

## Appendix 1: Supporting Information and Impact Assessment

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Abbreviations	
CIL	Community Infrastructure Levy
CIL Regs	The Community Infrastructure Regulations 2010 (as amended)
DCS	Draft Charging Schedule
PDCS	Preliminary Draft Charging Schedule
RDCS	Revised Draft Charging Schedule (i.e. the version that was consulted on 19 <sup>th</sup> March to 29 <sup>th</sup> April 2016)

### Section 1: Background Information

<b>1.</b>	<p><b>What is the proposal / issue?</b></p> <p>The report recommends submitting the Council's Community Infrastructure Levy Draft Charging Schedule (DCS) (with proposed modifications) for examination.</p> <p>This will be carried out in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).</p> <p>The Draft CIL has been the subject of consultation and an updated viability assessment (most recently the Torbay CIL Viability Study, PBA January 2016).</p> <p>The CIL proposals were discussed by Mayor's Executive Group on 3<sup>rd</sup> March 2015 and Policy Development Group on 9<sup>th</sup> March 2015. Members asked officers to reconsider CIL and particularly to ensure that it did not threaten smaller developers in lower value areas of Torbay; but also ensuring that higher value development contributes towards infrastructure. The Revised Draft Charging Schedule amends CIL to incorporate issues raised by Members.</p> <p>This approach retains S106 Obligations as the main way of funding infrastructure needed for larger developments within planned Future Growth Areas. Whilst s106 Obligations are subject to restrictions (e.g. no more than five S106 contributions can be used to fund a project), they are considered to be a more simple and effective way of securing infrastructure contributions from Future Growth Areas. Where highways works are required, the Council will seek contributions via S278 Highways Agreements where possible</p>
<b>2.</b>	<p><b>What is the current situation?</b></p> <p>Currently the Council relies solely on S106 Obligations and S278 Highways Agreements to secure developer contributions. These work relatively well for larger developments, where the need for strategic infrastructure can be identified. However S106 agreements can slow down decision making on smaller applications.</p> <p>Moreover no more than 5 Obligations may be pooled for any given infrastructure</p>

project, which limits the usability of small S106 contributions. There is an expectation from Government that CIL will be used, rather than “tariff style” s106 obligations

**3. What options have been considered?**

**The evolution of Torbay’s CIL**

The Preliminary Draft Charging Schedule (PDCS) was the subject of consultation between 9 December 2011- 6 Feb 2012 and consulted on an across the board residential charge of 100 per sq m. This resulted in significant objections from the development industry, particularly on viability grounds.

The first Draft Charging Schedule (DCS) was consulted on between 9 February - 23 March 2015. This made changes to CIL in response to comments on the PDCS. The DCS set a CIL of £70 for residential sites of 1-14 dwellings. There was very limited objection from the development industry.

However CIL must be based on an up to date development plan and it has therefore been necessary to wait for the Local Plan to be adopted before progressing Torbay CIL to formal Examination. Representations made on the CIL consultations, and how the Council has responded to them are set out at Appendix 5 to this Report.

The Local Plan was adopted by Council on 10<sup>th</sup> December 2015, and an updated CIL Viability Study was published in January 2016, which allows for CIL to be progressed.

The CIL proposals were discussed by Mayor’s Executive Group on 3<sup>rd</sup> March 2016 and Policy Development Group on 9<sup>th</sup> March 2016. Members asked officers to reconsider CIL and particularly to ensure that it did not threaten smaller developers in lower value areas of Torbay; but also ensuring that higher value development contributes towards infrastructure.

This resulted in a revised Draft Charging Schedule. Because this introduced additional Charging zones from the document previously consulted upon, the Revised Draft Charging Schedule has been consulted on again, between 18<sup>th</sup> March-29<sup>th</sup> April 2016.

A number of minor Modifications have been made to the CIL Charging Schedule in response to the consultation. These include treating undeveloped coast as being outside the built up area, and levying CIL on smaller sites within Future Growth Areas (i.e. using S106 obligations purely for larger planning applications in Future Growth Areas).

Any additional modifications may need to reported at Council by the Executive Lead for Planning transport and housing. A schedule of proposed Modifications to the Revised Draft Charging Schedule is set out at Appendix 4.

The current proposal for submission (technically the Draft Charging Schedule with proposed Modifications)

These Modifications to the DCS based on viability advice in the PBA Viability Study. As noted, CIL must be based on viability evidence and cannot be used as a policy making tool.

