

**Torbay Council**

# **Community Infrastructure Levy**

## **Submission Draft Charging Schedule**

### **Incorporating Revised Proposed Modifications**

**September 2016**

## Community Infrastructure Levy: Revised Draft Charging Schedule

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## **Appendix 1 Charging Zones Maps**

Residential Charging Zones Maps 1-39 showing Charging Zones 1-4 . Note that the map boundaries/page numbers correspond to the Adopted Local Plan 2012-30. The maps are designed primarily to be viewed on a screen and may be zoomed into (separate document). Note that Map 31 (showing land at Bascombe Road, Churston) has been amended slightly from the initial Proposed Modifications.

**Commercial and Non-Residential Development Charging Zones Map:** Zone C1 Town Centres, St Marychurch and Preston District Centres. Zone C2 out- of-town centre, including The Willows District Centre.

# Torbay Community Infrastructure Levy: Revised Draft Charging Schedule

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## 1. Introduction and Background

This is Torbay's Submission Draft Charging Schedule for the Community Infrastructure Levy (CIL).

The document has been revised in response to representations made on the Preliminary Draft Charging Schedule (PDCS), consultation that took place between December 2011 and February 2012, and the Draft Charging Schedule (DCS) which took place between February and March 2015. A further public consultation took place between 18<sup>th</sup> March and 29<sup>th</sup> April 2016. The emerging CIL has been accompanied by several viability assessments, the most recent being January 2016, with an addendum report dated August 2016.

The Council has proposed a number of Modifications to the Draft Charging Schedule which was consulted upon in February-March 2016. The Revised Proposed Modifications are marked in underlined red and in a separate schedule of Modifications. Deleted text is shown as ~~struckthrough~~. In the event of any discrepancies, the Schedule of Revised Proposed Modifications should be taken as the authoritative text.

The Revised Proposed Modifications reflect comments made on the Revised Draft Charging Schedule, the Council resolution of 11<sup>th</sup> May 2016 and subsequent developments, especially relating to affordable housing thresholds.

**Representations are sought on the Revised Modifications between Monday 5<sup>th</sup> September and Monday 17<sup>th</sup> October 2016.** There is no need to repeat representations previously made on emerging CIL as these will be reported to the Independent Examiner conducting the CIL Examination.

**However, please could representors indicate whether they wish to be heard at an Oral Examination, or whether they are content for their evidence to be submitted in written form.**

Community Infrastructure Levy (CIL) is a tax levied on development of more than 100 sq m of floorspace, or new-build dwellings. It is intended to help fund the infrastructure needed to support growth in Torbay. It is regulated by the Community Infrastructure Levy Regulations 2010 (as amended).

The Council is intending to charge CIL on residential developments within four charging zones:

- Areas of lower housing value (based on the built-up area within 20% most deprived area (as indicated in the Indices of Deprivation 2015)).
- Elsewhere in the built-up area.
- Outside the built-up area (Plus Ilisham Valley and Watcombe Heights, Torquay, and Bascombe Road, Churston).
- Future Growth Areas.

The built-up area is defined by the area outside Policy C1 “Countryside and rural economy” or Policy C2 “Undeveloped coast” areas in the Adopted Torbay Local Plan 2012-30.

Note that Charging Zones have been reviewed since the Revised Draft Charging Schedule to more accurately reflect viability. They have been published on larger scale, OS based maps. These maps are designed primarily to be viewed electronically where they can be zoomed into.

Residential schemes of 15 or more dwellings within Future Growth Areas (as proposed in the Adopted Torbay Local Plan 2012-30) will not be charged CIL. The Council will continue to negotiate Section 106 Obligations (s106) to cover the infrastructure needed to support their development as well as affordable housing.

It is intended to seek CIL on larger out-of-town/district centre retail developments.

All charging zones are based on the viability of development within the zones. Whilst strategic sites within Future Growth Areas are likely to be viable with CIL; the Council considers that the higher infrastructure costs associated with larger sites in Future Growth Areas means that they would not be viable with CIL and the s106 Obligations required to render these developments sustainable.

It is considered that s106 and s278 Highways Agreements are a more effective mechanism for providing the infrastructure required by development in these areas.

## **2. Next Steps**

This revised Schedule and the schedule of Proposed Revised Modifications will be submitted to, and considered by, an Independent Examiner (Intelligent Plans and Examinations Ltd (IPE)). The Examiner may approve it, reject it or approve it with modifications.

