



Association of Directors of
Environment, Economy, Planning & Transport

Response to the Technical Consultation on the Infrastructure Levy

This representation is made by the Association of Directors of Environment, Economy, Planning and Transport (ADEPT), in relation to the technical consultation on the Infrastructure Levy, as outlined in the Levelling-Up and Regeneration Bill. ADEPT represents directors of place from county, unitary and combined authorities, along with directors of Local Enterprise Partnerships (LEPs), sub-national transport boards and corporate partners drawn from key service sectors throughout England.

Introductory comments

ADEPT is supportive of the Government's desire to reform the current infrastructure funding and planning obligations system to make it simpler and capture more value from development. However, ADEPT is concerned that the proposed Infrastructure Levy will in fact further complicate matters, may result in less funding for infrastructure than at present – and may well have other unforeseen and unintended detrimental consequences.

The key points raised in this response can be summarised as follows;

- 1) Setting the rates while ensuring development viability will result in not capturing the potential land value;
- 2) Affordable housing should not be included within the definition of Levy-funded infrastructure;
- 3) Multi-modal infrastructure and passenger transport services are integral to achieving sustainable development proposals from the outset and therefore should not be included in the definition of Levy-funded infrastructure;
- 4) Regulated private infrastructure (such as water and wastewater treatment) should not be included within the scope of Levy-funded infrastructure; and
- 5) The operation of the Levy in two-tier areas raises the following concerns:
 - a. Experience of the Community Infrastructure Levy (CIL) is that receipts are not passed to the upper tier for delivering infrastructure;
 - b. The absence of a statutory role for county councils in Infrastructure Delivery Strategies;
 - c. County councils would continue to rely on section 106 obligations to deliver key infrastructure (schools and transport improvements);
 - d. The risk that county councils will have to object to planning applications, in the absence of any mechanism creating certainty that the impacts of development can be mitigated and their infrastructure needs met; and
 - e. The appetite/ need for lower tier authorities to borrow significant sums against forecast levy receipts, to pass to the upper tier to deliver infrastructure and the risks that entails.

In setting the Levy, much as with CIL, ADEPT has concerns that setting the Levy rate at any geography will be at too high a level for reflecting issues with the most marginal

individual sites, potentially rendering them unviable, and at too low a level for the high value areas and thereby missing potential land value capture.

One fundamental concern ADEPT has is the inclusion of affordable housing within the definition of Levy-funded infrastructure. When considering increased flexibility for section 106 contributions in 2012, the-then Government made a conceptual distinction between direct impacts, such as schools, that are 'inescapable' and a commitment to affordable housing¹. Affordable housing is not 'infrastructure' because it is integral to creating mixed sustainable communities and therefore should be delivered as part of an overall development. Placing affordable housing in the same categorisation as mitigating infrastructure means that even with the proposed new 'right to require', our concern is that Levy receipts will be pulled between competing priorities, and essential infrastructure will ultimately be relegated. ADEPT agrees that there is a need to ensure the delivery of affordable housing at the required levels across the country, and that the existing mechanisms are resulting in levels of affordable housing within new developments being reduced as a result of viability. However, including it within the scope of the infrastructure levy has the risk of swinging the balance in the opposite direction, with essential infrastructure taking the hit if the Levy does not generate the values anticipated. Should there not be sufficient funding to pay for both affordable housing and infrastructure, an alternative funding mechanism is required in order to ensure the delivery of affordable housing whilst enabling the infrastructure that both it and open market housing requires to be delivered without prejudice to either.

There are further concerns ADEPT has regarding the scope of Levy-funded infrastructure. The next round of Local Transport Plans is looking to deliver extensive modal shift from the private car in order to help meet the Department for Transport's ambitions around decarbonising transport, addressing air quality issues, tackling congestion and promoting active travel for health and well-being benefits. Including multi-modal infrastructure and public transport service provision as being Levy-funded suggests that both are desirable and not integral to a development. This approach undermines the urgent and crucial need for modal shift and gives the wrong message about the responsibilities of developers, public transport providers and local authorities to provide the necessary major investment in active and passenger travel infrastructure, essential to the delivery of sustainable places.

Additionally, widening the scope of eligible infrastructure to include regulated private infrastructure (such as water and wastewater treatment) is a major concern and will undoubtedly place further pressure on the infrastructure funding available. The spirit of the intention of giving communities more influence over how the community is compensated is noted; however, this approach suggests that infrastructure providers that are not addressing deficiencies will effectively be given an exemption.

Finally, ADEPT considers that the operation of the Levy within two tier areas has not been fully considered. County councils are responsible for delivering a significant proportion of the infrastructure required to support the growth of an area and yet under the CIL regime, many have reported that the lower tier authorities are not allocating funds to county council-delivered infrastructure. Following Gloucestershire County Council's announcement that it was considering legal action against its districts for not

¹ [27 November 2012, c. 293](#)

passing on CIL funding, the County Councils' Network conducted research with 12 authorities to understand what proportion of CIL had been provided to county councils. The responses showed the average proportion of CIL receipts being allocated to county councils to be 10%, with six county authorities reporting that they had been in receipt of 7% or less, and two such authorities had been passed no CIL receipts at all.

As with CIL, the Infrastructure Levy is proposed to be administered by the lower tier authorities, with no requirement to pass funding to the upper tier to deliver necessary infrastructure. Whilst there is a requirement for county councils to be consulted on Infrastructure Delivery Strategies, the consultation is clear that it will be the local authority's role to determine how it will use the Levy to deliver infrastructure. ADEPT considers that there should be a formal role for county councils in agreeing the Infrastructure Delivery Strategy, and failing agreement being reached, there should be a default proportion of the Levy that is earmarked for county-delivered infrastructure.

Currently many county councils continue to use section 106 to secure developer funding for delivery of infrastructure in order to avoid having to object to planning applications on the grounds of not having the certainty that the impact of the development on infrastructure, such as schools or the transport network, can / will be mitigated. Securing a planning obligation enables a county council to have certainty that the mitigation will be delivered and in place in a timely manner. County councils therefore cannot support applications where such infrastructure is identified as being funded by CIL, as there is no guarantee that the funds will be made available to them when required. There is therefore a risk that, apart from in the case of larger developments where section 106 may be retained, county councils will be forced to object to planning applications. This situation is further compounded by the proposed process and timing for recalculating and then collecting the Infrastructure Levy; a provisional payment is to be paid by the developer on nearing completion of the development, followed by a final adjustment payment on completion. County councils will be unable to directly borrow against future receipts as they are with section 106 obligations currently, and instead, they will have to rely on lower tier authorities borrowing the funds and passing them on.

In answer to the specific questions raised throughout the consultation, the following responses are provided:

CHAPTER 1: FUNDAMENTAL DESIGN CHOICES

Definition of development under the Levy

Question 1: Do you agree that the existing CIL definition of 'development' should be maintained under the Infrastructure Levy, with the following excluded from the definition:

- developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) - No

- Buildings which people do not normally go into - Yes

- Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery – Yes
- Structures which are not buildings, such as pylons and wind turbines. Yes

Developments of less than 100 square metres should not be exempt from the Levy. The recent NPPF consultation proposes an uplift in housing numbers in existing urban areas, this can only be achieved through intensification/densification. In suburban areas this may mean the use of gardens and rear alley areas to develop small houses and mews houses which may be less than 100sqm. Whilst individually these homes will have limited impact on infrastructure however the cumulative impact of hundreds or thousands of these types of development in a community or suburb will be severe without the provision of additional infrastructure. Evidence from places like Croydon where suburban intensification has taken place shows that once a few properties sell off part of their garden to build a new property then a domino effect occurs and before long most properties in a street have done the same. If the threshold does not include homes less than 100sqm then there is a risk of not capturing enough funding to provide the necessary infrastructure to accommodate this growth.

Whilst it is agreed that the Levy should not apply to buildings that people do not normally go into, or structures that are not buildings, these developments may still have an impact that would need to be mitigated. Therefore it is important that section 106 can continue to be used to secure mitigation that cannot be secured otherwise.

Additionally, ADEPT would support the extension of the definition of development to include “any change in the use of an existing building or part of a building” as provided for by Section 204E(1)(c), which overcomes the shortcomings of the existing section 106 and CIL regimes to adequately address the infrastructure needs arising from changes of use through permitted development.

Distinguishing effectively between ‘integral’ and ‘Levy-funded infrastructure’

Question 2: Do you agree that developers should continue to provide certain kinds of infrastructure, including infrastructure that is incorporated into the design of the site, outside of the Infrastructure Levy? Yes.

Yes, *it is imperative that infrastructure which is integral to the development is provided by the developer.*

There needs to be a clear distinction between ‘integral’ and ‘Levy-funded’ infrastructure. Developers, under the current system, are required to provide necessary and appropriate infrastructure incorporated into the design of a development, for example road layouts under Section 278, and this should continue outside of the Levy to make sure that a site can function, is accessible and has functionality and that the necessary infrastructure is provided in a timely manner.

The consultation implies that a significant reason for Government housing targets not being delivered is due to a lack of developer cash flow, as this is often tied up in delivering upfront infrastructure. However, many developers are keen to provide

essential site-related infrastructure such as access roads, sustainable drainage, utilities and community facilities etc to enable homes to be built and add value to the house sale value. Much of this infrastructure is presently provided by developers as 'in-kind' contributions, and they should continue outside of the Levy, to make sure that a site is accessible and has functionality and that the necessary infrastructure is provided in a timely manner.

For example, if a development generates the need for new education facilities by its reason of its scale, then the land and appropriate contribution should be made by that developer, rather than being funded through the Levy process. This certainty is necessary to ensure such facilities are incorporated early in the masterplanning process to then inform specific planning applications. The early provision of new schools or school extensions, and/or proximity to schools with a good reputation, influences house buyer decisions and will add significant value to house prices.

Similarly, on-site provision of multi-modal and passenger transport infrastructure should be integral to the development in order to create a sustainable community. Early provision of footways, cycleways and bus infrastructure will assist with achieving modal shift from the private car to alternative modes of transport, establishing sustainable behaviours from the outset and therefore embedding them into the community. This approach to development delivery has clear public health benefits, as well as helping to reduce congestion on the roads and therefore is essential for building healthy communities.

The implementation of the Levy risks detaching an important route for delivering enhancements to active and passenger transport infrastructure if these are not recognised as being integral infrastructure such as a new linkage to public rights of way, new cycle paths or safe routes to school. Given the holistic nature of delivering modal shift through improving a wider network, such infrastructure may be integral (and delivered through condition or s106/Delivery Agreement) and Levy funded. The boundary between the two might, in many cases, be difficult to determine. New approaches to determine the extent of integral mitigation, such as trip-budget-based methods, could provide an answer.

On-site green infrastructure (GI) should also be included as integral infrastructure, along with other infrastructure listed under paragraph 1.15 of the consultation material. The challenge is that providing GI is not a statutory requirement; unless a developer proposes to include GI in a project and it is secured through section 106 delivery obligations, it is necessary that Local Plans have firstly GI provisions embedded across a breadth of related policies, (such as health, education, highways, landscape etc) and second, that these are strongly worded so they are not 'downgraded' by other infrastructure policies or types. Currently, GI delivery, management and maintenance are often either missed out completely in emerging proposals, or the detail is left until reserved matters and even the end of the development process, when its provision may receive little or no funding. Often only a small amount of infrastructure funding is made available for GI assets, which leads to a short fall in quality, quantity and its long-term management.

