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**DARLINGTON COMMUNITY INFRASTRUCTURE LEVY**

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**Responsible Council – Councillor Chris McEwan  
Economy and Regeneration Portfolio**

**Responsible Director – Ian Williams, Director of Economic Growth**

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**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of this report is to highlight the key elements of the optional Community Infrastructure Levy (CIL), and to assess the appropriateness of introducing a CIL in Darlington now.
2. This report also highlights the positive impacts the planning obligations system (also known as developer contributions or Section 106 agreements) has had to date in securing appropriate infrastructure as part of viable development in the Borough.

**Summary**

3. The previous Government introduced the Community Infrastructure Levy in 2010 to work alongside planning obligations. It is an alternative approach to providing, improving, replacing and maintaining infrastructure required as a consequence of new development. The intention is that CIL could be used to help provide larger items of infrastructure that require contributions from several developments to secure delivery.
4. CIL is an optional, fixed rate charge and can be secured from most types of development – should the Council choose not to implement it now, they can reconsider at any point in the future. If CIL is introduced, the use of planning obligations would be limited to securing affordable housing and site specific infrastructure e.g. highways.
5. Payment is mandatory and, unlike planning obligations, the Council cannot decide on a case-by-case basis whether the charge can be varied. Although this means that a developer will be able to calculate their financial liability up front, if viability is an issue CIL must be paid, so any discounts would be from the affordable housing requirement or other site specific obligations which remain a separate consideration. As a result the delivery of affordable housing as part of a private development in the Borough could be adversely impacted upon.

6. Government guidance states that a CIL must achieve an 'appropriate balance' between securing viable development and generating sufficient funds to deliver meaningful infrastructure. It must be demonstrated that the CIL together with affordable housing requirements, sustainability measures and site specific planning obligations would ensure delivery of the Local Plan's development strategy.
7. A CIL would split the Borough into three/four broad charging zones to reflect land values and/or type of development. A more complex approach would not be supported. In general, land values in the Borough are relatively low - this means that in the current economic downturn (expected to last until 2018-19 at the earliest) the majority of the Borough would be unable to support a CIL charge or a meaningful charge. Only a small area in the South West of the urban area could support a CIL, affordable housing and meaningful planning obligations – but only 150 dwellings are proposed in the new Local Plan in this area to 2026.
8. In contrast, the Council's adopted Planning Obligations SPD (January 2013) ensures that for every location, development should mitigate its impact on infrastructure, while ensuring that landowners and developers can still secure competitive returns from the delivered development. It does this by identifying community infrastructure targets (critical/necessary/desirable) that potential development is likely to impact upon in different parts of the Borough (the North West, Central, South West, South East, North East or Rural Area) for the following financial year. The proposed targets for consideration for 2014-2015 are in **Appendix 1**.
9. In exceptional cases where land values are insufficient to fund the required community infrastructure, the process (agreed by Cabinet in February 2013) is that the total contribution should be split 75%/25% between the critical and necessary targets. Since January 2013, even in the economic downturn, this flexible approach has led to more schemes in Darlington contributing towards a wider range of infrastructure as part of a viable development e.g. at the former Feethams Football Club. Even with changes to national legislation that will be introduced in April 2015 (see paragraphs 36-38) it is considered that a similar level of success could be realised from other schemes over the next few years.
10. As a result, this report shows that the approximate value of CIL from potential Local Plan allocations is expected to generate significantly less revenue for infrastructure than the current planning obligations system.
11. Although a CIL would give local residents a say in how a proportion of the levy is spent, the overall amount available for infrastructure is likely to be significantly less than from planning obligations. While a formal neighbourhood fund is not part of the planning obligations system the Council does ensure that, through Members at Place Scrutiny and Planning Application Committees, the community are involved in determining where planning obligations for community infrastructure are spent.
12. Furthermore, introducing a CIL requires considerable supporting evidence which is also required to inform the new Local Plan. It is considered that it is premature to begin work on a CIL until there is more certainty associated with the Local Plan and its evidence base (receipt of the Inspector's Report expected to be July 2015).

