

Chapter 1: Fundamental design choices: proposals

Question	Yes/ No/ Indiff erent	Draft response	RAG Seriousness of change
<p>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:</p> <ul style="list-style-type: none"> - developments of less than 100 square metres (unless this consists of one or more dwellings and does not meet the self-build criteria) – Yes/No/Unsure - Buildings which people do not normally go into - Yes/No/Unsure - Buildings into which peoples 	<p>No</p>	<p>The definition of development has to be drafted carefully to ensure that ancillary uses within large developments are liable for the levy. Arguments about primary and secondary uses need to be avoided to prevent permissions seeking larger plant rooms etc at a reduced value only to be subsequently shifted to more profitable uses.</p> <p>Buildings that people rarely go into might get an exemption if they are public infrastructure, but if they are a server centre or similar created for a commercial purpose they should be liable.</p> <p>Wind turbines might be exempt as infrastructure.</p>	<p>G</p>

<p>go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure</p> <p>- Structures which are not buildings, such as pylons and wind turbines. Yes/No/Unsure</p> <p>Please provide a free text response to explain your answer where necessary.</p>			
<p>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/No/Unsure].</p> <p>Please provide a free text response to explain your answer where necessary.</p>	yes	<p>Highway, public realm infrastructure, training as part of construction and end use, green and bio diversity infrastructure should continue to be common on site requirements of development.</p> <p>There are many kinds of infrastructure, including health-enhancing infrastructure such as green spaces and footpaths, that are integral to the functioning of a site, rather than serving to mitigate the impact of development on the wider area. They can also increase the value of a site. As such, they should be funded as part of new development, outside of IL.</p>	A

		<p>Section 106 and before them section 52 agreements have a long history of successfully delivering on site infrastructure.</p> <p>Section 106 could be largely retained subject to deletion of Section 106(1)(d), which would transfer to IL</p> <p><i>Section 106</i></p> <p><i>(1)Any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation (referred to in this section and sections 106A [E2to 106C] as “ a planning obligation ”), enforceable to the extent mentioned in subsection (3)—</i></p> <p><i>(a)restricting the development or use of the land in any specified way;</i></p> <p><i>(b)requiring specified operations or activities to be carried out in, on, under or over the land;</i></p> <p><i>(c)requiring the land to be used in any specified way; or</i></p>	
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		<p><i>(d)requiring a sum or sums to be paid to the authority [E3(or, in a case where section 2E applies, to the Greater London Authority)] on a specified date or dates or periodically.</i></p>	
<p>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.</p>	c	<p>Southwark has for many years set out a clear set of Section 106 requirements in a series of SPD’s that are periodically reviewed. Developers have had a clear document from which section 106 requirements can be calculated in advance of considering a development proposal.</p> <p>The Section 106 priorities should be set locally because they should relate to and be linked to the development plan, which is by definition a locally determined document. There is an inherent logic to having Integral/s106 infrastructure set locally, because the IL rate will be set locally as well.</p> <p>Decisions for example such as training in construction and post construction will be specific to Southwark, because of the typology of development in Southwark, the existing training infrastructure and the viability within</p>	R

		Southwarks various property markets to support these requirements.	
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary.</p>	Unsure	<p>The demand for Infrastructure funding is extensive. Greater flexibility is generally desirable to ensure local planning authorities can apply funds as most needed and best directed in their locality.</p> <p>Infrastructure funding will suffer if funding for services such as Social Care is further reduced, and Infrastructure funds diverted to plug a gap in such funding.</p> <p>Infrastructure funding could be applied flexibly, subject to the proviso that it is reserved for providing new and additional services and infrastructure, as opposed to maintaining existing provision.</p> <p>The UK generally is suffering from an under provision of infrastructure, it is therefore difficult to see how there could be a surplus of funds for this need at present.</p>	A
<p>Question 5: Should local authorities be expected to prioritise infrastructure and</p>	yes	Infrastructure funding should be split into a strategic authority wide share for example 75% and a locality area 25%. The strategic infrastructure funding should follow	A

<p>affordable housing needs before using the Levy to pay for non-infrastructure items such as local services? [Yes/No/Unsure].</p> <p>Should expectations be set through regulations or policy?</p> <p>Please provide a free text response to explain your answer where necessary.</p>		<p>the policy of the authority, whereas locality funding could be more discretionary in its application.</p> <p>Strategic funding would be applied toward specific items in a methodical manner as determined by the authority. This should be a policy based process to avoid unnecessary restriction and expense of following rigid regulations.</p> <p>It is not anticipated that infrastructure needs will be satisfied to the extent that non infrastructure expenditure can be considered. For example there is unmet demand for affordable, good quality housing, which is important for population health and for tackling health inequalities.</p>	
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary.</p>	No		G

