

STATES OF JERSEY



JERSEY INFRASTRUCTURE LEVY: APPROVAL IN PRINCIPLE

Lodged au Greffe on 20th October 2017
by the Minister for the Environment

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to agree, in principle, to the introduction of an infrastructure levy in Jersey, to ensure that those who benefit from an increase in land value arising from the award of planning permission make a small contribution to offset the impact of that development on the Island community;
- (b) to charge the Minister for the Environment to develop and bring forward, for approval, the necessary legislation to give effect to the above proposal.

MINISTER FOR THE ENVIRONMENT

REPORT

When development takes place, it is inevitable that it will have some form of impact outside the site boundaries. Jersey is a small place and new development can affect the whole community. When planning permission which enables new development to proceed is awarded, land will increase in value.

Many authorities have successfully adopted the practice of offsetting the impact of development by allocating a small proportion of any increase in land value towards community facilities.

Funds generated can be used to help deliver essential community infrastructure and to improve the quality of places for people to live in, work and visit. The introduction of a development charge or infrastructure levy is a way of doing this.

The Island needs development to provide new homes and economic development as set out in the Island Plan. If an infrastructure levy is introduced, it must be at a level that does not affect the viability of development where it would undermine the delivery of the new homes and commercial floor-space required by the Plan. The Department of the Environment has assessed the impact of the introduction of an infrastructure levy in Jersey, and has demonstrated that it is viable to introduce a low, broad, charge which could operate without affecting the supply of development.

Extensive consultation has been carried out over 18 months, particularly with the development industry, about the impact of a levy on the viability of development in Jersey, using local data and testing it with local development industry professionals. Whilst the local development industry does not, as a matter of principle, support the introduction of an infrastructure levy in Jersey, it has not been able to provide any clear, substantive evidence to demonstrate that it would adversely affect the supply of development or that it would have an adverse impact on the cost of homes.

A form of this charge, known as the Community Infrastructure Levy (“CIL”), has been operational in the UK since 2010: a recent review into its effectiveness concluded that –

*‘Everybody we consulted, both public and private sector, accepts that development needs infrastructure and that developers who benefit from **the added value created through development should make some level of contribution towards that infrastructure**’¹.*

A levy will provide certainty to developers about what they will have to pay for infrastructure compared to the existing system of Planning Obligation Agreements (“POAs”), which will be reviewed, streamlined and reduced. Once the levy rate is set, it will be non-negotiable. This certainty will help developers decide on an appropriate price to pay for land. It will also be fairer because it will be a modest charge that will apply to a most of development rather than the limited number of larger developments which are currently subject to variable POAs.

The introduction of a community infrastructure levy to Jersey would provide a small but significant funding-stream to enable investment in the streets, public spaces and facilities that help to support local communities. As more development takes place, particularly in the Island’s urban areas, the need to offset the cumulative impact of development and for the provision of essential community infrastructure grows: an infrastructure levy can help respond to these imperatives.

¹ [A new approach to developer contributions \(2016\) CIL Review Team](#)

BACKGROUND

Capturing uplift in land value

The Assembly has consistently supported the principle of capturing a proportion of the uplift in land value, derived from planning decisions, for some form of public benefit for some time.

The Deputy of Grouville's 2008 proposition ([P.33/2008](#)) sought to secure part of the uplift in land value secured from the award of planning permission to deliver social housing. The support for this was manifest in Policy H3 of the 2011 Island Plan, which required a proportion of the yield from residential development to be affordable, subject to the development of supplementary planning guidance, setting out how the policy would work in practice.

Although the policy was examined and approved as viable by an independent planning inspector as part of the 2011 Island Plan, the policy was withdrawn following pressure from the construction industry in the wake of the recent economic downturn. The principle of seeking to research and develop a policy mechanism to capture value from the development of land was, however, still retained and supported by the Assembly in Proposal 23 of the Revised 2011 Island Plan (July 2014) which required '*work to be undertaken to research and develop alternative policy mechanisms to capture value from the development of land*'.

