Item 7

North York Moors National Park Authority

16 December 2013

Community Infrastructure Levy

1. **Purpose of the Report**

1.1 Outline the background to the Community Infrastructure Levy
1.2 To inform Members of the findings of the Viability Study
1.3 Outline the options for taking forward CIL in the National Park and seek Members views on the way forward.

2. Introduction

2.1 The Community Infrastructure Levy (CIL) is intended to be a transparent mechanism for securing money to fund the infrastructure required to support new development through a standard charge levied on new development according to its size and type. In England, National Park Authorities and the Broads Authority all have the power to charge the levy and are ‘charging authorities’. A number of Local Planning Authorities have now adopted a CIL charging schedule although so far the only National Park Authority that is introducing CIL is the South Downs.

2.2 Members considered a report in January which gave a general background to CIL and the Viability Study with a presentation after June Planning Committee from the consultant undertaking the work. The Viability Study is now complete and a summary of the findings is attached as **Appendix 1** to this report. The full report is available on request from the Policy Team and can also be viewed on the Authority’s web site in the Planning/Policies and Plans/Community Infrastructure Levy section.

2.3 CIL is a complex and technical process and the Regulations governing it have been subject to a number of amendments since its inception in 2010. Since members last considered CIL in January, revised Regulations have been published in April and October. The main significant change is in relation to Neighbourhood Funding (see para 3.7 below).

2.4 The Authority must now decide in the light of the evidence whether the introduction of CIL is something that it wants to pursue. The position of this National Park is more complex because of the circumstances around Helmsley and the joint work that has been undertaken on the Helmsley Plan which is accommodating growth identified in the Ryedale Local Plan Strategy.

2.5 This report reminds Members of the background to CIL, summarises the key findings of the Viability Study and presents options so that an overall decision ‘in principle’ whether to progress CIL in the National Park can be reached.

3. Background to CIL

3.1 Currently section 106 of the Town and Country Planning Act (1990) enables legal agreements to be attached to planning permissions to secure on and off site contributions toward works needed as a result of new development. Section 106 agreements have not generally been used in this National Park for this purpose as the level of new development is low and has not triggered the need for significant new infrastructure. Where immediate ‘on site’ improvements have been required such as highway improvements, they have generally been secured by making them a condition of planning permission.

3.2 The Community Infrastructure Levy is a new levy that local authorities can choose to charge on new developments in their area. The money can be used to fund a wide range of infrastructure that is needed as a result of new development. CIL is considered to be more transparent, faster and robust than the current system of section 106 agreements which are generally negotiated on a 'case by case' basis and can generate considerable debate and delays in the processing of applications. Levy rates are set in consultation with local communities and developers and are usually expressed as a rate of pounds per square metre. CIL enables contributions from relatively small developments to be collected towards a cumulative 'pot' which could amount to a more significant amount of money that would not have been possible to secure in the past. The levy is intended to fill the funding gaps that remain once existing sources of funding have been taken into account.

3.3 CIL is calculated on the basis of net additional increase in floorspace and is expressed as a charge 'per square metre'. A development is liable to pay CIL if the gross internal area of the new development permitted is over 100 sq m or of any size if the proposal is for a new dwelling. The chargeable amount is calculated by multiplying the CIL rate per square metre with the net floorspace being created. The gross floorspace of any building being demolished on the site is deducted from the chargeable amount.

3.4 Developers are notified of the charge with a liability notice issued with the planning permission. The levy is payable on commencement of development though arrangements can be made to pay in instalments in circumstances set out by the charging authority.

3.5 There is a discretionary power to grant relief from liability to pay the levy in exceptional circumstances, subject to a notification process by the charging authority. Affordable housing and development for charitable purposes are exempt. Section 106 agreements will remain the mechanism for securing affordable housing and the Authority has considerable experience of using these for the exception sites that have been approved over the last few years. The National Park Authority could pass money from the levy to other bodies to help deliver infrastructure within the National Park.

