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BY EMAIL ONLY

9 June 2023

Dear Sir/Madam,

Re: Technical Consultation on the Infrastructure Levy

Kent County Council would like to thank you for the opportunity to comment on the Technical Consultation on the Infrastructure Levy.

The County Council has long supported the Government's growth ambitions and is in support of the principles underpinning the proposals put forward, which seek to ensure that local authorities receive a fairer share of developer contributions to fund much needed infrastructure. However, the Authority would like to take the opportunity to express its strong concerns on some of the details relating to these proposed changes, as they are likely to leave communities with less funding available towards infrastructure, fewer affordable homes, and mixed and balanced developments.

Please find the County Council concerns below:

Firstly, the County Council is extremely concerned that the role of county councils, in two tier areas, is absent from this consultation. As a key strategic infrastructure provider, with considerable statutory and non-statutory roles in the delivery of infrastructure to support high quality, plan-led growth, this absence is of particular concern. If these proposed changes are implemented, the County Council will have very little influence over the setting of the Infrastructure Levy and spending priorities, which is unacceptable.

The County Council works extensively with the district and borough authorities across Kent to ensure that necessary infrastructure is planned, funded and delivered in a timely manner to support sustainable communities. However, since the introduction of the Community Infrastructure Levy (CIL), the ability to secure the necessary funding to support infrastructure in the areas which have adopted the CIL has already been severely diminished due to the

difficulties in the County Council being able to obtain an appropriate proportion of the money raised. This is largely due to the governance arrangements set up by each Charging Authority but partly due to the current number of exemptions. This shortcoming of the CIL is not addressed through the proposals for the new Levy.

The County Council is therefore seeking a greater role in the Infrastructure Levy including in the setting of rates, mandatory involvement in the Infrastructure Delivery Strategy preparation, prioritising the infrastructure needs and, collecting and spending the Levy. If the proposals are introduced as per the Technical Consultation, the County Council is concerned that the new system will result in insufficient funding for strategic infrastructure with the Levy directed to local projects and services which do not meaningfully mitigate the impact of development.

Secondly, the County Council would like to make it clear that the later timing of the Levy payments is a considerable concern. It is recognised that there needs to be a balance in the cash flow to ensure that developments remain viable, however, infrastructure must be delivered in a timely manner at the point of need. As most strategic infrastructure is needed to be provided upfront or at the early stages of a development, the assessment of the liability and payment of the Levy at the latter stages creates a considerable risk and concern to the County Council as the Levy income is not secure. All infrastructure providers need to be confident that the necessary funding for delivering infrastructure has been secured, not simply borrowed at risk. The details regarding the inherent risk of borrowing and the availability of borrowing also appears to lack considerable detail. Both local authorities and county councils are concerned as to who takes on the responsibility for this risk of borrowing and how it can be made more secure.

Thirdly, County Council is concerned with the proposal to change the definition of infrastructure. As proposed, the Levy will be able to be spent across additional projects, which cannot reasonably all be funded by the Levy. This includes affordable housing, the operation and maintenance of infrastructure and also expensive infrastructure such as water treatment. This means that the demands on developer contributions could become excessive with less money available for strategic infrastructure, which is what the Levy is proposed to fund. The proposals put forward could therefore result in less funding for much needed infrastructure for our communities.

The County Council has provided evidence to show that section 106 agreements can still be used effectively to create bespoke infrastructure solutions to support the delivery of high-quality, plan-led growth. The County Council notes that the Technical Consultation refers to section 106 agreements as being unreliable. It is, however, the County Council's experience over a number of years that legal agreements can help secure funding towards much needed infrastructure and it is therefore of significant concern that their future use could be restricted.

The County Council is also concerned with the level of resources that will be made available to alter the current system. This includes facilitating Infrastructure Delivery Plans, assessing viability statements, introducing the test and learn approach, and the preparation and attendance at public enquiries as these will all take a significant amount of time and resources for all parties. The County Council would therefore ask that proper training and funding is provided to support these new processes if they are brought forward.

Overall, the County Council welcomes the aims of the proposal of the Infrastructure Levy but as its response sets out, there are also considerable concerns which will all have significant implications for the County Council in its role as a key strategic infrastructure provider and on the level of funding available.

The County Council is keen to work with the Government to ensure that reforms to developer contributions are effective in securing the necessary infrastructure to support growth. If you require any further information or clarification on any matters raised above, please do not hesitate to contact me.

Yours sincerely



Simon Jones

Corporate Director of Growth, Environment and Transport

Encs:

Appendix A: Kent County Council response to Technical Consultation on the Infrastructure Levy.

Technical consultation on the Infrastructure Levy

Kent County Council response

9 June 2023

Response to the Introduction

Kent County Council (hereafter referred to as the County Council) notes and welcomes the support for an infrastructure first approach to development, laid out in the consultation, which ensures that communities have access to the infrastructure required to support sustainable growth.

The County Council strongly requests a better recognition of its role and responsibilities around infrastructure and developer contributions, which are of noticeable absence in this consultation. County councils across the country, including Kent, have a statutory duty to provide infrastructure and services for their residents and communities and therefore have considerable levels of evidence and experience in delivering infrastructure. It is therefore requested that their role is recognised and taken into account when drafting the new legislation. It is also requested that all local authorities are required to engage with county councils in all infrastructure and strategic planning matters surrounding the Levy as their input is vital. Rather than just encouraging engagement, their input should be mandatory.

As a County Council, there is currently no predictability or certainty created through the CIL. The difficulties in securing necessary funding for county council infrastructure and services through this mechanism are well documented in Infrastructure Funding Statements across the country. Although there are some uncertainties around section 106 agreements due to elements of negotiation, the County Council would note that this can create successful and bespoke solutions to complex sites, which should be retained and recognised.

The County Council does support the proposal for developer contributions to be responsive to market conditions as proposed in the consultation. This will ensure that best value can be secured from development to allow for the delivery of high quality, resilient infrastructure to support sustainable communities. However, responding to market conditions means that values may also go down, and this risk and impact on infrastructure provision should be recognised, especially as the consultation suggests that local authorities should take out loans to cover the delay in the income of the Levy.

The County Council notes the reference to wider government funding for infrastructure and affordable housing, but it should also be recognised that wider government funding is required to unlock highly constrained sites to allow them to be brought forward for development and is not available for every site. The County Council is concerned that the inclusion of affordable housing and other facilities and services, within the classification of 'infrastructure' could result in the loss of funding towards other types of infrastructure and the correct balance therefore needs to be met. Currently, for CIL charging authorities, affordable housing is normally lost to ensure that CIL can be paid. It is important to ensure that this balance is not reversed. This concern is supported in the 'Improving Infrastructure Funding and Delivery' report by the County Councils' Network which raises similar concerns.