This mantle was taken up by the recent Property Tax Review², undertaken by the Treasury and Resources Department, which concluded that whilst there was no public appetite to capture sales value through the property taxation system, there was general public support to capture some of the increase in land value after planning permission has been granted.

The responsibility to continue to explore how to capture a proportion of the uplift in land value from the award of planning permission, fell back to the Minister for the Environment.

Infrastructure levy

In carrying out this work, the Minister has had regard to the experience of UK governments which have, over the years, introduced a range of measures to secure revenue from development and to ensure that infrastructure required to support development and other community benefits are provided. Three short-lived national development taxes were introduced in the 1940s, 60s and 70s. The 2008 Planning Act made provision for a 'Community Infrastructure Levy' ("CIL") which was intended to provide funding to address the cumulative impact of development. The principle on which CIL was established was that those responsible for new development should make a reasonable contribution to the costs of providing additional infrastructure to meet the needs arising from that development.

Introduced in 2010, the UK's CIL is a fixed charge (per square metre) on the development of new floor-space which has now been adopted by about 130 UK local

² *Taxation of land and buildings in Jersey*
(<https://www.gov.je/government/consultations/pages/taxation-of-land-and-buildings-in-jersey.aspx>)

authorities, mainly in the south-east of England and London. Local authorities may vary charges by location, use, size and type of development. These charges are set out in a charging schedule, which can only be adopted by the charging authority once it has been through 2 rounds of statutory public consultation and after consideration by an Independent Examiner. Once set, CIL is mandatory and not subject to negotiation.

In England and Wales, money collected from CIL can be spent on a broad range of infrastructure identified as necessary to support the wider development and growth of the area, such as roads, schools, flood defences and health facilities.

Charging authorities are required to set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan.

At the start of 2016, the Minister for the Environment announced that he wished to examine whether the introduction of a type of infrastructure levy to Jersey might be a way of best achieving this objective for the Island.

A Jersey Infrastructure Levy: is it viable?

It has been clear from the outset that the introduction of any mechanism to capture part of the uplift in land value derived from planning permission would have to operate without unduly affecting development in the Island. Jersey needs new homes and commercial floor-space to support the economic and social needs of the Island. It is also acknowledged that the development industry is a significant and important part of the Island's economy itself, and needs to continue to be able to operate profitably to ensure that development still comes forward.

In this respect, the Minister has been quite clear that the introduction of any new mechanism needs to strike a balance between the generation of revenue to support investment in community infrastructure and the potential effect on the viability of developments.

The key to this is to develop and set a low, broad levy rate which does not threaten the ability to develop viably the sites and scale of development identified and required by the Island Plan.

In order to test the viability of introducing an infrastructure levy to Jersey, and to explore the potential parameters of any such charge, the Minister has commissioned a report: [*Viability Assessment for Review of Developer Contributions \(May 2016\)*](#) Arup and HDH Planning and Development³. This work has been carried out by consultants with considerable experience of the operation of CIL in England, together with local surveyors and valuers, who have provided and reviewed the Jersey-specific data about costs and values used in the report.

Most importantly, the assumptions, costs and values used in this viability assessment report have been exposed to the scrutiny of the Jersey development industry and have been refined as a consequence. This work began in September 2016 and included informal consultation locally with individual developers; small groups of developers; agents; valuers; and other key stakeholders in the Jersey construction industry to help shape and refine many of the assumptions made.

³ [https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Viability%20Assessment%20\(May%202017\)%20Report.pdf](https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Viability%20Assessment%20(May%202017)%20Report.pdf)

The key issue in determining the viability of development is to establish whether there is sufficient incentive for landowners to sell land for it to be developed. This is recognised in definition of viability testing provided by industry-standard guidance –

“An individual development can be said to be viable if, after taking account of all costs, including central and local government policy and regulatory costs and the cost and availability of development finance, the scheme provides a competitive return to the developer to ensure that development takes place and generates a land value sufficient to persuade the land owner to sell the land for the development proposed. If these conditions are not met, a scheme will not be delivered.”⁴

The key finding of the report commissioned by the Minister, *Viability Assessment for Review of Developer Contributions* (May 2016) was that it is considered viable to introduce an infrastructure levy in Jersey across a range of different development types without unduly affecting land coming forward for development.

