

Brighton & Hove City Council Community Infrastructure Levy

Strategic Environmental Assessment Screening Opinion

March 2018

1. Introduction

1.1 This statement outlines the Council's opinion on whether, in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations), a Strategic Environmental Assessment (SEA) is required for a Community Infrastructure Levy (CIL) Charging Schedule.

1.2. The requirement for SEA is based on the descriptions set out in the Regulations 5(1) to (6) of the Environmental Assessment of Plans and Programmes Regulations 2004.

Strategic Environmental Assessment

1.3. Under the requirements of the European Union Directive 2001/42/EC (Strategic Environmental Assessment (SEA) Directive) and Environmental Assessment of Plans and Programmes Regulations (2004) specific types of plans that set the framework for the future development consent of projects must be subject to an environmental assessment.

1.4. There are exceptions to this requirement for plans if they determine the use of a small area at a local level and for minor modifications, if it has been determined that the plan is unlikely to have significant environmental effects.

1.5 There are also exceptions for plans that are for the sole purpose of national defence, and for those which are a financial plan or programme.

The SEA Screening Process

1.6. The process for determining whether or not an SEA is required is called screening. Dependent on the type of plan or programme that is being assessed, the screening process can also include an assessment of whether the plan will have significant environmental effects. However, this is only applied where the plan or programme sets the framework for future development consent.

1.7 The three statutory consultation bodies must be consulted prior to a screening opinion being finalised: The Environment Agency, Natural England and English Heritage.

1.7. Within 28 days of making its determination, the authority must publish a statement, such as this one, setting out its decision. If it determines that an SEA is not required, the statement must include the reasons for this.

Background to the Community Infrastructure Levy

1.8. The ability of Local Authorities to secure payments from development to provide infrastructure needed to support growth is currently by planning obligations under Section 106 of the Town & Country Planning Act 1990.

1.9. The Community Infrastructure Levy (CIL) Regulations came into force on 6th April 2010 and set out how and when payments for infrastructure projects will be collected from developments in the future. The CIL Regulations make provision for adoption of a local CIL charging schedule which is used to determine payments, based on gross internal floorspace after deducting any floorspace lost to demolition.

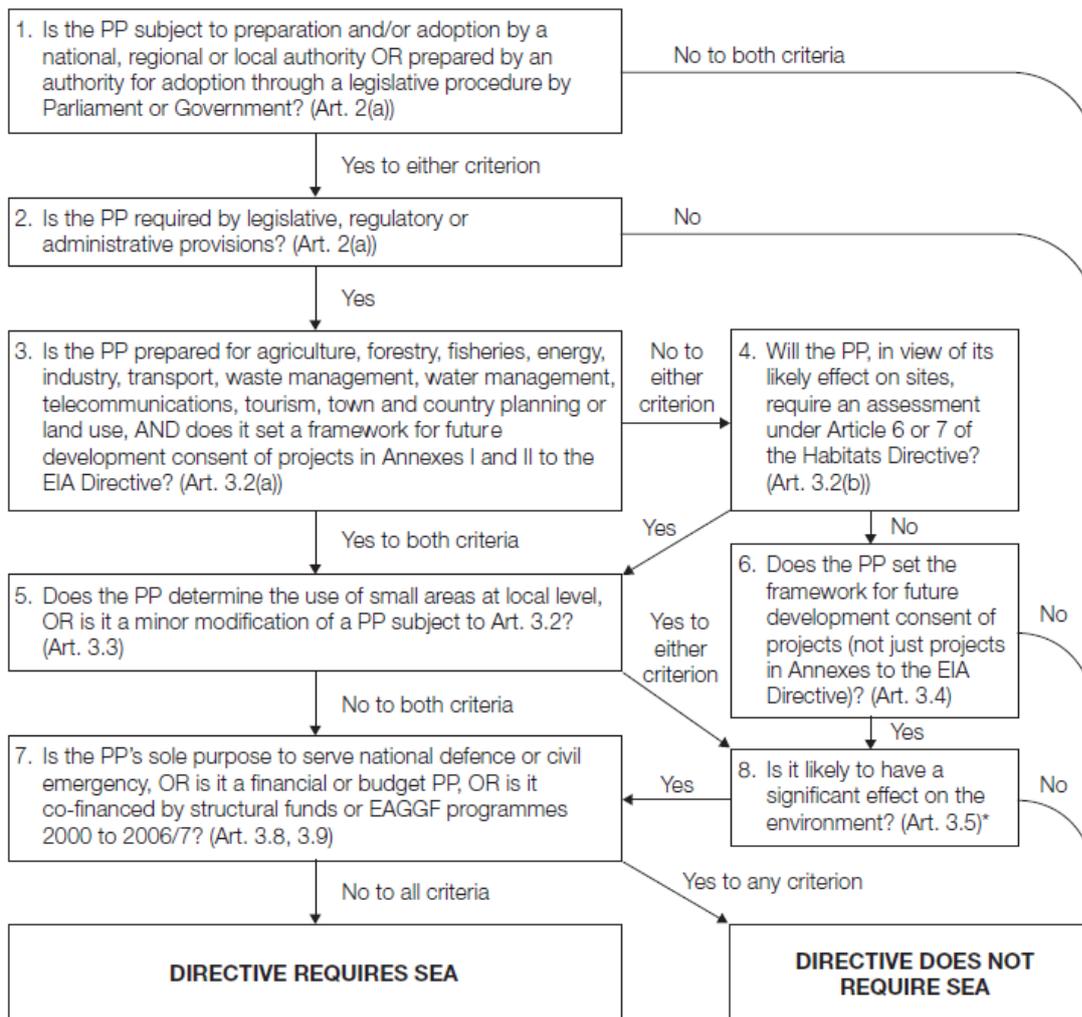
1.10. The CIL Regulations make provision for differential charging rates across local authority areas. The monies collected will be used to support the infrastructure requirements resulting from the growth of the area in accordance with City Plan Part 1.

