be collected from developments in the future. The CIL Regulations make provision for the adoption of a local CIL Charging Schedule which is used to determine payments, based on gross internal floorspace after deducting any floorspace lost to demolition. However, should a CIL charging schedule not be adopted by April 2014, under the CIL Regulations the Council's ability to seek S106 payments for infrastructure will be considerably reduced.

1.5 The CIL Regulations make provision for differential charging rates across local authority areas and rates that vary according to land use and location is likely to be the case in Breckland with a CIL charging schedule giving District-wide coverage. Any variations in rates must be based solely on viability and cannot be used as a policy tool. The Regulations also restrict the seeking of Planning Obligations as a reason for granting Planning Permission where the Charging Authority has published a list of infrastructure projects or types on its website.

1.6 Breckland Council currently plans to adopt a CIL charging schedule in late 2013.

Strategic Environmental Assessment (SEA)

1.7 Under the requirements of the European Union Directive 2001/42/EC (Strategic Environmental Assessment (SEA) Directive) and Environmental Assessment of Plans and Programmes Regulations (2004) specific types of plans that set the framework for the future development consent of projects must be subject to an environmental assessment.

1.8 There are exceptions to this requirement for plans that determine the use of a small area at a local level and for minor modifications if it has been determined that the plan is unlikely to have significant environmental effects.

1.9 In accordance with the provisions of the SEA Directive and the Environmental Assessment of Plans and Programmes Regulations (2004) (Regulation 9 (1)), the Council must determine if a plan requires an environmental assessment.

Sustainability Appraisal

1.10 Under separate legislation (the Planning and Compulsory Purchase Act 2004 and associated Regulations), the Council is required to carry out a Sustainability Appraisal (SA) for all Development Plan Documents. This considers the social and economic impacts of a plan as well as the environmental impacts.

1.11 In accordance with current Regulations (Town & Country Planning (Local Development)(England)(Amendment) Regulations 2009) SA is required for Development Plan Documents (DPD) but not other lower level documents.

The SEA Screening Process

1.12 The process for determining whether or not an SEA is required is called screening. In order to screen, it is necessary to determine if a plan will have significant environmental effects using the criteria set out in Annex II of the Directive and Schedule I of the Regulations. A determination cannot be made until the three statutory consultation bodies have been consulted: The Environment Agency, Natural England and English Heritage.

1.13 Within 28 days of making its determination, the authority must publish a statement, setting out its decision. If the authority determines that SEA is not required, the statement must include the reasons for this.

Habitats Regulations Assessment

1.14 Regulation 102 of the Conservation of Habitats and Species Regulations (2010) sets out the provisions for the Assessment of Implications for European sites for Land Use Plans.

1.15 Along with seeking the view of statutory bodies in respect of SEA, this paper also seeks to consult the appropriate authority (Natural England) in order to ascertain its views as to whether an appropriate assessment is required under Regulation 102 of the Conservation of Habitats and Species Regulations.

1.16 The Council's Core Strategy, Site Specific Policies and Thetford Area Action Plans have been the subject of 'Appropriate Assessments' made under Regulation 102 of the Habitats Regulations. A number of requirements for mitigation were identified as part of these proposals, some of which required direct amendments to these plans, with others requiring actions including seeking funding for monitoring of sensitive European sites.

1.17 The Governments interpretation of 'Infrastructure' is currently set out in the Planning Act 2008 (as amended by Reg 63 of CIL Regulations) as:

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities, and
- (f) open spaces.

1.18 The current range of mitigation arising from the abovementioned plans do not fall within the definition of infrastructure. However, the implementation of CIL may cover new or updated Development Plan Documents that the Council may wish to prepare, such as a wider Local Plan. Therefore, it is considered appropriate to carry out a screening exercise to establish whether an 'appropriate assessment' is required along with SEA.

SEA Determination and Reasons for Determination

1.19 Before making a determination under Regulation 9 the Council is now consulting the statutory bodies. Responses are invited by the closing date of **3rd December** 2012. This is in accordance with Regulation 12(6) of the SEA Regulations which prescribes a five week period for consultation.

