

CABINET

13 February 2013

COMMUNITY INFRASTRUCTURE LEVY: MEMORANDUM OF UNDERSTANDING
WITH HAMPSHIRE COUNTY COUNCIL

REPORT OF CHIEF EXECUTIVE & HEAD OF STRATEGIC PLANNING

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RECENT REFERENCES:

CAB2412 – Community Infrastructure Levy (CIL): Consultation on Preliminary Draft Charging Schedule

EXECUTIVE SUMMARY:

The Planning Act 2008 made a number of changes to the planning regime. Key amongst these was the introduction of the Community Infrastructure Levy (CIL), a new basis for funding, through contributions from new development, for the delivery of a broad range of community infrastructure.

CIL will replace the bulk of contributions currently secured through agreements made under s.106 of the Town and Country Planning Act 1990 and is intended to support a broad range of infrastructure needs – ranging from community facilities to roads, and health facilities to play areas. Whilst some of those facilities will be delivered by the City Council, others are the responsibility of other parties, notably the County Council.

This report outlines a basis for the City Council agreeing with Hampshire County Council an approach to the funding of infrastructure delivered by both parties and seeks agreement to us entering into a Memorandum of Understanding with the County on this matter. This has been developed by all the Hampshire district councils (excluding the Cities of Southampton and Portsmouth) and the County Council, and it is intended that all the authorities would endorse the Memorandum.

RECOMMENDATIONS:

That Cabinet:

- i) agree in principle to the City Council entering into a Memorandum of Understanding with Hampshire County Council over the basis for determining priorities for the planning, funding and delivery of community infrastructure; and
- ii) delegate to the Head of Strategic Planning authority to agree the final Memorandum, including any minor changes resulting from the process of it being agreed by this and other authorities, in consultation with the Deputy Leader and Head of Legal Services.

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DETAIL:

1 Introduction

- 1.1 The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008. It is a new mechanism by which funds for essential infrastructure can be raised from developers. The levy is an amount that must be paid per square metre of qualifying development. It will not be negotiable and the Government's aim is to introduce certainty about the amounts to be paid by developers towards essential infrastructure. The City Council, as local planning authority, is responsible for the development and implementation of a charging regime which provides the basis for charges to be levied under CIL (save in the area covered by the South Downs National Park, which has its own powers to introduce CIL), and we are currently consulting on a Preliminary Draft Charging Schedule.
- 1.2 Local authorities must spend the funds produced by the levy on the "infrastructure needed to support the development of their area". The Government stresses that the funds raised should not be used to remedy "pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development". Infrastructure is defined by the 2008 Act, and can cover, for example, transport, flood defences, schools, cultural and sports facilities, play areas and green spaces, and a wide range of health and social care facilities.
- 1.3 Not all of the relevant infrastructure is provided by the City Council, for example Hampshire County Council has a major role in providing highways, education and a range of other infrastructure. Colleagues in health, police and other sectors may also have an interest in seeking to secure necessary infrastructure to support new development. It is proposed that the needs across this diverse range of infrastructure and facilities are identified and prioritised in an Infrastructure Plan (which will in due course form the basis of a 'Regulation 123 List'), which officers will be preparing in consultation with the County and others.

2 Proposed Memorandum of Understanding

- 2.1 It is inevitable there will be complex and competing demands on the limited resources CIL is likely to provide. It will be essential that all parties co-operate

in planning and prioritising, indeed we are under a duty to do so. Hampshire district councils have also been discussing with the County Council the preparation and signing of a Memorandum of Understanding (MoU) as a framework for co-operation in determining priorities for planning, funding and delivering infrastructure.

2.2 A MoU would not be legally binding, as it is the City Council that has the responsibility for setting and collecting the charge and its allocation. However, it is good practice to have in place a statement of intent which both parties would seek to apply in making decisions about infrastructure. A full copy of the draft MoU is at Appendix 1. In summary the broad principles it sets out are:

- a) to work in collaboration with other partners to enable, wherever possible, the effective alignment of priorities and ensure future capital programmes and development plans take account of shared priorities;
- b) a commitment to developing a comprehensive infrastructure needs assessment for Hampshire that identifies infrastructure needs over the next twenty years, based on existing deficiencies, natural growth and development requirements;
- c) a commitment to using their best endeavours to release local capital and other resources to meet Hampshire's infrastructure needs;
- d) to work with a wide range of stakeholders, including those in the private sector and through Government agencies, to secure funding;
- e) to position themselves so they are ready to respond to Government initiatives, such as Tax Increment Financing and continue to exploit grant schemes from Government Departments and key agencies such as the Highways Agency and the Homes and Communities Agency;
- f) to engage positively with Enterprise M3 LEP and the Solent LEP and develop closer relationships with the local business sector. In doing so, partners aim to better align Hampshire's infrastructure priorities so that robust proposals for greater devolution of funding can be put forward to Government in order to invest in local growth schemes;
- g) a commitment to maintaining a collaborative approach towards local transport;
- h) to work flexibly with neighbouring authorities, including through bi-lateral arrangements with the two cities of Portsmouth and Southampton, as well as the two National Park Authorities – New Forest and South Downs – and other neighbouring counties;
- i) aim to ensure that any modifications to capital programmes do not take place in isolation but always in the context of the shared principles and

the consideration of all the alternative funding mechanisms and potential opportunities available;

- j) co-operate both within and beyond Hampshire, particularly in relation to the Community Infrastructure Levy; and
 - k) local planning authority partners to consult with the County Council on their CIL charging schedules and in relation to their CIL Regulation 123 Lists.
- 2.3 All of the Hampshire districts are content with the principle of an MoU. Officers here advise it would offer a good basis on which the City and County could work together and plan jointly to help meet Winchester's infrastructure needs, and understand how CIL, as one of a variety of funding mechanisms, can support delivery of that infrastructure. It will also provide a framework for guiding how the County will invest their own resources in the District.
- 2.4 There remain details of the drafting to be resolved, and other districts are also likely to raise minor points of drafting with County colleagues. However, the current draft of the MoU captures all the key principles and it is recommended that Members approve in principle the signing of an MoU and delegate authority to the Head of Strategic Planning to agree the final text once all parties have reached agreement.
- 2.5 The City and County will need to agree formal arrangements for working together in the spirit of the MoU, including liaising on developing the Regulation 123 List, considering capital spending plans and agreeing priorities for investment.

OTHER CONSIDERATIONS:

3 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (RELEVANCE TO):

- 3.1 Proper provision of appropriate infrastructure is essential to the economic, social and environmental well being of the District. These arrangements will assist in proper planning for that infrastructure.

4 RESOURCE IMPLICATIONS:

- 4.1 There are no direct resource implications arising from signing an MoU. It will, in due course, assist in guiding the allocation of resources generated through CIL and guide the spending of City, County and other capital budgets.

5 RISK MANAGEMENT ISSUES

- 5.1 Proper co-ordination, which the MoU seeks to achieve, will minimise risks associated with planning infrastructure spend.

BACKGROUND DOCUMENTS:

None.

APPENDICES:

Appendix 1 – Draft Memorandum of Understanding

DRAFT

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is dated

2012

PARTIES

The parties to this memorandum of understanding (MoU) are:

- (1) **BASINGSTOKE AND DEANE BOROUGH COUNCIL** of Civic Offices, London Road, Basingstoke, Hampshire RG21 4AH;
- (2) **EAST HAMPSHIRE DISTRICT COUNCIL** of Penns Place, Petersfield, Hampshire GU31 4EX;
- (3) **EASTLEIGH BOROUGH COUNCIL** of Civic Offices, Leigh Road, Eastleigh, Hampshire SO50 9YN;
- (4) **FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ;
- (5) **GOSPORT BOROUGH COUNCIL** of Town Hall, High Street, Gosport, Hampshire PO12 1EB;
- (6) **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ;
- (7) **HART DISTRICT COUNCIL** of Civic Offices, Harlington Way, Fleet, Hampshire GU51 4AE;
- (8) **COUNCIL OF THE BOROUGH OF HAVANT** of Public Service Plaza, Civic Centre Road, Havant, Hampshire PO9 2AX;
- (9) **NEW FOREST DISTRICT COUNCIL** of Appletree Court, Lyndhurst Hampshire SO43 7PA;
- (10) **RUSHMOOR BOROUGH COUNCIL** of Council Offices, Farnborough Road, Farnborough, Hampshire GU14 7JU;
- (11) **TEST VALLEY BOROUGH COUNCIL** of Beech Hurst, Weyhill Road, Andover, Hampshire, SP10 3AJ;
- (12) **WINCHESTER CITY COUNCIL** of City Offices, Colebrook Street, Winchester, Hampshire SO23 9LJ.