<file:///C:/Users/PambeC01/Downloads/Improving-infrastructure-funding-and-delivery-report-for-County-Councils-Network-by-Pragmatix-Advisory.pdf>

The County Council would note that land must only come forward for development where infrastructure is available, or new infrastructure can be secured and delivered to support the development. The timing of the payment of the Levy is a considerable issue for the County Council; this matter is covered within the response to the questions below but it should be noted that in order to deliver infrastructure in a timely manner, funding must be secured (not just borrowed). There is considerable risk to county councils and other local authorities borrowing against the Levy, only for subsequent market changes reducing the ability to raise the necessary funding.

Overall, it is important to note that, even within the introductory statements, the lack of consideration of two-tier authorities and the role that county councils play as a key infrastructure and service provider, is a significant omission in this consultation.

Chapter 1 – Fundamental design choices

General commentary

The County Council is extremely concerned to note that section 106 agreements are being further restricted. Section 106 agreements have been the only funding mechanism that provides sufficient (or close to sufficient) funding to facilitate the acquisition of land and the delivery of infrastructure and services such as schools and roads for the County Council. It is not considered that section 106 agreements are the only factor which causes delays in the issuing of planning consents. The elements of uncertainty and negotiation, mentioned in the Consultation as currently delaying applications, will remain with the Infrastructure Levy through the negotiation of integral and levy funded infrastructure and with the Gross Development Value GDV.

A reduction in the availability of section 106 agreements will significantly compromise the ability of the County Council to react to the Pupil Product that will emerge from new housing development. New schools can be the most expensive form of infrastructure required to accommodate the needs of new communities. For example, a development of 1,500 new homes will require 2 Forms of entry (2FE) of primary provision and 2FE of secondary provision. A new 2FE primary school is currently costing in the region of £10.5m to deliver, with 2FE of secondary provision costing a similar amount. These costs increase year on year. The Levy must be able to secure this level of contribution for it to be effective in the delivery of education infrastructure and this is just one example.

This current definition of infrastructure includes the provision of additional school places to accommodate the need generated by new development. This may be by expanding existing schools or building new schools. Most schools in Kent that could be expanded have now been expanded, meaning that new schools are now the usual infrastructure requirement. There appears to be little awareness of the costs of new school infrastructure, and the separation of District (as the proposed charging authority) from the County (as holder of the statutory duty) exacerbates this. There should be a statutory requirement for district councils to consult with county councils to get an up-to-date picture of what is needed, what is

forecast, the options available and most importantly the latest cost estimates for new provision.

The County Council welcomes the ability of the new Infrastructure Levy to support land transfers and for any funding to be spent strategically, not necessarily on the development site.

The County Council is supportive of the recognition of Biodiversity Net Gain as integral infrastructure given its importance in the delivery of environmentally sustainable development.

The County Council would also suggest that funding the maintenance of infrastructure must also be addressed. The proper maintenance of infrastructure must be adequately funded to ensure continued benefits of the infrastructure for the community. It is important however that the correct balance is met, to ensure that in allowing local authorities to be flexible that it does not result in less money for infrastructure provision, particularly if local authorities use this flexibility to direct the Levy to prop up their own services.

The County Council notes that there is little or no mention of encouraging and ensuring modal shift away from current transport modes and toward sustainable transport, and this is also not reflected in the priorities of infrastructure.

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) – Yes/No/Unsure

Yes

Buildings which people do not normally go into - Yes/No/Unsure

Yes

Buildings into which peoples go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery - Yes/No/Unsure

Yes

Structures which are not buildings, such as pylons and wind turbines. Yes/No/Unsure

Yes

Please provide a free text response to explain your answer where necessary:

The County Council considers that where development is likely to have an impact on infrastructure and services, be it local or strategic, then it should be considered as liable development to be charged under the Infrastructure Levy. Development that has a small footprint, and which people do not normally go in, will not significantly impact upon infrastructure and therefore the County Council agrees with the thresholds proposed. The only issue that should be considered is if several developments with a small footprint occur,

on the same site or immediate area, then the cumulative impact could be more significant and impact on infrastructure needs. The County Council therefore asks that this be considered.

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]. Please provide a free text response to explain your answer where necessary.

The County Council considers that infrastructure incorporated within the design of the site is essential for place-making and can only be provided by the developer. Developers should continue to provide this in addition to 'Levy-funded' contributions. However, information as to how this would work around the viability of the schemes needs to be better understood. Currently, when CIL is paid, it often means that other discretionary features of the application such as affordable housing, design and landscaping suffer due to viability issues. It is important to ensure that including infrastructure into the design of the scheme, as well as paying the Levy does not make sites unviable. In addition, it could also mean that if they pay all the on-site infrastructure and also provide affordable housing, this would reduce the amount left for strategic infrastructure which is essential for sustainable growth. This would be unacceptable.

Specific mitigation measures such as highways section 278 works and education land and infrastructure, will always be a necessity. The Technical Consultation refers to water and wastewater treatment and Biodiversity Net Gain which would also be required to be planned at a strategic level and secured through planning applications for larger strategic sites. Other transport infrastructure for rail or water including bridges (or more specifically their approaches) may also require integral land. The County Council would also ask that the distinction between infrastructure which should be provided on site and that funded by the Levy is made clear. This will ensure that some of the strategic infrastructure which may need to be provided on the site is not lost between the two definitions and risks not being provided. A clear distinction will also help to reduce disputes.

The County Council, as Minerals and Waste Planning Authority, and as Waste Disposal Authority, notes that waste infrastructure has not been considered within this section. The County Council would stress the importance for this infrastructure to be included, within any proposed definition, given its local and strategic nature and vital importance to the delivery of sustainable communities.

As Local Highway Authority, the County Council also notes site access and internal highway network (regardless of whether this is to be adopted by the Local Highway Authority) should be provided as an intrinsic part of the development itself. Hence, all risks on delivery costs should sit with the developer as part of the inherent risks of developing a site. The County Council would therefore urge that it must be clarified which types of infrastructure will be considered integral to avoid any ambiguity in this definition.

The County Council would also request clarity as to whether the ability to use the Levy to buy land will also extend to any remediation which may be required to ensure land is suitable for development.