<p>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].</p> <p>Please provide a free text response to explain your answer, using case study examples if possible.</p>	<p>Yes</p>	<p>Thresholds for inkind infrastructure should be set locally. Southwark has a long-established practice of doing this. This gives local accountability for decision making and gives confidence to the Council that development is meeting the priorities and requirements that are set by the Council.</p>	<p>R</p>
<p>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?</p> <p>Please provide a free text response to explain your answer.</p>		<p>Delivery agreement appears to be the same thing as a section 106 agreement. It is accepted that Infrastructure Levy will cover money contributions.</p> <p>A mechanism needs to exist by which a planning authority can incentivise, and penalise development to make on site provision. For example performance on Energy performance should where possible be achieved on site and the interplay between provision and contribution capable of being structured in such a way that the public can have confidence that on site provision is prioritised if that is what the relevant local planning policy requires.</p>	<p>A</p>

		<p>class to create larger HMOs which can pressurise local services and should not be exempt from IL.</p>	
<p>Question 10: Do you have views on the proposal to bring schemes brought forward through permitted development rights within scope of the Levy?</p> <p>Do you have views on an appropriate value threshold for qualifying permitted development?</p> <p>Do you have views on an appropriate Levy rate 'ceiling' for such sites, and how that might be decided?</p>		<p>If a minimum price per square metre is set in an IL schedule and the developed building does not exceed that price then no IL will be payable. Converting an Office block could produce high value residential land for minimal build costs, but where the EUV is high.</p> <p>Developing vacant land to create high value residential has high build costs, but a lower EUV.</p> <p>If no credit is given for existing floorspace, but a general minimum price applied the two types of development can be assessed for IL in the same way, without a different structure having to be created.</p> <p>PD changes of use could be a particular typology with a higher minimum price per square metre. To a large extent though IL</p>	<p>A</p>

		<p>would be an accurate check as to whether there is no demand for the prior use. For example the landlord of a tenanted business property maybe put off changing to residential by IL being payable, whereas if the property is vacant with no likelihood of reletting IL is less of a disincentive because the real EUV is much lower in that circumstance. The Council would therefore favour an approach of residential units being treated equally whether they arise by building or conversion rather than the current distorted position that penalises development over conversion</p>	
<p>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].</p> <p>Please provide a free text response to explain your answer where necessary, using case studies if possible.</p>	<p>No</p>	<p>The existing system seeks to broadly apply a viability framework across an area/locality. That should be maintained. If the land is particularly contaminated it will have little EUV. The property market can price in or deduct particular site specific problems without the need for the levy to seek to replicate this. Site specific issues are always caught be the EUV which will be below average meaning that there is no need to compensate in terms of IL to be charged.</p>	<p>A</p>

		<p>Southwark has had a consistent expectation of requiring the delivery of affordable housing and other mitigations as part of development for a long time. This is well known and signposted meaning that developers will factor this into their calculations when acquiring sites within the borough.</p>	
<p>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?</p> <ul style="list-style-type: none"> • 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 	<p>disagree</p>	<p>Local authorities are used to dealing with site specific viability. Developer and authority negotiate, with in most instances the developer not having their planning permission, which can encourage movement on the developers part within negotiations.</p> <p>IL postpones the negotiation to GDV, which on mixed use developments will be complex. The local authority will have little bargaining position in any negotiation as potential purchasers and occupants will be pressing acceptance of the developers position, having their permission and building in place. There is no guarantee that more will be collected. Risk as to what the final GDV will be coupled by a</p>	<p>R</p>

<p>Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]</p> <ul style="list-style-type: none"> • 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] 		<p>minimum price per square metre rising by inflation each year means that a substantial risk passes to the local authority.</p> <p>Had IL been adopted two years ago the Council would have been much worse off, due to the effects of inflation.</p> <p>CIL allows for different rates to be charged so the difference is marginal. Stepped rates could be introduced for CIL.</p> <p>The ability to levy against a change of use to floorspace is welcome, but this could be done by incremental change to CIL and still be paid with certainty on implementation.</p>	
<p>Question 13: Please provide a free text response to explain your answers above where necessary.</p>		<p>See above</p>	