3.6 The level of the charge varies according to the type and size of proposed new development and can also be varied by locality to reflect different economic conditions across an area. A Viability Study for the National Park has now been completed by consultants. The other element of developing the CIL involves an assessment of the infrastructure requirements of the area and the charging authority is responsible for deciding what infrastructure is needed in any area. The Viability Study makes some initial recommendations about infrastructure needs for the Park but further work will be needed on this to enable the Authority to adopt CIL.

3.7 From April 2013 15% of the Community Infrastructure Levy revenue collected by the charging authority will now be passed directly to those Parish and Town Councils where development has taken place. In areas where CIL is collected, the amount of CIL passed on is capped at £100 per existing council tax dwelling per year. This 'neighbourhood funding pot' will be passed to a Parish Council and can be spent on a wider range of things than general levy funds including:

- the provision, improvement, replacement, operation or maintenance of infrastructure; or
- anything else that is concerned with addressing the demands that development places on an area.

3.8 Where a Neighbourhood Plan has been adopted, the funding is increased to 25 % of levy receipts for development in the parish and is not subject to an annual limit. In communities without a Parish Council the Local Authority will retain the Levy receipts but should engage with the communities where development has taken place and agree with them how best to spend the neighbourhood funding.

4. Findings of the Viability Study

4.1 Overall, three types of development have been found to be sufficiently viable in the National Park to justify a levy. These are private market houses, supermarkets and retail warehouses although the latter is very unlikely to take place within the Park. One of the difficulties in doing the study for the National Park has been finding enough evidence of sales values due to the low volume of new build and transactions. Some data particularly relating to house sales has had to be supplemented by including sales information from settlements immediately adjacent to the National Park boundary.

4.2 Other types of development have not been found to be sufficiently viable to support a levy including industrial/employment development. Therefore there will be no scope to charge a levy the development coming forward at Whitby Business Park to meet some of the infrastructure costs and the Area Action Plan includes a mechanism through section 106 to deliver the infrastructure needs to support new development at the Business Park.

4.3 The Proposed preliminary draft charging schedule recommended in the Viability Study is as follows:

Use	Proposed CIL charge (per sq. m)
Private market houses	£70*
Supermarkets**	£135
Retail Warehouses**	£70
Public/Institutional Facilities as follows: education, health, community and emergency services	£0
All other chargeable development	£0

4.4 The CIL Regulations require that a charging authority strikes an ‘appropriate balance’ between securing additional investment for infrastructure which supports development and the potential economic effect of imposing the levy upon development. If the CIL rate is above the ‘appropriate level’ there will be less development than there could be because CIL will make too many developments unviable. Conversely, if the charging rates are set too low development will also be less because it will be constrained by insufficient infrastructure capacity. Although these considerations are less directly relevant in the National Park where the delivery of the Core Strategy does not rely on bringing forward specific development sites, it is nevertheless important to find the right balance in order that the introduction of the levy does not stifle new development.

4.5 Guidance on CIL states that ‘there is no requirement for a proposed rate to exactly mirror the evidence…….there is room for some pragmatism’ and there is therefore scope for the charging schedule to be amended at the discretion of the Authority. It is also important that the CIL rate is not set at the ‘ceiling’ of viability but at a level which makes it robust over time as circumstances change. A cautious approach is also important because values and costs vary widely between individual sites and over time in ways that cannot be fully reflected in the viability calculations in the evidence base.

4.6 The approach to CIL in the National Park is complicated by Helmsley and the need to ensure a consistent approach between the two charging authorities. Ryedale District Council has recently consulted on its Preliminary Draft Charging Schedule which sets a rate of £70 per square metre for residential development.

5. The Infrastructure Delivery Plan and Funding Gap Assessment

5.1 The CIL guidance states that revenue from the levy must be spent on the infrastructure needed to support the development of the area. Infrastructure is not exhaustively defined in the Planning Act 2008. Instead it is defined to ‘include’ a number of items - ‘transport, flood defences, schools, hospitals and other health and social care facilities’. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre existing deficiencies unless the repair of failing infrastructure is needed to support development.