To implement CIL, it must be demonstrated that there is a funding gap that cannot be funded through means such as general Council spending. Most areas, including Torbay, have no problem demonstrating an infrastructure funding gap. The Torbay Infrastructure Delivery Study (Baker Assocs/Roger Tym 2012) identified a total

funding shortfall of £158 million to provide all the Infrastructure needed to deliver the Torbay Local Plan. The South Devon Link Road (£20 million)) alone represents a significant funding gap.

Development viability tends to be the most contentious factor in CIL Examinations. Accordingly an updated viability assessment was commissioned from Peter Brett Associates (published January 2016). This updated earlier assessments carried out in 2012 and 2014. This indicates that most residential development and larger out of centre retail stores are likely to be viable with a CIL.

### **Current Proposal**

The proposed approach to CIL intends to continue using S106 Obligations for larger developments (of 15+ dwellings) within Future growth Areas. A variable CIL rate of between zero and £140 per sqre metre is proposed for other residential development, as indicted in the main report.

It is proposed to charge CIL at £120 per sq m for out of town centre retail/food and drink uses of more than 300 sq m. This includes The Willows. All other uses, including employment, tourism, care homes, extra care units etc would be zero rated for CIL.

It is estimated that this will raise between around £150-£170K per year when CIL is implemented, based on past completions of CIL Chargeable development and likely future development on smaller sites.

The proposed “hybrid” approach is considered to offer the best solution for Torbay in securing contributions from smaller developments, whilst allowing infrastructure requirements needed by larger developments on strategic sites to be secured through S106/S278 Agreements. This approach is also considered to be the simplest approach for developers.

### **What will CIL Pay for?**

Charging Authorities are required to identify infrastructure items that they intend to fund in whole or part through CIL on a “Regulation 123 List”.

It is recommended that The Regulation 123 List should be kept short, as infrastructure items on it cannot be funded through S106 contributions. However CIL is not subject to pooling restrictions so a large infrastructure item such as the South Devon Highway is a suitable project for CIL funding.

The CIL Regulations restrict the use of s106 obligations and prohibit “double dipping” i.e. prevent both s106 (or s278) and CIL monies being used to fund the same infrastructure. They also prevent pooling of more than five s106 Obligations for infrastructure items. However CIL does not cover affordable housing which is still sought through s106 obligations (and not subject to pooling restrictions).

The Regulation 123 list should be reviewed on an annual basis and may be amended speedily , so long as this is advertised.

A “neighbourhood portion” of 15% of CIL must be spent in the area where development arises. Where a neighbourhood plan has been made (i.e. adopted following referendum) the portion rises to 25%. In Brixham Town Council area the neighbourhood portion is passed to the Town Council. Elsewhere in the area, the money is held by Torbay Council but spent locally with community engagement on how it is spent. The neighbourhood portion of CIL is stipulated by Regulation 59A of

the CIL Regs.

### **Other Options not recommended**

A number of other options have been considered but are not recommended.

#### **i) Continue to rely on S106/S278 Obligations.**

This approach is possible. However it will be increasingly difficult to achieve infrastructure contributions from smaller developments due to Pooling restrictions on s106 agreements. From April 2015 no more than five obligations can be pooled for a single infrastructure item.

In addition S106 obligations can legally only be sought where they are:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

Inspectors are increasingly unwilling to support S106 obligations to mitigate the cumulative impacts arising from small developments.

Requiring smaller developments to enter into s106 Agreements or Unilateral Undertakings can be onerous for smaller developers and can slow down the planning process.

Conversely, larger developments usually require a s106 agreement to deal with affordable housing and other issues. It is easier to identify the infrastructure needs and mitigation measures needed by larger developments, and pooling of S106 obligations is less likely to be a problem.

#### **ii) Charge CIL for larger developments as well as smaller ones.**

The Viability Assessment indicates that sites of 15+ dwellings could achieve a CIL of up to £142 per sq m (around £10,000 for a family house). Depending on development levels this could earn up to an additional £1 million CIL per year (based on 100 CIL chargeable dwellings are completed per year on large sites). 15% of this (25% when Neighbourhood Plans are made) would need to go to the neighbourhood portion, i.e. spent in the area where development arises in consultation with the local community.

Paighton neighbourhood Forum have argued that charging only smaller developments CIL will create a disincentive to urban regeneration by rendering greenfield sites disproportionately profitable. However, it is proposed to charge larger developments S106 obligations to ensure that they meet the cost of infrastructure needed by development.