Following receipt of the Examiner’s Report, CIL needs to be adopted by Torbay Council.

## **3. Where to Find Out More**

More detailed advice on CIL and the relevant Regulations (with amendments) can be found on the Planning Advisory Service website:  
<http://www.pas.gov.uk/community-infrastructure-levy>

The government’s online Planning Practice Guidance (PPG), Part 25 contains detailed advice on CIL and links to relevant Regulations:  
<http://planningguidance.planningportal.gov.uk/blog/guidance/community-infrastructure-levy/>

Other details about CIL can be found on the Planning Portal’s CIL page:  
<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

## **4. The Torbay Infrastructure Delivery Study and Viability Evidence**

Under the CIL Regulations (2010 as amended - most recently in 2015), charging authorities are required to publish a charging schedule of CIL rates and to identify

items of infrastructure they wish to fund through CIL. Charging authorities should assess the impact of CIL on viability and set it at a level that will not jeopardise development.

Regulation 14 (1) of the CIL Regulations (as amended) indicates that: *“In setting rates (including differential rates) in a charging schedule a charging authority must strike an appropriate balance between:*

*a) the desirability of funding from CIL (in whole or in part) the actual and expected estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding; and*

*(b) the potential effects (taken as a whole) of the imposition of CIL on the economic viability of development across its area”.*

Torbay Council is the Charging Authority for the Torbay Local Plan area.

Detailed information on the need for infrastructure, estimated funding gaps, and the assessment of viability are contained in the Torbay Infrastructure Delivery Study (Baker Associates/Roger Tym and Partners 2011, Chapter 8). This is published on the Council’s website. <http://www.torbay.gov.uk/council/policies/planning-policies/evidence-base-and-monitoring/> .

There have been several subsequent viability reports prepared to advise the Council on the viability of development and the scope to seek contributions from developers. The Torbay Local Plan Viability Testing – Economic Viability Report (PBA 2014) was a “whole plan” viability assessment of the policies in the (then) emerging Torbay Local Plan. This assessment informed the DCS (February 2015).

**The Torbay CIL Viability Study Economic Viability Report (Peter Brett Associates, January 2016)** was carried out when the Local Plan Inspector’s Report had been received (October 2015) and the Local Plan with Modifications was nearing adoption. It assessed the scope to levy CIL taking into account the policy requirements (including affordable housing and space standards) in the Adopted Torbay Local Plan 2012-30. The 2016 Report is published on the Council’s website. <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>

The January 2016 PBA updated viability report advised that viability had reduced slightly for smaller residential schemes, extra care units and retail development. This advice is reflected in the CIL rates recommended in this Revised Schedule. The Viability Update also advised that residential developments of more than 4 dwellings had sufficient headroom to pay CIL of £78 per sq m. The Draft Charging Schedule has not increased the rate above £70 previously consulted upon for sites within the built up area, in order to avoid undue burdens being placed upon smaller developments.

Following further consideration of viability evidence, it was considered appropriate to charge a lower CIL rate in areas of lower housing viability. The **urban** areas within the 20% most deprived Lower Super Output Areas (LSOAs) in the Indices of Deprivation 2015 are taken as an indicator of areas of lower viability. **However, the areas have been reviewed to eliminate boundary anomalies.**

In response to representations to the Revised Draft Charging Schedule in March 2016, it was considered necessary to review the viability evidence. The subsequent CIL Viability Addendum report by Burrows Hutchinson Ltd has, together with Members' views, informed the modifications set out in this document. Note that the Council considers that small sites in all but the least viable areas (Charging Zone 1) would be viable with CIL.

In addition, the Burrows Hutchinson Viability Addendum recommended that the Charging Zones be reviewed to remove some anomalies with house values, and to publish the maps at a larger scale for clarity. This review of the Charging Zones has been carried out and modified maps published.

The CIL documents and Viability Reports are available on the Torbay.gov.uk website at <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>

Or by following the link: [Torbay.gov.uk-Planning-Planning Policies-Local Plan-S106](http://www.torbay.gov.uk/Planning-Planning-Policies-Local-Plan-S106) and CIL.

## **5. The CIL and the new Torbay Local Plan 2012-30 - A landscape for success.**

CIL is intended to help provide infrastructure needed to deliver growth and should normally be worked up and tested alongside the Local Plan. A key comment on the CIL Preliminary Draft Charging Schedule consultation in 2012 was that CIL would be premature until the new Local Plan was adopted.