It is noted that there is a caveat that what is considered as integral infrastructure will depend on the size of the development and the need for it to be on-site. Acknowledged throughout the technical consultation, what is 'Integral' and what is 'Levy-funded' infrastructure will likely depend on the area and scale of the development being proposed, whether it is in single or multiple ownership, its phasing, and site circumstances (i.e., whether it is a new garden community, an urban or village extension, a city/town regeneration area, a strategic site within an existing urban area, or an infill site). As such, the only means by which to provide the clarity and certainty sought will be if the principles and typologies are set locally within the Infrastructure Delivery Strategy.

Whether an infrastructure item is to be treated as integral or Levy-funded will therefore likely depend on the specific local circumstances. Councils should have the ability to make this distinction based on individual and specific circumstances but should be required to set this out clearly in the Infrastructure Delivery Strategy. These specific circumstances could be treated as departures from any list of 'integral' or Levy-funded infrastructure provided in regulations or national policy or guidance.

Question 3: What should be the approach for setting the distinction between integral and Levy-funded infrastructure? [see para 1.28 for options a), b), or c) or a combination of these]. Please provide a free text response to explain your answer, using case study examples if possible.

ADEPT considers that setting the distinction between integral and Levy-funded infrastructure at a national level, whilst providing more certainty and consistency across the country, is unlikely to capture the diverse and complex mix of mitigation measures needed for the vast range of sites that may be considered by planning authorities. Local authorities should therefore be able to set out any specific items that they will be seeking as integral contributions, through their Infrastructure Delivery Strategies.

In addition, consideration should be given to developments that do not accord with the development plan (a local plan, or neighbourhood plan). The infrastructure required to mitigate such development will not have been assessed through the local plan making process and therefore will not be reflected in the Infrastructure Delivery Strategy. These developments may not therefore accord with the locally-set integral/Levy distinctions.

Any regulations should clearly establish the potential need for enhancements to active and passenger transport infrastructure to be considered as 'integral'.

Whether an infrastructure item is to be treated as integral or Levy-funded will depend on the specific local circumstances. Councils should therefore have the ability to make this distinction based on the individual and specific circumstances but should be required to set this out clearly in the Infrastructure Delivery Strategy. These could be treated as a departure from any list of 'integral' or IL Funded infrastructure provided in regulations or national policy or guidance.

Further consideration needs to be given as to what comprises Levy Infrastructure (such as off-site highway improvements, strategic green infrastructure and bus services) to be secured through the Levy, and what comprises “integral infrastructure”, namely infrastructure specific to a development site and typically provided on-site. While some infrastructure will obviously fall into one of these two categories, the consultation recognises that there will be grey areas such as on-site school provision which could fall into both. What is considered ‘integral’ development may well depend on the overall scale of the development proposed. For example, with reference to education, a new 420-place (2 forms of entry) primary school serves approximately 1,400 homes and a new 900-place (6 forms of entry) secondary school is required to serve around 4,500 homes. In both these circumstances, the local education authority would consider them to be ‘integral’ infrastructure, without which any development proposals would not be supported.

Further clarification is required as to how these grey areas will be prescribed in due course, either through “regulations, policy and guidance and following further consultation and engagement” or in acknowledging that councils will have local circumstances to consider, and that there will be scope for engagement on a site-by-site or authority-by-authority basis.

Defining multi-modal strategic infrastructure as Levy-funded in paragraph 1.22 (desirable rather than essential) is a significant concern as it is considered to undermine the crucial need for achieving modal shift. Doing so conveys the wrong message about the responsibility of developers and their developments to provide for the necessary major investment in active and passenger travel infrastructure. Both are considered essential requirements to ensure that the provision of active and sustainable modes of travel is maximised in the first instance, particularly in large scale developments and new garden communities.

The widening of scope of eligible spend of the Levy to include regulated private infrastructure, such as water and sewage, is also of concern as it will inevitably reduce the available funds for other infrastructure. Water and sewerage companies have a funding mechanism whereby the developer pays directly to the water company for enhancement needed for serving a development, and an infrastructure charge for each new dwelling. Consequently, there should be no requirement for the Levy to contribute to such schemes: growth is in any event taken into account as part of the utility companies’ business plans.

Using the Levy to fund other local needs

Question 4: Do you agree that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items such as service provision? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

Unsure. *This is an issue on which ADEPT has mixed views.*

On one hand, particularly in the case of rural authorities struggling with significant cuts to bus services as a result of reduced funding and increasing home-to-school transport

costs, it would be helpful to have the flexibility to use the Levy to fund such requirements. This will be essential, in the absence of direct funding being secured from the development, or such requirements not being considered integral to the development.

However, there is a concern that there will be a limited pot of funding and therefore there is a need to prioritise it for the infrastructure that is essential to serve the site (at whatever scale), and support the planned growth of the area. The definition of infrastructure set in Regulations is already very broad and further diluting the potential use of Levy funds could lead to significant amounts of money being spent on items/services, at the expense of evidenced, large scale and more physical infrastructure requirements.

A key aspect in securing infrastructure from developers is the direct link between new development and the measures necessary to mitigate the effects of their proposals. Breaking this link is likely to lead to unsustainable and harmful development that does not provide the infrastructure needed to support communities and address other important factors, such as the green environment (including stewardship) and climate change.

The Levy should not be available for general revenue or to lower Council Tax. While local authorities should be able to decide their own infrastructure priorities and how they wish to spend any monies collected through the new Levy, it is essential that there is a clear mechanism to ensure that funds secured are appropriately apportioned to infrastructure providers and particularly, to county councils in two-tier authorities.

The widening of the type of infrastructure the Levy is anticipated to fund, from physical infrastructure to maintenance of strategic greenspace, means the pot for which infrastructure funding is needed is ever-expanded. This increased flexibility for spending of the Levy means Government is pushing more of the funding burden on to local authorities. The total amount of Levy collected is also further reduced by transition costs to the new system, administration of the Levy and neighbourhood share and hence the available pot for strategic infrastructure is further reduced.

Question 5: Should local authorities be expected to prioritise infrastructure and affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure]. Should expectations be set through regulations or policy? Please provide a free text response to explain your answer where necessary.

Yes. It is absolutely critical that infrastructure funding is prioritised. Any regulation or policy that allows Levy to be spent on non-infrastructure items will only reduce available funds for infrastructure provision.

The Town and Country Planning Act 1990, exerts controls over physical development and the use of land. In addition, planning obligations can be entered into to mitigate the impacts of a proposal; as a reason for granting planning permission, a s106 must be necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

These requirements must be maintained if the Government's greater focus on 'place making' and 'the creation of beautiful places' is to be delivered and to maintain public support for the planning system. Local communities will generally only support development if they can see the physical provision of infrastructure provided by that development locally.

The Right to Require and the inclusion of affordable housing within the scope of the Levy may risk the delivery of necessary infrastructure due to the proportion of funding which is required to deliver affordable housing – circa 70% of section 106 funding secured in 2018/19 was for affordable housing, despite many authorities being unable to ensure that developers delivered the councils' policy requirements, due to viability issues.

Question 6: Are there other non-infrastructure items not mentioned in this document that this element of the Levy funds could be spent on? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

Yes, with all of the caveats expressed in response to questions 4 and 5. There are a number of activities relating to transport infrastructure provision which are integral to its delivery; for instance sub-regional transport modelling, strategy development, and feasibility and design work. In addition, the use of the Levy to supplement integral multi-modal infrastructure such as e-bike/e-scooter schemes and car clubs is supported in principle. The Levy would also be well-suited to funding road safety and behaviour/education schemes including school crossing patrols, and also freight management and zero emission delivery schemes.

There may also be items that cannot be foreseen at this time such as technologies relating to energy provision and electric vehicles. Stewardship is also an ongoing challenge, especially with continued budget pressures on local authorities, in which CIL or developer contributions have often been sought to help cover costs. This applies to a range of issues such as green infrastructure (GI) and community development. For GI, the alternative has been the emphasis for the developer to identify its long-term maintenance, whether through a community company or other form, before negotiating with local authorities to take on maintenance. However, it is recognised that since this is a one-off payment, it cannot be seen by local authorities as a solution to fund long-term maintenance, unless an appropriate amount of funding has been allocated to set up the ongoing stewardship.

Councils also have the ability to seek developer contributions towards community development and sports development services, to help residents in a new community to come together and socialise. This is particularly important where the development is creating a new garden community or new neighbourhood, and where it might take a decade for the area to become truly established. Often residents will be required to make compromises in the intervening period, such having to use non-local schools and facilities until these can be provided and sustained locally. As such, creating an inclusive and cohesive community can be challenging. As part of mitigation, local community groups also benefit from support in building capacity in order to collaborate effectively with the councils and their partners in delivering services.

Such initiatives should therefore still be secured through any new infrastructure Levy/developer obligations regime, but it is considered that these may be best secured through section 106 rather than through Levy funding as the needs are likely to be site-specific having regard to the surrounding local circumstances, including capacity within neighbouring areas to accommodate need and demands.

The infrastructure in-kind routeway

Question 7: Do you have a favoured approach for setting the 'infrastructure in-kind' threshold? [high threshold/medium threshold/low threshold/local authority discretion/none of the above]. Please provide a free text response to explain your answer, using case study examples if possible.

Local authority discretion. *This should be left to local authority discretion, taking account of the nature of the area and the scale of development being planned for in the Local Plan. The high threshold of 10,000 homes favoured by Government is far too high, as many local authorities will never experience applications at this scale (ie garden communities/new settlements). The medium range of between 2,000 to 4,000 homes is more appropriate and which will generate significant infrastructure that needs to be provided by a specific developer/ consortium, namely new primary and/or secondary school(s). However, developments in rural areas may be of a smaller scale but will require in-kind provision, such as land for additional community or education uses. It is therefore not appropriate to set a threshold nationally as it will not take into account the variations in requirements across the country.*

In addition, strategic and major development sites do not necessarily come forward as one unified site. They can be comprised of several developments, which are built out at in phases at different times/stages, with different scales/sizes of development and by different developers. Councils need to be allowed to view all these individual developments together, in order to recognise their cumulative impact. Therefore, to ensure the infrastructure via the 'in-kind' route is provided in a way to mitigate new developments in a comprehensive manner, the threshold should be set at the local authority's discretion, to ensure that infrastructure is provided in the right place and in a timely manner.

The S106-only routeway

Question 8: Is there anything else you feel the government should consider in defining the use of s106 within the three routeways, including the role of delivery agreements to secure matters that cannot be secured via a planning condition? Please provide a free text response to explain your answer.

The proposal to narrow the application of section 106, limiting its use to large development sites and site-specific mitigation, is likely to have little benefit in terms of speeding up the determination process, given that site specific mitigation applies to large and small development sites alike. ADEPT wishes to see the continuation of section 106 as a mechanism to: restrict the development or use of land in any specified

way; require operations to be carried out to land; and require land to be used in any specified way. In addition, a planning obligation may only constitute a reason for granting planning permission, if it is necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Section 106 needs to be maintained as now, to ensure the focus on 'place making' and 'the creation of beautiful places'. However, what is being proposed through the use of the three different section 106 routeways appears complex and to some extent confusing.

The consultation paper suggests that if local authorities require certainty of contributions towards certain types of infrastructure, the contribution can be secured via a Delivery Agreement, and the amount is then off-set against the final Levy payment. Clarification is sought as to how this differs to the existing section 106 agreement process. However, in the context of the proposed Levy, this may provide a useful mechanism for managing cash flow for developers.