The County Council supports paragraph 1.23, which states that Levy receipts can be passed on to third parties such as county councils. This is because county councils are a key infrastructure and service provider with statutory functions, providing local and strategic infrastructure and supporting the delivery and maintenance of new and existing communities. More detail must be provided, and a greater role given to county councils in the Levy, stating clearly defined routes for county councils to secure necessary funding.

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.

The County Council would support a combination of approaches for setting the distinction between integral and Levy-funded infrastructure.

The County Council would raise concerns with principles and typologies being set locally only. Where two-tier authorities are operating, this option is considered unworkable, as it would rely on local authorities (District and Borough Councils) to establish the list of items to be included on the integral list. The County of Kent has twelve Local Planning Authorities operating different systems and governance when dealing with developer contributions. Implementing this system under the Infrastructure Levy would only serve to exacerbate the issues currently experienced with CIL funding, with low percentages of CIL being passed on to county councils. Among the 12 LPAs, Kent has five CIL authorities, all operating under differing schedules and governance. All five are unable to provide the required levels of mitigation required for statutory infrastructure and services (including education and highways). Influence on decision making for infrastructure management must be dealt with by the statutory undertakers and/or at a higher strategic "county" level whether devolved or otherwise. At present, due to the County Council's role in developer contributions, it can be challenging to ensure that infrastructure that is provided by the County is given the same level of priority compared with that provided by the district. Both district and county infrastructure must be planned for and delivered in collaboration for sustainable and resilient communities to thrive.

The County Council considers that a set of principles may be a more effective way of helping to define 'integral' infrastructure, but this would require careful consideration. It would also expect that the definitions should be tested, and this could occur through the proposed 'test and learn approach.' As acknowledged in paragraph 1.27, the County Council agrees that there will always be areas of ambiguity. For example, a development generating 200 pupil places would need to provide integral education infrastructure to support the growth directly from the site. However, this development may also need to support wider growth in the area and would also need a wider 'Levy' income to support that growth, to make it sustainable.

Local Plans should be used to identify where 'integral' infrastructure is going to be needed for a site. The County Council would recommend that section 106 agreements are retained for all strategic sites requiring integral infrastructure so that their impacts and costs can be identified at that time. Where strategic sites are unable to provide specific land areas

required for infrastructure, then that land and its associated acquisition costs could also be identified at the Local Plan stage and fed into a Levy rate.

In terms of highway works, the County Council would agree that 'integral' should be all on-site infrastructure, or that it is required in the immediate vicinity of the site to enable the development to be acceptable in planning terms. The principle of individuality is key for highway infrastructure; this would typically be set within the findings of a Transport Assessment showing where the impact of that specific development needs to be addressed in the area around the development. It is agreed, by the County Council as the highway authority, that 'Levy-funded infrastructure' should be off-site infrastructure to which the development is required to make a contribution to offset its impact on the wider transport network as part of a wider impact from cumulative local development.

The County Council would therefore support a combined approach where frameworks are established which can feed into policy and nationally set lists. There could also be an element of local considerations to account for the different infrastructure needs across the country.

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.

The County Council agrees that local authorities should have the flexibility to use some of their Levy funding for non-infrastructure items, such as service provision and maintenance, however as mentioned earlier, it is important that the correct balance is met, allowing local authorities to be flexible but ensuring that this does not lead to less Levy being available for infrastructure provision.

Delivery models for the County Council, have evolved over time and in particular post the Covid-19 pandemic. This has meant that services which would have previously been delivered through specific 'bricks and mortar' infrastructure such as care homes, community learning or youth centres, are now often provided through combinations of reduced fixed infrastructure and mobile "outreach" or digital services. In order for these services to grow, to meet the needs of new development, revenue funding is required to provide for increased staff time and service provision. There also remains an initial growth-related cost to Local Authorities in providing these services and therefore amendments to allow for revenue costs to be covered under these proposals are welcomed.

In respect of transportation, this could allow for the pump priming of a bus service or cycle hire scheme that has the long-term potential to create modal shift and become commercially viable in its own right.

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.

The County Council considers that as each area is unique, priorities should be decided at a local level and in two-tier areas, this should include both district and county council priorities. The legislation should be amended to make input from both levels compulsory. This will enable there to be a full understanding of the infrastructure needs, the housing need and also the service needs across an area at both local and strategic levels.

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.

The County Council would also recommend that Special Protection Areas, protected habitats, community archaeology, cultural heritage, and the digital and creative industries would also benefit from Levy funds.

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.

The County Council would question how the consultation is defining "large and complex sites". There should be recognition that sites which are not considered to be large can still be complex and benefit from section 106 obligations.

It also considered that any threshold could be problematic in areas unable to deliver sites of significant size due to genuine planning constraints. The high threshold as proposed would not affect a single planning application within the County Council's administrative area. The higher threshold proposed would, in the County Council's opinion, effectively only be relevant to a very small proportion of local planning authorities leaving other areas entirely dependent on a Levy. This would be unworkable for Kent. Any threshold would need to relate to a Local Plan and the sites within it, which are capable of providing in-kind contributions and land necessary for vital infrastructure. A national threshold is incapable of being compatible with local decision-making processes or local site availability.

For example, when dealing with primary education alone, it is likely that a site of 750 dwellings would necessitate the provision of 1FE of school infrastructure. It would be likely that in-kind provision would be needed for a site of that size or even smaller, if existing infrastructure is unable to be expanded in the local area.

A preferred approach would be to use local authority discretion and that it be directly linked to Local Plans. County councils and statutory bodies must also have meaningful influence in the delivery and location of infrastructure.

The County Council would continue to support the retention of section 106 planning obligations for strategic sites to ensure that the highly bespoke infrastructure and service needs which can arise can be accommodated to support new communities as they grow.

The County Council would also support the need for a Levy backstop amount to ensure that best value is secured for the delivery of necessary infrastructure.

It should be noted that under the current system, the County Council is a lot more successful in securing funds through Section 106s. The Infrastructure Funding Statement (IFS) ([Infrastructure Funding Statement 2021-2022 - Kent County Council](#)) shows that the County Council secured over £51 million through Section 106 agreements towards strategic infrastructure but only just over £390,000 through the Community Infrastructure Levy. Therefore, as well as a need to backstop the levy, the County Council also considers that there is a need to ensure that this new method would secure at least the same amount of infrastructure and service provision and value through the Levy as it would currently through Section 106 Agreements.