The analysis concluded that there was **significant** capacity for the introduction of a levy on residential development in particular. Other land uses, such as office and retail, were also considered to be able to sustain the introduction of a low development charge, whilst remaining viable. The key recommendations of the viability assessment were that it was considered viable to introduce a new standard developer contribution for –

- residential development that falls in the range of £50/m² to £125/m²;
- non-residential development, at maximum rates of £80/m² for offices; and £150/m² for retail development.

With specific regard to residential development, depending on the rate set, the report has concluded that the introduction of an infrastructure levy in Jersey would represent less than a 10% reduction in land value, or less than 3% of the total development values (the GDV), which would be within a ‘margin of error’ and the reasonable tolerances of the appraisal process. This does not mean that it would be an insignificant cost – or that it is not a real cost that needs to be paid from the project’s revenue, but it provides context to the level and subsequent effect of a new charge or levy (is it a large or small amount relative to the value of the project?).

This level of impact on viability in Jersey is within the range of impact on values experienced in the UK. Recent research in England⁵ has concluded that the introduction of CIL has had a limited impact on development viability and is a relatively minor development costs which, in general, comes off the value of land.

“From an early stage of the research there was concern amongst stakeholders that schemes regarded as ‘marginal’ would become unviable once CIL is introduced. However, CIL is a relatively minor development cost, around 2% of total market value on average”

“Viability modelling shows that the introduction of CIL has limited impact on development viability and does not make, on its own, a viable scheme

⁴ [Viability Testing in Local Plans – Advice for planning practitioners \(June 2012\) LGA/HBF](#) – Sir John Harman, known as the *Harman Guidance*.

⁵ [The value, impact and delivery of the Community Infrastructure Levy: Report of Study \(Feb 2017\) DCLG](#)

unviable. The impact is proportionately more where the CIL rate is high and/or market values are lower. The latter being given by some local authority non-adopters for their decision ...”

Nevertheless, some developers interviewed expressed a concern about the impact of CIL on viability. The majority developer view is that CIL payments “come off the land value” and that, in a rising market, this would not be a major issue.”

The ability of the development process in Jersey to bear the introduction of a low, broad infrastructure charge is, perhaps, not that surprising when compared with the costs borne by developers in England in areas with similar market values to Jersey. The table below demonstrates that in local authorities where CIL has been adopted⁶, developers are, in relation to housing development, required to pay a CIL rate of between £80–£180/m², in addition to being required to provide between 30–50% of their housing yield as affordable homes.

Whilst accepting that development costs (expressed with reference to the Building Cost Information Service (“BCIS”))⁷ are higher in Jersey (20% or so higher than England) (January 2017), developers of open market homes in Jersey are not presently subject to either an infrastructure levy or any contribution to affordable housing, compared to developers in many parts of the UK, especially where values are higher. On the basis of all of the evidence, it is considered clear that there is clear potential to secure a low level of contribution, to the cost of community infrastructure from the development of land, without unduly affecting viability.

Local authority name	Average Price (£)	Rank	Housing	Super-markets	Employment	From	Affordable Housing	BCIS
Oxford	475,732	33	£100	£100	£20	Oct-13	50%	1.06
Epsom and Ewell	470,592	34	£125	£150	£0	Apr-14	35%	1.16
Sevenoaks	468,532	35	£125 / £75	£125	£0	Feb-14	40%	1.12
Tandridge	465,216	36	£120	£100	£0	Dec-14	34%	1.16
Bromley	461,468	37				Not Adopted		1.15
Jersey	454,000	38						1.20
South Oxfordshire	444,950	39	£150 / £85	£70		Apr-16	40%	1.16
Reigate and Banstead	444,938	40	£200 / £180 / £80 / £140 / £0	£120	£0	Apr-16	30%	1.16
Brentwood	443,482	41				Not Adopted		
Runnymede	443,071	42				Not Adopted		
Woking	440,654	43	£125 / £75	£75	£0	Apr-15	35%	1.16
Winchester	432,557	44	£0 / £120 / £80	£120	£0	Apr-14	40%	1.07

Source: Council web sites – January 2017

⁶ It is relevant to note that the London Borough of Bromley; Brentwood Borough Council; and Runnymede Borough Council are some of the 88 English local authorities currently going through the process of adopting CIL.