The primary issue local authorities currently have is that it is very difficult to apply a standardised approach to the use of planning obligations, as every site and development scheme is different. What is an issue requiring mitigation on one site is a non-issue on another. Unfortunately, the scale of the development is not the only defining consideration. However, it is typically the case that where a specific section 106 obligation is sought, its being fulfilled will be the crucial determinant of whether a proposed development will be functional in technical and day-to-day operational terms. Often this is not apparent or known at the plan making stage. Usually, such matters arise only through pre-app consultation on an outline planning application, or even at reserved matters stage. It is therefore essential that the use of section 106 is not curtailed under any of the three routes proposed to the extent that it cannot be used where it is the only acceptable and appropriate mechanism by which to satisfactorily secure the mitigation required.

Such mitigation could extend to infrastructure that should have fallen to Levy funding and should have been accounted for in the Infrastructure Delivery Strategy when setting the Levy rate. This could include circumstances where matters only arise in the detailed planning of the infrastructure requirement.

There is little said in the consultation material about the form of planning applications. With outline schemes, much if not all of the detail is left to be addressed in the future submission of reserved matters approval applications. For significant schemes with very long build-out periods, the post-planning permission submissions can vary significantly from what was originally granted and significantly alter what is finally built. The current system of obligations retains flexibility to address such matters.

If affordable housing is to be separated out from section 106, it is unclear if this will be the subject of a Levy agreement or will be covered by a Levy charging schedule. Presumably site-specific affordable housing matters will still need to be agreed e.g. the trigger for when the affordable dwellings have to be provided, affordable tenures, the specification of the homes, rent levels, identity of the registered provider, nomination agreements, and service charge levels. If a Levy agreement and section

106 obligation both have to be negotiated there is unlikely to be any time-saving in the determination process.

However, the Levy does allow the negotiation of a single type of infrastructure in-kind, rather than paying contributions towards multiple infrastructure 'pots'. So, a local authority could require greater provision of social rented housing, or the construction of a road and forego other contributions. This could simplify some schemes.

Specific concerns have been expressed by upper-tier authorities in regard to their statutory responsibilities if the new system is implemented as outlined in the consultation material. For example:

Education. As local education authorities, county councils have a statutory duty to ensure schools can accommodate the additional places generated by new development, as well as early years and childcare (EYCC) places. It is unclear how the new system will deal with the provision of land for schools and EYCC, if the direct link between development and its mitigation is lost, as the proposals do not refer to education as being 'integral infrastructure'. If the local authority is unable to legally tie a developer to providing such facilities, as warranted by the pupil product of that development, this may lead to new schools and EYCC having to be provided off-site and requiring land to be identified and purchased at residential land value. Therefore, education must be classified as 'integral' development. Paragraph 1.22 indicates that new and expanded schools and early years will be funded by the Levy.

In addition, it cannot be assumed there will be an increased availability of Basic Need grant funding from the Department for Education (DfE) or even its suitability to be directed towards filling gaps in funding in areas of low value uplift not exceeding the threshold. The DfE timing of Basic Need allocations and the DfE School Capacity calculations do not always allow sufficient warning of need and can make the delivery of a whole new school challenging.

Highways. As local highways authorities, county councils use both section 106 and section 278 agreements to secure much of the infrastructure required to mitigate the impact of development on the highway and transport network. These agreements enable mitigation to be directly related to any development (e.g. to secure sustainable transport measures, including travel plans), and ensure the highway continues to operate in a safe manner and with adequate capacity. County councils secure most of the highway improvements required to mitigate the impact of development using section 278 agreements, primarily as this route ensures developers carry out the mitigation at the required point in the development programme. ADEPT welcomes reference in paragraph 1.40 to local authorities still being able to use section 278 and 38 agreements to deliver highway works, and further clarification is required that these may relate to what the Government defines as 'integral infrastructure' (paragraph 1.15) and wider than site specific infrastructure.

Minerals and Waste. As minerals and waste planning authorities, county councils use section 106 agreements to secure the long-term site management and restoration of mineral extraction sites, in addition to securing other necessary off-site mitigation. Reference to minerals and waste sites within the section 106-only routeway is

welcomed, as such development will not be subject to the Levy and therefore the existing planning obligations process will continue.

CHAPTER 2: LEVY RATES AND MINIMUM THRESHOLDS

Permitted development rights

Question 9: Do you agree that the Levy should capture value uplift associated with permitted development rights that create new dwellings? [Yes/No/Unsure]. Are there some types of permitted development where no Levy should be charged? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Yes

Levy funding should be collected from any change in land use and any scale of development that places an additional demand on infrastructure. Permitted development is subject to CIL and any proposed Levy should capture developer contributions from all forms of development that have to be served by infrastructure. Permitted development change of use schemes that create new dwellings create a demand and need for infrastructure and the impact of such developments must be mitigated. This has been a significant omission of current permitted development rights in relation to section 106 and it needs to be urgently rectified.

The inability for local authorities to enter into section 106 agreements with developers who are carrying out office-to-residential conversions through permitted development rights is an ongoing concern. A significant amount of development has come forward through this process with only very limited planning matters being capable of being considered; for example, no financial contributions can be collected towards providing necessary infrastructure such as school places.

The cumulative impact of permitted development changes of use has resulted in unacceptable burdens being placed on local facilities and services, has failed to address affordable housing needs, and has almost without fail created unacceptable living conditions, with little or no on-site green open space, or residential amenity.

With respect to whether there are some types of PD where no Levy should be charged, ADEPT would recommend that these be treated as an exception. Local authorities should be able to use their own discretion, depending on local circumstances, to determine which permitted development change of use schemes would be exempt or should be charged the Levy. It is often the case that the unintended consequences of permitted development only emerge years after the permitted change has been implemented.

Question 10: Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy? Do you have views on an appropriate value threshold for qualifying permitted development? Do you have views on an appropriate Levy rate 'ceiling' for such sites, and how that might be decided?

It is essential that the Levy should secure additional funds through capturing changes of use, including on projects where there is no additional floorspace, and for some permitted development rights including office to residential conversions and new demolition and rebuild rights. This will increase the base level of monies collected and enable developments to better contribute to infrastructure delivery, making them more acceptable to local communities and more liveable for residents

The Levy should also pick up the cumulative impact of all development on existing infrastructure and in total, provide enough funding to mitigate its overall impact. The requirement for all development, irrespective of scale and use, to pay the Levy if above the set threshold is supported.

With respect to the value threshold for qualifying permitted development, this should be determined locally, based on the uplift in value between the existing use and the permitted use. As the application of CIL has shown, the viability of different forms of development varies significantly in different parts of England. The value of an existing use will depend on its location, condition, and local need. Conversely, residential values also vary significantly across an authority's area and have little relevance to the existing use value of the land.

The ability to set different Levy rates for different land uses in different areas based on local circumstances is welcomed. The application of a blanket base rate for an authority area as a whole is considered appropriate with a low minimum threshold. This will ensure all new viable development makes a contribution to the provision of infrastructure. This can then be nuanced with the setting of differential rates for areas planned for significant growth that will have specific infrastructure needs to be met. The threshold in growth areas, including regeneration areas, needs to be maximised to deliver the required infrastructure and to ensure growth is appropriately supported.

The 'Regeneration Rate' should therefore not be set at a low threshold. Often these areas are those that require substantial structural change in the urban fabric to make new development functional and will be deficient in the type, scale and quality of infrastructure required to meet the regeneration ambition. The setting of a low rate would be counter-productive, unless deemed that the majority of required structural change can be achieved through 'integral' delivery.

It is not appropriate to set a Levy rate ceiling for permitted development. Overall, the aim of the charging schedule will be to strike the right balance between developer profits and provision of necessary infrastructure and affordable housing. A range of factors will need to be considered in setting the appropriate Levy rates applying to different forms of development, including permitted development but as long as it is demonstrated that the development remains viable, then it is right that the wider community shares in the uplift in value created by permitted development rights.

Addressing the variability of Brownfield Land

Question 11: Is there is a case for additional offsets from the Levy, beyond those identified in the paragraphs above to facilitate marginal brownfield development

coming forward? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary, using case studies if possible.

Unsure. *The redevelopment of brownfield sites and conversions of existing buildings, particularly within town centres, will need to remain more favourable forms of development. The combination of differential rates for brownfield and minimum thresholds might not provide sufficient flexibility for more complex sites. Additional offsets would also ensure that the setting of rates and thresholds does not undervalue higher value sites when set to allow the least viable to still be progressed. The provision of residential and extra care accommodation within urban areas could benefit from these additional offsets.*

Notwithstanding this, the onus remains on the developer to undertake due diligence before determining to purchase a site for redevelopment. This is especially the case with brownfield sites. Local authorities and Government have sought to ensure matters such as land contamination and site constraints are adequately reflected in land value. Local authorities then work with developers to bring forward viable and acceptable schemes, which often involves the need for compromises from both parties. However, where developers pay above the market value for development sites, speculating on the potential profit whilst underestimating the cost of infrastructure provision, this creates problems from the beginning and is the predominant cause of sites becoming 'marginal' in viability terms. For sites that are truly marginal, market forces alone are usually insufficient to bring these sites forward. In such circumstances, local authorities can and do use other tools at their disposal, including compulsory purchase powers.

Ensuring rates and thresholds are appropriate

Question 12: The government wants the Infrastructure Levy to collect more than the existing system, whilst minimising the impact on viability. How strongly do you agree that the following components of Levy design will help achieve these aims?

- Charging the Levy on final sale GDV of a scheme [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]
- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]
- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]
- Separate Levy rates for thresholds for existing floorspace that is subject to change of use, and floorspace that is demolished and replaced [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

Disagree

Strongly Agree

Strongly Disagree

Agree

Question 13: Please provide a free text response to explain your answers above where necessary.

Whilst ADEPT would also want the Levy to collect more funds than the existing system, where authorities have been successfully using section 106 to secure significant levels of contribution towards infrastructure, the scope for the Levy to deliver more will depend on the willingness of landowners to bring forward land at a reduced value and to accept the profit in the scheme being reduced. The research by the University of Liverpool confirmed this using a worked example (page 53).

The Levy is a land-value capture mechanism that relies, in two-tier areas, on charging authorities to programme and provide funding for infrastructure that county councils have the statutory duty to provide. Charging the Levy on GDV presents a challenge for the timely delivery of infrastructure, owing to the uncertainty of income. While borrowing is possible, this will require district councils to borrow significant sums on behalf of county councils, at risk. Currently with section 106, either the payments are triggered at intervals to coincide with the infrastructure delivery or, for infrastructure such as a new school, a county council is able to borrow against future receipts because it has a contract with the developer directly.

Detailed comments on each of the components are as follows:

GDV. GDV is assessed in relation to value at completion or sale. The point of “completion” is not identified. This could be identified as the date that a professional instructed by the developer issues a practical completion certificate, or a Building Regulations completion certificate, or when a property is registered for council tax or business rates. It is unclear whether completion could be identified as sectional completion, or even by reference to individual units. The latter is likely to be administratively burdensome for both developer and the local authority, if the Levy has to be assessed and paid on each new home individually in a multi-dwelling development.