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 County Council would recommend that further information is provided on Delivery Agreements because at present the consultation provides insufficient detail for the Authority to understand the proposal, provide a full opinion and understand the full impact that this would have.

The County Council would also recommend that the Government considers the complexities of site delivery, especially brownfield sites which can sometimes be highly constrained.

Furthermore, the necessity for the funding and delivery of strategic scale infrastructure must also be considered and given due attention when considering infrastructure to support new and existing communities.

It should also be noted that legal agreements are a much more secure mechanism for securing matters such as land or money. The consultation appears to support the use of conditions over legal agreements which will weaken the system and allow developers to apply to remove conditions after the development has been granted permission. The County Council would suggest that enforcement powers for breach of conditions should be made stronger ensure that conditions are adhered to, if this process is to go ahead.

Chapter 2: Levy rates and minimum thresholds

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.

New dwellings and other development delivered through permitted development will create demand on local infrastructure and services and as such, the Levy should capture the value uplift associated with the development. Permitted development tends to be more speculative

and local and strategic infrastructure will require additional investment to mitigate the cumulative impacts of such development, when it is implemented in an area.

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?

The County Council considers that the Levy should be paid where there will be a demand on infrastructure and services. The County Council's Developer Contribution Guide <https://letstalk.kent.gov.uk/developer-contributions-guide> sets a minimum threshold of 56sqm of development, above which, a contribution should be sought. This is seen as a reasonable amount by which a development would start to impact on the County Council's infrastructure and services. This would also seem a reasonable threshold for the Levy.

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.

Whilst it is accepted that brownfield sites can suffer from viability constraints, some will be in prime, high value, central or waterside locations, and would also still require a similar amount of supporting infrastructure and services as other development sites. The County Council would raise the question as to how infrastructure and service mitigation will be secured for sites if they have additional offsets because the demand is still going to be created and this must be appropriately mitigated.

Local Authorities and communities will need to be supported to be able to properly assess or challenge developer instructed site viability appraisals, especially as they could be used to justify a reduction in the amount of Levy paid. Prior to any introduction, the County Council would welcome Government support on viability adjudication for the Planning Inspectorate to provide an independent view and also confidence that communities are receiving the appropriate amount of infrastructure.

The County Council considers that all Local Plans must include review mechanism policies for sites where there are viability issues. If an appropriate policy is not in a Local Plan, national planning policy must require reviews to recapture, where market conditions allow, any lost value through either the proposed "Delivery" or section 106 agreements.

The current system is not robust in this area. This has resulted in planning consent being granted for sites, that are not policy compliant in terms of infrastructure and service provision, with no opportunity to capture any future uplift if the existing Local Plan does not contain a viability review policy.

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 County Council would question how the evidence of the final sale GDV will be verified for a scheme and how this verification process will be resourced given it will be a resource intensive exercise.

- The use of different Levy rates and minimum thresholds on different development uses and typologies [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

The County Council agrees with this. Although there would need to be consultation and agreement on the rates and thresholds to ensure they are appropriate to the local area, and local and strategic infrastructure needs.

- Ability for local authorities to set 'stepped' Levy rates [Strongly Agree/Agree/Neutral/Disagree/Strongly Disagree/Unsure]

The County Council disagrees with this, because there is the potential that this could create a surge of smaller developments with developers wishing to take advantage of the lower rates. This would mean that development would not reflect maximum value that could be created by the development and thus create a situation where there would be insufficient funding available for necessary infrastructure and services.

- 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]

The County Council considers that all development which generates infrastructure and service demands should be subject to the Levy.

In respect of paragraphs 2.37-2.39, the County Council welcomes the proposal that the Levy charging schedule and rates will be subject to consultation. The County Council would request that there is a clear role for county councils, and a requirement for local authorities to meaningfully engage with upper tier authorities in two tier areas ahead of public consultation.

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

It is not clear which "existing system" this consultation is referring to in respect of Question 12. If it is CIL only, then the County Council has significant reservations that the Infrastructure Levy will collect more, as local authorities currently control where the strategic

CIL money is spent and very little is directed to county councils. The proposed consultation still intends to give the majority of the control of the spending to local authorities. Should it do so, there are concerns that the County Council will continue to not receive the level of contributions required to delivery statutory services and infrastructure, as already experienced (and evidenced in response to Question 35) through the CIL. As an absolute minimum, KCC expects the Levy to deliver the equivalent of the s106/CIL system combined.

Charging a Levy on the final sale GDV of a scheme is reliant on robust and honest assessments presumably being supplied by the developer. There would be a corresponding level of additional resources required for Local Authorities to test the accuracy of every development. Local Authorities will need to be suitably resourced to manage this process.

The inclusion of different Levy rates and minimum thresholds on different development uses and typologies would assist in ensuring that at least a minimum level of mitigation is secured.

Chapter 3 – Charging and paying the Levy

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.

The County Council understands that within the current proposals, county councils will have limited involvement in the calculation of the Levy and therefore wishes to raise the following concerns with the process outlined in Table 3 in order to help the Government achieve their aims and ensure that the maximum amount of the Levy is paid:

- When an application is submitted as an outline application, the County Council would question whether an application in that form will provide the necessary information for an indicative liability calculation to be carried out. It is suggested that this be considered when looking at effective ways of paying the levy.
- The County Council would request that additional resources will need to be provided to local authorities to provide an independent valuation to verify the GDV data.
- The time between the completion of the development, when it is sold or the first occupation is different for every application, especially if the site is complex to deliver. They will therefore need to be clearly defined. The County Council considers that there is a need to provide additional detail around when payment from a developer will be liable.
- The County Council supports the payment of contributions as early as possible to enable infrastructure to be provided as development is built out. However, it does understand that there are concerns that requiring payment at first occupation could render more development unviable. Some developments may require expensive up-front or early “integral” infrastructure, particularly for highways and education, making earlier Levy payments unviable. The County Council would ask that this is taken into consideration.
- Whilst it is understood that the Government considers that loans could be a solution to this, as the levy charge is not known and there could be a considerable delay in the income from the Levy, which could create a number of financial risks for district and county councils. The County Council therefore do not support this solution unless

guarantees are given that councils will not be exposed to increased risks on top of the existing exposure to borrowing debt costs from the changes to supported borrowing. The risks could include the following:

- The Levy income may not come in at the amount set, particularly where the Levy will be paid to the local authorities who determine where receipts are allocated.
 - There is not enough security that the loan payments will be met and by whom, leaving infrastructure providers at great risk and reluctant to take out a loan.
 - There is also a considerable risk to taking out a loan, with either the local authority or infrastructure provider needing to cover the interest costs. It is not clear how these payments are expected to be paid.
 - This would lead to less infrastructure being provided upfront when it is most needed. It would be much simpler if all infrastructure is paid off directly by the Levy.
 - Under the previous supported borrowing regime councils took out loans to fund approved capital infrastructure projects on the understanding that the financing costs (interest and debt repayment) would be covered in future grant settlements. Subsequent changes to the local government funding arrangements meant that the future funding was not secured leaving councils exposed to long term debt costs with inadequate funding. As outlined in our response this proposal to forward fund levy proceeds from borrowing exacerbates this existing exposure from previous borrowing decisions.
 - The authority is already at risk of having additional revenue costs from forward funding developer contributions and any additional risk is unsustainable
- The proposal is for the Levy payment to be developer initiated; it is considered that this is unlikely to deliver timely payments to local authorities for infrastructure.
 - The final adjustment payment is welcomed as it will allow best value from the Levy. However, it creates considerable risk for local authorities and any infrastructure providers that have a proportion of the Levy passed to them. The potential for monies being returned to developers as part of the final adjustment payment will be a significant financial challenge. Local authorities and infrastructure providers need confidence in the ability of the Levy to secure the necessary funding to deliver infrastructure. Timings of the final adjustment payment are also unclear; whether this is planned at 'post-completion or once the development is sold'. The County Council has concerns as to how this would be enforceable, should the development owe additional Levy.
 - The proposal for local authorities to borrow against the Levy lacks considerable detail as to how this will work and how key infrastructure providers such as the County Council will then be able to secure this borrowed money. It should also be clarified as to whether it will simply be district authorities who will be able to borrow against the levy, or whether County Councils will also be required to. It should be noted that many county councils already borrow significant sums through prudential borrowing to meet shortfalls in grant funding and capital receipts. Due to the revenue implications associated with such borrowing, limits need to be set to ensure the Council remains in a viable and sustainable financial position. This proposal will

simply place more pressure on already stretched revenue budgets. The process of securing monies through borrowing is also resource intensive and this resource should be addressed and secured.

- It is the County Council's view that the matter of interest of the proposed borrowing has not been addressed. It is unclear as to how will this interest be paid. Currently it indicates that it will reduce the amount of the Levy payment going on infrastructure, which is not acceptable.
- In Kent, there have been instances where developers have halted their building just before a funding trigger is reached. This has had the effect of the County Council having to accommodate potentially large cohorts of primary, secondary and special education needs children, without any financial means to do so. The County Council questions how the risk of this will be managed.
- The County Council would also disagree with the focus of the process on the developer's cash flow as infrastructure must be provided to support a development. If the necessary infrastructure cannot be viably funded and delivered, then the development should not go ahead. The financial pressures of local authorities, including county councils, must also be recognised.

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.

The County Council would suggest that, as a minimum, the Levy should be paid 50% on commencement of the development or each phase; and the remaining 50% at 25% occupation of the development or phase.

Additional Levy could be captured once the development is completed but there are concerns that this would never materialise or be resource intensive to enforce. The County Council is concerned that many developments would never entirely "complete" to avoid payment of the GDV gains. In part, this could be addressed by relating triggers to completed phases of development.

There may be alternatives to categorise infrastructure depending on local demand and urgency of mitigation; with Category A infrastructure largely captured through an earlier paid Main Levy (Education, Highways, Environment, Open Space and Play, Water and Energy); and Category B Infrastructure (Affordable Housing, Waste, Culture & Neighbourhood improvements) being largely captured through later payments and uplift.

The County Council would however question the categories given to some of the infrastructure such as waste, which is considered to be fundamental infrastructure to support good growth. The Council would therefore ask that this is reconsidered.

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

The County Council agrees with this. However, it notes that challenges may be faced in the final adjustment payment where developers are no longer trading. The County Council questions how any final adjustment payment would be enforced and how this will be resourced, so that final adjustments can be provided to the Local Authorities and appropriately distributed to key infrastructure providers.

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.

The County Council disagrees and questions what the penalty is for not paying the Levy. Once a development is completed and sold, many developers may not feel obliged to pay the Levy. Within s106 agreements, the ability to include negative clauses preventing further occupations provides a strong incentive to pay. Equivalent mechanisms need to be built into the Levy.

New homeowners are at risk of inheriting a land charge liability. Similar instances have occurred previously where an existing Public Right of Way (PRoW) has been left with new homeowners to resolve a land charge when the PRoW diversion should have been completed as part of a development.

The County Council recommends that incentives could be explored to prevent the avoidance of Levy payments.

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.

The County Council strongly agrees with this, as it will be essential to ensure that infrastructure mitigation is provided at the point of need. There must be a balance between securing best value and having necessary funding secured for the delivery of infrastructure in a timely manner.

Where off-site infrastructure requires funding and completion ahead of development, then funding should be made available, for example, works to increase school places before a development is sold and occupied or junction capacity improvements ahead of occupation. This is especially true if the development is significant in size but not such that the impact on the off-site infrastructure is specific to that development alone i.e. it is a large proportion of the cumulative development impact and therefore triggers a tipping point that requires Levy-funded infrastructure delivery.

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.

Paragraph 3.15 states *'the provisional Levy liability will be paid prior to a scheme or phase of a scheme being completed. It is envisioned that this will occur at the discretion of the developer.'*

The Levy should not be paid on completion of development, as this will increase the risk of non-payment. The County Council also strongly disagrees that it should be at the discretion of the developer; it should be based on the need of the development.

For education, highways, waste and water management/treatment, there will be circumstances that require Levy funded off-site mitigation to be in place at earlier stages. This may be to prevent a highway safety matter, environmental damage or ensure that there is suitable local education or waste management provision. Any Levy system must be able to be suitably flexible to adapt to the changing levels of demand and availability of essential infrastructure. Later payments would be hugely damaging and potentially unsafe for communities already suffering from infrastructure deficits.

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.

The County Council agrees but would note that Local Authorities must be properly resourced to secure their own independent valuation to ensure appropriate verification processes are carried out. Furthermore, there must be necessary resource and mechanisms to enforce the Levy. Both will require specialist skills and expertise to ensure that the Levy is effective in securing necessary funding for infrastructure to support sustainable development.

Chapter 4 – Delivering 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.

The County Council is supportive of the priority for the planning and timely delivery of infrastructure. The County Council is also supportive of a strategic approach to how infrastructure is planned for and funded and would support closer working between districts and county councils (as key infrastructure providers). The County Council is pleased to see the recognition of the difficulties in planning for infrastructure for large, unallocated sites.

