

Community Infrastructure Levy Regulations 2010 (As Amended)

Consultation Statement and Torbay Council's response to representations made on the Preliminary, Draft and Revised Draft Charging Schedules.

Torbay Council March 2016

Torbay Council CIL Consultation Statement.

Community Infrastructure Levy (CIL) is governed by the CIL Regulations 2010 (as amended). These require the publication of a Preliminary Draft Charging Schedule (PDCS) followed by a Draft Charging Schedule (DCS). Following consultation on the DCS, the CIL is submitted to the Secretary of State for examination by an independent examiner. Torbay's CIL is currently at the Submission stage. The Council undertook additional consultation of a Revised Draft Charging Schedule between 18th March- 29 April 2016.

The Preliminary Draft Charging Schedule (PDCS) was the subject of consultation between 9th December 2011 and 6 February 2012. Thirteen organizations, developers or individuals made representations.

The main issues raised in the PDCS consultation were as follows:

- The CIL should be based upon an up to date development plan.
- CIL at the proposed rate of £100 per sq m was too high and would harm viability
- Impact of CIL upon affordable housing
- Detailed comments on CIL viability and the need to test the impact of all Local Plan policies upon viability.
- The need to define the relationship between CIL and S106 Obligations.
- The development industry supported instalments policies but argued that they should be based on completions rather than being time limited.
- Exceptional Circumstances relief should be given.
- The “meaningful proportion” of CIL spent locally should be as high as possible.
- Objections to varying CIL rates for retail uses-should be set by use class.
- Objections to treating The Willows as an out of centre area.

The representations to the PDCS, and the Council's response are set out in full below. The Council accepted that CIL should be based on an up to date development plan and that the Draft Charging Schedule (DCS) should be postponed until the Torbay Local Plan was closer to adoption. In addition further viability testing of the impact of the emerging Local Plan policies upon viability was carried out (PBA 2014).

Because of the potential conflict between CIL and delivering affordable housing on larger sites, the DCS adopted an approach of seeking CIL on smaller sites (up to 15 dwellings) and S106 obligations on larger sites.

The Draft Charging Schedule (DCS) was published for consultation between 9th February - 23rd March 2015. Eleven organisations or developers made representations on the DCS. These are summarized in detail at appendix 2 along with the Council's response.

The main issues raised at the DCS were as follows:

- Need to ensure that impacts of development upon the Berry Head SAC are satisfactorily mitigated.
- The Council should be aware of pooling restrictions on S106 Obligations
- Need to further update viability evidence following changes to CIL Regulations
- Need to indicate expected revenue from CIL
- Concern from Neighbourhood Forums that levying CIL on smaller sites could be a disincentive to brownfield developments.
- Objection to treating The Willows separately from other district centres.
- Define circumstances when Exceptional relief should be given.

Fewer representations were made on the DCS regarding the viability of CIL. However the Council considered that it would be appropriate to update its viability evidence to assess the impact of policies in the adopted Local Plan (PBA 2016).

Following the DCS and updated viability evidence, a number of **Modifications** were proposed to the DSC. These are set out in full in the Appendix to the DCS. In summary the changes are as follows:

- Exclude sites of 1-3 dwellings from CIL.
- Continue to seek CIL on sites of 4-14 dwellings. The headline residential rate was kept at £70 per sq m, which is slightly below the rate advised by PBA as being achievable (£78)
- Continue to seek s106 obligations to achieve infrastructure on larger sites (15+ dwellings).
- Reduce the rate of out of centre retail CIL from £150 per sq m to £120 based on viability evidence.
- Note that extra care accommodation is zero rated for CIL, based on viability evidence.

These Modifications reduce the impact of CIL upon development based on updated viability evidence. On this basis, the Council's view is that there is no need (or indeed provision within the CIL Regulations) to re consult upon CIL.

The CIL Regulations require the Submission of CIL to be advertised and interested parties to be notified of the CIL examination. Anyone who wishes to is entitled to appear at the CIL examination.

The Revised Draft Charging Schedule (RDCS) was published for consultation between 18th March- 29 April 2016. It followed Member requests to reconsider charging zones to minimise impact on less viable small developments, whilst ensure that more viable development higher value areas contributes fairly to CIL.

Paignton and Torquay neighbourhood Forums objected to the exclusion of sites within Future Growth Areas and the effect of this upon the neighbourhood portion of CIL. In addition Paignton Neighbourhood Forum argued that it would give out of town greenfield sites an advantage over brownfield sites.

Note that the consultation period had not expired by the report deadline for Council. On this basis later representations will be reported to Council by the Executive lead for Planning, Transport and Housing.