5.2 Government Guidance on CIL states that a charging authority must identify the total cost of infrastructure that it wants to fund from the levy based on the infrastructure planning that underpins its Development Plan. It must also consider what other funding sources are available, for example Government funding for infrastructure or anticipated section 106 agreements. The justification for having CIL is based on having a funding ‘gap’ after all other known sources of funding have been taken into account.

5.3 The Authority’s Core Strategy document envisaged that development at both Helmsley and Whitby Business Park would be progressed through their respective Development Plans. There were no specific allocations for housing or employment development in the Core Strategy and an Infrastructure Delivery Plan was not prepared. At the January meeting of the Authority some initial ideas for what could be included in an Infrastructure Delivery Plan were outlined to members including green infrastructure, habitat connectivity, sub regional infrastructure such as roads and schools and the specific requirements known for Helmsley and Whitby Business Park.

5.4 The consultants have advised on an appropriate approach to developing an Infrastructure Plan in a National Park context and initial work on an Infrastructure Delivery Plan for the National Park has been done alongside the Viability Study. The Viability Study contains an initial Infrastructure Funding Gap Assessment with items for green infrastructure based on the aims of the National Park Management Plan and the known requirements for Helmsley and Whitby Business Park. This is reproduced in **Appendix 2** to this report. Further work will be needed however to finalise an Infrastructure Delivery Plan and confirm a funding ‘gap’.

6. Relationship with Section 106 Agreements

6.1 The CIL regime does not replace s106 arrangements completely. When the levy is introduced, the contributions sought through section 106 agreements must be scaled back to items that are directly related to the development requirements of a specific site to mitigate the impact of a proposal. So for example, the provision of open space directly related to a housing site would continue to be sought through a section 106 agreement. The provision of affordable housing would also be agreed and funded through s106 irrespective of whether CIL is adopted by the Authority or not.

6.2 From April 2015 the number of individual s106 contributions that can be 'pooled' to fund an item of infrastructure will be limited to five. It is important to note that the scope of s106 contributions has been scaled back since April 2010 and must meet the following tests:

- necessary to make the development acceptable in planning terms
- directly related to the development
- fairly and reasonably related in scale and kind to the development

6.3 Regulation 123 of the CIL Regulations 2010 restricts the use of s106 agreements for infrastructure that will be funded in whole or in part by CIL to ensure that there is no 'double charging'. A charging authority is expected to publish a list of infrastructure that it intends to benefit from CIL funding on its web site – known as the Regulation 123 List. This is now examined alongside the Preliminary Draft Charging Schedule. The List can be reviewed annually but must be done in consultation with the local community. Charging authorities must publish an annual report by 31st December each year, which will include details of how much CIL monies have been collected and spent, and how much remains to be spent.

7. Options for Taking Forward CIL in the National Park

7.1 The Viability Study includes an estimate of the income that could be generated from CIL towards infrastructure in the National Park, based on the scale of development of each type likely to come forward for the remainder of the Core Strategy plan period from 2013 to 2026. The estimates are shown in the table in **Appendix 3** of this report.

7.2 The majority of receipts are likely to be from new housing and this figure is based on the completions anticipated in the Core Strategy of 26 per annum. The revenue generated by CIL would be directly proportionate to the actual level of new build residential completions in the National Park (excluding affordable) which over the last 10 years has varied from 4 in 2011/12 to 22 in 2006/07. However, the allocation of sites in the Helmsley Plan provides more certainty in delivery and completions from sites within the National Park in Helmsley over the next 13 years could be around 10 per annum.

7.3 There is provision within the CIL Regulations to use up to 5 per cent of the CIL receipts towards the administration and set up expenses related to the operation and management of the levy. It is recommended in the Viability Study that CIL receipts are only used for revenue spending in highly exceptional circumstances and that the primary intent of CIL is to deliver a pot of funding for capital investment in essential infrastructure.