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DRAFT

1. PURPOSE

- 1.1 This Memorandum of Understanding (MoU) provides a broad framework to assist its signatories, hereafter referred to as “the Partners”, as they come to determine priorities for planning, funding and delivering future infrastructure.
- 1.2 The Planning Act (2008) provides a wide definition of the infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition encompasses a broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, district heating schemes and police stations and other community safety facilities. This gives local communities flexibility to choose what infrastructure they need to deliver their development plans.
- 1.3 Although this MoU is not legally binding, it is a statement of joint intent which indicates the broad principles that the Partners will seek to apply when making decisions about strategic and community infrastructure, both of which are integral to the economic, social and environmental well-being of Hampshire’s communities.
- 1.4 Due to the diverse range of infrastructure needs across Hampshire Partners fully recognise the need of locally tailored solutions rather than a one-size-fits-all approach. However, they also recognise the need to work in collaboration so that wherever possible priorities can be effectively aligned and to ensure future capital programmes and development plans take account of shared priorities. The principles, outlined in this Memorandum, are designed to help ensure Partners make best use of all potential funding streams in order to maximise investment for Hampshire’s infrastructure.
- 1.5 This MoU aims to provide a framework within which Partners can work to minimise the risk of a growing infrastructure deficit in Hampshire. That risk has been heightened due to recent changes in the planning system, coupled with the on-going reductions in central government grant and the disaggregation of funding streams away from local authorities.
- 1.6 Partners have agreed to develop a good practice guide to accompany this document. Development of the guide will be led by Havant Borough Council and will include various worked examples and case studies provided by Partners to illustrate how funding can be maximised through effective joint working and best use of the range

of funding mechanisms. The good practice guide will remain a live document, to which further case studies can be added over time.

1.7 This Memorandum of Understanding sets out the basis upon which Partners will seek to collaborate, in terms of:

- (a) Jointly identifying infrastructure needs and providing evidence where funding gaps exist;
- (b) Early and on-going co-operation to inform plans for future development and infrastructure priorities;
- (c) Agreed principles to guide Partners when determining how funding mechanisms can support key developments and maximise infrastructure delivery;
- (d) Collective approach to engaging other key stakeholders.

The Parties acknowledge the need to keep this document under review and consider, as and when necessary, further flexible arrangements between parties to aid the timely delivery of schemes.

2. SHARED PRINCIPLES

2.1 This Memorandum of Understanding includes a range of principles which partners have agreed to apply to their strategic planning, budget setting and policy implementation. These are summarised below:

- (a) to work in collaboration with other partners to enable, wherever possible, the effective alignment of priorities and ensure future capital programmes and development plans take account of shared priorities. (para.1.4)
- (b) a commitment to developing a comprehensive infrastructure needs assessment for Hampshire that identifies infrastructure needs over the next twenty years, based on existing deficiencies, natural growth and development requirements (para 4.1)
- (c) a commitment to using their best endeavours to release local capital and other resources to meet Hampshire's infrastructure needs. (para.6.1)
- (d) to work with a wide range of stakeholders, including those in the private sector and through Government agencies to secure funding. (para.6.2).

- (e) to position themselves so they are ready to respond to Government initiatives, such as Tax Increment Financing and continue to exploit grant schemes from Government Departments and key agencies such as the Highways Agency and the Homes and Communities Agency. (para.6.2)
- (f) to engage positively with Enterprise M3 LEP and the Solent LEP and develop closer relationships with the local business sector. In doing so, partners aim to better align Hampshire's infrastructure priorities so that robust proposals for greater devolution of funding can be put forward to Government in order to invest in local growth schemes. (para.6.3).
- (g) a commitment to maintaining a collaborative approach towards local transport. (para.5.5).
- (h) to work flexibly with neighbouring authorities, including through bi-lateral arrangements with the two cities of Portsmouth and Southampton, as well as the two National Park Authorities – New Forest and South Downs – and other neighbouring counties. (para.5.5).
- (i) aim to ensure that any modifications to capital programmes to not take place in isolation but always in the context of the shared principles and the consideration of all the alternative funding mechanisms and potential opportunities available (para.5.9).
- (j) co-operate both within and beyond Hampshire, particularly in relation to the Community Infrastructure Levy (para.5.6)
- (k) local planning authority partners to consult with the County Council on their CIL charging schedules and in relation to their CIL Regulation 123 Lists (para.5.7)

2.2 In addition Partners have identified and agreed four principles to specifically help maximise developer funding for infrastructure. These are set out in paragraph 6.4 of this Memorandum of Understanding.

3. STATUS

3.1 The Partners acknowledge that this Memorandum of Understanding is not a legally binding contract but, as outlined above, a statement of intent which provides the foundation blocks for early and on-going co-operation between Partners, including bi-lateral arrangements between neighbouring authorities and between the different tiers of local government in Hampshire.