13. Introducing a CIL would also lead to a number of resource implications for the Council; an estimated £115,000 would be needed to set up and administer a CIL, the existing planning obligation administration arrangements would still need to be maintained, additional staff resources would be required to produce a CIL and the CIL examination would be held at the Council's expense. These costs would need to be duplicated after 2018-19 or whenever an economic upturn is experienced to ensure the CIL remains relevant and up to date.
14. Any work undertaken would also be in the context of a General Election in May 2015. The current Government and the opposition have indicated that should they be elected the CIL would either be replaced or revised significantly. It would be unwise to commit resources to a CIL now when it may need to be re-visited within 12-18 months to reflect changing national guidance.
15. Consequentially for the time being, it is considered that the best way forward for the Council and local residents is to proceed with the approach that maximises the amount of funding generated by new development for infrastructure – the use of the current planning obligations system.

### **Recommendation**

16. It is recommended that :-

- (a) Cabinet agree not to introduce a Darlington Community Infrastructure Levy at this time, and review this on adoption of the Local Plan or if the national direction changes;
- (b) Cabinet approve the minor consequential amendments to the adopted Planning Obligations SPD 'living' community infrastructure targets as the basis for prioritising planning obligation funding for 2014-15.

### **Reasons**

17. The recommendations are supported by the following reasons :-

- (a) to help accelerate housing delivery;
- (b) to support economic ambitions of the community and the Council;
- (c) to help mitigate the impact new development may have on the Borough's existing physical, social and green infrastructure;
- (d) to ensure the proper planning of the area, and
- (e) in respect of recommendation (b), to take account of any site specific viability and planning issues that may emerge through the planning application process.

**Ian Williams, Director of Economic Growth**

### **Background Papers**

Planning Obligations Supplementary Planning Document, January 2013

Karen Johnson, Extension 6324

S17 Crime and Disorder	The recommendation will have a neutral impact on the Council's ability to consider issues of crime and disorder.
Health and Well Being	This report will ensure matters such as green infrastructure, sustainable transport provision, sport and recreation facilities that encourage and enable people to lead more active lifestyles and improve health and well-being are considered through new development.
Carbon Impact	Securing renewable energy generation and/or contributions to the carbon management fund can be achieved through new development. Both can help reduce the Borough's carbon footprint.
Diversity	This report will ensure matters such as homes for older people, affordable housing and improving access to education facilities for children of all ages and abilities are considered through new development.
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	The continued use of the planning obligations system and/or the introduction of a CIL could affect the level and timing of capital receipts arising from the sale of Council owned land.
Key Decision	Yes.
Urgent Decision	No.
One Darlington: Perfectly Placed	Delivering infrastructure at the right time to meet the needs of the new community strongly reflects the vision, themes and work strands of One Darlington: Perfectly Placed.
Efficiency	If agreed, this recommendation will ensure the Council does not have to re-visit a CIL within two years of adoption. It could reduce the amount of time that is needed to consider and determine planning applications and appeals for new development.

## MAIN REPORT

### Purpose and Reason for this Report

18. The purpose of this report is to highlight the key elements of the optional Community Infrastructure Levy (CIL), to assess the appropriateness of introducing a CIL in Darlington now and as a result to seek Members approval not to introduce a CIL for the time being.

19. This report also highlights the positive impacts the planning obligations system has had to date in securing appropriate infrastructure as part of viable development in the Borough.

### **What is the Community Infrastructure Levy?**

20. The previous Government introduced the Community Infrastructure Levy in 2010 to work alongside planning obligations. It is an alternative approach to providing, improving, replacing and maintaining infrastructure required as a consequence of new development. The intention is that CIL could be used to help provide larger items of infrastructure that require contributions from several developments to secure delivery.

21. CIL is optional – should the Council choose not to implement it now, they can reconsider at any point in the future. If CIL is introduced, the use of planning obligations would be limited to securing affordable housing and site specific infrastructure e.g. highways.

22. Use of CIL locally is mixed; Stockton, Durham and Hambleton are introducing CIL but Hartlepool, Middlesbrough and Scarborough are not. Redcar and Cleveland who had been a PAS CIL Frontrunner are not introducing CIL after work showed that it would not generate sufficient funding to deliver the infrastructure needed to deliver their Local Plan.

23. CIL is a fixed rate charge, based on square metres of net additional floor space. It can be secured from most types of development of more than 100m<sup>2</sup> or from 1 or more dwellings. Affordable housing, charitable developments and developments where the public do not normally go, eg a substation, are exempt.