The "Torbay Local Plan 2012-30 and beyond: A landscape for success" was adopted by Council on 10<sup>th</sup> December 2015.

*This consultation is not about growth levels or potential sites for development.* However, it is clear that Torbay will experience an infrastructure funding gap. In particular the South Devon Highway (formerly South Devon Link Road) is a key element in improving Torbay's economic prospects. This was opened in December 2015, but the bulk of the £20 million borrowed by the Council to help fund it remains to be raised. Overall, the Torbay Infrastructure Delivery Study identified an infrastructure funding shortfall of £160,000 between 2010-31 of which £52,000 is considered to be critical infrastructure.

## **6. Who pays CIL?**

CIL applies to developments that create more than 100 sq m gross internal floorspace of new development, minus the floorspace of any demolished buildings (so long as these have been in lawful use for at least 6 months out of the last three years). New-build houses or flats are also liable to CIL even if less than 100 sq m, unless built by a "self-builder" and an exemption is obtained.

CIL only applies to places where people usually go, so does not cover buildings such as electricity sub-stations or plant rooms.

Social housing (as defined in the CIL Regulations) is exempt, as are charities so long as the development is used for charitable purposes. CIL is not collected if it would be less than £50.

Note that CIL is payable on qualifying developments whether they require express planning permission or are permitted under the General Permitted Development Order (as amended), Prior Approval or Local Development Orders (LDOs).

CIL will be used to help fund major infrastructure projects set out in the key infrastructure projects list ("Regulation 123" List). Should other infrastructure needs arise that require CIL funding, the Council will publish a revised Regulation 123 List.

A "neighbourhood portion" of CIL must be spent in the neighbourhood in which CIL arises. When Neighbourhood Plans have been "made" (i.e. adopted following approval at a local referendum), this will be 25%. The proportion will be 15% until Neighbourhood Plans are approved at referendum.

In the case of Brixham, the money will be passed directly to the Town Council. For the "unparished" parts of Torbay (i.e. everywhere except Brixham Town Council area), the Council will hold the money and spend it on matters agreed with the local communities. This will be used to support the infrastructure priorities identified by Community Partnerships and Neighbourhood Forums.

## 7. Social housing and Self-Build Housing Exemptions

Social housing as defined in Regulation 49 of the CIL Regulations (as amended) and self-build/custom-build housing have a mandatory exemption from CIL.

Self-build/custom-build housing is defined in the CIL Regulations (as inserted in 2014). Section 54 of the CIL Regulations (Amendment) 2014 sets out procedures that must be followed in order for self-build exemption to apply. ***Exemption can only be claimed before development is commenced.***

## 8. Torbay's Proposed Approach to CIL: Residential Development

The Revised Draft Charging Schedule sets out four residential Charging Zones:

- 1) **"Inner Urban" Built-up areas with lower development viability due to deprivation.** Residential developments of 1-3 dwellings within areas of deprivation (Charging Zone 1) will not be charged CIL (i.e. they will be zero rated). Larger sites will be charged CIL. This zone is defined as based on Lower Super Output Areas (LSOAs) within the built-up area which are within the 20% most deprived LSOAs in England in the Indices of Deprivation 2015. (Note that boundaries have been reviewed (to remove anomalies in land value in the RDCS). Conditions or s106 Obligations will be sought to address site acceptability matters, and to make development legal in terms of its impact on Habitats Regulations matters etc.
- 2) **Elsewhere in the built-up area.** Residential development will be charged CIL. The built up area is defined as areas outside the Policy C1 "Countryside and rural economy" area or Policy C2 "Undeveloped coast area" in the Adopted Torbay Local Plan 2012-30, that are not within Zone 1 or a Future Growth Area.
- 3) **Outside the built-up area, plus Watcombe Heights and Ilisham Valley, Torquay and Bascombe Road, Churston.** Residential development will be



charged CIL. This applies to areas within the Policy C1 “Countryside and rural economy” area or Undeveloped coast area within Policy C2.

- 4) **Future Growth Areas** as defined by Adopted Local Plan Policy SS2 and related Strategic Development Policies. This includes the small parts of Future Growth Areas that are within deprived LSOAs. ~~These~~ Sites of 15 or more dwellings will be zero-rated for CIL, but s106/s278 Agreements will be sought to provide infrastructure and affordable housing in these areas. CIL will be sought proposals of 1-14 dwellings at £70 per sq m.