7.4 A decision on whether to progress with CIL in the National Park now needs to be taken. The low level of development in the Park means that the Authority must consider carefully the benefits and disadvantages of progressing with CIL and key considerations are set out below. Members should be aware of the further stages that are needed to adopt CIL which will include:

- Finalising the National Park Infrastructure Delivery Plan which will require further discussion with infrastructure providers and other bodies, for example the Highway Authority
- Consultation on a Preliminary Draft Charging Schedule and consideration of comments.
- Consultation on a Draft Charging Schedule

- Examination in Public

The advantages of progressing CIL include:

- Most development will contribute towards local infrastructure including small developments which make up a large proportion of new development in the Park.
- Greater flexibility and freedom to the Authority to set its own infrastructure priorities, as funds are not legally ring-fenced for specific uses.
- Local communities directly benefit from accommodating new development.
- Use of Section 106 agreement contributions is to be restricted from April 2014
- Once the CIL charging schedule has been through Examination, the Charging Rate is non-negotiable and therefore should be easier to administer.

Issues to consider:

- Further work is needed to develop an Infrastructure Delivery Plan for the National Park which will form the basis for the Regulation 123 List needed for examination.
- Establishing CIL requires significant resources to take the proposals through public consultation and independent examination.
- The set up and on-going administrative costs of CIL will have an impact across the Authority, particularly for the Planning and Finance teams. It may be possible to negotiate an arrangement with the constituent Districts who are progressing CIL to administer it on behalf of the Authority but this requires further discussion.

The following options are put forward for Members to consider:

Option	Pros	Cons
Do nothing - only mechanism would be s106 agreements to secure contributions to infrastructure by ‘pooling’ up to 5 agreements	Saves resources for other work	No policy basis in the current Core Strategy for seeking contributions from s106 agreements other than for affordable housing – could be challenged by developers Evidence from Viability Study shows that it is viable to charge a levy in the National Park Missing potential funding streams both known (Helmsley) and unknown in the future, particularly from small developments Scope of s106 contributions would be limited to the three ‘tests’ outlined in paragraph 6.3 of this report Negotiating individual s106 agreements is resource intensive (including for legal service) and protracted.

Consult on a Preliminary Draft Charging Schedule with a view to adopting CIL	Will generate funding from developments in Helmsley Potential to generate income from other developments, particularly if economy improves In place before a new Local Plan and ready to receive income, particularly if housing policy changes to accommodate more housing.	Need to do more work on an Infrastructure Delivery Plan quickly Diverts resources from other work Cost of examination Need to work out administrative and financial arrangements Uncertainty over levels of housing completions and therefore revenue projections
Await preparation of new Local Plan and use Viability evidence to justify introduction of CIL alongside the new Plan	Will have better knowledge of new policy position particularly with regard to housing. In the meantime resources can be used for other work eg starting new Local Plan	Delay Won't generate income from developments in Helmsley Evidence including Viability Study will become out of date Could be seen to be 'massaging' policies to generate more income through CIL eg supporting more open market housing

8. Financial and Staffing Implications

8.1 As outlined above, progressing CIL in the National Park will have significant staffing implications throughout the Authority. Taking CIL through to an examination will require a dedicated staff resource in the Policy team and once adopted, the Development Management team will implement its provisions. There is an ongoing monitoring role to report on how the levy has been spent though this could be embedded into the annual Authority Report. Depending on whether any administrative arrangements could be negotiated with constituent authorities there will also be additional responsibilities for the Finance team. Up to 5% of CIL receipts can be recouped by the Authority to cover the administrative costs of implementing the levy.

8.2 The initial outlay in progressing CIL relates to the cost of consultation on the Charging Schedule and paying for an examination. Depending on the scale and nature of objections to the Charging Schedule, there may also be a need to retain the services of the consultant to defend the approach to viability in the Viability Study. The cost of examination will depend on the number of objections received but together with using a consultant to support the process could be around £25 - £30,000. This might be seen as a potentially good investment since there are very few promising alternative means of funding infrastructure in the foreseeable future.