The statement “delivered ahead of when the need for it becomes too acute” is noted as an infrastructure first approach and is advocated by the County Council because it is necessary to ensure communities are well supported, sustainable and resilient. Infrastructure first is

necessary to avoid issues with new developments. For example, in Kent, walking and cycling routes to a new primary school have not been provided in time by the developer. The County Council had to fund improvements to routes that the developer did not provide. New residents were rightly requesting the routes which had been used by developers as part of the selling point of the dwellings but had not been implemented.

As currently drafted, the Local Planning Authorities will be the receiving authorities. In two-tier authorities, it is the county councils who bear the cost and risk of delivering large infrastructure projects such as schools, roads and waste disposal facilities. This raises a question whether county councils will be able to borrow against a fund for which they have no guarantee of receiving the Levy for. Taking on financial risks in an already difficult financial environment, places county councils in a difficult situation.

Within section 106 agreements, the County Council is declining to forward fund the provision of infrastructure unless appropriate surety is provided, and the cost of borrowing is met by the developer through a legal agreement. No such provisions are included in the Infrastructure Levy proposals. County councils should not be required to take on the burden of risk to forward fund infrastructure required to support new developments.

Paragraph 4.7 states 'integral' infrastructure will be delivered by developers, with Delivery Agreements used to specify timing of delivery in the 'core Levy routeway'. Whilst the Department of Education encourages direct delivery of schools by developers and the County Council has, on occasion, permitted this, it has strong reservations about this proposal. The provision of school infrastructure is a specialist build, and not an add-on to housing delivery. As the Statutory Commissioner of Education places, the County Council is required to provide places in a timely manner. Direct delivery of school infrastructure will only be considered on a case-by-case basis to ensure that all necessary warranties, build specification and technical expertise etc. are provided.

The approach of 'Infrastructure First' being delivered by Local Authorities carrying the risk of borrowing is strongly rejected. Upper tier authorities (as drafted) carry the highest cost of infrastructure risks with the least level of control or influence over Levy rates and receipts.

The County Council would also raise the continued concerns with the risk of borrowing, as local authority and county council budgets are already stretched. Therefore, it should be questioned whether the borrowing facilities offered will be utilised given the interest payable and the associated risks. The County Council also requests further details on how the passing of funds from local authorities to infrastructure providers will be facilitated. The County Council would strongly recommend consideration of how this approach will work for two-tier areas, as this consultation appears to have not considered this structure. This is very concerning as this structure is in existence across the majority of the country.

The County Council also notes that recent rapid inflation means that the delivery of infrastructure is costing more than originally forecasted. The County Council would raise a question as to where the risk of this sits in this scenario.

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.

The County Council considers where there is an infrastructure need, this must be appropriately planned for, funded and delivered in a timely manner. The County Council would therefore agree with the statement in this question. However, the County Council would raise reservations as to how this will be afforded on large strategic sites, where upfront infrastructure costs are significant to ensure the development is sustainable.

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.

The County Council would urge more consideration is given to the role of county councils, given their role as a key infrastructure and service provider.

There should be consideration for a rolling infrastructure fund (RIF) for upper tier or unitary authorities to enable early provision of infrastructure. Upon payment of the Levy, this is then paid back to a RIF for further investment.

The County Council would also recommend that there must be clear guidance and resources provided to Local Authorities to ensure the effective preparation and implementation of Infrastructure Delivery Strategies.

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.

The County Council strongly disagrees with the statement in this question.

The County Council has little confidence that the strategic spending plan will provide certainty of spend. Instead of planned spend according to priorities established within the existing Infrastructure Delivery Plan (IDP) system, experience of CIL is that Local Planning Authorities use it as their own fund, with Elected Members choosing which projects to apply funds to. County Councils across England have received a small percentage of what has been required to mitigate the needs of new development. The bidding systems currently in operation across some CIL authorities within Kent are further evidence that this type of approach does not secure necessary funding for infrastructure with less than 7% of the total CIL income for Kent being allocated towards strategic Infrastructure.

In addition, county councils are required to provide extensive information to ensure compliance with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as

amended). Receiving authorities in two-tier authorities (i.e. borough, district and city councils) are able to receive the CIL directly and not have to provide the same justification.

There is also increasing evidence that the CIL is not providing sufficient levels of funding to cover strategic infrastructure at the right time. This raises a concern as under the new Levy system, the protection of the neighbourhood share and the addition of affordable housing being covered by the Levy, will mean that less of the Levy will be available for strategic infrastructure.

It is important to note that any Infrastructure Levy is only workable where the accountable Planning Authority is also the main provider of infrastructure such as unitaries or where upper tier authorities have devolved powers that include ownership and accountability for an overarching Infrastructure Delivery Strategy funded and influenced by individual Local Plans. There will otherwise always be a disconnect between planning and delivery of infrastructure.

In respect of transparency, there is a need for all parties to be transparent. This includes local authorities, the County Council and developers to ensure that development is brought forward in a sustainable and viable manner.

The County Council also notes that the Infrastructure Delivery Statement will be subject to an examination. The County Council notes this will be resource intensive and time consuming to complete and would question the impact of the delay that this will have on the delivery of necessary infrastructure. It is suggested that the right balance needs to be met between being accountable and also being timely.

The County Council considers that engagement between the County Council and local authorities will be essential to ensure funding towards county council services are secured through the Infrastructure Delivery Strategy. It is also important to ensure that there is a clear link between the priorities laid out in the Infrastructure Delivery Strategy and what is actually provided on the ground.

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

In two-tier areas, Local Planning Authorities must be required to work in conjunction with county councils (as statutory infrastructure and service providers) to draw up and prioritise requirements within the Infrastructure Delivery Strategy. Evidence of this engagement must also be demonstratable to prove that due consideration has been given to the requirement for county council infrastructure and services.

In particular, the timings of infrastructure requirements are critical as well as understanding the lead-in times for infrastructure. This is particularly important for infrastructure which may take time to properly plan for and deliver sustainably.

The County Council would request a clear role in the Infrastructure Delivery Strategy preparation process as there is expertise within county councils which could be of considerable benefit. For example, the County Council produces an Education Commissioning Plan for all areas of Kent that outlines current provision as well as future forecasts. The Commissioning Plan, however, is a snapshot and cannot provide the

expertise and knowledge of the current provisioning status. That is the role of the Area Education Officers (the County Council's Education provision planners), who should be involved in the drafting of the Infrastructure Delivery Strategies.