⁷ BCIS is the Building Cost Information Service of the Royal Institute of Chartered Surveyors (RICS) providing cost and price information to the construction industry: see <http://www.rics.org/uk/knowledge/bcis/>

Impact of the levy

Most importantly, the findings of the report seek to test whether or not the impact of a levy would likely alter the behavior of landowners/developers in bringing sites forward for development in Jersey, were an infrastructure levy to be introduced. The conclusions drawn from the Jersey viability study are that, if a levy is introduced that is low and broad, it would not be prejudicial to land coming forward.

*“The question is whether a fall at these levels would deter landowners from releasing land. This will depend very much on the reason for the land becoming available. As can be seen from the Jersey House Price Index presented in Chapter 4 above, the housing market, and therefore land prices are subject to fluctuations, both up and down, and whilst prices are on a generally upwards trajectory some months go down a little. **We would question whether or not a difference of 5% or 10% in land values would actually alter landowners’ behaviour when it comes to selling land.**”⁸*

This backs up the view expressed by Oxera’s report: *Further analysis of land/development-based environmental taxes: what is the impact on Jersey?* (January 2008), which concluded that –

*“Assuming that the proportion of the increase in value to be taken in tax would be relatively small, even if the full incidence of the tax fell on owners, **it is likely that there would be little effect on the overall supply of land made available for development.**”*

Recent research from the UK⁹ demonstrates that the introduction of CIL has not adversely affected the overall supply of developable land –

“The introduction of CIL is not thought to have had a long-term impact on the development pipeline although there may have been a ‘rush’ of applications immediately before its introduction, followed by a short term dip thereafter but with rates returning to their pre CIL levels.”

A JERSEY INFRASTRUCTURE LEVY: WHAT COULD IT LOOK LIKE?

If an infrastructure review were to be introduced to Jersey, what would it look like?

As part of the work undertaken to assess the viability of introducing an infrastructure to Jersey, a series of recommendations were made about the scope and parameters of what an infrastructure levy for Jersey could comprise.

One of the key recommendations of the report was that should it be decided to introduce an infrastructure levy to Jersey, clear notice of its introduction is made. This would enable developers who have acquired land or who are in the process of acquiring land to secure planning permission for development schemes before an infrastructure levy

⁸ [P.123 Viability Assessment for Review of Developer Contributions \(May 2016\) Arup and HDH Planning and Development](#)

⁹ [P.64 The value, impact and delivery of the Community Infrastructure Levy: Report of Study \(Feb 2017\) DCLG](#)

becomes operational. The Minister has already signalled that were a levy to be introduced in Jersey, **it would not take effect until after April 2019 at the earliest.**

On this basis, **the exact parameters of an infrastructure levy for Jersey – such as the thresholds and land use types liable for the levy, and the levy rate – remain to be determined**, because they would need to be set relative to economic conditions, related to costs and values, at the time. The details of how an infrastructure levy would work in practice also remain to be developed. These would need to be enshrined in subsequent Regulations.

In order that consideration could be given to the key components and shape of an infrastructure levy for Jersey; however, the Minister has already developed and consulted upon a draft framework that would be used to inform the implementation of an infrastructure levy in the Island.¹⁰ The key components of an infrastructure levy for Jersey would, therefore, be based on the following parameters, as signalled during the recent consultation –

What kind of development is liable for the levy?

The levy will be payable on development which creates net additional floor space, where the gross internal area of new build and/or extension exceeds a defined area. The findings of the report commissioned by the Minister, *Viability Assessment for Review of Developer Contributions* (May 2016) recommended that there was scope to levy the charge on residential, retail and office development in Jersey.