9. Contribution to National Park Management Plan

9.1 Although CIL is not specifically mentioned in the Management Plan, income from the levy could assist with the delivery of the habitat connectivity aims in Policies E11 and E12 and associated targets in the Plan. These are likely to be an important component of the 'green infrastructure' element of the National Park Infrastructure Delivery Plan. Funding for local infrastructure and community projects from the Neighbourhood Funding element will also contribute to Policies C3 and C7 in the Communities chapter.

10. Legal Implications

10.1 The process for adopting CIL must comply with the Community Infrastructure Levy Regulations 2010 and the Community Infrastructure Levy (Amendment) Regulations from 2011, 2012 and 2013.

11. Recommendation

11.1 That Members:

- Note the findings of the Viability Study for the National Park.
- Discuss the options for taking forward CIL in the National Park and decide whether it should be progressed 'in principle'.
- Depending on the above, authorise further work on an Infrastructure Delivery Plan for the National Park.

Contact Officer
Sarah Housden
Policy Manager
Tel No 01439 772700

Background papers to this Report	**File ref**
1. Community Infrastructure Levy	3052/4

Appendix 1

Executive Summary from Economic Viability Assessment (Peter Brett Associates)

Executive Summary

The authority's Core Strategy sets out the vision and strategy for development across the National Park over the period to 2026. A clear theme that runs throughout the vision and objectives set out in the core strategy is the aspiration of protection the character and environment of the National Park. For this reason the levels of development anticipated is not at a significant level.

There are a limited number of development types that are likely to come forward in the National Park. However, in order to ensure key development types are tested and evaluated we have sought to include a range of uses. The core development types that have been tested in this study are:

Residential

Office and industrial development at Whitby Business Park; and

Small scale town centre retail development.

Whilst a range of other uses and forms of development are considered, given the nature of the national park, these other uses are somewhat less likely to come forward.

To meet legal requirements and satisfy the independent examiner, a CIL charging schedule should:

'Aim to strike what appears to the charging authority to be an appropriate balance between the need to fund infrastructure and the impact of CIL'; and *'Not put at serious risk the overall development of the area'*.

As explained in official guidance, CIL may reduce development by making certain schemes unviable. Conversely, it may increase development by funding infrastructure that would not otherwise be provided, which in turn supports development that otherwise would not happen. The law requires that, in the judgment of the authority, the net outcome of these two impacts should be positive. This judgment is at the core of the charge-setting process.

Regulation, legislation and guidance also advise that:

Charging Authorities (CAs) should avoid setting charges up to the margin of viability for the bulk of sites;

CIL charging rates may vary across geographical zones and land uses. But there are restrictions on this differential charging. It must be justified by differences in development viability, not by policy or by varying infrastructure costs; it should not introduce undue complexity; and it should have regard to State Aid rules.

Charging rates should be informed by 'appropriate available evidence', which need not be 'fully comprehensive or exhaustive';

While charging rates should be consistent with the evidence, they are not required to 'mirror' the evidence1. In this and other ways, CAs have significant discretion in setting charging rates.

In our analysis and recommendations below, we aim both to meet these legal requirements and to maximise achievement of the council's own priorities, using the discretion that the legislation and guidance allows.

Our approach to assessing the viability of development can be summarised as follows:

[1] Planning Act 2008 (Section 212 (4) (b))

Net development value
Minus
Reasonable land acquisition costs
Minus
Total development costs
Equals
Residual developer's margin
(Determines ability to pay for a CIL)

Separate assessments of the viability of residential and non-residential development in the National Park have been undertaken, using different models that take account of the key characteristics of each.

Assessments of residential development have been done for development on sites within the following sub areas:

Moderate value; and

High Value.