Further clarification with regard to the definition of ‘upon occupation’ in relation to the payment of the Levy is required. With regard to larger developments, is payment required on occupation of the first dwelling, a particular phase, or the last home within a scheme? Payment on occupation is unlikely to incentivise developers to speed up build times, with local authorities having little or no control over developers to implement planning permissions, or to speed up build-out rates. Developers often bring forward schemes depending on the housing market and local absorption potential and it is likely that this will remain the case, regardless of any Levy payment.

Payment on commencement would enable those responsible for delivering essential infrastructure to secure the necessary funding from developers far earlier in the process, and to deliver it at the appropriate time. A potential option could be to improve the cash flow between developers and local authorities, with the Levy being charged on commencement and potentially linked to phased practical completions, rather than occupation or completion of the development. Developers, rather than infrastructure

providers, could then borrow the money to pay the Levy. This would also incentivise developers to complete schemes in a timely way, following the grant of planning permission, and provide local authorities with the necessary confidence to commit to delivering necessary infrastructure and the financial means to do so.

As the Levy will be non-negotiable, developers must now take full account of the Levy payments they will make when agreeing a price for land. However, a point of concern about the use of GDV, is the incentive on developers to exceed the cost of purchasing and developing a site. Any Levy system must work like an overage, where developers are incentivised to optimise development values generated. This ensures developers and councils will share equally in the uplift of land value. In the absence of an overage, what incentive is there on a developer to seek to deliver a significantly positive GDV?

With respect to the timing of the payment of the Levy liability - if the Levy is not paid until the development is complete, sales values will be significantly affected by the lack of supporting infrastructure. The Government's assumption that the public sector will borrow to forward fund the required infrastructure may be significantly misplaced. Most authorities no longer have significant reserves and are risk adverse, even when undertaking council direct delivery development. In high growth areas, the level of borrowing required by local authorities with a large number of infrastructure projects/sites is also likely to be very significant. The risks and costs of this borrowing – particularly where the delivery of projects may slow down due to poor market conditions for example - will be carried by local councils, not developers. This risks the fundamental erosion of local councils' ability to deliver both infrastructure and to maintain services to its community.

Any proposals therefore need to explore how payment to offset borrowing risks/costs can be made in stages to smooth the upfront funding burden on a development while ensuring the funding of the delivery of Levy-funded infrastructure as the development is being built out. A mopping-up exercise should then still take place at scheme completion to ensure the full uplift of GDV is paid.

Further clarification is needed with regards the relationship between the Levy and the actual cost of Levy infrastructure to be delivered. CIL and section 106 both work on the basis of contributing towards the cost of providing infrastructure. In terms of the Infrastructure Delivery Strategy, this is prepared by the local authority to identify infrastructure needed to support development proposed in the Local Plan, how it will be funded and the approach to prioritising Levy fund. There appears to be no relationship between the cost of infrastructure provision and the Levy, as it is based on a valuation approach rather than linked to the cost of providing that infrastructure. There will doubtless be a funding gap and it is not clear whether the Levy (replacing CIL, and being operated alongside limited use of section 106) is likely to reduce or increase that gap.

The recent inflationary pressures and escalating construction costs also demonstrate the risks associated with infrastructure requirements and their costs being agreed often years before the level of contributions being levied from a development are known. The longer the time period between the infrastructure being identified and

costed and the money being made available, the more risk there is of the Levy not being sufficient to pay for said infrastructure.

Stepped Levy rates. Setting a lower Levy rate level initially and then stepping this up over time is not supported. A long-held basic principle of planning obligations has been to ensure fairness. However, this proposal clearly benefits early developments at the expense of later developments, which will be asked to contribute more towards the same level of infrastructure provision. If the Levy is to be based on a package of infrastructure required to support the planned development across an area, and is set out in an Infrastructure Delivery Strategy that is subject to consultation and independent examination, the expectation will be that all development would be required to contribute fairly and equitably towards the cost. A discount for earlier development would also not reflect the fact that such schemes would usually benefit more from any surpluses in existing capacities.

It is noted that the technical consultation does not currently propose who would determine when it was appropriate to step the Levy up and on what basis. As the consultation stresses, the aim of the Levy system is to secure at least the same level of affordable housing and infrastructure provision as the current system. How would this be achieved through the stepping-up approach, as outlined? Conversely, how would this achieve the objective of providing developers with certainty around the rate of the Levy likely to be applicable to their development? Given these uncertainties, it remains difficult to appreciate how the application of a stepped approach could be made to be fair or workable. This approach should not be taken forward in the Regulations.

Use of different Levy rates and minimum thresholds. This is strongly supported and local authorities must have the ability to set different Levy rates for different land uses in different geographical areas, based on local circumstances. The application of minimum thresholds should ensure that developments that do not give rise to Levy-funded infrastructure needs are not required to contribute towards funding them and that developments remain viable.

Similar to CIL, it is essential that Levy rates be indexed to ensure build cost inflation is also reflected in the infrastructure provision itself, including the value of affordable housing.

CHAPTER 3: CHARGING AND PAYING THE LEVY

The timing of Levy payments

Question 14: Do you agree that the process outlined in Table 3 is an effective way of calculating and paying the Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

No.

The system will rely on valuations being submitted and local authorities providing the oversight that the valuation has been made correctly. This is an additional burden, and while local authorities are more able to consider viability from experiences with determining levels of affordable housing, this has not been required for all planning applications.

The determination of a planning application is a critical stage in confirming the acceptance (or not) of a development by the local community and public bodies such as county councils. A valuation of the development to provide an expectation of the amount of income from the Levy might still be required to determine whether the anticipated impacts of development can be mitigated. This is particularly important for cross-boundary impacts, such as those required to provide sustainable transport. There is a risk of charging authorities not providing funding for infrastructure in other areas. To provide clarity on the consequences of decisions, county councils would highlight the expected cost of infrastructure and the district council might wish to be certain of the likely income so that other communities that are affected by development are not having to fund these cross-boundary impacts.

There are many variables that affect the GDV, particularly the interaction of prices paid for affordable homes, which would be influenced by affordable housing funding programmes and regulations, including the Right to Acquire. The potential for repayment from the final adjustment payment presents a significant risk to local authorities.

If local authorities are unwilling or unable to borrow to forward fund infrastructure, and the Levy is not paid until the development is complete, sales values will be significantly affected by the lack of supporting infrastructure.

The introduction of the Levy does however offer the opportunity to address a persistent issue that continues to undermine confidence in the planning system. Site value engineering, where landowners or agents seek planning permission with no intention of ever undertaking the development, has two consequential impacts. Firstly, it artificially increases land value. Developers then have to pay more for the site and need to put forward a higher density development to make the site viable.

Second, it raises expectations within the local community of development and change taking place in terms of a scheme they consider acceptable, only to then be faced with a denser development proposal which they perceive as overdevelopment and the new developer just being greedy. If this practice is not addressed, it significantly undermines the Levy-funded system being based on GDV. A proportionate Levy payment on grant of planning permission would significantly curb this practice.

There are also questions around valuation. This will become an industry in itself with the need for continuously updated RICS guidance, given the fluctuations in GDV over the lifetime of a development, particularly those that are delivered over 5 years and more. In this regard, there is likely to be a significant burden on local authorities for the monitoring and evaluation of different stages of the valuation process.

There is the potential for significant changes in the value of potential Levy between the indicative Levy liability undertaken at the point of planning permission and the final valuation of the development. Local authorities will need to undertake ongoing analysis about whether it would be in the public interest to ask for a re-valuation of the development, which would require local authority resourcing. The process could lead to the authority being required to review two/three sets of viability assumptions in order to inform the indicative Levy, when the build costs and other inputs vary between approval and occupation. The final Levy might be so far removed from the indicative one that this does not improve transparency or give confidence to the community as to how much has been secured. Calculating the Levy liability across multiple stages of a development is a significant amount of work and resource burden, particularly given the number of applications (which could be liable to the Levy) that will need to be processed and determined.

Of further concern are the proposals for payment of the Levy i.e. an interim or provisional payment prior to occupation of the scheme, with a balancing payment once the development has been sold. This will inevitably lead to cash-flow issues for developers compared with the current system where section 106 payments are often staggered through instalments linked to occupations throughout the build programme and where CIL payments are usually paid in accordance with the Charging Authority's instalment schedule, again enabling payment to be made after receipts from some sales have been received. Furthermore, an occupation restriction until the Levy has been paid is also proposed although other than the Levy liability being registered as a local land charge, it is not clear how such a restriction is to be secured, or if potential occupiers will be able to waive this at their election (presumably at risk of liability for the Levy). While the provisional payment can be related to a phase of the development, many medium-sized sites are not currently phased, and even where they are, payment up front of the Levy in respect of a phase could create viability issues for SME developers.

Finally, it is unclear how the indicative Levy liability would work with larger strategic sites, and there is a risk that indicative liabilities will be wholly inaccurate. This would lead to uncertainty about future Levy receipts which would hinder infrastructure planning and forward funding.

In outline planning applications for larger schemes, all matters other than access tend to be reserved; they often have long, phased delivery periods of up to 10-15 years. Large strategic sites often require negotiations regarding the needs for significant infrastructure so assumptions about infrastructure requirements could result if these negotiations do not take place at early stages. The charging process indicated in the consultation seems to be based on applications where all information is known at the point where planning permission is granted; however it is often the case that details such as floorspace are not known.

Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

Yes.

Staged payments of Levy liabilities throughout the build-out period, as per the current section 106 process would be more appropriate. The proposed regime shifts too much of the 'cashflow' burden from developers to the local authority. A staged payment approach would overcome the initial funding burden on developers of the CIL payment regime, and would help developer cashflow while ensuring Levy-funded infrastructure is capable of being delivered at the right time to support the development, which in turn will help maintain sales values. A phasing plan should be submitted alongside the Indicative Liability calculation, similar to submitting a phasing plan with an Assumption of CIL Liability, which would have the effect of breaking up Levy payments into more manageable portions and giving a more regular income to collecting authorities.

Imposition of a local land charge

Question 16: Do you agree with the proposed application of a land charge at commencement of development and removal of a local land charge once the provisional Levy payment is made? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary

No.

It is agreed that the Levy should be applied as a Land Charge and note that the Bill will allow for a penalty fine to be charged for unfulfilled Levy liabilities, however the removal of the Land Charge after the Provisional Payment is questioned. Ideally, the local land charge should remain and not be removed until ALL outstanding Levy payments are made. This reflects current practice under the section 106 and CIL regimes that have not inhibited the sale of homes. The local authority search result would be able to reassure individual house purchasers that no liabilities would be passed onto them but remain the liability of the developer.

The Final Adjustment payment could be significant if houses prices rise quickly compared to the assumed costs used at the Provisional Payment stage. If there is no Land Charge, it becomes harder to enforce payment of outstanding liabilities, particularly on large sites where landowners/developers may have sold all their interests in the land by that point.

There may also not be appetite or resources from the collecting authority to chase Final Adjustment payments where legal enforcement action is required. This could mean certain infrastructure providers lose out on a significant portion of Levy funds that they need to deliver much needed infrastructure.

Question 17: Will removal of the local land charge at the point the provisional Levy liability is paid prevent avoidance of Infrastructure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/ Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Disagree.

Whilst it is acknowledged that the intention of removing the land charge before completion is to avoid inhibiting the sale of homes and encouraging developers to pay early, the removal of the land charge before the final payment is made will only reduce enforcement powers of the collecting authority and could increase the possibility of developers going into liquidation or other such commonly-used avoidance tactics to avoid paying the Final Adjustment liability. Rather than leaving it to the developer's discretion to make early payments, this should be mandatory. Keeping the local land charge in place will provide the safeguard of a penalty for those who are late or fail to make the payments. It would be the most effective preventative measure.