For the purposes of illustrating how the levy might work, and having regard to development trends and the scale of historical development in Jersey, the Minister has suggested minimum thresholds of:

- development, re-development or refurbishment resulting in the creation of over 75m² of net floorspace. This equates to the minimum size of a two-bed flat;
- the creation of a new residential unit. A charge can be levied on a single house or flat of any size.

Developments that do not require planning permission, i.e. permitted development, will not be liable for the levy.

Exemptions

In order to create a system that is simple to implement, the number of exemptions from the introduction of an infrastructure levy in Jersey would be limited. It will be a requirement that the following types of development would be exempt:

- dwellings constructed by Registered Affordable Housing providers¹¹
- developments constructed by Registered Charitable Trusts for charitable purposes¹²

¹⁰ <https://www.gov.je/SiteCollectionDocuments/Planning%20and%20building/CR%20-%20JIL%20Proposal%20-%20Consultation%20Document.pdf>

¹¹ [As defined within the Income Support \(Jersey\) Regulations 2007](#)

¹² [As defined within Charities \(Jersey\) Law 2014](#)

- development undertaken by the States of Jersey or parochial authorities where it relates to their statutory functions¹³

Setting the levy rate

It will be a requirement that the levy should be set at a rate which does not threaten the ability to develop viably the sites and scale of development identified in the Island Plan. Because of this, a cautious approach to the setting of a levy rate will need to be taken to ensure that the impact of it does not result in a burden that is so close to the limits of viability that a modest fluctuation in a particular input would prejudice development.

It will be a requirement that an appropriate balance is struck between the need to secure investment in community infrastructure and the potential effect on the viability of developments in Jersey.

It will also be a requirement that the setting of the rate is subject to independent review and scrutiny, following public consultation¹⁴. This will enable detailed consideration of the evidence used to justify the charge and for landowners and the development industry in particular, to scrutinise, review and test the assumptions made about costs and values.

The findings of the report commissioned by the Minister, *Viability Assessment for Review of Developer Contributions* (May 2016) recommended that there was currently scope to introduce a levy rate of between £80–£150/m² across different land uses. For the purposes of demonstrating that the principle of introducing an infrastructure levy in Jersey is viable, the Minister has set out a notional levy rate of £80 per m² to ensure an even rate is applied across all proposed developments across the Island. This is amended from the published notional £85 per m² rate to reflect the lower office levy rate recommendation.

The decision to propose a flat-rate Jersey Infrastructure Levy is informed by the findings of the UK CIL Review¹⁵, which suggests that a complex system with variable charging rates and numerous exemptions can lead to a system which is difficult to understand, expensive to operate and uncertain in its implementation.

Should the principle of the levy be approved then the notional levy rate will be subject to full review and update before the final rate is set. Following adoption, the levy rate will be reviewed every 5 years or in the event of a change in values of more than 10%.

Commencement date and transitional period

It will be a requirement that, should the principle be accepted and requisite legislation developed and approved, the Jersey Infrastructure Levy would not commence before 1st April 2019.

It will be a requirement that where planning permission has been granted before the implementation of an infrastructure levy in Jersey, a project will not be liable.

¹³ Commercial developments undertaken by States-owned bodies, such as the Jersey Development Company, would not be exempt.

¹⁴ The process is similar to Planning Hearings by Planning Inspectors

¹⁵ [The value, impact and delivery of the Community Infrastructure Levy: Report of Study \(Feb 2017\) DCLG](#)

If and when an infrastructure levy is adopted, liability will only arise if applications approved prior to the start date are revised, and then only in relation to any additional floor-space which is introduced and added to the original development approval.

Relationship between POAs and the levy

POAs are made between the Minister for the Environment and developers to ensure that when land is developed, the requirement for site-specific infrastructure that is directly related to the development can be provided as an integral part of the award of planning permission. The introduction of an infrastructure levy is about the wider impact on the surrounding area.

The existing POA system will be rationalised and simplified if an infrastructure levy is introduced. Existing POA requirements will be reduced and simplified to cover only site-specific issues, and the new levy will cover area wide improvements. It will be a requirement that restrictions will be put in place, through regulation, to ensure that developers are not charged twice (sometimes known as ‘double-dipping’) for the same item of infrastructure.