Chapter 3 – Charging and paying the Levy

Commentary goes here

Question	Yes/ No/ Indifferent	Draft response	RAG Seriousness of change
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary.</p> <p>IC</p>	No	<p>Consequences of a three stage process</p> <p>The two additional stages in calculating the levy seem likely to add to the administrative burden on local planning authorities. Potentially three separate calculations will need to be undertaken, indicating that three times as much officer time may be needed. However, this is not certain due to the differences in the calculation process. The biggest current burden of calculating liabilities, measuring floorplans, is still required under the new system. The dependence of the liability on GIA will always result in this burden, as self-reporting of GIA from developers is consistently inaccurate, meaning LPAs must verify it manually. Additional officers will be costly to LPAs.</p>	R

		<p>Use of GDV and sales price/market valuations</p> <p>Developers could manipulate the use of sales prices to indicate GDV at completion. E.g. they could sell units to a sister company for a reduced price in the first instance who then sell the units on the open market. Market valuations and the use of independent valuations are preferable. A valuation is though only an opinion, unlike a measurement it is not a fact. This is a significant flaw in this proposal. Valuations are not straightforward sales prices are not available for all developments. The public often query viability assessments the same problems will be replicated in respect of valuations. Developers are likely to invest resource in low valuation to drive down the amount of levy due.</p> <p>Taxing GDV (once) places additional pressure on an already pressurised point in the development process i.e. the sale and letting of the completed units. It gives all parties a very limited time to agree on a final valuation and ensure all sums are paid.</p> <p>Minimum threshold/average values/site typologies and zones</p>	
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		<p>Stage 1 comments</p> <p>Phrasing suggests average rates used for calculating the indicative liability will be differentiated by zone (“area”) and use (“typology”) as is the case under CIL. It is agreed that the liability should be registered as a local land charge as early as possible, soon after planning permission is granted, as this is often when developers are most communicative, and will grant the LPA powers to enforce against non-compliant applicants. It is not agreed that developers should be able to submit their own valuation at this point. There are two further stages where the developers are able to engage valuations. This already allows significant room for ‘negotiation’ under a system which is meant to be non-negotiable. Not offering a valuation at this stage will encourage developers to remain in contact with LPAs as they may want a valuation in stage 2 or 3. Remaining in contact with developers is extremely useful for monitoring purposes and therefore systems should encourage this. It seems likely valuations at this early stage would simply be used as a tool to artificially deflate indicative liabilities.</p> <p>Stage 2 comments</p>	
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		<p>The timing of this planning stage is too vague, it will need a specific s106 style trigger to be enforceable. Any stage requiring payment needs extremely specific and monitor-able triggers to be enforceable, such as the commencement trigger under the current CIL system. Too vague to say 'can be initiated by the developer' – the responsibility and timing of requesting this needs to be extremely clear to be enforceable. 'An independent valuation' is also too vague – the independence of the valuation will be curtailed by whomever is funding it. It is agreed that occupation restrictions will provide good controls for LPAs to ensure payments are made – but how will this be enforced? Disagree that the land charge should be removed at this point, this takes away any leverage if subsequent valuations indicate LPAs should be entitled to a share in uplift of GDV in stage 3. Without leverage, it is extremely unlikely LPAs will have the actual opportunity to share in uplift, as is meant to be one of the goals of IL. Developers will probably only re-engage if there is evidence of down-lift.</p> <p>Stage 3 comments</p> <p>Unrealistic to imagine that developers will remain in contact with the LPA once a development is sold, or even post-completion. Who would the</p>	
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		<p>LPA contact in the event units are sold at a higher price than anticipated? There is no motivation for developers to engage with LPAs at this stage if there is a chance it will increase the liability. First mention of penalty fees – these will be necessary for late payment during the previous stage as well. The use of a land charge at this stage for late payment fees would simply impact the new homeowners, rather than the developer which is a significant issue with post-completion processes. The most important issue – the possibility of having to refund an overpayment makes infrastructure planning very difficult. Spending the liability becomes a risky move when it is possible it might have to be refunded. This seems most likely to occur in an economic downturn when it is likely that the LPA will be tight on cash anyway. The possibility of a refund essentially negates the benefit to the authority of having the liability paid earlier on, as an economic downturn could require vast sums to be paid out to developers. This impact of economic downturn on infrastructure funding is a substantial issue with a system that responds to market conditions. While developer profits are impacted, the infrastructure needs of the users of a completed development are NOT, yet the funding available for this could be put into jeopardy.</p>	
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<p>Question 15: Is there an alternative payment mechanism that would be more suitable for the Infrastructure Levy? [Yes/No/Unsure]</p> <p>Please provide a free text response to explain your answer where necessary.</p>	<p>yes</p>	<p>The public want certainty what will be provided when development is permitted IL fails to provide that creating a democratic deficit in comparison to the existing system. Development at present contributes what the decision maker determines, not what a future valuation figure produces. If payment dependent on a future valuation is removed and a sum fixed at decision date as per the current system that retains certainty and democratic accountability.</p> <p>The fact that land values can increase post permission could be captured by indexation of CIL rather than tying it to the permission date, instead to implementation, or if agreed some later date to aid developer cash flow.</p> <p>UK property taxation is very skewed toward taxing the developer rather than the asset owner. It is true that Capital gains tax can be paid on some property. Large amounts of development land are owned off shore and currently do not pay tax when the asset is realised reform of CGT, or transfer of stamp duty to seller rather than purchaser might be a way of realising a greater tax take without further cost pressure on a developer.</p>	<p>R</p>
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<p>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]</p> <p>Please provide a free text response to explain your answer where necessary</p>	<p>No</p>	<p>Agree with the proposed application of a land charge at the commencement of development as it is good for monitoring and enforcement.</p> <p>Disagree with the removal of a local land charge once the provisional Levy payment is made but before final adjustment payment is made is likely to result in developer not paying the remaining IL.</p> <p><i>Definition: "Local land charges are generally financial charges or restrictions on the use of land which are governmental in character and imposed by public authorities under statutory powers, otherwise known as originating authorities. They affect whoever owns the land and so there is an obligation that they are registered, to alert purchasers to their existence. Their existence would not normally be apparent from an inspection of land or from the register of title (or title deeds if the land is still unregistered land)".</i></p> <p>The main reasons of registering on local land charge:</p>	<p>R</p>