24. Payment is mandatory and, unlike planning obligations, the Council cannot decide on a case-by-case basis whether the charge can be varied. Although this means that a developer will be able to calculate their financial liability up front, if viability is an issue CIL must be paid, so any discounts would be from the affordable housing requirement or other site specific obligations which remain a separate consideration. As a result the delivery of affordable housing as part of a private development could be adversely impacted upon.

25. The owner of the land who secures planning permission is liable to pay the levy to the charging authority (the Council) once construction commences or in accordance with a staged payments policy. The Council must then use the money to deliver infrastructure projects identified on a published list, known as a Regulation 123 List.

### **The Existing Planning Obligations System**

26. At the moment the Council uses planning obligations (also known as developer contributions or Section 106 agreements) to secure infrastructure to allow the granting of planning permission. They must meet all of the following tests set out in national legislation:

- (a) necessary to make the development acceptable in planning terms to create a sustainable development;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development to provide infrastructure which would not have been necessary without the demand generated by the development.

27. The Council's adopted Planning Obligations SPD (January 2013) ensures that for every location, development should mitigate its impact on local and strategic infrastructure, while ensuring that landowners and developers can still secure competitive returns from the delivered development.

28. Using knowledge of housing delivery the SPD identifies the community infrastructure targets (critical/necessary/desirable) that potential development is likely to impact upon in different parts of the Borough (the North West, Central, South West, South East, North East or Rural Area) for the following financial year. These targets have been derived from a wide range of evidence including the Joint Single Needs Assessment, One Darlington: Perfectly Placed, the LDF Infrastructure Delivery Plan and through consultation with relevant Council services. The ability of existing infrastructure to cope with increased use from new development, as well as committed infrastructure projects, the availability of funding from other sources and land values have all been taken into account. The proposed targets for consideration for 2014-2015 are attached (as **Appendix 1**).

29. In exceptional cases where land values are insufficient to fund the required community infrastructure, the process (agreed by Cabinet in February 2013) is that the total contributions for community infrastructure should be split 75%/25% between the critical and necessary targets.

30. Since January 2013 this approach has led to more schemes in Darlington contributing towards a wider range of infrastructure, such as education and affordable housing as part of a viable development e.g. at Bishops Place, Hopetown Park. The benefits of the current system are most significant at the former Feethams Football Club; planning permission and a s106 agreement negotiated in a buoyant market was limited to affordable housing, highways and open space but by using the SPD, even in the economic downturn the re-submitted application secured additional contributions for education and sports provision. Even with changes to national legislation that will be introduced in April 2015 (see paragraphs 39-41) it is considered that similar levels of success could be realised for other schemes expected to be submitted over the next few years.

## **The Way Forward**

31. Given the above, it is considered that the most beneficial way forward for the Council and local residents is to proceed with the approach that maximises funding and the infrastructure required to mitigate the impact of new, viable development. It is considered a CIL will not achieve the best possible outcome because:

- (a) ***Uncertainty with potential Local Plan allocations***

A CIL Charging schedule and the Local Plan should inform and be generally consistent with each other. The Making and Growing Places DPD (MGP DPD) is at Revised Preferred Options stage. Following the recent public consultation there remains some uncertainty about the potential housing allocations and the type of housing that will be allocated on each site. Crucial elements of the Local Plan evidence base (the Whole Plan Viability and Infrastructure Delivery Plan) are not expected to be finalised until November 2014. Both are also required to inform a CIL. To avoid abortive work it is considered that CIL should not be started until there is greater certainty about the content of the Local Plan and the two supporting documents - on receipt of an Inspectors Report in July 2015.

**(b) *Level of CIL Eligible Planning Permissions 2016-19***

The levy can only be secured from schemes that have been granted planning permission from the date CIL is adopted. As CIL takes 12-18 months to produce the earliest it could start being secured is July 2016 (see paragraph 26). By this date it is anticipated that 20 sites (approx 2317 homes) proposed in the Making and Growing Places DPD could have planning permission. Only 11 sites (590 homes) including only one of the strategic housing locations may not have planning permission and would be CIL eligible. This will significantly reduce the amount of funding that can be generated by CIL in the plan period (see paragraph 33).