Payment

Charges will be due from the date that a chargeable development is commenced. Provision will be made to permit payment by instalment over the life of a development project. This must be balanced with the need to ensure that infrastructure is delivered in a timely manner.

Appeals

Once the levy rate is set, the JIL charge will be non-negotiable and will be applied to all liable development.

The number of exemptions and variations will be limited to reduce the risks of dispute or miscalculation. If dispute does occur, or claims of miscalculation are made, Regulations will include provisions for a number of actions, including an appeal process that could be made available to persons liable for payment of JIL.

Enforcement

Regulations will set out the means of enforcement which are available to the Minister. Where the correct procedure is not undertaken, the surcharges may apply that are proportionate with the application of the levy. Penalties, to be defined within the Regulations, will be incurred for non-payment.

Administration

The Regulations will be written to minimise the administrative process, and coupled with the anticipated reduction in POAs it is not anticipated that the new levy will have a significant impact upon the Department’s resources. A small percentage of the receipts may be used to cover some of the potential costs should they arise¹⁶.

¹⁶ Regulation 61 of 2014: The Community Infrastructure Levy (Amendment) Regulations 2014 in England and Wales sets out that charging authorities may take administrative expenses into account when setting their levy. For reference, this administrative expense is set at 5% of total CIL receipts in England and Wales.

Spending the levy: what is it for?

The development process tends to focus attention on the buildings and spaces within the red line of a planning application boundary. And whilst it is important to ensure that we can deliver good quality buildings, which relate well to their site and their context, it is the spaces around and between buildings, including trees, parks, squares and streets which make up the public realm, that has a major part to play in the character, attractiveness and success of places. The creation and maintenance of a healthy public realm, together with vital community infrastructure such as transport services and facilities, is essential to the achievement of an attractive, thriving, and sustainable Island that everyone can enjoy and take pride in.

It is considered right that a small proportion of any uplift in value of land derived from the award of planning permission is used to offset the impact of that development on the community, and to improve the quality of places for people to live in, work and visit. The introduction of a development charge or infrastructure levy is a way of doing this.

Whilst the exact parameters of an infrastructure levy for Jersey – such as the thresholds and land use types liable for the levy, and the levy rate – remain to be determined, a levy rate of £80 per m² on developments over 75 m² would be expected to raise between £1.5 million and £2.5 million a year.

Funds generated from the introduction of an infrastructure levy can be used to help deliver essential community infrastructure. Examples of what a levy could fund include –

- new and improved streets, safe play spaces and recreational facilities, parks, tree-planting and community gardens, such as the Millennium Town Park and the Weighbridge;
- improvements to public transport services and facilities, like more bus shelters and improved services;
- pedestrian improvement schemes and new footpaths, such as improvement to town streets already completed in Conway Street and Broad Street;
- new cycle routes, such as the Eastern Cycle Network or the St. Peter's Valley Cycle Path;
- improvements to make local areas more resilient to climate change, by introducing sustainable urban drainage schemes to help manage surface water; more tree-planting to provide shade and cooling; and better flood defences.

As already stated, the details of how an infrastructure levy would work in practice also remain to be developed. These would need to be enshrined in subsequent Regulations.

In order that consideration could be given to the key components and shape of an infrastructure levy for Jersey; however, the Minister has already developed and consulted upon a draft framework that would be used to inform the implementation of an infrastructure levy in the Island. The key components of how funds derived from an infrastructure might be managed and spent would be based on the following parameters, as signalled during the recent consultation.

Prioritisation plan

JIL is proposed to be spent on a variety of community infrastructure projects across the Island; these may be more strategic projects which are not directly related to a specific development.

The Regulations will include the process of identifying these projects, and how these will be compiled. It is proposed that a list detailing infrastructure projects and requirements would be produced by the States of Jersey, similar to that of the 'Regulation 123 List' legislated for in England and Wales CIL regulations.

The creation of a community infrastructure list will enable the prioritisation of projects which are suitable for collecting community infrastructure levy receipts.