Possibility for payment on account

Question 18: To what extent do you agree that a local authority should be able to require that payment of the Levy (or a proportion of the Levy liability) is made prior to site completion? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]. Please explain your answer.

Strongly agree.

If the full Levy payment is potentially not made until the completion of a development, this will place greater risk on the local authorities and other infrastructure providers as some infrastructure on strategic sites will need to be delivered before or during the construction of the development. This is especially the case on larger sites where there is rolling provision of significant infrastructure over time.

If the final valuation is to be retained, to provide an opportunity to capture any uplifts, an alternative is for a proportion (such as 80%) of the Levy to be paid prior to completion. This would provide greater certainty of income at an earlier stage that would support the delivery of infrastructure.

Completed development could be identified as the date that a professional instructed by the developer issues a practical completion certificate, or a Building Regulations completion certificate, or when a property is registered for council tax or business rates. It is unclear whether completion could be identified as sectional completion, or even by reference to individual units. Some developments do not ever become 'fully completed' with a unit space left vacant to enable future expansion of the site through a separate planning application. The latter is likely to be administratively burdensome for both developer and the local authority if the Levy has to be assessed and paid on each unit individually in a multi-unit development.

Question 19: Are there circumstances when a local authority should be able to require an early payment of the Levy or a proportion of the Levy? Please provide a free text response to explain your where necessary.

Staged payments on commencement would enable those responsible for delivering essential infrastructure to secure the necessary funding from developers far earlier in the process, and to deliver it at the appropriate time. A potential option could be to

improve the cash flow between developers and local authorities with the Levy being charged on commencement and potentially linked to phased completions, rather than occupation or completion of the development, and that developers, rather than infrastructure providers, could borrow the money to pay the Levy. This would also incentivise developers to complete schemes in a timely way, following the grant of planning permission, and provide local authorities with the necessary confidence to commit to delivering necessary infrastructure and the financial means to do so.

On larger strategic sites it is essential that early payment is made for infrastructure to ensure its delivery (if this infrastructure is not included as integral and provided by the developer). For instance, if major transport infrastructure or a secondary school is needed, then those payments should be sought early to enable the provision when they are required. This could also be the case where large infrastructure is required to meet the demand from cumulative development when the need is prior to some of the prospective Levy liabilities.

The level of borrowing needed for many infrastructure projects would result in either the district council as “borrowing authority” - or the infrastructure provider money would be borrowed for - being unwilling to borrow such large sums of money due to the uncertainty of funding and would most likely result in schemes not being delivered.

Appeals

Question 20: Do you agree that the proposed role for valuations of GDV is proportionate and necessary in the context of creating a Levy that is responsive to market conditions [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Unsure.

The system will rely on valuations being submitted and local authorities providing the oversight that the correct valuation has been made. This is an additional burden and while local authorities are more able to consider viability from experiences with determining levels of affordable housing, this has not been required for all planning applications.

The proposed role for valuation of GDV at the various stages is potentially likely to be complex and open to misinterpretation between local authorities and developers. It would not necessarily be responsive towards market conditions particularly if disputes arise between local authorities and developers, particularly if it increases the use of the appeal process. It could also require local authorities requiring different professional skill sets which would need to be resourced to provide valuation expertise to be able to assess and reach negotiated agreement with the developer. Valuation will become an industry in itself if the Levy is progressed and the ability of the industry to meet the sustained demand in this field is questioned.

The significant time that will be spent in this potentially protracted process with viability assessment (or equivalent) submissions at three separate stages for every single

liable planning permission (or permitted development) is therefore a concern in relation to resourcing limitations.

CHAPTER 4: DELIVERING INFRASTRUCTURE

Other mechanisms to facilitate the delivery of infrastructure

Question 21: To what extent do you agree that the borrowing against Infrastructure Levy proceeds will be sufficient to ensure the timely delivery of infrastructure? [Strongly Agree/Agree/Neutral/ Disagree/Strongly Disagree/Unsure]. Please provide a free text response to explain your answer where necessary.

Strongly disagree.

The Infrastructure Levy is a land value capture mechanism that, in two tier areas, relies on district councils to programme and provide funding for infrastructure that county councils have the statutory duty to provide. However, only district councils will be able to borrow against Levy income and will need to undertake their own due diligence (including the potential risk of repayment at the final stage) on infrastructure that they are not delivering. This creates additional administrative burdens and delay in the certainty of securing funding, as officers and councillors will need to understand the complex parameters involved in delivering transport and education infrastructure.

Whilst it could be a positive aspect of the Levy that authorities can borrow against future Levy receipts, in a two-tier area and/or where infrastructure providers other than the local authority are responsible for funding and providing infrastructure, there will be inherent uncertainties about whether the borrowing authority will ever borrow on behalf of others.

If a local highway authority, for example, requires a junction improvement at a particular point in time as a result of the cumulative impact of development, it could only be included in the capital works programme if there was absolute certainty over available funding. In a two-tier area, this would require the lower tier to borrow against future Levy receipts and agree to pass that funding on to the local highway authority at the appropriate time. Having to wait for this certainty to become apparent will only serve to create additional delays and uncertainty surrounding delivery.

Additionally, if a local authority has multiple infrastructure providers seeking borrowed money at the same time, the local authority could quite understandably consider the risk of borrowing so much to be too high. If they were to decide not to borrow the total amount required, this could lead to additional uncertainty and delays in delivering much needed infrastructure and it could lead to the local authority, rather than the infrastructure providers, determining infrastructure priorities based on their ability to borrow.

Quite frequently there are disputes between infrastructure providers and local authorities about the need for infrastructure. If a local authority does not wholly agree with the need for certain items of infrastructure (note the most common disputes are about education, highways, and NHS GP surgery requirements), it may decide not to

borrow money for those projects, leaving the infrastructure providers without the capital to deliver what they consider to be required.

In borrowing against Levy proceeds, local authorities will be able to make use of the Public Works Loan Board (PWLB) facility. The normal rules for borrowing from the PWLB will apply, whereby the facility can support local authority capital spending provided that capital spending has a policy objective (in other words, is not for the purpose of generating a monetary return), and that it is within the Prudential Framework. There can be risk where authorities are reliant on forecast revenues streams to afford debt if those revenue streams do not materialise or are less than forecast.

In essence, the proposal will place significant, if not all, risk on local authorities to borrow against future Levy receipts to forward fund 'strategic' infrastructure. This appears a complete reversal to the existing situation and is proposed with the intention to improve developer cashflow, enabling more homes to come forward at pace. Following years of austerity measures and significantly reduced funding imposed on local authorities by Government, and the recent, unforeseen COVID-19 cost pressures, the appetite for such 'financial risk' taking is considered potentially low. Uncertainty around the delivery of schemes and therefore uncertainty about the receipt of contributions arising out of such schemes will make it very difficult for local authorities, let alone county councils, to appropriately plan and deliver their own infrastructure requirements. The impact of new housing developments must be appropriately mitigated by developers.

If local authorities are to borrow against future receipts to fund infrastructure, consideration should be given to a mechanism which allows monies to be clawed back from the developer should their development not go ahead. This then shares the risk with the developer rather than placing all of the risk with the local authority, and provides an incentive for the developer to deliver and for the local authority to deliver infrastructure in a timely manner phased with development.

Local authorities must service the interest cost and make minimum revenue provision (a charge to revenue) with respect to debt. As the Levy will ultimately serve as an ongoing revenue stream which local planning authorities will be able to draw from, it is appropriate for borrowing to occur against that stream, given that the PWLB lends to support a local authority's whole capital plan, rather than providing project by project financing.

Borrowing against future Levy receipts would only be workable if local authorities were to be given discretion over the threshold relating to use of the 'Infrastructure in-kind' routeway for large and complex sites (secured through section 106 agreements, as opposed to the Core Levy routeway). We presume that these section 106 contributions could stipulate earlier trigger points for payment than envisaged under the Levy system. This has the potential to make the proposals more workable.

Question 22: To what extent do you agree that the government should look to go further, and enable specified upfront payments for items of infrastructure to be a condition for the granting of planning permission? [Strongly

Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Agree. *There should be the potential for upfront payments for infrastructure either as part of delivery agreements, or section 106 planning agreements. This could be a useful option in appropriate cases, which local authorities could use at their discretion. This will assist in the delivery and implementation of the right infrastructure at the right place and time, particularly for strategic and major development sites to support sustainable growth and development.*

Infrastructure that is needed early on in a scheme should be included as integral infrastructure and delivered by the developer for when it is required. Upfront payments would mean less risk for councils and less need to borrow, however they may affect viability due to the increased costs of borrowing for developers.

Circumstances are likely to arise through specific infrastructure requirements that are then associated with Grampian conditions. It would be reasonable for the local authority to require payment of a proportion of the Levy to provide the funding towards such infrastructure in the same way as section 106 is able to operate.

Question 23: Are there other mechanisms for ensuring infrastructure is delivered in a timely fashion that the government should consider for the new Infrastructure Levy? [Yes/No/Unsure] Please provide free text response to explain your answer where necessary.

Yes. *The suggestion of securing a financial contribution for a specific infrastructure project through a delivery agreement (offset against the total Levy liability) could be a useful tool.*

ADEPT welcome reference in paragraph 1.15 and 1.40 to confirm how section 278 agreements will still be permitted to deliver highway matters but their scope is restricted to being 'integral infrastructure', namely within or directly adjacent to the site (paragraph 1.15). However, these agreements are often used to contribute to the delivery of wider highway infrastructure improvements that may serve more than a single site, namely a new relief road. Local highway authorities use both section 106 and 278 agreements to secure much of the infrastructure required to mitigate the impact of development. These tools enable mitigation to be directly related to any development e.g. secure sustainable transport measures, including Travel Plans, and ensures the highway continues to operate in a safe manner and with adequate capacity. Most highway improvements to mitigate the impacts of development are secured by section 278 agreements, primarily as they require developers to carry out the mitigation, thereby ensuring they are implemented by a set time and the full cost of any works is covered by the developer, and at their risk. The application and interface of section 278 agreements with the Levy needs to be explored in greater detail and its on-going use clearly defined.

Questions on the Infrastructure Delivery Strategy

Question 24: To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree] Please provide a free text response to explain your answer where necessary.

Neutral

The Infrastructure Delivery Strategy (IDS) could play a pivotal role in ensuring that Levy receipts are fairly shared to ensure efficient delivery of infrastructure but this will only occur if 1) local authorities are somehow tied to spending Levy receipts in line with the Spending Plan within an IDS 2) the IDS and Spending Plan are heavily scrutinised as part of the Examination prior to adopting a Levy, 3) if there are mechanisms to update the IDS and Spending Plan with up to date information, and 4) in two-tier areas there is a statutory role for the upper-tier authority in agreeing the IDS.

However, the risk is that there will remain a high degree of uncertainty regarding costs at the plan-making stage, and the IDS would require a significant amount of work to identify reliable cost estimates, with the burden of funding this work seemingly being placed upon local authorities. This uncertainty risks reducing the value of using an IDS to support delivery as development comes forward.