Strategic development within Future Growth Areas will require strategic infrastructure serving the development. ~~Such sites~~ Most applications in Future Growth Areas are likely to be larger in scale, so s106 pooling restrictions are less likely to prevent the delivery of key infrastructure. In addition, s106 Obligations are likely to be required for affordable housing on these sites.

The Council's residential charging zones for CIL are summarised below and set out more fully in the following Figures 1- 4 below. Notes to the tables are set out on page 13.

<b>Summary of Residential Charging Zones</b>			
<b>Zone</b>	<b>Site size (£ per sq m)</b>		
	<u>1-3 dwellings</u>	<u>4-14 dwellings</u>	<u>15+ dwellings</u>
1. <u>Built up areas based on top 20% deprivation</u>	<u>Zero</u>	<u>£30</u>	<u>£30</u>
2. <u>Elsewhere in the built up area</u>	<u>£30</u>	<u>£70</u>	<u>£70</u>
3. <u>Outside the built up area</u>	<u>£70</u>	<u>£70</u>	<u>£140</u>
4. <u>Future Growth Area</u>	<u>£70</u>	<u>£70</u>	<u>Zero- s106 Obligations will be used to secure infrastructure funding.</u>

Note that the Charging Zone boundaries have been reviewed and amended since the Revised Draft Charging Schedule, and have been published on larger scale maps. These maps are intended primarily to be viewed electronically and may be zoomed. If an instance arises that a site falls within two charging zones, the zone that the site is substantially within will apply. If equally between two zones, the lower zone will apply.

**Figure 1: Residential Charging Zone 1: Inner Urban Built-up areas based on within the 20% most deprived LSOAs (excluding Future Growth Areas).**

**CIL Revised Draft Charging Schedule and relationship to s106 Obligations: Residential Development (Use Classes C3, C4 and sui generis hostel. See Note 1)**

	<b>S106</b>	<b>CIL</b>
<b>Developments of 1-3 net new dwellings</b>	Zero, except for direct site acceptability matters. (Including access, direct highway works, flooding and biodiversity, matters to make development acceptable in terms of Habitats Regulations and other legal matters).	<b>Zero</b>
<b>Developments of 4 -14 net new dwellings.</b>	Zero, except for direct site acceptability matters (see above).  Note that affordable housing may be sought on greenfield sites of $\geq$ <b>11</b> or more dwellings (see Note 2).	<b>£30 per sq m</b> of chargeable floorspace.
<b>Developments of 15+ net new dwellings.</b>	Zero, except for direct site acceptability matters (see above).  Note that affordable housing is sought on sites of 15+ dwellings (see Note 2)	<b>£30 per sq m</b> of chargeable floorspace

**Figure 2: Residential Charging Zone 2: Elsewhere in the built up area, excluding “inner urban” areas and Watcombe Heights and Ilsham Valley, Torquay, and Bascombe Road, Churston.**

~~Outside Inner Urban area based on 20% Most Deprived LSOAs, and within the Built Up Area~~

**CIL Revised Draft Charging Schedule and relationship to s106 Obligations: Residential Development (Use Classes C3, C4 and sui generis hostel) (See note 1).**

	<b>S106</b>	<b>CIL</b>
<b>Developments of 1-3 net new dwellings</b>	<p>Zero, except for direct site acceptability matters. (Including access, direct highway works, flooding and biodiversity, matters to make development acceptable in terms of Habitats Regulations and other legal matters).</p> <p>Note that affordable housing is sought on greenfield sites of <del>3</del>-11 or more dwellings (see Note 2).</p>	<b>£30 per sq m</b> of chargeable floor space.
<b>Developments of 4-14 net new dwellings.</b>	<p>Zero, except for direct site acceptability matters (see above).</p> <p>Note that affordable housing is sought on greenfield sites of <del>3</del>-11 or more dwellings (see Note 2).  <del>Affordable housing on greenfield sites, usually by contribution on sites of fewer than 10 dwellings</del></p>	<b>£70 per sq m</b> of chargeable floor space.
<b>Developments of 15+ net new dwellings (excluding Future Growth Areas)</b>	<p>Zero, except for direct site acceptability matters (see above).</p> <p>Affordable housing is sought on sites of 15+dwellings. (See Note 2).</p>	<b>£70 per sq m</b> of chargeable floor space.