1.11. The Council plans to adopt a CIL charging schedule in 2018.

Application of SEA Regulations

1.12 The following diagram, from A Practical Guide to the SEA Directive (2005), illustrates the process for deciding whether a plan or programme is the type which requires SEA or requires screening for significant effects.

This diagram is intended as a guide to the criteria for application of the Directive to plans and programmes (PPs). It has no legal status.



*The Directive requires Member States to determine whether plans or programmes in this category are likely to have significant environmental effects. These determinations may be made on a case by case basis and/or by specifying types of plan or programme.

1.13 The following assessment questions are based on the criteria and guidance above, and relate to the SEA Regulations section 5 (2 to 6). These questions help to guide whether an SEA is required.

Decision making criteria	Y/N	Reason
1. Is the plan or programme subject to preparation and/or adoption by a national, regional or local authority OR prepared by an authority for adoption through a legislative procedure by Parliament or Government? <i>Art. 2(a)</i> <i>Reg. 2(1)(a) and (b).</i>	Yes	CIL will be adopted by Brighton & Hove City Council.

Decision making criteria	Y/N	Reason
<p>2. Is the plan or programme required by legislative, regulatory or administrative provisions?</p> <p><i>Art. 2(a)</i></p> <p><i>Reg. 2(1)(c)</i></p>	Yes	<p>Recent case law (Brussels C567 10 (EN)) indicates that this aspect of the Regulations should be interpreted as whether the plan or programme is <i>regulated</i> by legislative provisions, regulatory or administrative provisions.</p> <p>CIL undergoes a formal adoption process and is regulated through the CIL Regulations 2010. This part of the Regulations is therefore considered to apply.</p>
<p>3. Is the plan or programme prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use, AND does it set a framework for future development consent of projects in Annexes I and II to the EIA Directive?</p> <p><i>Art 3.2(a)</i></p> <p><i>Reg. 5(2)(a) and (b)</i></p>	No	<p>Although CIL is being prepared for town & country planning use, it will not set the framework for future development consent of any project. The framework for future development consent is established within The City Plan Part 1 and accompanying planning framework/guidance.</p>
<p>4. Will the plan or programme, in view of its likely effect on sites, require an assessment for future development under Article 6 or 7 of the Habitats Directive?</p> <p><i>Art. 3.2 (b)</i></p> <p><i>Reg. 5(3)</i></p>	No	<p>The CIL is not considered to require an assessment for future development under Articles 6 or 7 of the Habitats Directive.</p>
<p>5. If the plan sets the framework for development, does it determine the use of small areas at local level, OR is it a minor modification of a plan or programme subject as described under question (3) and (4) above.</p> <p><i>Art. 3.3</i></p> <p><i>Reg. 5(6)(a); 5(6)(b)</i></p>	No	<p>CIL does not determine the use of land or allocate land or sites for development. CIL is not a minor modification.</p>
<p>6. Does the plan or programme set the framework for future development consent of projects</p> <p><i>Art. 3.4</i></p> <p><i>Reg. 5(4)(b)</i></p>	No	<p>CIL will not set the framework for future development consent of any type of project. The framework for future development consent is established within The City Plan Part 1 and accompanying planning framework/guidance.</p>