Information in the Infrastructure Delivery Strategy (IDS) will build on and replace infrastructure delivery plans (IDPs) and will be subject to examination. Whilst the IDP identifies the infrastructure requirements necessary (including phasing and estimated cost) to support the anticipated growth in the Local Plan period, it does not form part of the statutory development plan. It should also be acknowledged that many infrastructure providers prepare and implement their future spending plans on a much shorter timeframe than the 15-year local plan period, leading to increased uncertainty towards the later stages of a plan period. The IDP is usually a part of the evidence base and is a 'living' document, where assessments of costs, funding, delivery and phasing will continue to be updated, in conjunction with further work being undertaken with site promoters, infrastructure providers and funding partners. This ongoing review ensures the best and most up-to-date information is available, particularly to inform the planning application process. Consequently, the IDS should not be a binding document on future infrastructure costs but one that can be used to set and agree infrastructure priorities.

It is anticipated that the IDS will be an iterative document that can reflect changing circumstances as developments come forward, which is welcomed. Changing circumstances may also include political administration cycles as a new leadership may seek to review and reprioritise spending priorities that are included within an examined IDS. Consequently, a process that allows for updates without further examination (perhaps annually), and the engagement that should be undertaken alongside, will need to be set out. Details of the circumstances under which a full re-examination is required will also be needed. In any event, this will all be resource-intensive – managing the spend profile would require significant additional resources and skills not currently held by councils, particularly in the smaller local authorities – and such costs would necessarily need to be able to be recovered through the Levy.

The government envisions that the drafting of an IDS will be a consultative and iterative process between, for example, local authorities, infrastructure providers, including transport providers and operators, highways and transport authorities (including sub-regional transport bodies), utilities such as water companies, neighbouring authorities, Integrated Care Systems, and local education authorities (county councils in two-tier areas). Consequently, in two tier areas it should be made a statutory requirement to include county councils in the preparation and implementation of an IDS, particularly their important roles in delivering strategic infrastructure. This is where a strategic overview is required beyond one administrative boundary, to ensure consistency in the identification of projects where there are larger than local impacts. Consideration should be given to allowing for a joint IDS to be prepared particularly where joint plans are being prepared, or there is significant cross-boundary development.

Although Levy receipts can be passed to third parties such as county councils if they are best placed to deliver the infrastructure needed, there must be a clear and mandatory requirement on the 'collecting authority' to establish governance arrangements to identify, prioritise and distribute Levy funds. Councils seeking to reduce borrowing risk are likely to seek to deliver just the highest priority infrastructure requirements until such time as Levy liabilities exceed borrowing. This would delay delivery of other essential infrastructure.

Question 25: In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?

The notion that the complex mixt of infrastructure and the reasons for funding these at what time can be streamlined is unrealistic. There might well be summaries and appendices, such as linkages to infrastructure identified through local transport plans, but an IDS, as a whole, will need to be a functional and detailed document that identifies the sources of evidence.

To be consistent with the current approach to developing Infrastructure Delivery Plans to sit alongside development plans, local authorities will need to:

- *establish the overall scale and location of growth being planned for over the lifetime of a Local Plan, separated out into completed and permitted development (infrastructure needs already accounted for) and that still to be provided (commitments);*
- *establish the baseline infrastructure position with identification of available capacity;*
- *understand the development needs of the area;*
- *prepare population projections and analyse demographics to assess demand and when infrastructure is required;*
- *engage providers and their regulators in understanding their planned and committed infrastructure investment;*
- *undertake audits of existing infrastructure capacity and condition, assess options and feasibility of mitigation measures, including the consideration of changing service delivery models;*
- *determine triggers for infrastructure provision having regard to development trajectories; and*
- *be able to design and cost individual infrastructure requirements.*

There will also need to be a mechanism to implement the Levy in those areas where there is not an up-to-date Local Plan.

Question 26: Do you agree that views of the local community should be integrated into the drafting of an Infrastructure Delivery Strategy? [Yes/No/Unsure] Please provide a free text response to explain your answer where necessary.

Yes.

Given that the Charging Schedule and the Infrastructure Delivery Strategy (IDS) would be examined, there is an opportunity for views of the local community to be incorporated. This is particularly relevant when assumptions are being made by local authorities on the capacity of the local community to take on responsibility for any new infrastructure. This could apply, for example, to schools that are expected to include community use agreements for new sports facilities or other buildings.

However, there is a risk that local communities use this process to make further objections to development by challenging the provision of related infrastructure. There is also the risk that very localised opinions of other strategies, such as for transport or education, are also aired through the IDS. District and borough councils should not be put in a position of having to represent local communities' views on the implementation of infrastructure strategies formed by other organisations such as county councils.

Ultimately, the needs of ALL infrastructure providers should be integrated into the drafting of an IDS to ensure the document is as strategic and representative of requirements as possible. This involves major and local infrastructure providers.

The role of the local community needs to be clearly explained and expectations managed. It is appropriate to seek the views of the local community into the drafting of the Infrastructure Delivery Strategy, if only to confirm that there are no omissions and to illicit broad agreement to matters such as how the Levy is to be operated (Levy rates applicable to which areas and land uses; the thresholds to be applied; qualifying development; exempt development; the affordable housing to be secured, the neighbourhood share portion etc.). However, given that the majority of Levy-funded infrastructure is likely to be strategic in both nature and scale, it would be far more appropriate for the delivery bodies to undertake more detailed consultation on their specific infrastructure items matters such as route or location selection, and detailed design considerations. Operational matters should therefore be treated as being outside of the scope of consultation on the Infrastructure Delivery Strategy, or risk the strategies potentially taking years to prepare.

Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:

- Identification of general integral infrastructure requirements
- Identification of infrastructure/types of infrastructure that are to be funded by the Levy- Prioritisation of infrastructure and how the Levy will be spent
- Approach to affordable housing including right to require proportion and tenure mix

- Approach to any discretionary elements for the neighbourhood share
- Proportion for administration
- The anticipated borrowing that will be required to deliver infrastructure
- Other – please explain your answer
- All of the above

All of the above.

A fully detailed and thorough IDS and Spending Plan will be absolutely critical to the success of the Levy to be a more successful mechanism for infrastructure provision than the current CIL regime. The Spending Plan should be scrutinised in great detail at examination and Planning Practice Guidance (PPG) should set out the required content and evidence included in an IDS.

The Regulations should also ensure that Levy receipts are spent in accordance with the content of an IDS. With the caveat that it is unlikely that exact infrastructure requirements will be known at the point of examination and that some mitigation strategies will change over time, the Regulations could at least show how Levy receipts should be split between all infrastructure providers, in line with the PPG's suggested content.

Levy receipts could then be shared at set times each year, like how the neighbourhood portion of CIL is calculated and shared with all relevant Parish Councils at set times. This would give certainty to infrastructure providers that they will receive Levy receipts.

The IDS should also factor in the cumulative impact of smaller sites as well as cross-boundary infrastructure.

While the proposed content for the spending plan in the IDS sounds reasonable, there are concerns about local authorities being forced to borrow large sums if the Levy can only be collected at the end of development to repay the infrastructure delivered. Many if not most local authorities, will not want to underwrite the full infrastructure bill for Levy-funded infrastructure without certainty that it can be repaid in full over a relatively short period (i.e. less than 10 to 15 years – the length of a local plan period).

In a two-tier system, it is essential that county councils are involved in the preparation of the Infrastructure Delivery Strategy. County councils have various statutory roles: the local highway and transportation authority; the local education authority including early years and childcare (EYCC), Special Education Needs and Disabilities (SEND), and Post-16 education; the Minerals and Waste Planning Authority; the Waste Disposal Authority; Lead Local Flood Authority, public health duties; responsibility for adult social care (housing needs of older people and adults with disabilities); and provision of libraries. Giving county councils a statutory role in the preparation of the IDS and agreeing priorities for infrastructure funding and delivery, as well as how the Levy is to be spent, is considered critical if the Levy is to operate successfully in two-tier areas.

There should also be a section in the Infrastructure Delivery Strategy on other mainstream infrastructure funding sources, and if or how they will contribute alongside Levy funding to deliver specific items.

The examination of the Charging Schedule and IDS should align infrastructure funding, affordable housing (including tenure mix) and viability, and be considered alongside the Local Plan.

The discretionary elements for the neighbourhood share, administration and borrowing could also be included in the IDS but setting further obligations on local authorities would be administrative burdens and limits the potential for IDSs to be creative tools.

Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?

- Guidance to local authorities on which infrastructure providers need to be consulted, how to engage and when
- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy
- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies
- Guidance to local authorities on prioritisation of funding
- Implementation of statutory timescales for infrastructure providers to respond to local authority requests
- Other – please explain your answer

Involvement in the examination of Charging Schedules, Infrastructure Delivery Strategies and Spending Plans is absolutely vital to ensuring strategic infrastructure providers participate in the creation of a fit-for-purpose Levy system.

Whilst it is not possible to always know exact infrastructure requirements, it is normally possible to know where infrastructure mitigation will be needed and possible to know rough estimates and assumptions of what that mitigation will need to be. The PPG should set out the level of detail of infrastructure and associated costs in the IDS and how evidence should be gathered prior to the Examination of the IDS.

The Regulations should set out how IDSs can be updated to use more up to date information as and when it is available.

Mitigation strategies change for a number of reasons and the promotion of windfall sites outside of Local Plan allocations is completely unpredictable, therefore the ability to review and update IDSs will be crucial.

The Levy is a land-value capture mechanism that relies on district councils to programme and provide funding for infrastructure that county councils have the statutory duty to provide. The incorporation of affordable housing as part of the value of the Levy, particularly as defined in this consultation, is a significant risk for disagreement between the tiers of local government on priorities and programming of infrastructure.

While “the delivery of the right infrastructure ahead of or alongside development is a priority for the government” (Technical Consultation, paras. 1.8 & 4.1), the formation of the ‘right to require’ is designed so that affordable housing is protected “from the pressure of other spending priorities” (Ibid, para 5.1).

This is a reversal of the long-established position that provision of affordable housing does not take priority over the delivery of the very infrastructure needed to support it. For example, during the consideration of the Growth and Infrastructure Bill in 2012, Nick Boles told the Bill Committee that:

“there is a conceptual distinction; section 106 obligations that relate to alleviations of specific and direct impacts of a development and are hence inescapable—such as those where primary schools or a road that connects the development to a community must be built—are in a different category from a commitment to affordable housing, whether through land or financial contribution.”

(Official Report, 27 November 2012, c.293)

The very recognition in the Technical Consultation that county councils will need to be engaged with prioritisation indicates an expectation that the Levy will not be able to fund the necessary infrastructure as well as the urgently required affordable housing.

The notion that other sources of funding will be available towards infrastructure needs to be thoroughly set out to contradict assumptions, such as the use of Basic Need from the Department of Education, that alternatives are available. County councils have the statutory duty to ensure sufficient places and carry the risk if funding through the Levy or from Government is not available.

The Levy replaces the certainty (for county councils and developers) of funding and delivery through section 106 agreements, with the only programming mechanism being the Infrastructure Delivery Strategy (IDS). District councils must produce this document when the Levy rates are being examined but this is the only point that a county council has to provide input and challenge.

Many districts place an emphasis on a bidding process for CIL funding, which leads to uncertainty and can result in protected discussions. There needs to be a stronger emphasis that lower tier authorities agree the programme of funding with county councils, and for this to be regularly updated. The logical mechanism is through the IDS having to be an agreement made annually. This would emphasise the ongoing and forward-looking role of the IDS as a tool for the local government system to align a programme of funding commitments for new infrastructure.