**Figure 3: Residential Charging Zone 3: Outside the Built Up Area (i.e. within the Countryside Area or Undeveloped Coast), plus Watcombe Heights and Ilisham Valley, Torquay and Bascombe Road, Churston.**

**CIL Revised Draft Charging Schedule and relationship to s106 Obligations: Residential Development (Use Classes C3, C4 and sui generis hostel (see note 1)).**

	<b>S106</b>	<b>CIL</b>
<b>Developments of 1-3 net new dwellings</b>	<p>Zero, except for direct site acceptability matters. (Including access, direct highway works, flooding and biodiversity, matters to make development acceptable in terms of Habitats Regulations and other legal matters).</p> <p>Affordable housing on greenfield sites, <del>usually by contribution on sites of fewer than 10 dwellings (see note 2).</del> of <b>11+ dwellings or 6+ in the AONB.</b></p>	<b>£70 per sq m</b> of chargeable floor space.
<b>Developments of 4-14 net new dwellings</b>	<p>Zero, except for direct site acceptability matters (see above).</p> <p>Affordable housing on greenfield sites, <del>usually by contribution on sites of fewer than 10 dwellings (see note 2).</del> of <b>11+ dwellings or 6+ in the AONB.</b></p>	<b>£70 per sq m</b> of chargeable floor space.
<b>Developments of 15+ net new dwellings (excluding Future Growth Areas)</b>	<p>Zero, except for direct site acceptability matters (see above).</p> <p>Affordable housing is sought on sites of 15+ dwellings (see note 2).</p>	<b>£140 per sq m</b> of chargeable floor space.

**Figure 4: Residential Charging Zone 4: within Future Growth Areas**

CIL Revised Draft Charging Schedule and relationship to S106 Obligations: Residential Development (Use Classes C3, C4 and sui generis hostel) (See note 1).

	S106	CIL
<u>Developments of 1-14 net new dwellings</u>	<u>Zero, except for direct site acceptability matters (see above).</u>	<u>£70 per sq m of chargeable floor space.</u>
<b>Developments within Future Growth Areas (Local Plan Policy SS2)</b>	S106 Contributions to cover infrastructure needed to make development sustainable. Likely to include: <ul style="list-style-type: none"> <li>• Direct site acceptability matters.</li> <li>• Affordable Housing (see Note 2).</li> <li>• Sustainable development contributions necessary to make the development acceptable in planning terms.</li> </ul>	<b>Zero</b>

**Notes to Residential Charging Schedule tables**

**Note 1:** Residential includes dwellings within Use Classes C3 and C4 and sui generis Houses in Multiple Occupation (HMOs). It includes sheltered housing, where extra care is **not** provided.

Extra care housing and student halls of residence will be zero rated for CIL, so long as secured for such use through condition or legal agreement.

Social Housing, as defined by Regulation 49-50 of the CIL Regulations, is exempt from CIL where the requirements of the CIL Regulations have been met.

Self-build and custom-build housing are exempt from CIL so long as an exemption is claimed before the commencement of development. See PPG paragraph 25-141-20140612.

Charitable institutions, e.g. churches are exempt from CIL, so long as the development is used primarily for charitable purposes. (See Regulations 43-44 of the CIL Regulations).

**Note 2:** Affordable housing requirements are set out in Policy H2 of the Adopted Torbay Local Plan 2012-30. The Council has regard to material considerations governing site size thresholds: Namely the Written Ministerial Statement of 28/11/2014, PPG paragraph 23b-031 and the Court of Appeal Ruling of 13 May 2016, that affordable housing should not be sought from sites of fewer than 11 dwellings (6 in designated rural areas as commuted payments paid at the completion of units within the development).

An element of affordable housing is sought on greenfield sites of ≥ 11 or more dwellings or 6+ in the AONB, and brownfield sites of 15 or more dwellings. However, this may be reduced to zero in areas of deprivation, where this would encourage investment.

**Note 3:** Outside the built up area is defined as areas within the Countryside and the rural economy area (Policy C1) or Undeveloped coast (Policy C2) in the Adopted Torbay Local Plan 2012-30. The built up area is defined as areas not so designated. For the purpose of CIL, Watcombe Heights and Ilsham Valley, Torquay and land around Bascombe Road, Churston are within Zone 3.