Seeking a CIL on larger sites within Future growth Areas would mean that all infrastructure that is not directly necessary to making the site acceptable in narrow terms would need to be funded through CIL. On this basis matters such as education, sustainable transport, employment, off site biodiversity, recreation etc would need to be included on the Regulation 123 List. Because of restrictions on "double dipping" such matters could not be funded through S106 obligations.

The directly link between infrastructure needed by a development and how CIL is allocated would be lost. Negotiating it through S106 Obligations retains the link and is likely to be more effective in delivering infrastructure needed on strategic sites (i.e. large sites within Future Growth Areas).

The calculation of CIL on larger developments is also likely to be complicated and

onerous for developers, whilst large schemes are still likely to require Legal Agreements (e.g. for affordable housing), which would further complicate the development management process.

The CIL Viability Study 2016 and the Torbay Whole Plan Viability assessment carried out in 2014 assessed the deliverability of the Local Plan taking into account affordable housing and other policy costs such as space standards. Therefore, levying a CIL should not *in theory* result in a reduction in affordable housing. (Affordable housing is in any event largely exempt from paying CIL). However, in practice, affordable housing is often negotiated down as part of a wider package of S106 requirements. CIL is less easy to negotiate, so in practice levying CIL on larger sites is highly likely to result in reduced affordable housing provision because of viability reasons.

### Consideration of CIL rates in Neighbouring Authorities

Torbay's CIL rate needs to be based upon viability within Torbay. However Neighbouring CIL rates are an indicator of what may be achievable, after taking into account differences in house prices, local demand etc.

The table below sets out neighbouring authorities' CIL rates.

Area	Residential CIL (£per sq m )	Retail CIL	Exceptional circumstances relief advertised	Instalments up to
Teignbridge	£70 Newton Abbot etc £125 Teignmouth £150 SW Exeter £200 Rural areas	£150 outside town centres	No	Up to 2 years
Exeter	£100 ( for development approved in 2016)	£154.62 outside City centre.	No	Up to 2 years
South Hams	No CIL	-	-	-
Plymouth	£30 (zero in central zone)	£100	No (but may offer in the future)	Up to 2 years
Mid Devon (DCS) original CIL not implemented	£60/40/0 large sites £100/0 small sites  Zero charge on strategic sites	£100 and £0 zones	No ?	300 days
Bristol	£70/£50	£120	No	18 months

Around 12 Charging Authorities in the South and South West charge different rates of residential CIL by size of development. The closest comparison is Mid Devon which has republished its DCS (Feb 2015) which charges a zero rate of CIL on strategic sites. Stroud (Gloucestershire) has a similar approach.

<p><b>4.</b></p>	<p><b>How does this proposal support the ambitions and principles of the Corporate Plan 2015-19?</b></p> <p>CIL provides infrastructure funding to support growth in Torbay. The hybrid approach is intended to minimise any negative impacts on the delivery industry and allows for matters such as affordable housing to be sought through S106 Obligations. It thereby uses resources to best effect.</p> <p>It is proposed to use CIL to fund the Council's expenditure on the South Devon Highway. These costs would otherwise need to be paid for from the Council's budget. It is also proposed to use an element of CIL to alleviate recreational pressure on Berry Head.</p>
<p><b>5.</b></p>	<p><b>Who will be affected by this proposal and who do you need to consult with?</b></p> <p>The development industry – particularly house builders – will be most affected by CIL. The wider community is also affected as a proportion of CIL (15% rising to 25% when Neighbourhood Plans are made) must be spent in the area in which development arises.</p> <p>CIL was consulted on between December 2011-February 2012 and February –March 2015 and again in March- April 2016. Whilst these were open to anyone to comment; developers, agents and other organisations on Spatial Planning's database were specifically notified. There were objections from house builders to the first consultation, which resulted in a reduction of CIL (from £100 per sq m to £70 in the PDCS). A summary of representations received is set out in appendix 5.</p> <p>Development viability has been tested on several occasions, most recently in the Torbay CIL Viability Study (PBA January 2016). A previous but related study, the Torbay Local Plan Viability Report (PBA 2014) tested the viability of the policies in the Local Plan.</p> <p>CIL will be the subject of public examination by an independent examiner (Planning Inspector). Any person asking to be heard before the examiner at the examination must be heard in public.</p>
<p><b>6.</b></p>	<p><b>How will you propose to consult?</b></p> <p>See above. Regulation 19(3) of the CIL Regs requires that the CIL Draft Charging Schedule and modifications be made available at Council offices, online etc and that persons consulted on the Draft Charging Schedule be notified of its submission. This notification will need to be carried out before the DCS is submitted for examination.</p> <p>Any person asking to be heard before the examiner at the examination must be heard in public.</p>

## Section 2: Implications and Impact Assessment

### 7. What are the financial and legal implications?

CIL is governed by the CIL Regulations 2010 (as amended).