1.19 The Council has provided an initial assessment under Regulation 9 of the Environmental Assessment of Plans and Programmes Regulations 2004 setting out its view as to whether the CIL Charging Schedule could have significant effects on the environment. In accordance with the relevant regulations, the views of the statutory bodies will form part of the Councils determination as to whether SEA is required.

1.20 Appendix 1 below sets out the process for determining if the CIL Charging Schedule will have significant environmental effects using the criteria set out in Annex II of the Directive and Schedule I of the Regulations.

Appendix 1 – SEA screening for a CIL charging schedule

Criteria (from Annex II of SEA Directive and Schedule I of Regulations)	Breckland Council's Response
Characteristics of the plan or programme	
(a) The degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources.	The framework is set by national regulations on the use of charging schedules in the Community Infrastructure Levy Regulations 2010 (as amended). The Charging Schedule itself does not set the framework for future consents as this is the remit of higher level plans and individual projects.
(b) The degree to which the plan or programme influences other plans and programmes including those in a hierarchy.	The charging schedule is a financial tool to be applied to individual project consents. The charge is set outside of the plan making process and does not influence the content of plans or programmes.
(c) The relevance of the plan or programme for the integration of environmental considerations, in particular with a view to promoting sustainable development.	A CIL charge can be used to raise monies from individual development projects towards infrastructure which can aid the delivery of sustainable development. However, the charging schedule is not a plan or programme but a financial tool.
(d) Environmental problems relevant to the plan or programme.	Environmental problems within Breckland are already highlighted within the Core Strategy and Development Control Policies SEA Scoping Report (2005), and the Site Specific Policies and Proposals, Thetford Area Action Plan scoping report (2008) and the Attleborough and Snetterton Heath AAP Scoping Report (2009). However the charging schedule does not and cannot set policy guidance or interventions to deal with environmental problems. The charging schedule is only a tool by which to raise contributions from individual development projects, although monies raised can be spent on alleviating environmental problems if these are considered to be infrastructure.
(e) The relevance of the plan or programme for the implementation of Community (EU) legislation on the environment (for example, plans and	None

programmes linked to waste management or water protection).	
Characteristics of the effects and of the area likely to be affected	
(a) The probability, duration, frequency and reversibility of the effects.	A CIL charging schedule will not in itself set out, guide or bring forward development plans or projects. It will purely set out a charge which applies to individual consents. As such there is no mechanism for effects to arise from the charge itself, although individual infrastructure projects on which CIL monies will be spent may. However, such infrastructure projects are likely to be subject to environmental appraisal either as part of the plan making process or within individual consents.
(b) The cumulative nature of the effects	A CIL charge could be spent on a range of infrastructure projects, but does not in itself give consent for such projects or is a material consideration in the decision making process. As such, no cumulative effects arise from the charge itself, but as in (a) above, individual infrastructure projects on which CIL monies will be spent may.
(c) The transboundary nature of the effects	Given the geographic scope of the CIL charging schedule, it is considered that no transboundary effects will arise.
(d) The risks to human health or the environment (for example, due to accidents)	None
(e) The magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected)	Although differential charges can be set for different areas of the district (and different types of development) a CIL charging schedule is likely to have district-wide coverage in some form or another. This will affect all planning applications for qualifying development across the borough, but only in terms of a charge raised not whether the project is acceptable in planning terms or not.
(f) The value and vulnerability of the area likely to be affected due to: i) Special natural characteristics or cultural heritage; ii) Exceeded environmental quality standards or limit values; iii) Intensive land-use.	Given the nature of the charging schedule: - i) None ii) None iii) None
(g) The effects on areas or landscapes which have recognised national,	Avoidance of impacts of European Sites (e.g. the Breckland SPA/ SAC) is dealt

<p>Community or international protection status.</p>	<p>with in other documents produced by the Council. Whilst the CIL charge (at present) can be used to avoid impacts to Natura 2000 sites by providing monies towards mitigation which can off-set recreational impacts (where this is defined as infrastructure), the charging schedule itself is only a financial tool by which to raise monies. It does not set the policy framework for individual project consents or the framework for avoiding infrastructure.</p>
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