JIL funds will be ring-fenced to invest in new community infrastructure, and not used to offset general revenue expenditure on existing public infrastructure, such as roads and drains.

Community share

One of the reasons why local communities oppose new development is the perceived impact upon local infrastructure. Allowing parishes to receive a proportion of the infrastructure levy receipts arising from development in their area would empower communities to address very local issues.

It will be a requirement that not less than 10% of levy funds raised from development in a parish are allocated to that parish for community infrastructure investment.

Governance

Arrangements for JIL governance and the allocation of JIL income are to be decided by the Minister, working in consultation with the other Ministers and the community.

Monitoring is necessary to measure the effectiveness of the levy, and to ensure payments are forthcoming.

The levy will be reviewed to ensure it remains proportionally appropriate to market value and/or development costs. It is planned that the levy will be reviewed every 5 years or in the event of a change in values of more than 10%.

CONSULTATION

Extensive consultation has been undertaken on the development of this proposal, particularly with the Island's development industry. The Environment, Housing and Infrastructure Scrutiny Panel has also been closely engaged throughout the development of the proposal.

Early engagement with the development industry began in October 2016, setting out the working assumptions behind the viability assessment for Jersey with the industry, and providing them with opportunity to challenge the evidence. This they did, and some amendments were made in order that the work was more robust, resulting in the

publication of [Viability Assessment for Review of Developer Contributions \(May 2016\)](#)¹⁷.

This evidence supported the development of a draft policy framework – the Jersey Infrastructure Levy Proposal (June 2017)¹⁸ – which set out how an infrastructure levy might work in Jersey, containing indicative parameters of an infrastructure levy for Jersey – such as the thresholds and land use types liable for the levy, and the levy rate. Consultation on this ran from June to September 2017: a total of 35 individual survey responses were submitted, with over 300 comments made on key areas of the proposal, and a further 8 substantive submissions were made by groups and organisations.

The Minister has published a full and detailed response to the comments made. The key issues to arise are as follows:

The principle of the levy

The main case made against the levy by the development industry is that –

- it is a new tax;
- it is unfairly targeted on the development industry; and
- it will lead to increased prices for development (purchase and rental).

The Minister for the Environment is not disputing that the levy is a new form of ‘tax’, but is one that is designed to ensure that the development of land directly delivers some community benefit.

The levy is targeted at the development of land because it is believed that it is right for a small proportion of the increase in land value arising from the grant of planning consent to be shared with the community, rather than going solely to the landowner. It is also considered right that funds derived from the development of land are used to offset some of the impact of that development upon the community, to make them better places to live, work and visit.

Viability

The viability work that has been undertaken adopts a cautious and conservative approach in its assumptions, and demonstrates that the introduction of a levy would work in Jersey and that developer profits can still be maintained. It also shows that the introduction of a modest levy would represent a small percentage of the final Gross Development Value, and no evidence has been provided to demonstrate that this would add directly to end development prices. This conclusion is supported by recent work to review the operation of the Community Infrastructure Levy in the UK.

Economic Impact

The Economics Unit’s view is that charges like the Jersey Infrastructure Levy would normally be expected to impact land values. In a competitive market, developers would have a strong incentive to make sure the charge leads to lower land values, because if

¹⁷ <http://consult.gov.je/file/4583290>

¹⁸ <https://www.gov.je/planningbuilding/lawsregs/lawregulations/pages/jerseyinfrastructurelevy.aspx#anchor-1>

not, new-build properties would become relatively more expensive than similar properties that have already been developed and were not subject to the levy.

New-build homes only form a minority of homes sold each year, and in a competitive market, prices will be determined by the interaction of overall supply and demand for properties, and therefore general conditions in the market.

Landowners should be in position where they are less able to resist any downward pressure on land values, as all land getting permission would be subject to the levy. In some situations, developers may already have purchased land and so won't be in a position to adjust land values. This is being mitigated by the Minister for the Environment's clear, early signals to the industry of his intent not to introduce the levy until 2019 at the earliest, and the fact that the levy is being set at a low rate to maintain the incentives to develop.