There are costs to the Authority in developing a CIL. The Planning Inspectorate charges £993 +VAT for each day (7.4 hours) the examiner spends on the examination plus subsistence expenses. This is likely to be around £15-£20K.

The Council must appoint a **Programme Officer**, at the time of submission. He or she will probably need to be in post, mainly for about 1 day a week, basis for about 6 months.

It is also likely that the Council will need to employ Peter Brett as an expert witness on viability. At August 2015 PBA quoted £5,000 to prepare and appear as an Expert Witness at the CIL Examination.

Regulation 61 of the CIL Regs allows up to 5% of CIL to be spent on administrative expenses of setting up, examining and managing the Levy.

### 8. What are the risks?

The main risk of CIL is that it could harm development viability and thereby the delivery of new development. The CIL has been viability tested and the proposed basic rate (£70) is below the maximum that PBA advise could be achieved (£78). Seeking a lower (or zero) rate in areas of deprivation is likely to minimise the impact on less viable areas and smaller house builders. Development outside the built up area is likely to be more viable and the rate for larger developments has been set based on PBA's evidence. There may need to be some additional testing of smaller developments outside the built up area.

Negotiating larger developments in Future Growth Areas through S106 will ensure that the delivery of larger developments (and the Local Plan strategy) is not undermined by viability issues. There is opportunity to negotiate S106 Obligations to ensure that the infrastructure needs arising from development are met. The Council requires an independent viability assessment from such developments where viability is challenged by developers.

Setting a higher CIL, and particular charging CIL on larger developments, would raise more money. Dependent upon development levels, this could be about £1 million a year (based on 100 CIL Chargeable dwellings per year).

The Council is proposing to offer discretionary exceptional circumstances relief, which will act as a "safety net" to ensure that CIL does not prejudice the delivery of sustainable development.

CIL is not set in stone and may be reviewed. However there are clearly consultation and examination costs associated with reviewing CIL.

There is a temptation to include additional items on the CIL Regulation 123 list.

	<p>However this would preclude such items being funded through S106 Obligations. South Devon Link Road will more than cover expected CIL revenues. It is considered more appropriate to keep most infrastructure directly required by new development as a S106 item. The Regulation 123 List may be amended quickly should the need arise.</p>
9.	<p><b>Public Services Value (Social Value) Act 2012</b></p> <p>See above. The CIL regulations require the appointment of an independent examiner and specify the required evidence, consultation arrangements and examination procedure.</p>
10.	<p><b>What evidence / data / research have you gathered in relation to this proposal?</b></p> <p><b>CIL must be based on an up to date development plan.</b> The Adopted Torbay Local Plan 2012-30, and much of the evidence base supporting it is relevant.</p> <p><b>There must be an infrastructure funding gap.</b> The Infrastructure Delivery Study (Baker associates/Roger Tym and Partners 2012) is relevant. However, a significant infrastructure funding gap exists taking into account just the South Devon Link Road</p> <p><b>CIL should not be set at a level that would undermine development viability.</b> The Torbay CIL Viability Study Economic Viability Study (PBA 2016) sets out an up to date assessment of development viability. See also the discussion above.</p>
11.	<p><b>What are key findings from the consultation you have carried out?</b></p> <p>See separate schedules of representations (Appendix 5). The main issue to arise at the first stage of consultation (on the PDCS) related to development viability. The proposed CIL has been reduced in line with evidence (see above).</p> <p>Several bodies sought an element of CIL for their specific areas of interest (Natural England, Sport England, and Neighbourhood Forums). However, there is a danger that this would prevent such items being sought through S106 Obligations. The Regulation 123 List is already oversubscribed with the South Devon Highway and expanding it further could prove counter-productive in terms of achieving infrastructure for these projects. The exception to this is mitigating the impact of small developments in the Brixham Peninsula on the Special Area of Conservation, which was requested by Natural England.</p> <p>There were a number of objections to earlier consultations on behalf of supermarkets. Sainsbury's objected to treatment of The Willows as an out of centre location and thus being CIL liable. However the viability evidence indicates that new retail floor space at The Willows would be viable to pay CIL.</p> <p>Please note that the consultation on the Revised Draft Charging Schedule expires on 29<sup>th</sup> April, and therefore any representations received after the deadline for Council will need to be reported verbally by the Executive Lead for Planning, Transport and Housing. However, CIL has already been subject of extensive</p>