**(c) *Viability of Development varies across the Borough***

Government guidance states that the introduction of CIL should achieve an 'appropriate balance' between securing viable development and generating sufficient funds to deliver meaningful infrastructure. It must be demonstrated that the CIL together with affordable housing requirements, sustainability measures and planning obligations for site specific infrastructure would ensure delivery of the Local Plan's development strategy.

32. To help achieve an appropriate balance differential rates (by size and type of development and area) to reflect land values are set out in a CIL Charging Schedule. Most have three/four zones - a reasonable blanket rate is applied to each to ensure that the appropriate balance is achieved. Complicated charging schedules or setting higher blanket rates to capture the value of exceptional sites within a zone are not supported because it could put affordable housing provision at risk, thereby putting the development strategy at risk.

33. Achieving an appropriate balance in Darlington would not be straightforward - viability of development varies considerably across the Borough. For example the 2012 Addendum to the Economic Viability of Housing Land Study (EVHL) shows that in the current downside market:

(a) It is unlikely that housing development in the central, eastern and south eastern urban area will be viable with affordable housing and planning obligations. Even with no planning obligations, a viable development is unlikely. Other neighbouring authorities, eg Newcastle and Durham, have not set a charge in

their lower market areas - a similar approach would be appropriate in Darlington;

- (b) Newcastle and Durham set higher tariffs for residential development in their higher value areas – this approach could be applied in the South West urban area – but only 150 dwellings are identified there in the Making and Growing Places DPD to 2026;
- (c) Viability varies elsewhere e.g. in the inner north western area, the northern area and the outer north eastern area only schemes of up to 14 dwellings could be marginally viable. Neighbouring authorities have set a rate of £10-15 per sqm for similar areas which could be achieved in the Borough. But it is questionable whether site specific infrastructure and affordable housing could be supported as well;
- (d) Retail, office and hotel development would be able to support a levy but this varies by site:
  - (i) Newcastle, Durham and Hambleton do not set a rate for employment development/ smaller businesses - it would be unwise of the Council to set a rate as this could discourage investment in the Borough;
  - (ii) Hambleton and Durham have found that large scale convenience retail is able to support a charge of £80/sqm - a similar levy could be set in Darlington, although proposals of this type between 2016-2019 are expected to be limited;
- (e) Strategic sites with very significant on-site infrastructure have been excluded elsewhere where those costs are greater than the CIL might be. Therefore, all of the Darlington strategic locations and the Harrowgate Hill 'options' could be exempt.

34. These assumptions have been supported by viability assessments for development sites over the last 12 months. So requiring CIL, particularly under c) would threaten the viability of development and could affect housing delivery in the Borough contrary to the Council's aim to generate £1.5m in the Medium Term Financial Plan. Where viability is a concern, the mandatory CIL must be paid, so this could also have an adverse impact on the delivery of the affordable housing through private development, contrary to the ambitions of the Council's Housing Strategy.

(a) ***Anticipated CIL contributions could be relatively low***

- (i) High level analysis has been carried out to determine the amount which could potentially be raised through the CIL. This is based on the rates of neighbouring authorities with broadly comparable land values (e.g. residential development: £80/m<sup>2</sup> for the South West = £7,832 for a 3 bed house and £15/m<sup>2</sup> for the CIL liable parts of the rest of the Borough = £1,335 for a 3 bed house).



- (ii) Taking into account the exemptions (in paragraphs 17 and 30) the **approximate** value of CIL from 590 dwellings identified in the MGP DPD, expected to be generated as a result of planning permission from 2016-2019 is £1.1m. On the other hand if the Council continues to use planning obligations to the extent it has over the last 15 months, contributions would be £6.3m, significantly higher than a CIL. This would include provision of new primary schools, local and strategic road, foot and cyclepath networks, bus service extensions, new playing fields, open space and play areas.