Overall, there should be little impact on the supply of land for development, as landowners still have a significant incentive to sell land for development and cannot avoid the impact of the levy.

There are risks that the levy could impact on the level of development and house prices, but this would most likely be under the circumstances where –

- The policy is deemed to lack credibility and developers/landowners think that it will be repealed or changed.
- The levy was at an unviable, high level, and therefore significantly impacted on the incentives for development.
- The local housing market/development industry does not operate in a competitive market.

The consultation responses did not provide any clear evidence that any of the above risks are significant in Jersey. Further economic advice will be sought from the Economics Unit to test and amend if necessary, a more detailed levy proposal, should there be any likelihood that the levy could lead to higher prices and/or reduced supply.

Use of the levy

The proposed allocation of 10% of any levy funds to the parishes, derived from development within that parish, generated mixed views with some of those who supported it, some suggesting a higher share. Many comments identified the need for an audited and managed process to spending the levy: this would be addressed as part of future Regulations, should the principle of introducing the levy be supported.

Planning Obligation Agreements

The development industry expressed concern about being asked to contribute for the same infrastructure twice, through both the levy and the POAs. A review of existing POA charges would be included in the development of a levy, if the principle of its introduction is supported, and restrictions would be put in place, through regulation, to ensure that developers are not charged twice for the same infrastructure.

It is likely that if JIL is introduced, the existing POA requirements would be significantly reduced and simplified to cover only site-specific issues, while the new levy would cover area-wide improvements.

CONCLUSION

The Minister for the Environment has published a draft policy document proposing the introduction of a broad, low and fair development charge called a Jersey Infrastructure Levy, and has sought a broad range of views on this.

An extensive and soundly-evidenced viability report based on Jersey-specific data has been prepared, in consultation with the Jersey development industry, to support the Minister's proposal to introduce an infrastructure levy to Jersey ([Viability assessment for review of developer contributions report](#)): this demonstrates that the introduction of a levy would work in Jersey.

During this formal round of consultation, there has been no further submission of alternative evidence that directly or substantively challenges this supporting work. Whilst it is clear that the development industry does not support the introduction of a levy, it has not been able to offer any substantive evidence which demonstrates that a levy would not work in Jersey. On this basis, the Minister is content that the evidence prepared to support the principle of introducing a levy has been thoroughly scrutinised and can be considered robust.

It is also considered reasonable to conclude, in light of this, that the Jersey development industry's opposition to the introduction of JIL is a matter of principle. The principle of the levy, however, is to ensure that developers who benefit from the increase in land value that comes from development permission, make a contribution to the impact of that development on the local community. The Minister believes that this is right and is supported by those community groups who have responded to this consultation.

The Minister is, therefore, of the opinion that the outcome of this consultation provides a sound basis for taking a proposition to the States to seek the Assembly's approval of the principle of introducing an infrastructure levy in Jersey and, if supported, to subsequently develop law, policy and regulation.

Next steps

If the States Assembly supports the introduction of a Jersey Infrastructure Levy, in principle, further work will then begin on the development of legislation, regulation and policy to enable the implementation of the levy. This work would be undertaken during 2018.

New legislation is required for JIL to take effect in Jersey. This would remain to be the subject of approval by the States Assembly. It is envisaged that this might take place during Q4 2018/ Q1 2019.

The setting of an infrastructure levy rate will likely be the subject of independent professional scrutiny, probably by a Planning Inspector, during some form of public inquiry: the provisions of new legislation will likely provide for this. Before JIL takes effect in Jersey, the current data and assumptions about costs and values set out in the *Viability Assessment for Review of Developer Contributions (May 2017)*, would need to

be reviewed and updated, in order to reflect any change in the Jersey development industry and market. This would form the basis of the Minister's proposed JIL rate, and work would need to be carried out, once legislation has been introduced, to ensure that the most up-to-date information was being used to inform any proposal. It is envisaged that this might take place during Q1/2 2019.

It is only once the JIL had been reviewed and set, following independent scrutiny and review, that it would take effect, likely sometime in the second half of 2019.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Minister for the Environment, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this proposition.