	consultation, which have gone beyond the requirements of the CIL Regulations.
<b>12.</b>	<p><b>Amendments to Proposal / Mitigating Actions</b></p> <p>As noted, development viability is likely to be the main consideration at CIL Examination. CIL has been amended significantly since the first consultation in 2012, to address concerns raised by consultees and Members. There are intended to safeguard the viability of development, and to reflect as accurately as possible different viability rates likely to exist in Torbay. It is also proposed to seek off site mitigation of SAC impacts arising from small development from CIL, in order to address concerns raised by Natural England and others).</p> <p>A number of further minor modifications have been made to the CIL Revised Draft Charging Schedule to more accurately define the land outside the built up area (i.e. it should include the undeveloped coast and countryside area). In addition it is recommended to modify the Revised Draft Charging schedule to seek CIL on developments of 1-14 dwellings in Future Growth Areas. Whilst in theory most developments in these areas should be on sites of more than 15 dwellings; seeking CIL on smaller sites will ensure that an element of value is captured should housebuilders seek to infill areas to increase numbers after the main permission has been granted.</p>

## Equality Impacts

13	Identify the potential positive and negative impacts on specific groups			
		Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
	Older or younger people	<p>The education needs arising from developments will be sought as S106 Obligations.</p> <p>Affordable housing, and extra care units are zero rated for CIL</p>		
	People with caring Responsibilities			No direct impact. Policy H6 of the Adopted Local Plan seeks S106 obligations from developments that give rise to health care need. This operates separately from CIL.
	People with a disability			Policy H6 of the Local Plan requires 5% of new homes on sites of 50+ dwellings to be built to Building Regulations M4(2) accessibility standard. This operates separately from CIL but will have an impact on development viability. Negotiating larger schemes through planning obligations will allow such costs to be taken into account when negotiating developments.
	Women or men			No direct impact
	People who are black or from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			It is not proposed to seek CIL on caravans for travelling people. (See Policy H5 of the Local Plan for criteria that would apply in considering any proposals that

			may arise).
Religion or belief (including lack of belief)			It is not intended to seek CIL from Class D1 uses, including places of worship.
People who are lesbian, gay or bisexual			No direct impact
People who are transgendered			No direct impact
People who are in a marriage or civil partnership			No direct impact
Women who are pregnant / on maternity leave			No direct impact
Socio-economic impacts (Including impact on child poverty issues and deprivation)	<p>CIL provides funding to support development in Torbay and provides additional benefits to existing communities. The Regulation 123 List proposes to use CIL on the South Devon Highway which will help improve economic prosperity and reduce deprivation in Torbay.</p> <p>It is proposed to seek a lower rate of CIL on small developments- either zero or £30. Whilst this is to take account of lower viability in these areas; it should also incentivise regeneration of such areas.</p>	<p>There is a trade off between CIL and affordable housing. Whilst the viability testing of CIL has taken into account the Local Plan's affordable housing requirements, a high rate of CIL will reduce the scope to seek affordable housing in practice.</p> <p>The Draft Charging Schedule's proposal to negotiate S106 Obligations from larger developments will minimise the conflict between CIL and affordable housing.</p>	

		Offering discretionary relief will also ensure that affordable housing can be prioritised where appropriate.	
	Public Health impacts (How will your proposal impact on the general health of the population of Torbay)		No direct impact. Policy SC1 of the Adopted Local Plan deals with health impacts of developments. These may be dealt with via S106 Obligations if necessary to make developments acceptable in planning terms.
<b>14</b>	<b>Cumulative Impacts – Council wide</b> (proposed changes elsewhere which might worsen the impacts identified above)	CIL is intended to help fund the cumulative impacts of developments upon infrastructure needs. The South Devon Link Road, and cumulative effects of small development upon the South Hams SAC are identified as CIL items. \	
<b>15</b>	<b>Cumulative Impacts – Other public services</b> (proposed changes elsewhere which might worsen the impacts identified above)	As above.	