		<p>Restrictions on the use of land and to alert the purchasers to their existence.</p> <p>Once local land charge is removed, what kind of enforcement can we impose to recover IL?</p> <p>Penalty surcharges:</p> <p><i>“To protect against any failed payments due at the final adjustment payment stage, Section 204S(10) of the Bill allows for a penalty fine to be charged for unfulfilled IL liabilities. The minimum value for that penalty is higher than the equivalent provision under CIL to deter developers from seeking to avoid paying total liabilities owed.”</i></p> <p>Unlike CIL, this penalty fine will not be treated as part of the liability and registered on local land charge, therefore what will be the consequences of not paying the penalty fine that is in addition to the unfulfilled IL?</p> <p>Enforcement of local land charges:</p>	
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		<p>Enforcement of local land charges will no longer be applicable.</p> <p>Liability order and Charging order:</p> <p>If the liability is not bound with the land, will it be bound with the liable party (person or company)? What if no one has assumed liability? Liability goes to the landowner who might not be the developers but the purchasers?</p> <p>Hard to execute liability orders and charging orders if the liable party is a shell company.</p> <p>Is there a need to alert the purchasers about the unfulfilled IL?</p> <p>In order to sell the property, IL registered on local land charge has to be removed.</p> <p>Since the liability has been removed from local land charge, does the purchaser need to be informed if there's an unfulfilled IL? Will IL fall back on the landowner if the developers fled?</p> <p>Conclusion</p>	
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		<p>Pro: if IL is not bound with land, the liability might not fall on the purchasers.</p> <p>Con: Hard to impossible for collecting authorities to retrieve unpaid IL.</p>	
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary.</p>	disagree	<p>See above.</p> <p>No this is a clear loophole. A developer has no obligation to pay tax until sale, but the purchaser has no liability for that tax. If the developer can dissolve itself as soon as the transaction completes the levy will not be paid and there will be no one to pursue.</p> <p>Many thousands of property transactions are contingent upon the seller giving title clear of any debt I.e. redeeming all of the charges on the land. There is no clear rationale as to why IL should be treated any differently to a partly paid mortgage. The landcharge should remain until the amount due is fully paid. It is nonsensical to treat this any differently to any other charge on land.</p>	R

<p>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].</p> <p>Please explain your answer.</p>	<p>Strongly agree</p>	<p>The present regulations require that the liable payment is made based on receiving a commencement notice with the commencement date. A proportion of developers or liable parties do not submit this form and developments are found to have started by desk based research. Moving the payment to a later stage (after commencement but before first occupation) will not alter this situation and could effectively initiate much more enforcement. Also by leaving the initiation to the developer, could lead to cases where the developer does not inform us and occupation date is unknown or unclear if the site is sold to another developer.</p> <p>The payment of the levy should be on agreed milestones at the outset of development in much the same way as CIL, but with greater flexibility in terms of the ability to stagger payments to assist cash flow. Leaving assessment till further in the process and ultimately dependent on the end value is a recipe for missed payment and or passing the burden to the purchaser of the development.</p> <p>If a developer accepts a requirement to provide social housing, but either fails to secure an RSL,</p>	<p>R</p>
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		<p>or the RSL fails to deliver social housing (We have had a case of this in Southwark) who is liable for the additional IL in those circumstances? It is very unclear, because of a desire to both postpone assessment and guillotine any on going liability. Those desires create an unnecessarily insecure system in comparison to the more secure existing.</p>	
<p>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?</p> <p>Please provide a free text response to explain your where necessary.</p>	<p>yes</p>	<p>There will always be a lead in time to the delivery of infrastructure. If, as is proposed, a council is encouraged to borrow against expected levy income, the risk (and additional cost arising from a longer borrowing period and interest payments over that time) is passed from the developer to the council, thereby possibly increasing the amount a council would have to borrow compared to under the current system.</p> <p>It is proposed – through the new levy - that developer payments will be made at the completion end of the development timetable yet there are infrastructure items that would need to be put in place well before the development is completed. For example, a developer obligation to provide training and certification for trainee bricklayers/ carpenters / plumbers can be</p>	<p>A</p>