**Note 4:** Future growth Areas are designated in the Adopted Torbay Local Plan 2012-30.

## 9. Torbay's Proposed Approach to CIL: Commercial Development

It is proposed to seek CIL on out-of-town centre retail and food and drink development of more than 300 sq m at £120 per sq m). This is a slightly lower rate to that set out in the Preliminary and first Draft Charging Schedules, and is based on the PBA January 2016 Viability Study.

Where retail proposals are submitted as part of major mixed use developments, the Council may offer exceptional relief (as set out in Section 16 below) if this would secure a more sustainable and viable development, particularly where it would secure the early delivery of serviced employment land. [Local Plan and NPPF Policies to safeguard the vitality and viability of town centres will be taken into account.](#)

The Council's viability evidence indicates that town centre retail would not be viable with CIL. This viability position also applies to St Marychurch and Preston District Centres; but not The Willows District Centre, which operates as an out-of-town retail park.

The viability evidence indicates that other commercial/employment uses would not be viable with a CIL.

Figure 5 sets out a draft CIL for commercial development. The Charging Zones Map are included at Appendix 1.

<b>Figure 5: CIL Revised Draft Charging Schedule: Commercial and Non Residential Development</b>		
<b>Type of Development</b>	<b>Development Charging Zone</b>	
	<b>1) Town Centres, St Marychurch and Preston District Centres</b>	<b>2) Everywhere else (including The Willows District Centre).</b>
Class A1 retail less than 300 sq m.	Nil	Nil
Class A1 retail over 300 sq m. (see Note 2).	Nil	£120 per sq m
Food and drink (Class A3, A4, A5) (see note 3).	Nil	£120 per sq m
Class A2 Financial and Professional services.	Nil	Nil
Class B employment uses	Nil	Nil
Class D1 Non-residential institutions (see Note 3).	Nil	Nil
Class D2 Assembly and leisure/non residential institutions (see Note 3).	Nil	Nil
Class C1 Hotels	Nil	Nil
Class C2 and C2A Residential Institutions (see Note 4).	Nil	Nil

**Notes to Commercial and non-Residential Charging Zones**

**Note 1:** Charitable institutions, e.g. churches are exempt from CIL, so long as the development is used primarily for charitable purposes. (See Regulations 43-44 of the CIL Regulations).

**Note 2:** Applies to all A1 retail uses including bulky retail.

**Note 3:** s106 contributions may be sought where a development has an effect on non-CIL chargeable matters, such as the night time economy; or where site specific mitigation measures are required such as for access.

**Note 4:** Care Homes are only taken to be non-self contained accommodation for persons who, by reason or age or infirmity, are in need of care. Extra care units are also zero-rated for CIL purposes. Sheltered or retirement dwellings which have their own bathroom and cooking facilities (i.e. are essentially self-contained), and are not extra care units, will be considered to be residential within Use Class C3.

## 10. CIL and S106 Obligations Policy

The Council will still make use of s106 Obligations alongside CIL in order to secure sustainable development. These must meet all of the following tests. They must be:

- a) Necessary to make development acceptable in planning terms;
- b) Directly related to the development; and
- c) Fairly and reasonably related in scale and kind to the development.

After 6<sup>th</sup> April 2015, it was no longer permissible for more than five s106 obligations for infrastructure matters to be pooled (i.e. collected for one specific project). This does not apply to non-infrastructure items that are not fundable through CIL, such as affordable housing, training or town centre management.

S106 Obligations may still be used to secure infrastructure, so long as they meet the above tests, and the Council has indicated that they do not intend to fund that item through CIL.

Full details of s106 Obligations will be set out in a revised Supplementary Planning Document (SPD). This will set out how planning obligations will be targeted on delivering the new Local Plan's growth strategy. It will provide more details on the implementation of affordable housing and green infrastructure. Particular attention is drawn to the need to alleviate flood risk and combined sewer overflows, and to protect priority species such as greater horseshoe bats and cirl buntings.

## 11. CIL Chargeable residential developments and s106 Obligations

CIL will be sought on residential developments outside Future Growth Areas (excluding sites of 1-3 dwellings in Zone 1 ~~deprived SOAs~~). CIL will also be charged on proposals of 1-14 dwellings within Future Growth Areas. On these sites s106 Obligations only will be sought where they are directly necessary to making development acceptable in terms of direct on- and off-site impact (e.g. access, drainage, waste, biodiversity and flooding).

Where possible such matters will be addressed through planning conditions rather than S106 Obligations.