(b) ***The Neighbourhood Fund must be taken into account***

- (i) The Council does not control how all the CIL is spent. Parish Councils would receive 15% of the levy secured in their area (limited to £100/existing dwelling) and Neighbourhood Forums receive 25% for the area where a neighbourhood plan has been adopted. Elsewhere 15% of the levy must go to the community where the development has taken place to be used on infrastructure projects of their choice – the Council would need to fund engagement with the local community that is proportionate to the level of funding to be secured to determine their infrastructure requirements.
- (ii) Although a CIL would give local residents a say in how a proportion of the levy is spent, it is likely to generate significantly less funding for local infrastructure. In contrast planning obligations are likely to generate more funding and although a formal neighbourhood fund is not part of the planning obligations system the Council does ensure that, through Members, the wider community are involved in determining where planning obligations for community infrastructure are spent. Appropriate infrastructure projects are approved by Members at Place Scrutiny and then placed on the Council's Infrastructure Projects List (updated every two years). Planning Applications Committee then approves the expenditure for a specific project by approving planning permission. This process has been successful to date, with S106 agreements contributing to several projects on the list e.g. £114,673 towards the provision of primary school places in the urban area.

(c) ***Additional resource intensive governance arrangements***

- (i) Implementing a CIL will take approximately 12-18 months and there are two stages of public consultation which must be carried out: 'Preliminary Draft Charging Schedule', then 'Draft Charging Schedule' which would set out the approach to be taken by the Council and the proposed rates. After both these consultations have been undertaken, an independent inspector, funded by the Council, will undertake an examination before a CIL can be implemented.
- (ii) A Charging Schedule must be kept under review to ensure that the charges remain appropriate over time, take account of market conditions and remain relevant to the infrastructure needed to support

the Local Plan's development strategy. A Schedule can be revised at the Council's discretion as long as the process identified in paragraph 36 is followed. If CIL were to be implemented now in a downside market, it is assumed that any schedule would need to be revisited after 2019 to reflect the expected upturn in the housing market. All costs and resource implications to the Council identified in paragraph 38 would therefore need to be repeated approximately two years after adoption.

## **Financial Implications**

35. A number of financial issues would need to be considered if a CIL is to be adopted. Based on the experience of other local authorities who have adopted and reviewed a CIL, it would cost an estimated additional £115,000 to set up and administer a CIL. While 5% of the CIL can be used to cover administration annually this will not cover all costs. There is also often a time lag of 1-3 years between grant of permission and start of construction, when CIL would be collected. Therefore, if CIL is adopted in 2016, the Council would start receiving income until 2019-20. Due to the above costs, it would be 2021 before the revenue from CIL starts to generate meaningful sums – not significant enough to deliver major infrastructure projects. Additionally, the existing planning obligation administration arrangements would still need to be maintained. Additional staff resources and funding would also be required to produce a CIL and fund the examination. These costs would also need to be duplicated after 2018-19 or whenever an economic upturn is experienced to ensure the CIL remains relevant.

## **Legal Implications**

36. From the 6 April 2015 (but backdated to the 6 April 2010), national regulations will limit the use of planning obligations; the Council will not be able to seek financial contributions for a piece of infrastructure that they have already collected money for, from five other developments (5+ rule). The same rule does not apply to s278 highways agreements - these can still be pooled.

37. Because prior to January 2013 planning obligations were only sought for a limited number of matters, and because of the more limited development activity over recent years, in Darlington this is only likely to be an issue in a limited number of cases. Given the location of potential development sites and the impacts they are expected to have it is considered that their infrastructure requirements can be addressed through the planning obligations system.

38. If the Council chooses not to proceed with a CIL, based on evidence from other local authorities who have not adopted CIL infrastructure will be tied to tightly defined projects or elements of projects in a S106 agreement e.g. 'to secure improvements to the Eastern Transport Corridor between junction x and y'. So, even more 'strategic' facilities like new primary schools could be delivered in this way. The Council's Borough Solicitor has confirmed that this approach is acceptable.

## **Corporate Landlord Advice**

39. The Levy would apply to the Council as a landowner just as it would with other landowners/developers. Introducing CIL and/or continuing with the planning obligations system could affect the level and timing of capital receipts arising from the sale of Council owned land. The Estates and Property Team within the Economic Growth Directorate was satisfied with the approach, content and costs identified in the adopted SPD and have been using the approach in the planning application process since 2013.