		<p>categorised under education and/or economic development infrastructure. Where a developer cannot provide this training, a payment in lieu could be made before the development is implemented (in order for a third party to be able to provide it). These roles need to be provided during the construction and fit out of the development and cannot be done at or after the completion stage. Early payment of the levy would be helpful in ensuring that infrastructure requirements are met at the time they are needed.</p>	
<p>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].</p> <p>Please provide a free text response to explain your answer where necessary.</p>	<p>No</p>	<p>The negotiations that currently occur around viability at permission stage will be transposed to valuation post permission. The decisions taken will not be in a public forum. The outcome will be uncertain. A simpler system would be to index CIL payments up to the date of payment so that they are fixed at the decision stage and the same payment in real terms is made on implementation/part completion/full completion as agreed by developer and planning authority. That gives a clearer more certain and less bureaucratic process than multiple valuation evidence.</p>	<p>R</p>

Chapter 4 – Delivering infrastructure

Commentary goes here

Question	Yes/ No/ Indifferent	Draft response	RAG Seriousness of change
<p>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].</p> <p>Please provide a free text response to explain your answer where necessary.</p>	disagree	IL receipts are not certain. Whilst the ability to borrow against them is welcome they lack sufficient security to be a significant asset that could prudently support significant infrastructure investment.	A
<p>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</p>	Strongly agree	The current system requires payment on or around implementation subject to phasing. This is because it is recognised that the sooner contributions are paid the sooner infrastructure can be commissioned. If all payments are on	A

<p>granting of planning permission? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]</p> <p>Please provide a free text response to explain your answer where necessary.</p>		<p>completion inevitably there will be a significant lag between development that causes pressure on infrastructure and the delivery of that infrastructure to meet the demands of expanded commercial or residential space.</p>	
<p>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.</p>	<p>Yes</p>	<p>CIL is to be retained for the GLA as a source of Infrastructure funding, which is indicative that the system has delivered infrastructure funding. In London in particular where CIL will remain consideration should be given to a reformed or expanded version of CIL that could cover changes of use and have payments indexed not to the date of permission but to the date of payment. There is a strong efficiency in just having one system of infrastructure funding within London. London is the area of the Country where CIL and S106 are most developed and most certain so it would be logical at first to retain the existing system in an enhanced form in London, whilst trialing IL elsewhere.</p>	<p>A</p>
<p>Question 24: To what extent do you agree that the strategic spending plan included in the Infrastructure Delivery</p>	<p>disagree</p>	<p>Local authorities have a capital programme that IL would need to sit within. The local development plan will of course identify</p>	<p>A</p>

<p>Strategy will provide transparency and certainty on how the Levy will be spent? [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree]</p> <p>Please provide a free text response to explain your answer where necessary</p>		<p>infrastructure needed for certain development to take place and be sustainable. The timing and delivery of that infrastructure will vary upon the volume and location of development that takes place.</p> <p>The Council sets a budget each year at a public meeting that includes a capital programme. Each year the Council publishes an infrastructure funding statement. The Councils standing Orders and financial controls require reports to be produced to sanction infrastructure spending all of which are publicly available. Requiring an IDS would duplicate existing work. It might also be unduly restrictive as to how resources are spent slowing the delivery of infrastructure.</p>	
<p>Question 25: In the context of a streamlined document, what information do you consider is required for a local authority to identify infrastructure needs?</p>		<p>In London where CIL remains an Infrastructure Funding Statement is required each year. That document is currently mainly an accounting statement showing which development has funded what infrastructure the regulation surrounding that statement could be altered to require a forward looking requirement. However, it is important that infrastructure funding remain agile and not tied to annual commitments that unnecessarily slow changes in priorities and focus.</p>	<p>A</p>