Note that an element of affordable housing is sought on greenfield sites of  $\geq$  11 or more dwellings (6+ in the AONB), and brownfield sites of 15 or more dwellings, as set out in Policy H2 of the Adopted Torbay Local Plan (as affected in implementation by the Planning Practice Guidance and Court of Appeal Ruling).

## 12. Residential development in Future Growth Areas and s106 Obligations

S106 Obligations will be negotiated with developers to secure affordable housing and provide the infrastructure needed for larger residential, commercial and mixed use schemes within Future Growth Areas. This includes but is not necessarily limited to:

- Direct site acceptability matters (biodiversity, waste, flood prevention, access etc). Affordable housing (as per Policy H2 of the Adopted Torbay Local Plan 2012-30).



- Sustainable development contributions (education, lifelong learning, sustainable transport, green infrastructure, recreation, employment etc).

All such contributions will be subject to the tests of lawfulness (see above) and pooling restrictions, on infrastructure items. Where practicable to do so, s278 Highways agreements will be used to carry out improvements to the highway.

Further details will be set out in a revised SPD.

### **13. Non-residential development and s106 Obligations**

S106 Obligations may be sought from commercial and other non-residential developments, so long as they meet the tests above and are not items identified in the Regulation 123 List as being funded through CIL.

This includes direct site acceptability matters (access, biodiversity, flooding etc), and dealing with the traffic impacts of proposals through sustainable transport. s106 Obligations will be sought to address other impacts of non-residential proposals.

For example, where a development has an impact on regulating the night time economy, it could be the subject of a s106 Obligation towards CCTV or town centre management.

Further details will be set out in a revised SPD.

### **14. Calculating the chargeable amount of CIL**

CIL will be calculated by multiplying the CIL rate by chargeable floor area and an inflation measure as follows:

$CIL = CIL \text{ rate} \times \text{gross internal floor area} \times \text{inflation measure.}$

The inflation measure is calculated by the increase in the RICS' Building Cost Information Service all-in tender price index from the base year to the date when permission is granted.

### **15. "Assumed Liability" and Commencement Notices**

Ultimate liability for CIL runs with the land. However, the CIL Regulations encourage someone to assume liability to pay. It is expected that the developer will often "assume liability". Where developers have assumed liability, they are required to submit a commencement notice to the Council prior to starting development.

CIL becomes payable from the date that chargeable development is commenced. When planning permission is granted, the Council will issue a liability notice setting out the amount payable and the payments procedure, including instalments where the amount payable is more than £5,000 (see Section 16 on Instalments).

Where no one has indicated that they "assume liability", and/or no commencement notice is submitted by the developer, 100% of CIL is payable within 60 days of commencement of development. This will be identified through the Council's

monitoring process and an inflation measure (as above), and recovery cost will be applied to late payment.

## 16. Instalments Policy

In order to make CIL more affordable, taking developers' cash flow into account, CIL may be paid by instalments as set out below. Note that the Council is able to vary its instalments policy in accordance with S69B of the CIL Regulations 2010 (as amended). Any revised instalments policy will be published on the Council's website.

Instalments only apply where liability for CIL has been assumed and a commencement notice issued before development commences. Where this is not the case, 100% of CIL becomes payable within 60 days of commencement.

- **Where CIL is less than ~~£5,000~~ **£20,000**:** 100% within ~~9 calendar months~~ **90 days** of commencement of development.
- **Where CIL is more than ~~£5,000~~ **£20,000**:** 50% within 90 days of commencement of development, the remaining 50% within 180 days of commencement of development.
  - ~~25% within 9 calendar months of commencement of development.~~
  - ~~25% within 18 calendar months of commencement of development.~~
  - ~~25% within 24 calendar months of commencement of development.~~
  - ~~25% within 30 calendar months of commencement of development.~~

CIL payable is linked to inflation using the RICS' Building Cost Information Services all-in tender price index of construction. Therefore, earlier repayment of CIL Instalments is encouraged.

Note that in CIL terms, development is considered to have been commenced when any material operation begins on the land. Developers are required to submit a Commencement Notice before development commences. If they do not do this, the Council will not be able to offer payment by instalments or CIL Relief.

## 17. Exceptional Circumstances Relief Policy

CIL is not intended to be a negotiated item. The CIL Regulations grants mandatory relief for charities, self-build housing and social housing.