4. IDENTIFYING INFRASTRUCTURE NEEDS

- 4.1 Hampshire local authorities have a good track record of working together to identify and deliver infrastructure needed to support development. The Partners are committed to developing a comprehensive infrastructure needs statement, that identifies infrastructure needs over the next twenty years based on both existing deficiencies, natural growth and development requirements. The intention is to update the statement annually to reflect changes and progress in delivery. *(insert link when available)*
- 4.2 To assist with this work Hampshire County Council (“the County Council”) has developed an [Interim Strategic Infrastructure Statement \(March 2012\)](#) (Interim Statement). This preliminary assessment focuses on the County Council’s own service areas, based on an understanding of the development strategies set out in the district and boroughs Local Development Frameworks which are currently emerging. The Interim Statement will be expanded to include links to the District Transport Statements and infrastructure needs of other key stakeholders, such as Health, to provide an Infrastructure Statement of Need that will inform future Capital Programmes and Development Plans. It should also help Hampshire’s two Local Enterprise Partnerships (“LEPs”) when prioritising the allocation of funding to infrastructure projects.
- 4.3 The Interim Statement is a dynamic document that will be regularly updated by the County Council in full consultation with Partners to reflect the adoption of Local Plans. It sets out the infrastructure assets for County Council services and explains the basis for determining where new infrastructure is required. Bi-lateral discussions will take place to consider local needs and agree joint priorities.
- 4.4 The Interim Statement includes current funding arrangements, the likelihood of funding being available in the future, and the investment required on a district by district basis. This, combined with evidence contained in the District Statements, illustrates the need for a significant amount of new infrastructure to meet local needs. Therefore robust plans, developed in collaboration with Partners will become increasingly important.
- 4.5 The Interim Statement has started to highlight funding gaps that may be relevant for Community Infrastructure Levy (CIL) funds or other developer contributions. The Partners have agreed to work speedily through a series of bilateral talks and to involve other key stakeholders to build on this Interim Statement and, by providing links to development plans, be ready to provide a more comprehensive picture as to where developer contributions will be required.

5. INFORMING FUTURE DEVELOPMENT PLANS

- 5.1 Historically a significant proportion of the County Council's Capital Programme, particularly for education and transport infrastructure, was funded through Hampshire's developer contributions policy. Developer contributions have been equally important for funding District and Borough Council infrastructure priorities, most notably affordable housing, but also a wide range of community infrastructure such as open space, flood defences, and leisure facilities. Due to the changes in the planning system, the use of Section 106 (S106) developer contributions will be significantly restricted, thus prohibiting the use of the current developer contributions policy. Instead, alternative funding mechanisms, including CIL, will need to be utilised to meet the strategic infrastructure needs set out in the Interim Statement (see para 3.2) and community infrastructure needs identified in the development plans.
- 5.2 The Government has yet to confirm how affordable housing is to be funded in future. Expectations are that it will continue to be funded from S106 developer contributions. In this context the ability to plan, fund and deliver Extra Care Housing for Hampshire's growing elderly population remains crucial and a number of worked examples to address how this might be done are provided in the good practice guide.
- 5.3 In future Hampshire County Council and Hampshire's district and borough councils will each seek to deploy capital and other resources to help fund infrastructure priorities. The County Council's Capital Programme will play a fuller part in infrastructure. This follows a shift within the County Council to taking a more strategic overview in terms of prioritising and funding capital investment needs. In future it will apply a similar approach when considering the needs and priorities for infrastructure investment across the county. Working together, the Partners will not only use traditional forms of capital resource such as S106 and capital receipts but will also make use of all other funding sources and new mechanisms, for example through the LEPs and new Transport Bodies.
- 5.4 As indicated above, the Interim Infrastructure Statement will help inform District and Borough Local Plans. In addition, the County Council will continue to provide Partners with population, economic and housing data to further inform their Local Plans.
- 5.5 Partners are committed to maintaining a collaborative approach towards local transport. District Transport Statements and Town Access Plans are produced and their priorities are reflected in local

development plans. Whilst this MoU endorses county-wide collaboration wherever possible, it recognises that Partners need to work flexibly with different neighbouring authorities. This will include a range of bi-lateral arrangements with the two cities of Portsmouth and Southampton, as well as with the two National Park Authorities - New Forest and South Downs - and other neighbouring counties.