<p>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</p>	yes	<p>It is important that a local link between development and infrastructure funding is maintained. The Council supports maintaining a local or neighbourhood share of infrastructure levy. Those sums are well suited to a local decision making process.</p> <p>Strategic Infrastructure spending decisions will be set by the Council's Cabinet and will reflect the strategies and priorities set out within documents such as the Local Development Plan and similar documents subject to local consultation. Replicating that process through a formal Infrastructure Delivery Strategy is likely to induce consultation fatigue and unnecessary cost, which should be avoided.</p>	A
<p>Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy should include:</p> <ul style="list-style-type: none"> • Identification of general 'integral' infrastructure requirements • Identification of infrastructure/types of infrastructure that are to be funded by the Levy 		<p>Affordable Housing is likely to remain the biggest infrastructure item for Southwark and most Councils. Affordable Housing Policy is decided as part of the local Development Plan and other planning policy documents. Those documents will also identify other integral infrastructure requirements. There is no need to seek to duplicate planning policy. Infrastructure delivery could be given greater prominence as planning policy develops, but at present the importance of</p>	A

<ul style="list-style-type: none"> • 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 		<p>Affordable Housing, Green infrastructure and steps to address economic inequality are already at the fore front of planning policy in Southwark. The Infrastructure Delivery Strategy is already included within the local development framework and does not need to be repeated.</p>	
<p>Question 28: How can we make sure that infrastructure providers such as county councils can effectively influence the identification of Levy priorities?</p> <ul style="list-style-type: none"> • 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 		<p>In London there is a clear split between GLA and Borough funding. Cooperation between the Council and the GLA is successful in ensuring that major infrastructure projects such as the redevelopment of Elephant and Castle and the associated highway and London Underground improvements are successfully carried out.</p> <p>Guidance should be clear that IL is to fund Council Infrastructure priorities and does not exist to support utilities infrastructure spending.</p>	A

<ul style="list-style-type: none"> • 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 			
<p>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.</p>	strongly	The Local plan will not be a comprehensive list of infrastructure requirements and is not intended as such. It will identify some key projects, but equally importantly will give a guide as to what the priorities for infrastructure should be.	G

Chapter 5 – Delivering affordable housing

Commentary goes here

Question	Yes/ No/ Indifferent	Draft response	RAG Seriousness of change
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary.</p>	disagree	<p>Recent experience in Southwark has shown that a settled and consistent affordable housing policy does deliver compliance with policy requirements, because the Councils requirements are well known and well understood.</p> <p>The right to require monetises the affordable housing element of the development. It can mean that affordable housing is provided on site, but any shortfall in expected value or collection will impact infrastructure funded by financial contributions. Developers will seek revaluation of their IL if RSLs charge more than the amount anticipated rather than seek best price possible from providers reducing competition in the sector.</p>	R

		<p>At present developers are directed by planning policy to provide affordable housing on site. Potentially if they cannot provide such accommodation on site they can make an in lieu payment. Whilst that payment needs to be viable the rate can be set so as to encourage affordable housing provision on site rather than be entirely neutral. Under IL that incentive is likely to go. Whilst affordable housing can be required ultimately there has to be a willing RSL to take it, in some cases and in some markets a willing RSL is not always present meaning some transfer to a payment in lieu is inevitable. This will be more likely to happen under the IL regime, because of the monetising of what is intended to be delivered.</p>	
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary</p>	<p>neutral</p>	<p>Council's do encourage affordable housing and CIL zero rates it, subject to proof of delivery. However, s106 requirements such as training, provision of public space, carbon funding etc are all contributions that would still be sought from such development a completely zero rated levy could lead to such development being unacceptable in planning terms if mitigating contributions could not be sought.</p>	<p>G</p>

<p>Question 32: How much infrastructure is normally delivered alongside registered provider-led schemes in the existing system?</p> <p>Please provide examples.</p>		<p>Southwark Council has developed Council housing itself. On recent schemes the Council has given unilateral undertakings to pay carbon offset funding, play space contributions, archaeology contributions and carry out highway works. The Council has its own training programme, when Housing Associations develop affordable housing they will be expected to provide training or pay a contribution towards training.</p>	G
<p>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].</p> <p>Please provide a free text response to explain your answer where necessary.</p>	No,	<p>The government should not introduce an upper limit on the right to require threshold. The circumstances of each local authority are different, as are the priorities. Local authorities should also be able to respond to community views and housing demand within their area, rather than be constrained by central government. The right to require will be subject to viability testing when the IL is proposed in order to ensure limits do not curb development.</p> <p>Therefore it follows that the right to require should be left to the discretion of the local authority.</p>	A