The Infrastructure Funding Statements (IFS) are already providing a useful guide to what the IDS could look like. The statutory requirement for both tiers of local

government to publish IFS has proved effective and these are being used to inform bids for Community Infrastructure Levy and section 106 agreements.

While a disagreement between local councils on funding might be politically inconvenient, this might not prove to be a sufficient incentive for the lower-tier authorities to seek agreement or sufficient mitigation of the financial risks to upper-tier authorities.

Whether county councils should automatically receive a portion of the income for the Levy was a point raised by the [CCN's Pragmatix Study](#) (page 68) where there is no partnership or agreement in place. This is a logical measure, and one that would safeguard the risks to county councils given the cost of transport, education, waste, flooding and library infrastructure.

There is a potential linkage then between an ongoing agreement towards a programme, such as the IDS, and a trigger for automatic apportionment of Levy income to all the tiers of local government.

Support for county councils as to what can be funded through the Levy should not be necessary if the legislative and governance frameworks behind the Levy are precise and well-thought-through. Currently, this does not currently appear to be the case as the proposals for the split between "integral", "in-kind" and "Levy-funded" do not account for the complex mixture of site and area-specific infrastructure requirements or how these will be delivered. For example, there is not any recognition for activities to support sustainable transport improvements beyond site boundaries as being fundamental requirements for development.

A statutory timetable for infrastructure providers to supply information to local planning authorities related to the infrastructure Levy relies on the providers being able to supply the information that the local planning authority considers that it needs. Often, the local authority will make assumptions on the level of detail and the format that information can be shared, particularly spatial information.

A better approach would be to focus attention and resources on the plan-making stage and for infrastructure providers to take a long view and be ready to contribute to the plan-making process, particularly if the 30-month timetable every five years is introduced. The Government could provide clear expression, not just through regulations, of the need to engage in the plan-making process. Support would be useful to infrastructure providers, including county councils, on the Government's expectations for engagement and this support should be through the relevant departmental arm or regulator.

The consultation material shows little understanding of the role of county councils in the provision of infrastructure and how it is funded. This must be rectified as proposals are further developed. The pilot authorities to test and learn the introduction of the Levy must include a county council.

The regulations should set a requirement for charging authorities to establish clear governance arrangements with key infrastructure providers, especially in two-tier authorities, for determining the apportionment of Levy monies to infrastructure projects and providers. County councils will be reliant on the discretion of the charging local authority for when and how any monies for infrastructure may be secured. This will lead to difficulties in securing monies for infrastructure projects that are required to deliver the growth identified in Local Plans as well as any degree of certainty or when they are required. The spend of any new Levy should be by joint agreement of district and county councils to avoid existing problems with CIL being replicated, where little if any is provided to county councils.

In addition, the ability to spend monies on non-site related infrastructure will not be welcomed by local communities impacted by development and may reduce their appetite for future engagement in the planning process.

The Levy proposals seek increased flexibility for local authorities to spend Levy receipts on their policy priorities once 'core infrastructure' obligations have been met. Further clarity is required with regards what is covered by the term 'core infrastructure' and any process for determining how these obligations have been met, and by whom. The relevant infrastructure providers must be included within this process.

In two-tier areas there should also be a statutory duty for district councils to work with their county councils in the preparation of Levy-setting and the government should look to allocate a certain portion of Levy receipts directly to county councils.

In the long term, the report recommends the return of strategic planning. LPAs would collaboratively come together at the county or combined authority level to draw up long-term strategic visions for their areas, which should directly feed into Infrastructure Delivery Strategies, which will be mandated as part of the infrastructure Levy. These visions would align – rather than replace – local plans. They would cover a county-wide level, mapping out broad locations to direct housing growth and supporting infrastructure needs over a long period of time, enabling key challenges to be addressed strategically. The Local Nature Recovery Strategies are an example of how working at the strategic level has multiple benefits, and will no doubt be the basis for spatial planning at the strategic level. Enabling strategic plans to address infrastructure and growth is the natural next step, and they will enable infrastructure funding to be addressed more holistically.

Question 29: To what extent do you agree that it is possible to identify infrastructure requirements at the local plan stage? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Neutral.

A Local Plan should include a strategic infrastructure policy which identifies the strategic infrastructure required to deliver its growth, including transportation infrastructure and education. Local Plans which allocate development at a significant scale should also include site specific policies, which set out the necessary infrastructure expected of the developer and relevant bodies given the review of

relevant evidence base and developer work undertaken. Such requirements are then included within the Infrastructure Delivery Plan and viability assessment of the Local Plan. The requirements, phasing and costs will be further refined through the masterplanning and planning application process.

However, Infrastructure Delivery Plans can only set a framework for a snapshot in time. A significant amount of variation can occur, such as through costs, demographic and economic changes, and regulations or other initiatives. Changes to pupil forecasts and the costs of delivering schools are particularly challenging and to provide a greater degree of certainty, studies are required to ascertain whether schools can be expanded or constructed and the resultant costs. Such studies are additional burdens and while district councils are willing to share the cost, there is not a clear mechanism for county councils to recoup these costs.

Additionally, IDPs cannot identify the infrastructure required to mitigate the impact arising from windfall development or speculative development arising outside of local plan process, which individually and/or cumulatively often places additional demand on infrastructure (eg. schools) that had not previously been identified. At present, CIL provides an opportunity for additional funding but CIL spend is at the discretion of the collecting authority.

Further clarity is required regarding how strategic cross-boundary issues, such as major infrastructure or strategic sites will be planned for with the forthcoming abolition of the Duty to Co-operate. Without a strategic framework it is difficult to envisage how sustainable patterns of development will be arrived at, and how local areas will be expected to align Infrastructure Delivery Strategies and Levy contributions with strategic infrastructure investment. These issues could potentially be addressed in ongoing devolution arrangements.

Strategic infrastructure usually refers to high-cost cross-boundary schemes (particularly strategic transport schemes) and forward funding may require financial contributions from sites in several authorities to be pooled, which could be politically sensitive, and require formal procedures to be established and indeed infrastructure Levy payments.

It should also be recognised that many delivery partners are often not able to adequately inform the local plan infrastructure requirements – most are concerned with meeting current needs and their funding arrangements and service delivery plans only look towards the immediate future (the next 1-3 years). Service providers, such as the NHS, should be resourced to support long-term infrastructure planning for a council areas or wider region. In its absence, there will remain uncertainties as to whether the Infrastructure Delivery Strategy is robust and a true reflection of what may be required to mitigate development impacts.

The ability of local authorities to introduce an Infrastructure Levy should not be constrained by the timing of their Local Plan. Given the on-going need to mitigate the impact of new development, it is vital that local authorities are not left without an effective means to secure developer contributions until the next Local Plan is adopted.

Chapter 5: Delivering affordable housing

The 'right to require' work in practice

Question 30: To what extent do you agree that the 'right to require' will reduce the risk that affordable housing contributions are negotiated down on viability grounds? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Unsure.

The Levy should seek to secure affordable housing delivery on-site with at least the same proportion that is demonstrated to be viable and required in Local Plans. However, as a strategic infrastructure provider, the proposal to use the Levy to fund affordable housing will create an inevitable false choice between the need for infrastructure and the need for affordable homes. Local authorities could choose to prioritise funds raised through the Levy towards higher levels of affordable housing provision locally rather than other infrastructure requirements. The new Levy should not simply divert monies to affordable housing at the expense of other necessary infrastructure and place making.

By moving away from an 'in-kind' system of affordable and social housing delivery and towards a finance-based system, the Infrastructure Levy risks undoing important progress in delivering affordable housing even though there are frustrations when developments seek to reduce affordable housing provision after permission.

Local authorities would still be having to navigate through a complex system that is unresponsive to differences in land value and site viability. This problem may be particularly pronounced in areas with variable development values and low land value. As well as the risk that less resource is provided to support infrastructure owing to the 'protected' nature of affordable housing, the right to require might be set low to account for the least viable sites.

The spending plan in the Infrastructure Delivery Strategy will reflect the prioritisation choices of the local authority. This includes the proportion of the Levy that a local authority intends to secure on affordable housing through the 'right to require'. However, local authorities will also retain flexibility, and not be obliged to seek their full entitlement of on-site affordable housing, as set out under their 'right to require'. This will enable them to redirect Levy resources towards other infrastructure priorities when necessary, balancing this appropriately with the affordable housing needs of their area. Without statutory requirement to include county councils in this prioritisation process the necessary monies for strategic infrastructure will not be forthcoming.

In addition, the government envisions that non-monetary contributions will be secured through Delivery Agreements, although local authorities may also wish to direct an element of their Levy funding towards non-infrastructure matters such as employment, training and skills provision.

The section on affordable housing appears to leave a number of questions unanswered:

- *The consultation refers only to Social Rent, Affordable Rent, Shared Ownership and First Homes with no reference to other tenures such as Right to Buy or discounted market sales.*
- *The “Right to Require” will set out the proportion and tenure mix of on-site delivery but the consultation is silent as to how it is intended that the affordable housing is in fact secured in perpetuity. It is likely that there will continue to be a need to secure such provision through Delivery Agreements/section 106 in order to ensure suitable securitisation provisions. Much of the current negotiation of affordable housing provisions in section 106 agreements is not in fact around the quantum or tenure mix but around these broader provisions for example in respect of allocation and reletting and there is nothing in the consultation document that indicates that this will not continue.*
- *Affordable housing schemes will have an impact on infrastructure and therefore will still be subject to negotiations in respect of integral infrastructure and any mitigations that would need to be secured through a Delivery Agreement (not least in respect of the affordable housing).*

Treatment of development with a high proportion of affordable housing

Question 31: To what extent do you agree that local authorities should charge a highly discounted/zero-rated Infrastructure Levy rate on high percentage/100% affordable housing schemes? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Disagree.

All housing, including affordable housing, generates a demand for infrastructure. Affordable housing, in the experience of many authorities, can generate a larger demand for education places, health and related services than open market housing. If affordable housing schemes are zero-rated, the amount of available funding will be reduced overall and the need for infrastructure arising from affordable housing schemes will be subsidised by open market schemes, to their detriment if there are insufficient funds to deliver all of the infrastructure required. If such schemes are to be exempt from the Levy there will be a need to enable local authorities to utilise Delivery Agreements or section 106 to secure the required mitigation.

Question 32: How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system? Please provide examples.

The majority of authorities ADEPT represents treat affordable housing in the same way as conventional mixed market schemes, applying local policies on infrastructure and the principles of sustainable development.

Question 33: As per paragraph 5.13, do you think that an upper limit of where the

'right to require' could be set should be introduced by the government? [Yes/No/unsure] Alternatively, do you think where the 'right to require' is set should be left to the discretion of the local authority? [Yes/No/unsure]. Please provide a free text response to explain your answer where necessary.

Yes.

Local discretion should be used to determine where an upper limit might be most appropriate so long as this is set out in detail and scrutinised at examination and through development of the Charging Schedule and IDS.

Locally-led evidence is the most appropriate way to justify the approach in the context of local needs, market conditions and integral infrastructure requirements. It also provides greater confidence to communities, registered providers and developers.

CHAPTER 6: OTHER AREAS

The neighbourhood share

Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? [Yes/No/Unsure?]

Unsure.