## APPENDIX 1: PLANNING OBLIGATIONS: RESIDENTIAL DEVELOPMENT COMMUNITY INFRASTRUCTURE TARGETS 2014-2015

TYPE OF INFRASTRUCTURE	North West				Central				South West				South East				North East				Rural Area				
	No. dwellings				No. dwellings				No. dwellings				No. dwellings				No. dwellings				No. dwellings				
	5+	10+	15+	50+	5+	10+	15+	50+	5+	10+	15+	50+	5+	10+	15+	50+	5+	10+	15+	50+	5+	10+	15+	50+	
<b>HOUSING</b>																									
Affordable housing			C	C			N	C			C	C			N	C			C	C			C	C	
Improvements to Council owned housing				D								D								D					
<b>TRANSPORT</b>																									
Sustainable transport		D	D	N				D			N	N				N				N	D	N	N	N	
Public transport			D	N				D			N	N			D	D			D	D	N	N	N	C	
Highways		D	D	D			D	D			D	D			D	D			D	D		D	D	D	
Travel Plan				D				D				D				D				D				D	
<b>EDUCATION</b>																									
Early years																									
Primary	D	D	C	C		D	N	C	C	C	C	C		D	D	N		D	N	C	N	C	C	C	
Secondary																									
<b>GREEN INFRASTRUCTURE</b>																									
Children's play			D	N		D	N	N	N	N	N	C						D	D	N					
Wildlife friendly space			D	N	D	D	C	C	N	N	N	C	N	N	N	C			C	C	C	C	C	C	
<b>SPORT &amp; RECREATION</b>																									
Playing pitches			N	N						D	D	D			N	N			N	N	N		N	N	N
Other sports facilities							N	C																	
<b>RENEWABLE ENERGY</b>																									
Carbon Management Fund			D	N				D		D	D	N				D			D	D		D	D	N	
<b>EMPLOYMENT PLACEMENTS</b>																									
Construction				D				D				D				D				D				D	

C Critical
 N Necessary
 D Desirable

Priority	Justification
Critical infrastructure	<p>Delivery of the infrastructure is critical because it either:</p> <ul style="list-style-type: none"> <li>• is fundamental to deliver Core Strategy policies and the IDP in the correct timeframe; and/or</li> <li>• has funding for part of the infrastructure is already in place but additional funding is required to secure delivery; and/or</li> <li>• provides for or unlocks significant development that might not otherwise happen.</li> </ul>
Necessary infrastructure	<p>Required to meet a specific need and create a place so people can live there with access to essential facilities. But the delivery of the infrastructure can take place as development progresses.</p>
Desirable infrastructure	<p>Includes infrastructure required to deliver sustainable communities that has a benefit at a neighbourhood or locality level. It supports the development taking place and can be delivered within an appropriate timeframe after a development has been completed.</p>

**PLANNING OBLIGATIONS: NON RESIDENTIAL COMMUNITY INFRASTRUCTURE TARGETS 2014-2015**

TYPE OF INFRASTRUCTURE	North West		Central		South West		South East		North East		Rural Area	
	Size of development (m <sup>2</sup> )		Size of development (m <sup>2</sup> )		Size of development (m <sup>2</sup> )		Size of development (m <sup>2</sup> )		Size of development (m <sup>2</sup> )		Size of development (m <sup>2</sup> )	
	500+	1000+	500+	1000+	500+	1000+	500+	1000+	500+	1000+	500+	1000+
<b>TRANSPORT</b>												
Sustainable transport		C		C		C		C		C	C	C
Public transport	N	C		N	N	C		C		C	C	C
Highways	D	D	D	D	D	D	D	D	D	D	D	D
Travel Plan	D	N	D	D	D	N	D	N	D	N	D	N
<b>GREEN INFRASTRUCTURE</b>												
Informal recreation												
Wildlife friendly space	N	N	N	N	N	N	N	N	N	N	N	N
<b>SPORT AND RECREATION</b>												
Playing pitches											D	N
Other sports facilities		N	D	N	D	N	D	N		N		
<b>RENEWABLE ENERGY</b>												
Off site												
<b>EMPLOYMENT PLACEMENTS</b>												
Construction		N		N		N		N		N		N
End User		N		N		N		N		N		N
<b>PUBLIC ART</b>												
Public art		D		D		D		D		D		D

**C** Critical    **N** Necessary    **D** Desirable