In order to avoid exceptional circumstances rendering development unviable, the Council will consider offering "exceptional circumstances relief" where:

- The chargeable development is being carried out pursuant to a planning permission that is subject to an enforceable s106 Obligation that makes the development acceptable in planning terms; and
- Evidence (in the form of an assessment of viability) is provided to demonstrate that paying the full levy would have an unacceptable impact on the development's economic viability; and

- The relief must not constitute notifiable state aid (see PPG paragraph 25-129), **unless** the development would otherwise be eligible for mandatory charitable relief.

As noted above, the Council will consider granting exceptional relief to retail elements of large mixed use schemes where this would secure a more sustainable and viable development, particularly the early delivery of “Use Class B” employment land (and the criteria are met). Similarly, the Council will consider granting exceptional relief where developments would assist in the delivery of town centre masterplans or early delivery of (Class B) employment. The criteria noted above must apply (i.e. there must be a s106 Obligation in place and a viability assessment has been carried out to indicated that the impact of CIL would render development unviable).

Before granting discretionary relief, developments must be subject to an independent assessment of viability to be carried out at the applicant’s expense. They should indicate that development is not viable with CIL, and that a longer repayment period will not render development viable. Where an extension to the Instalments Policy is agreed, this will need to be published on the Council’s website for 28 days.

Further details of the Council’s arrangements for assessing viability will be set out in a new SPD dealing with developer contributions.

CIL relief must be sought before the commencement of development. This applies to both mandatory and discretionary relief.

**Payments in kind** of land or infrastructure may be accepted in lieu of cash payment of CIL where they will assist with the delivery of items on the Regulation 123 list *and* comply with the legal requirements (currently set out in regulation 73A of the CIL Regulations).

## **18. State Aid**

The proposed CIL rates are derived from the supporting viability evidence and strike an appropriate balance between the desirability of funding infrastructure to support development in Torbay while ensuring that the rates do not prevent development from coming forward. The proposed basis for charging CIL in Torbay is based on viability evidence and no competitive advantages are identified for any development type or organisation which would give rise to any implications with regard to State Aid.

## **19. Review of CIL**

The Council will keep CIL rates under review. If there are significant changes to the viability of development, CIL will be revised in accordance with the process set out in the CIL Regulations.

## 20. Draft “Regulation 123” List of Key Infrastructure Projects proposed to receive CIL

It is intended to use CIL to help fund the following items set out in the draft Regulation 123 List below. Accordingly, s106 Obligations will no longer be sought towards these items. The Council will publish a revised Regulation 123 List should other matters arise that need to be funded through CIL.

CIL Critical Infrastructure Item	Total Cost	Funding Shortfall
South Devon Highway	£130m	£20 Million
<p>Impacts on South Hams Special Area of Conservation (Berry Head to Sharkham Point, Brixham) arising from:</p> <ul style="list-style-type: none"> <li>Recreational impacts on limestone grassland <u>and</u>;</li> <li>Offsite Impacts on greater horseshoe bat <u>colony through enhancements and monitoring of roosts and habitats</u>;</li> </ul> <p><u>Arising from developments that have paid CIL. From CIL chargeable developments outside Future Growth Areas. An element of CIL will be prioritized to address off site SAC matters from developments that have paid CIL.</u></p>	<p>£2m</p> <p><u>Including a need to ring fence 10% of CIL up to £20K per annum to contribute towards addressing likely significant effects on the SAC from development that has paid CIL</u></p>	£2m

## Appendix 1 Charging Zones Maps

### Map 1. Residential Charging Zones

~~Zone 1: Urban areas within the 20% most deprived LSOAs (Excluding Future Growth Areas).~~

~~Zone 2: Outside Inner urban zone (based on 20% most deprived LSOAs), and within the Built-Up-Area~~

~~Zone 3: Outside the Built Up Area (i.e. within the Countryside~~

~~Zone 4: Future Growth Areas~~

Residential Charging Zones Maps 1-39 showing Charging Zones 1-4 . Note that the map boundaries/page numbers correspond to the Adopted Local Plan 2012-30. The maps are designed primarily to be viewed on a screen and may be zoomed into (separate document). Note that Map 31 (showing land at Bascombe Road, Churston) has been amended slightly from the initial Proposed Modifications.

### Map 2. Commercial Development Charging Zones:

Zone C1 Town Centres, St Marychurch and Preston District Centres.

Zone C2 out-of-town centre and The Willows District Centre.