Chapter 6 – Other areas including Neighbourhood CIL, LPA administration, London Mayoral CIL, Enforcement

Commentary goes here

Question	Yes/ No/ Indifferent	Draft response	RAG Seriousness of change
<p>Question 34: Are you content that the Neighbourhood Share should be retained under the Infrastructure Levy? [Yes/No/Unsure?]</p>	<p>Yes</p>	<p>Although not applicable in Southyward as we have no Parish Councils, in practice this has been adopted as policy by the Council. Local communities will inevitably want to ensure that some infrastructure is provided in proximity to the development that brings increased pressure to the area.</p>	<p>G</p>
<p>Question 35: In calculating the value of the Neighbourhood Share, do you think this should:</p>		<p>Section 106 payments such as in lieu payments for affordable housing and sums to offset carbon are not necessarily spent in the immediate</p>	<p>G</p>

<p>A) reflect the amount secured under CIL in parished areas (noting this will be a smaller proportion of total revenues),</p> <p>B) be higher than this equivalent amount</p> <p>C) be lower than this equivalent amount</p> <p>D) Other (please specify) or</p> <p>E) unsure.</p> <p>Please provide a free text response to explain your answer where necessary</p>		<p>area of the development. A breakdown of IL similar to the existing 75/25 split would be welcome. In unitary authorities exactly what should be local and what the precise split should be should be left to the authority to determine subject to guidance.</p>	
<p>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 in such areas?</p>		<p>Southwark has a system of neighbourhood forums. In common with other London Boroughs a system of localised decision making exists, with each borough selecting what the appropriate boundaries and make up of those sub divisions is. This process is captured in each Councils constitution and is transparent and accountable. London Boroughs should decide themselves on the</p>	<p>G</p>

		strategic/local split to allow flexibility for the preferences of each borough as determined by their elected representatives.	
<p>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.</p> <p>Please provide a free text response to explain your answer where necessary.</p>		<p>The administration of infrastructure planning is a significant undertaking for a local planning authority, in terms of policy, rate setting, collection and management of expenditure. The rate of 5% that exists in the CIL regulations would be reasonable and consistent to take forward for IL. There should be provision to carry over admin fees from year to year because income will be variable as will expenditure on adopting and altering IL.</p>	G
<p>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:</p>	Agree/disagree	<p>Residential annexes: Agree, in the main householders improving their home. Exception should be made for landlords to be charged CIL.</p> <p>Self-build housing: disagree</p>	A

<ul style="list-style-type: none"> residential annexes and extensions; [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree] self-build housing; [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree] <p>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?</p>		<p>In Southwark Self build housing has largely consisted of property professionals arranging their affairs so that they develop a new home that they live in whilst working on their next project. This is a loophole. We do not have first time owners, building their home, because of the cost of land. In central London self build exemption should be removed, because it is a loophole to avoid contributions rather than genuine assistance to those without a home.</p>	
<p>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].</p> <p>Please provide a free text response to explain your answer where necessary.</p>	<p>Yes</p>	<p>A planning authority should be able to charge additional IL for buildings that fail to meet local sustainability standards in terms of energy efficiency, generation and emissions.</p> <p>Infrastructure such as micro generation plant should not be subject to IL on the basis that it is infrastructure.</p>	<p>G</p>
<p>Question 40: To what extent do you agree with our proposed approach to small sites?</p>	<p>Disagree</p>		<p>G</p>

<p>[Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]</p> <p>Please provide a free text response to explain your answer where necessary.</p>		<p>It is accepted that rural LPAs have different needs and different markets to operate within. Southwark would have no objection to different requirements existing outside of urban areas. In Southwark it is now established in the recently approved local plan that all sites need to contribute toward affordable housing. The Council would object to this being undone by top down regulation. The Council acknowledges that different typologies of development have differing levels of viability, but this will vary from borough to borough. If a different approach is to be taken to small sites that should be a decision made at LPA level rather than regulated centrally.</p>	
<p>Question 41: What risks will this approach pose, if any, to SME housebuilders, or to the delivery of affordable housing in rural areas?</p> <p>Please provide a free text response using case study examples where appropriate.</p>		<p>Southwark is not a rural area so would not wish to comment on rural matters. At present in London it is proposed to operate CIL and IL together. That is an increased bureaucratic burden for the Council, but also SMEs having to address two levys rather than one combined.</p>	<p>G</p>