Local Authorities must be required to liaise with county councils and other infrastructure providers, to ensure that the Delivery Strategy is fit for purpose and takes account of cross boundary issues in which the County Council may be able to provide considerable advice given its strategic role.

The Strategy must be flexible enough to adapt to prevailing market conditions, both for the developer and to service providers. The County Council requests confirmation on the time period to which an Infrastructure Delivery Strategy will be subject to, after which it must be reviewed, and whether such a review requires the input of county councils.

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.

The County Council agrees that communities must be given clear opportunity to engage in drafting. However, it is vital that key infrastructure and service providers, including the county councils, are also engaged as they will have a better understanding of the needs of the statutory functions that they are responsible for. This is also one of the keyways in which county councils can be involved in the prioritisation and influencing of infrastructure provision across the country.

Naturally, local communities wish to see their areas benefit as much as possible. However, county council service provision is set according to individual service strategies and evidence of how those services and infrastructure currently function. This may involve strategic, cross boundary, provision of a facility or a service, rather than delivery within a local community, which may then be at odds with local expectations.

Community engagement needs to be carefully managed so that there are realistic expectations around where new infrastructure can be provided and at what cost.

Question 27: Do you agree that a spending plan in the Infrastructure Delivery Strategy (IDS) 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

The County Council considers that this is a sensible approach. To consider the integral infrastructure and identify what will be funded by the Levy through the IDS and what the priorities are, are all essential requirements. More information as to how affordable housing is approached would be helpful to ensure that it does not dominate all other forms of infrastructure.

In particular, when looking at the potential discretionary elements to the neighbourhood portion, the proportion that is available is up to 25% (where a Neighbourhood Plan is in place). This is considered to be too high, especially as the current CIL income is not sufficient to meet the needs of essential infrastructure in the County. A quarter of the CIL income for an area is set aside for local projects, this should only be the case provided strategic infrastructure is covered. Whilst local community should receive some direct benefit from the Levy, the rate should be lowered and aligned with growth-related community needs, evidenced and confirmed in the IDS to ensure that the contributions are responsibly put towards infrastructure to support resilient and sustainable communities.

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

The County Council supports this and would ask that including statutory providers in identifying Levy priorities is mandatory.

- Support to county councils on working collaboratively with the local authority as to what can be funded through the Levy.

The County Council supports this.

- Use of other evidence documents when preparing the Infrastructure Delivery Strategy, such as Local Transport Plans and Local Education Strategies

The County Council supports this.

Guidance to local authorities on prioritisation of funding

The County Council supports this.

- Implementation of statutory timescales for infrastructure providers to respond to local authority requests

The County Council supports this, providing the timescales are reasonably set.

- Other – please explain your answer

Where engagement has not been sufficient, the County Council considers there should be means for infrastructure and service providers to raise a concern to an independent body.

The County Council considers that lower tier authorities must be required, by legislation, to work collaboratively with county councils to establish Levy priorities.

The County Council would also request requirements for lower tier authorities to use other evidence to prepare the Infrastructure Delivery Strategy, including Local Transport Plans, Local Education Strategies and County Developer Contributions Guides.

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.

The County Council considers that an overall strategic infrastructure requirement can be identified at Local Plan stage and set out in an Infrastructure Delivery Plan. However, this needs to be reviewed on a regular basis to ensure that the priorities keep pace with the delivery of housing and other socio-demographic changes. The timing for production of Local Plans is proposed to be reduced so there will need to be a phase of initial investment and available time to establish the baseline evidence for each Local Plan.

The County Council seeks to proactively engage with local authorities at all stages of the Local Plan to ensure that infrastructure requirements are embedded into policies. This also ensures that all stakeholders are aware of what is required to support residential growth at the earliest stages and throughout the progress of the Local Plan.

The County Council would also urge the importance for strategic infrastructure to be identified at all Local Plan stages given the scale, cost and complexity around its delivery.

The County Council would also recommend considering when infrastructure is needed to react to unallocated development when it comes forward, especially when this speculative development is on a larger scale. This can alter cumulative infrastructure requirements for an area which must be accounted for. One solution to this would be to treat the IDS as a live document that can be updated with the agreement of the local authority and infrastructure providers. There needs to be flexibility within the IDS and implementation to reflect market changes and changes in circumstances such as a site not coming forward.

Chapter 5 – Delivering affordable housing

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.

The County Council recognises the challenges between balancing infrastructure provision and affordable housing. The County Council considers that it should be carefully considered to ensure that affordable housing does not become the prominent infrastructure provision to the detriment of other strategic infrastructure.

The County Council would also recommend consideration of whether the redirection of Levy towards other infrastructure would adequately support strategic infrastructure.

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

Affordable housing still creates a demand on infrastructure and service provision, which must be funded. The County Council questions how infrastructure and services needed to support these developments be secured without adequate funding. Conversely, without discounts being offered, it may make the delivery of affordable housing unviable. This therefore needs to be carefully considered.

Whilst affordable housing providers may argue that affordable housing residents do not increase demands upon services as they are already resident in the area, there is no evidence that backfill of previous accommodation does not occur. It is the view of the County Council that affordable housing does result in an increased population. There is also anecdotal evidence that occupation levels within affordable housing dwellings is higher due to the requirement for full occupancy and due to the overwhelming need. This increased population/growth places requirements on county councils' infrastructure and services such as education, highways and waste disposal which needs to be mitigated.

Should a zero or discounted rate be applied for affordable housing, then alternative funding mechanisms need to be put in place to meet the cost of necessary infrastructure.

The County Council welcomes that integral infrastructure will still be required to be delivered by the developer, however, what this constitutes requires clear definition.

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

The County Council does not provide discounts on developer contributions for affordable housing schemes. Where viability is raised, this is generally dealt with on a case-by-case basis with the district planning authority where priorities for infrastructure are established. If affordable housing is accepted as infrastructure, this could result in the provision of affordable housing or it could be education or highways, depending on the priorities for each area and local authority.

It is also considered that the proposed Infrastructure Delivery Strategies could help with understanding priorities if drafted and understood correctly, and by working in collaboration with county councils.

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.

The County Council would refer to its District / Borough Authorities to provide a response to this question due to the County Council's minimal role in respect of affordable housing.