Decision making criteria	Y/N	Reason
<p>7. Is the plan or programme's sole purpose to serve the national defence or civil emergency, OR is it a financial or budget PP, OR is it co-financed by structural funds or EAGGF programmes 2000 to 2006/7?</p> <p>Art 3.8, 3.9</p> <p>Reg. 5(5)(a)(b) or (c)</p>	Yes	<p>The sole purpose of CIL is to set out how and when money for infrastructure projects will be collected from development. CIL is therefore considered to be a financial tool that is used to secure monies.</p> <p>The SEA Regulations 5(5)(b) state that an SEA does not need to be carried out for a plan of this type.</p>
<p>8. Is it likely to have a significant effect on the environment?</p> <p>Art. 3.5</p> <p>Reg. 5(4)(c) and Reg. 5(6)(a) or (b)</p>	N/A	<p>Not applicable. This question is only applicable if; the plan sets the framework for future development consent and determines the use of a small area at local level; or is a modification to an existing plan. None of these criteria are considered to apply and therefore the second stage of screening, the assessment of significant effects, does not need to be carried out.</p>

Initial Conclusion

1.14 From the information outlined above, although CIL is subject to preparation by the City Council, follows regulatory provisions and is prepared for town and country planning purpose, it is not considered to fall under the requirement of the SEA Regulations because:

- It does not set a framework for any type of project, of any size
- It does not require an assessment under the Habitats Directive
- It is not a minor modification to a plan or programme

1.15 Additionally, CIL is considered to be a financial tool that will be used for securing monies, it will set out how money will be secured and will include a list of types of infrastructure development on which monies secured will be spent. The SEA Regulations (5(5)(b) do not require SEA for this type of plan or programme.

Consultation

1.16 This screening opinion was sent to Natural England, Historic England and the Environment Agency to seek their opinion on the initial conclusion.

1.17 Responses were received from all three consultees. Natural England and Historic England concurred that CIL would not require a SEA. The Environment Agency replied saying they had no further comments.

Final Conclusion

1.18 Following consultation with the statutory consultees, it is concluded that CIL does not require a SEA for the reasons described above.

Appendix Consultation Responses



Historic England

Helen Pennington
Sustainability Appraisal Officer
City Development & Regeneration
Brighton & Hove City Council

Our ref: PL00329742

Your ref:

Telephone

Fax

Email

Date

e-seast@historicengland.org.uk

27 March 2018

By email only: helen.pennington@brighton-hove.gov.uk

Dear Ms Pennington

**Brighton & Hove City Council CIL Community Infrastructure Levy (CIL)
Sustainability Appraisal/Strategic Environmental Appraisal Screening Opinion**

Thank you for your email dated 28 February 2018 consulting us on your intention of carrying out a SEA/SA for the above plan.

In light of the Environmental Assessment of Plans and Programmes Regulations 2004, our view is that a SEA is not required in this instance.

Yours sincerely

Alan Byrne
Historic Environment Planning Adviser



Historic England, Eastgate Court, 195-205 High Street, Guildford GU1 3EH
Telephone 01483 25 2020 HistoricEngland.org.uk

Please note that Historic England operates an access to information policy.
Correspondence or information which you send us may therefore become publicly available.



Date: 23 March 2018
Our ref: 240313
Your ref: Brighton & Hove City Council CIL - SEA screening



Ms H Pennington
Sustainability Appraisal Officer
City Development & Regeneration
Brighton & Hove City Council
Hove Town Hall
Norton Road
Hove
BN3 3BQ

Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

Helen.Pennington@brighton-hove.gov.uk

Dear Ms Pennington

Strategic Environmental Assessment screening – in connection with the Brighton and Hove Community Infrastructure Levy

Thank you for your consultation request on the above dated and received by Natural England on 28th February 2018.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Screening Request: Strategic Environmental Assessment

It is our advice, on the basis of the material supplied with the consultation, that, in so far as our strategic environmental interests are concerned (including but not limited to statutory designated sites, landscapes and protected species, geology and soils) are concerned, that there are unlikely to be significant environmental effects from the proposed plan.

For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk

Yours sincerely

Sharon Jenkins
Consultations Team

From: [PlanningSSD](#)
To: [Helen Pennington](#)
Subject: RE: Brighton & Hove City Council CIL - SEA screening
Date: 26 March 2018 14:54:17

Hi Helen, thank you for consulting us on the initial conclusion of the Brighton and Hove City CIL SEA screening. We have no comments to make.

Kind regards

Marguerite

[Marguerite Oxley|Technical Specialist|Sustainable Places|Solent and South Downs Area|Environment Planning and Engagement|Environment Agency|Guildbourne House|Chatsworth Road|Worthing|West Sussex|BN11 1LD](#)

Our Commitment:

Sustainable Places will prioritise and drive forward environmental outcomes from our work with local authorities and partners across the Solent and South Downs Area

We have moved to GOV.UK. Our website is now available at: www.gov.uk/environment-agency.

We offer a cost recovery service for bespoke pre-application advice. For more information go to: gov.uk or [email us](#)