<p>Question 42: Are there any other forms of infrastructure that should be exempted from the Levy through regulations?</p>		No	G
<p>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.</p>	Disagree	<p>Enforcement of the IL system will require the ability to compel someone to stop development, such as through the stop notice system, as well as compel compliance with a development agreement. The right to require integral development must be strongly supported by the ability to obtain a mandatory injunction to ensure that the covenants in the agreement are kept to.</p> <p>The indication that the Levy will cease to be a landcharge upon part payment unnecessarily weakens the ability of planning authorities to enforce the charge. It is a mistake to believe that a charge on land prevents dealings in it. The Levy charge should be prioritised, but like any other charge when paid will be released swiftly enabling the registration of interests not subject to the charge.</p>	R

		<p>The ability to secure a debt as a charge over land should not be the only way of enforcing the charge, but in the majority of cases it is likely to be the most effective.</p> <p><u>Provisional Liability- Land charge, Occupation restriction and Stop Notice</u></p> <p>Local Land charge: The enforcement of local land charge is contingent upon the council's knowledge of the development, making it unenforceable if the development commences unnoticed and is only discovered after units have been sold. Should this be the case, and no one assumes liability, the freeholder cannot be held responsible as the default liable party. Furthermore, there will be no entry on the LLC to prevent the sale of units if the development commenced unnoticed.</p> <p>Occupation restriction: Occupation restrictions cannot be applied if the</p>	
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		<p>council is uninformed, and the development is sold prior to discovery.</p> <p>Stop Notice: Stop Notice cannot be applied if the council is uninformed, and the development is completed prior to discovery.</p> <p>Unlike CIL, which has a long binding effect on the relevant land and liable party, IL has no enforceable anchor for the council to recover unpaid fees. It relies upon the developer to approach the council to avoid the risk of enforcement measures being too late to execute effectively, resulting in unrecoverable CIL.</p> <p><u>Final adjustment payment - Increased Penalty Surcharges</u></p> <p>Surcharges: The lack of clear definition for post-completion and the sale of development poses challenges for the council in determining when to impose surcharges. The sale of individual units during construction</p>	
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		<p>differs from the sale of an entire development, this may affect the trigger point of final adjustment payment.</p> <p>Imposing surcharges alone may not be sufficient enough to incentivize developers to settle the final adjustment payment. Without liability/charging order in place to pinpoint and enforce liable individuals, it may be challenging for the council to recover unpaid IL if the developer absconds.</p> <p>IL will weaken enforcement, by weakening the landcharge system. It will also make it harder to enforce, because completion is harder to monitor than implementation and only provides a short window to collect the sums due. Significant non payment of IL is likely</p>	
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Chapter 7 – Introducing the Levy

Commentary goes here

Question	Yes/ No/ Indifferent	Draft response	RAG Seriousness of change
<p>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]</p> <p>Please provide a free text response to explain your answer where necessary</p>	yes	<p>A transitional approach is sensible as it is a significant change to the process of capturing uplift in development value that is proposed. Modeling indicates that areas outside of London are most likely to benefit. As London will be keeping the CIL system in part there is potential for a tandem approach of introducing IL and reforming CIL within London to test to see which is most effective.</p>	A
<p>Question 45: Do you have any views on the potential impact of</p>		<p>Planning contributions are intended to mitigate the impacts of development and in part enable the wider</p>	R

<p>the proposals raised in this consultation on people with protected characteristics as defined in section 149 of the Equality Act 2010? [Yes/No/Unsure].</p> <p>Please provide a free text response to explain your answer where necessary.</p>		<p>community to share the benefit from development. In Southwark there is substantial demand for affordable housing particularly from communities with protected characteristics. Similarly the impact of climate change will be more severe on poorer communities less able to adapt than more affluent communities. CIL and s106 contributions are used to improve inequality within the borough.</p> <p>The intention of IL is to generate more contributions. However, government modeling shows that in London this is less likely to occur. If IL had been adopted two years ago, recent levels of inflation and limited property price increases would have meant that IL would have collected much less than anticipated.</p> <p>IL represents a considerable risk to London's poorer communities and those with protected characteristics, because it jeopardises the gains in capturing the increase in land value that local councils within London have achieved in recent years. London Councils have adopted CIL and broadly have consistent section 106 policies. It is acknowledged that viability discussions still take place, but generally these are marginal rather than more fundamental discussions as to whether any contribution can be made at all. Outside of London it is acknowledged that CIL has not been universally adopted and the case for setting up IL may be much stronger. Southwark and other London Councils</p>	
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		request that consideration is given to the way land use value is currently successfully captured rather than seek to impose one policy for every area of the country without regard to regional difference and the resulting equality impacts.	
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Any other LNBS comments

Any other comments we want to make

Comment	RAG Seriousness of change
An overall comment: It should be ensured that consideration of population health and health inequalities informs use and collection of the proposed IL.	