Chapter 6 – Other areas

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

It is the County Council's view that the Neighbourhood Share should be retained, but reduced under the Infrastructure Levy. It is also suggested that the neighbourhood portion of the share should be spent where the need is demonstrated. This would ensure that it is planned and would make specific improvements to the area. Further consideration should be given to county councils' share in a two-tier authority. County councils have a statutory responsibility to provide and deliver infrastructure and services, and therefore require the necessary funding to support and facilitate this delivery.

The consultation demonstrates a lack of strategic consideration around infrastructure delivery, instead focusing on the delivery of local infrastructure. Strategic infrastructure must be delivered alongside local infrastructure to fully support development. Currently it is dealt with separately, which does not provide a holistic approach.

The County Council recommends that as part of the test and learn approach there could be a consideration of a county council share being provided in two-tier areas. This would mean that, as with the neighbourhood share, the county councils would receive a percentage of the CIL income for the area. This would ensure that neighbourhood shares are not disproportionate compared with the level of funding for county councils who deliver local and strategic infrastructure. It would then be possible to compare those county councils which have a share of the Levy and those that don't and therefore where county councils can benefit the community the most.

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

The County Council believes the Neighbourhood portion should be lower than the rate currently set, especially considering other infrastructure and service providers who require funding to deliver local and strategic projects. At present, these providers do not get a guaranteed share. Spending of the Levy from the Neighbourhood share should be evidenced to clearly demonstrate improvements to the area.

Whilst it is accepted that neighbourhoods should see some direct benefit from development in the locality, the percentage is too high. An upper level of 5% would be more appropriate.

Looking at the Infrastructure Funding Statements across Kent currently, between 15% - 25% of the CIL income has been given to parish and town councils, consistently, with only 6.31% given to Kent County Council across the five authorities with CIL. This shows that an unfair proportion is awarded to local projects, which exceeds the amount given to strategic projects to support growth. The County Council would ask that this balance is addressed in this new system.

The County Council is aware, through discussions with districts and boroughs across Kent and through looking at their CIL annual reports each year, that some parish and town councils do not own a lot of land or buildings and find it difficult to spend the current CIL portion given to them. There are therefore large amounts of money being retained at the end of the reported year:

For example, for the District of Sevenoaks in Kent, the County Council looked at a small sample of the 27 parish and town councils. The first five that officers looked at revealed the following:

<u>Parish</u>	<u>Amount retained:</u>
Chevening	£57 844
Chiddingstone	£35 000
Sevenoaks	£56 000
Swanley	£24 000
Leigh	£14 517
Total:	£187, 361

This shows that over £187, 000 of the CIL income is unspent. This represents only 5 out of 27 parishes. In addition to this, a number of parish and town councils do not know where to spend their money and they are not required to do any work or provide evidence to justify the spend. This money could be used for identified strategic infrastructure projects.

It is therefore considered important that when looking to draft an Infrastructure Delivery Strategy local authorities should also consider the priorities for the neighbourhood portions and if there are no local infrastructure needs or no identified priorities that the neighbourhood portion is directed towards identified infrastructure priorities, where there is an evidenced need.

The County Council would also strongly propose that as well as a neighbourhood share, there should be consideration of a share which goes straight to county councils for local and strategic infrastructure and service provision. This share would need to be flexible to be able to meet the differing demands of districts in terms of infrastructure provision. The County Council would be keen to discuss this proposal further.

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?

The County Council would suggest that funds are given directly to infrastructure and service providers.

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.

The County Council would refer to it's District/Borough Authorities to provide a response to this question due to their role and understanding in the administration at present. The County Council would, however, state that there is an administration cost to providing strategic infrastructure and services and therefore a percentage should also be aside for the administration costs incurred by the respective providers.

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 countrywide exemptions. How strongly do you agree the following should be retained:

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

Agree

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

Agree

- 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?

The County Council considers that where development will generate a demand on infrastructure, then then the development should be liable for Levy contributions.

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.

The County Council considers that sustainable technologies should be encouraged alongside the delivery of key local and strategic infrastructure to deliver sustainable and resilient communities. The County Council would request that "sustainable technologies" is clearly defined to understand what this might include to understand the context in relation to what is already required by regulations and standards, both nationally and locally.

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.

The County Council agrees with the approach to small sites. However, where infrastructure and service demand is created, Levy contributions should always be sought. Multiple small sites can have a cumulative impact on infrastructure demand. A reduced rate could be explored but a contribution should still be sought to ensure that necessary infrastructure can be funded and delivered.

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.

The County Council has no comments on this question.

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

The County Council considers that where development will generate a demand on infrastructure and services, then the development should be liable for Levy contributions and exemptions should not be allowed.

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.

The County Council disagrees with the statement in this question.

If the Levy is payable on completion of a development, then stop notices will be ineffective as the developer has nothing to lose by not paying. It may be possible that Levy is valued on the value secured at 50% occupations and paid in full at that time with a final adjustment made at 100% occupations.

The County Council also considers that Local Authorities must be provided with adequate resource and training to be able to effectively ensure enforcement.

Chapter 7 – Introducing the Levy

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

The County Council agrees with this approach as it is considered necessary to prevent issues and understand what will occur when the Levy is rolled out to all authorities before it becomes nationwide and mandatory. It is also important to be able to understand all the issues and mitigate against any potential loss of income in the long term. However, a long timescale is proposed and the County Council would raise a question whether this will result in uncertainties around development, especially larger scale strategic development which will be delivered over a longer time scale.

The County Council strongly urges the Government to provide county councils with a clear role in the test and learn approach and would ask that a set proportion of the Levy is directed towards county councils. Kent County Council are happy to be involved in this process. It would then be possible to directly compare the amount of strategic infrastructure that is given to infrastructure providers (upper tier authorities) depending on whether a set amount is set aside or not.

Feedback must be presented on a regular basis as to how the test and learn approach is fairing to ensure all those involved in development are aware of how the Levy is progressing.

Currently, the implementation of the CIL and the governance of CIL has resulted in a patchwork of arrangements across the 12 Districts and Boroughs across Kent. There are several different arrangements for collecting and spending under the existing regime and it takes time for the County Council to understand each procedure, liaise with each authority and also to apply or bid for the CIL funds. Which is frequently unsuccessful. It is therefore suggested that the test and learn approach should ensure a much simpler approach, where the governance is more consistent across each authority. The County Council would request that there be a much more consistent approach.

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? [Yes/No/Unsure]. Please provide a free text response to explain your answer where necessary.

The County Council considers that providers of infrastructure and services must ensure that they carry out their own Equalities Impact Assessment when delivering projects and spending the Levy.