ADEPT does not object to the Neighbourhood Share of the Levy, but this should not be consistent with the existing CIL requirements. It is envisaged that the value collected as Neighbourhood Share should not result in less value being allocated to neighbourhoods than in the existing system. However, under the new system this could result in significant amounts being allocated to neighbourhoods and would further reduce the 'funding pot' available for strategic infrastructure. Any neighbourhood share should also be spent on infrastructure/planning related matters as a priority.

As an alternative approach, rather than setting a proportion of Levy receipts to be allocated to the neighbourhood share, total Levy receipts should be apportioned to all infrastructure providers, based on the evidenced infrastructure requirements set out in an examined IDS.

If parish councils can evidence a requirement for infrastructure that they are responsible for providing in order to mitigate growth, the neighbourhood share would rightly be incorporated into the strategic overview contained within the IDS. If parish councils do not need as much money to provide required infrastructure as they are allocated, that simply reduces the amount of Levy receipts available for the provision of required infrastructure.

The IDS should be scrutinised in great detail at examination to ensure that it is thorough, is based on strong, proportionate and appropriate information and assumptions, and that it ties Levy receipts to infrastructure providers. Without apportioning future receipts to exact pieces of, or types of, infrastructure (accepting that strategies for mitigation change over time), the IDS will only show what money is

needed but will not commit the collecting authority to using collected IL receipts to meet the needs.

Question 35: In calculating the value of the Neighbourhood Share, do you think this should A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues), B) be higher than this equivalent amount C) be lower than this equivalent amount D) Other (please specify) or E) unsure. Please provide a free text response to explain your answer where necessary.

Other. *Shares should be based on the costs of providing the infrastructure and overall administration. The value of the neighbourhood share should only be the equivalent in value to the existing CIL funding for parish councils so long as the local authorities can fund and deliver the necessary infrastructure to support sustainable growth and development and secure an appropriate provision of affordable housing. It might be appropriate to consider the Neighbourhood Share should be a matter for local decision and be set locally depending on the scale of local development. This might enable a higher share for smaller in-fill developments, which tend to increase demands on existing facilities within the local vicinity. It would also be appropriate to allow local councils to vary the amount of the Neighbourhood Share and to determine whether it is appropriate to set a fixed annual cap to the total Neighbourhood Share.*

Question 36: The government is interested in views on arrangements for spending the neighbourhood share in unparished areas. What other bodies do you think could be in receipt of a Neighbourhood Share such areas?

All Levy receipts should be apportioned strategically within the examined and adopted IDS. That way, regardless of an area being parished or unparished, the infrastructure requirements in that area would be funded and delivered fairly and appropriately.

The administrative portion

Question 37: Should the administrative portion for the new Levy A) reflect the 5% level which exists under CIL B) be higher than this equivalent amount, C) be lower than this equivalent amount, D) Other, (please specify), or E) unsure. Please provide a free text response to explain your answer where necessary.

Other.

The new system set out in the Technical Consultation will lead to significant initial costs for charging authorities, not least through additional valuation burdens, but also to county councils in providing sufficient evidence to ensure robust Infrastructure Delivery Strategies and for monitoring infrastructure receipts from the Levy and expenditure.

The cost of administration could be set out in an IDS and easily updated based on the actual cost of administration. A set percentage would be too high for some authorities and too low for others. It seems a reasonable request for local authorities to assign (with evidence) a cost to software/staff/appeals which could be paid for out of Levy receipts. This could then be reported annually through the IFS, or similar, to prevent misuse of Levy receipts to pay for local authority budget items.

Without an evidence-based approach, the concern is that it will reduce the available contributions towards strategic infrastructure. However, at this time, and in the absence of any detailed work to understand the full breath of resourcing required, it is impossible to say what this cost might be and how this might translate as a percentage of the Levy. It is clear that county councils rely on the monitoring fees provided through section 106 contributions to monitor, manage funds and support project delivery and this must be factored into administrative fees associated with the Levy in two-tier areas.

Exemptions and reduced rates

Question 38: Applicants can apply for mandatory or discretionary relief for social housing under CIL. Question 31 seeks views on exempting affordable housing from the Levy. This question seeks views on retaining other countryside exemptions. How strongly do you agree the following should be retained:

- residential annexes and extensions; [Strongly Agree/Agree/Disagree/Strongly Disagree]

- self-build housing; [Strongly Agree/Agree/Disagree/Strongly Disagree]

If you strongly agree/agree, should there be any further criteria that are applied to these exemptions, for example in relation to the size of the development?

Agree to exemptions being retained for residential annexes and extensions, given the assertion in paragraph 6.10 that these do not generally result in new pressure on infrastructure.

Disagree to retaining a country-wide exemption for self-build housing because this should be a matter for local discretion. Where self-build housing contributes to planned growth that has a cumulative impact on an area and creates the need for new infrastructure to mitigate its impact, applying the Levy would be reasonable.

Question 39: Do you consider there are other circumstances where relief from the Levy or reduced Levy rates should apply, such as for the provision of sustainable technologies? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

Unsure. In principle, all developments ought to pay to mitigate any impacts arising on local infrastructure. However, while the impact of infrastructure might remain the same, sustainable technologies tend to have higher up-front costs that are recouped over long periods, which are unlikely to be reflected in the GDV of developments. It might be appropriate for developments that are providing more energy efficiency, renewable or even innovative methods of construction to have reduced rates or alternative minimum thresholds.

Nevertheless, renewable generation projects such as solar PVs have their own impacts and consideration should be given to whether these are exempt if the Government was to introduce a robust package of community benefits.

Ultimately, it would depend on the impact the development would place on local infrastructure. The technologies referred to in the question are also not specified. The document describes that this could be where they go beyond national policies. Where local plans require higher environmental standards as the norm this should not result in reduced Levy requirements.

Approach to small sites

Question 40: To what extent do you agree with our proposed approach to small sites? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

***Unsure.** Whilst small sites should be considered in the setting of the rate and application of the minimum threshold, all new residential development, including small sites, cumulatively, place an increased burden on local infrastructure. All development should contribute to infrastructure requirements. If such development is viable and can afford the full Levy, the full Levy should be sought. However, it is appreciated that local circumstances will vary and the decision to provide a discount could be made locally. This should not be a central government imposition.*

It may be more appropriate for small sites to make the Levy payment at the set rate for the locality rather than a reduced Levy rate given they still have an impact on infrastructure requirements, particularly education and early years. Clarification as to how the threshold of 10 dwellings for small sites would be exempt from the Levy as set out in paragraph 6.14 was reached would be welcomed. NPPF, paragraph 69 requires Local Plans to identify land to accommodate at least 10% of their housing requirement on sites no larger than one hectare. This can amount to a significant proportion in urban areas, and they should be required to make the necessary payments to mitigate their impact individually and cumulatively.

Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas? Please provide a free text response using case study examples where appropriate.

There are risks to SME housebuilders and to affordable housing in rural areas from the liability affecting cashflow until the units have been sold, which could be addressed with payment on completion. However, not all small sites are delivered by SMEs or are community-led affordable housing. Ultimately, if local authorities have the ability to vary the Levy applicable to small sites should local viability considerations warrant, the impact should be minimal.

Treatment of publicly funded infrastructure

Question 42: Are there any other forms of infrastructure that should be exempted from the Levy through regulations?

Generally, the exemption of publicly-funded infrastructure and Levy-funded development would be supported. However, it should be defined clearly which types of public funded infrastructure should be exempt.

Enforcement

Question 43: Do you agree that these enforcement mechanisms will be sufficient to secure Levy payments? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary.

Unsure.

The enforcement measures and mechanism should be put in place to make sure the Levy is paid particularly to support key major developments. However, a local land charge should not be removed when the provisional Levy liability is paid but only once the final Levy liability is paid. There should be robust enforcement mechanisms and fines for late payments of the Levy and in cases of deliberate non-payment significant penalties to act as a deterrent.

Nevertheless, an increase in penalties and surcharges from those in the CIL Regs would be welcome, to give more power to the collecting authority in instances of developers not complying with the regulations.

If a large development only has one Levy liability (ie, not phased in an yway) it is queried whether a Stop Notice would prevent work on site effectively but this question would be best answered by looking at their effectiveness of them as implemented for the CIL Regs.

One item of concern is how a collecting authority would enforce payment of the Final Adjustment Payment if the Levy liability is removed as a Local Land Charge after the Provisional Payment has been made. The Final Adjustment Payment could be significant for individual sites if sales values were higher than reported at the earlier stage, and the aggregation of small Final Adjustment Payments could be significant across a district/council area. If authorities see risk in paying for enforcement to get small pots of money from individual sites, that could significantly reduce the total Levy receipts, which may significantly reduce the amount of Levy that a particular infrastructure provider might be reliant on to deliver schemes.

CHAPTER 7: INTRODUCING THE LEVY

Transition into the new system

Question 44: Do you agree that the proposed 'test and learn' approach to transitioning to the new Infrastructure Levy will help deliver an effective system? [Strongly Agree/Agree/ Neutral/Disagree/Strongly Disagree/Unsure] Please provide a free text response to explain your answer where necessary

Unsure.

It is agreed that a pilot approach could be beneficial to the eventual rollout of a national system, but we consider that the authorities involved in the test and learn process should be fully representative of the whole variety of geographical and political authorities in the country. In particular, a selection of non-London, non-unitary authorities should be included where the county council is responsible for education and highways (as well as other) infrastructure provision on a strategic scale.

Clarity is required regarding whether an IDS would have to be adopted prior to the test and learn pilots, and if the pilot would be sufficiently long-term to test funding-allocation and infrastructure delivery as well as merely collection of Levy receipts. If the pilot period does not show how the distribution of funds between infrastructure providers works in practice and does not therefore show whether infrastructure provision was affected positively or negatively using the Levy mechanism, the benefit of a test and learn will be reduced.

Given the Levy is based on development value, it needs to be seen what issues arise once payments are due. If a planning permission lasts for at least three years and can be completed on an indefinite timescale once implemented (for the moment), it will take time for perverse outcomes that require correction to come to light. Even where the Levy is implemented, sites that already have planning permission will continue to be subject to potential CIL payment and section 106 requirements. This will lead to some councils with large scale garden communities and developments with long build out periods operating both the Levy, CIL and section 106. This will also be relevant between different authorities in two-tier areas.

Sites granted planning permission before the Levy is introduced, which are then subject to another planning permission for a broadly similar development, should remain in-CIL (or out of CIL) while the first permission is still extant. The intention would be to avoid complicated comparisons of viability between the pre-IL vs IL scheme when the focus should be on the differences between the two schemes.

The introduction of the Levy could take years to roll-out as it has not been piloted or road tested yet and the fragmented way it will be introduced, with the many unanswered questions arising from this consultation, will create uncertainty and could drastically undermine development delivery - and specifically, housing delivery.

Equalities impacts

Question 45: Do you have any views on the potential impact of the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? No

Yes. *Developer contributions play an important part in the promotion of social inclusion and cohesion. It is important that the consultation involves people with protected characteristics, to support their needs, for example, age, physical and mental health, disabilities and ensure that access to local services continues to be available to meet their needs (and improved on). As well as considering protected characteristics, there is a need to consider the impacts on low incomes. This allows*

us to address potential inequalities at the outset. As much as the Government seeks to make the Infrastructure Levy scheme as simple as possible, the process is still likely to be found extremely complicated by many householders and the community – and businesses. Mitigations will need to be considered to help make the new scheme easier to understand, in different formats.