- 5.6 All Partners are fully committed to the duty to co-operate as set out in the Planning Section of the Localism Act (2011). There is a strong desire to co-operate both within and beyond Hampshire, particularly in relation to CIL which will be one significant mechanism for funding infrastructure.
- 5.7 Decisions over the allocation of CIL monies rests with the individual Local Planning Authorities ie the CIL Charging Authorities. However, the Partners recognise the need for co-operation beyond the public examination stage of the CIL Charging Schedule, not least because the contents of their CIL Regulation 123 List will list what will be funded by CIL and, consequently, will determine what can and cannot be funded by S106 monies. Therefore the CIL Charging Authorities who are party to this MoU have agreed to not only consult the County Council on their CIL Charging Schedules but also to engage the County Council as they come to determine which schemes and types of infrastructure will be funded by CIL. Those details will be set out in their CIL Regulation 123 Lists, which will be produced following approval of the Charging Schedules and which will need to be updated as schemes come forward.
- 5.8 Partners recognise that a 'one size fits all' approach is not appropriate given the scale of development and the variety of infrastructure across Hampshire. However there is an understanding that individual priorities will be informed by the shared principles set out in Section 5 of this document. The intention is for Partners to add case studies to the good practice guide.
- 5.9 The Partners recognise that, due to the nature of CIL with its set tariff and viability tests, it is likely that local planning authorities in Hampshire will secure significantly less for off-site infrastructure through CIL than under the old pooling arrangements. Therefore, this collective approach aims to ensure that any modifications to capital programmes and the development of CIL policies do not take place in isolation but always in context of the shared principles and after consideration of all the alternative funding mechanisms and potential opportunities available.

6. MAXIMISING FUNDING FOR INFRASTRUCTURE

- 6.1 Partners are aware that in order to maximise funding for infrastructure all possible funding streams will need to be explored and utilised where appropriate. They are committed to using their best endeavours to release local capital and other resources to meet Hampshire's infrastructure needs.
- 6.2 In addition to developer contributions and CIL, the Partners will need to work with a wide range of stakeholders, including those in the private sector and through Government agencies to secure funding. In addition they will need to position themselves so they are ready to respond to Government initiatives, such as Tax Increment Financing and continue to exploit grant schemes from Government Departments and key agencies such as the Highways Agency and the Homes and Communities Agency.
- 6.3 Partners will also want to consider how Hampshire can maximise its share of locally retained business rates through influencing business and central Government. Partners will want to engage positively with Enterprise M3 LEP and the Solent LEP and develop closer relationships with the local business sector. In doing so, Partners aim to better align Hampshire's infrastructure priorities so that robust proposals for greater devolution of funding can be put forward to Government in order to invest in local growth schemes. Joint working with the LEPs and other sub national Partnerships is vital because, although the Government continues to direct more funding streams to those strategic Partnerships, it is often only with the co-operation and delivery capacity of local government can LEP priorities be met.
- 6.4 In terms of securing developer funding, Partners agree to apply the following principles wherever possible: -
- (i) That S106 developer contributions be sought to fund infrastructure schemes which are dedicated to supporting new large developments, such as a development of 500 or more homes. This would include securing S106 to fund infrastructure that is on site or in the vicinity of the development, for example a new household waste recycling centre or a new school.
 - (ii) That Section 278 of the Highways Act be used by the County Council, as the Highways Authority, to secure funding for transport schemes which are directly related to the impact of the development.

- (iii) That CIL receipts be used to fund infrastructure schemes which will benefit multiple developments for strategic off-site schemes and those that cross district boundaries, for example the Bus Rapid Transit.
- (iv) That a combination of CIL and Section 278 be sought to fund major transport schemes which are unlikely to be able to be fully funded through CIL and where there is a clear requirement for the scheme to be delivered in order to support one or more developments.

Appendix 1 contains a number of worked examples which illustrates how these principles can be applied. *(details to be added to the good practice guide)*

7. REVIEW AND DISPUTE RESOLUTION

- 7.1 The MoU will be subject to periodic review by all the Partners and amended as appropriate.
- 7.2 Partners agree to monitor the application of the principles set out in this MoU and to develop more detailed arrangements as and when required.
- 7.3 By following the principles set out in the document and pursuing a collaborative approach wherever possible it is expected that disputes on how to address infrastructure needs will be avoided or at least kept to an absolute minimum. Where differences arise parties will take all reasonable steps to reach a mutually acceptable resolution. This will involve escalating issues up through the respective organisations in an attempt to secure a resolution. Where differences cannot be resolved the individual sovereignty of the respective organisations will need to be respected.

Updated September 2012