Our assessments sought initially to establish the maximum potential charge rates (consistent with maintaining viability) in each case. As mentioned above, it is then a decision for the CA as to how far from this theoretical ceiling it wishes to set the charge. The maximum potential charge rates for residential development types are considered to be:

Market housing (Helmsley infrastructure not delivered through S106): £101 per sq.m

In respect of non-residential development, a number of development types were assessed using a simple high-level model to reveal the surplus/residual profit or deficit after all development costs (including the developer's margin) have been taken into account. The following types of development were assessed:

Town centre office

Business park office

Industrial and warehousing

Town centre comparison retail

Out of centre comparison retail

Convenience retail

Education, health and community facilities

Again, where development types were found to be viable, we sought to establish the maximum potential charge rates, consistent with development remaining viable. Where the assessment showed a deficit, no maximum charge rate is identified. Our findings are as follows:

Town centre offices – N/A

Business park offices – N/A

Industrial/warehouse – N/A

High Street Comparison Retail – N/A

Retail Warehouse - £72 per sq.m

Convenience retail - £152 per sq.m.

The viability of other, less common uses and forms of development has also been considered in order to inform the proposed charging schedule set out below.

As discussed above, it is at the discretion of the CA to determine how far below this theoretical maximum any charges should be set.

The charges set out below reflect the viability evidence and comply with the CIL regulations in every respect, as we understand them. We believe that it is exactly this kind of clarity and simplicity that is being and will be sought by inspectors.

Proposed Charging Schedule

Use	**Proposed CIL charge (per sq.m)**
Private market houses:	£70*
Supermarkets	£135
Retail Warehouses	£70
Public/Institutional Facilities as follows: education, health, community and emergency services	£0
All other chargeable development	£0

*Assumes Helmsley infrastructure is delivered through CIL. £45 per sq. m is recommended if infrastructure is to be delivered through S106.

Appendix 2

CIL Infrastructure Funding Gap Assessment

Infrastructure	Cost	Anticipated Funding	CIL Funding Gap
Strategic – National Park Wide			
Green Infrastructure	£2,542,500	£295,000	£2,247,500
Transport	tbd	-	-
Broadband	tbd	-	-
Area Specific – Helmsley			
Indoor recreation facilities	£100,000	S106	tbd
Outdoor play equipment	£18,000	S106	tbd
Improvements to public realm in the Market Place	tbd		tbd
Allotments	tbd	S106	tbd
Education	£250,000	S106	tbd
Green corridors	tbd	S106	tbd
Whitby Business Park			
Highway improvements, connections and landscaping	£4,000,000	Loan funding secured via Growing Places Fund and Coastal Communities Fund and loan will be paid back via developers of the Whitby Business Park.	
Total CIL Funding GAP	(including Whitby Business Park)	**£6,247,500**	

Appendix 3

CIL Revenue Projection from Viability Study

	CIL Charge per sq.m	No. units in plan period (note 1a)	Market units (note 1b)	Unit floorspace (sq. m) (note 2)	Gross floorspace (sq. m) (note 3)	Estimated net additional proportion	Estimated net additional floorspace (sq. m)	Estimated CIL revenue in plan period	Estimated annual CIL revenue
Residential									
Houses									
	70	338	203	120	24,336	95%	23,119	£1,618,344	£124,488
Non-residential									
Retail warehouses	70				1,000	95%	950	£66,500	£5,115
Supermarkets	135				500	50%	250	£33,750	£2,596
Offices & Industrial	-				48,000	95%	45,600	£0	£0
Total								£1,718,594	£132,199.54

Note 1a: It has been assumed that 26 dwellings per annum could be delivered over the life of the plan

Note 1b: affordable housing is not liable for CIL. We assume that an average of 40% affordable housing is achieved.

Note 2: the average unit size is based on our analysis of new build properties

Note 3: Non-residential floorspaces are broad estimates based on Core Strategy aspirations and recent development patterns.

Note 4: CIL is levied on net additional floorspace, so an allowance is made for existing buildings demolished to make way for new development.

Note 5: revenue projections are based on allocated figures and therefore these projections do not take windfall sites into consideration.