However it is recommended that two Modifications are made to the RDCS at submission:

- Include the undeveloped coast (Policy C2 of the Adopted Local Plan) as being land defined as being outside the built up area. Such areas are likely to have higher land values than land in the built up area.
- Seek CIL on developments of 1-14 dwellings within Future Growth Areas. (Larger sites of 15+ dwellings would still contribute to infrastructure via s106 Obligations).
- An element of CIL will need to be ring fenced where this is necessary to address Habitats Regulations requirements. It is assessed that this ring fenced element would be about £20k per year

Note that consultation on the RDCS runs until 29 April 2016, and late comments (and any resulting Modifications) will need to be reported to Council by the Executive lead for Planning, Transport and Housing.

Torbay Council Response to the Community Infrastructure Levy Preliminary Draft Charging Schedule by Person/Organisation. May 2015

This section sets out the Council's summary of the consultation responses to the Community Infrastructure Levy Preliminary Draft Charging Schedule and Regulation 123 List of projects that were intended to receive Funding, together with the Council's response.

These were the subject of public consultation between 9th December 2011 and Monday 6th February 2012. This document lists responses by the organization/person who made comments. The representations informed the content of the Draft Charging Schedule (DCS), which was published for consultation in February –March 2015.

The Torbay CIL Viability Study was published in January 2016. A number of Modifications to the CIL are proposed in response to this updated viability evidence. These changes exclude sites of 1-3 dwellings from CIL and reduce the rate of CIL for retail developments (to £120 per sq m). The Council's response reflects the position at February 2016 (i.e. the proposed Modifications to the Draft CIL).

CIL Preliminary Draft Charging Schedule: Summary of responses and comments received			
No.	Person/Organisation	Summary of representations made	LPA Response
1	National Farmers Union (Emma Woodhouse).	CIL should not apply to agricultural buildings.	<p>Noted. CIL would not apply to buildings used for agriculture, as (1) They may not be places where people usually go. (2) There would be no uplift above agricultural values.</p> <p>Whilst CIL may be charged on farm shops and other non-agricultural uses on farms subject to viability, such uses are unlikely to be more than 300 sq m.</p>
2	Woodacre Constructions Ltd - Andrew Robson	Object – Would harm viability of small house builders.	<p>Concern noted. There are advantages of seeking CIL from small developers in terms of reducing the need for s106 Obligations.</p> <p>Note that the 2016 Viability update recommended a zero rate of CIL for sites of 1-3 dwellings and the submission version of the Draft Charging scheduler has been modified accordingly.</p>
3	Tetlow King for South West Housing Associations and Registered Providers	(1) Object that £100 per sq m CIL would reduce Affordable Housing provision.	<p>Noted – there is a trade off between high CIL and affordable housing. This is a choice that Members need to decide upon. There are pressing infrastructure priorities as well as a need for affordable housing.</p> <p>Adopting a hybrid approach of charging CIL on smaller sites (instead of S106 contributions) and using s106 Obligations on larger sites will reduce the conflict between CIL and affordable housing.</p>

3	Tetlow King for South West Housing Associations and Registered Providers (cont)	(2) Support instalments Policy – should be based on occupation (not completion).	Support for instalments noted. Disagree that it should be based on occupation as this would remove an incentive to complete developments.
3	Tetlow King for South West Housing Associations and Registered Providers (cont)	4) Do not support affordable housing being provided through CIL: There would be no ring fencing. Better to keep as on-site provision through S106 Agreements.	Noted. Agree that it would raise practical difficulties to use CIL for on-site provision of affordable housing. Affordable housing is expressly excluded from CIL.
4	PCL Planning for Strategic Land Partnerships & Mr Burrows.	CIL was devised during buoyant years. Essential that CIL is set at a rate that reflects economic hard times. Critical that CIL reflects viability.	Agree. However the Infrastructure Delivery Study's viability modelling was carried out during the downturn (201, 2014 and January 2016). The submission draft Charging Schedule is supported by an up to date Viability assessment and sets a rate slightly below the maximum rate recommended as achievable.
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	£100 per sq m is too high.	The Draft Charging schedule revised the figure downwards to £70 per sq m
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	CIL consultation is premature – it cannot precede the Core Strategy.	Noted. CIL must be based on an up to date development plan. Therefore development of CIL was postponed until the Torbay Local Plan 2012-30 was adopted. Paragraph 175 of the NPPF states that “Where practical, CIL charges should be worked up and tested alongside the Local Plan”. Preparation of the CIL including consultation on the DCS was able to proceed in parallel with the Local Plan.

4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	<p>Support Phasing and Instalment Policy.</p> <p>Instalments should be based on completion, <u>not</u> time.</p>	<p>Support for instalments noted. Disagree that it should be based on occupation as this would remove an incentive to complete developments.</p>
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	<p>Support principle of viability testing but have detailed objections to methodology in Peter Brett and Associates viability study:</p> <ul style="list-style-type: none"> -Object that benchmark values in viability report are too high. -Landowners will not accept residual values in viability report. -CIL viability study does not take abnormal costs into account. - Viability study based on charging up the margin of viability. CLG Guidance indicates that CIL should not be set right up to the margins of viability. (CLG 2010, para 29 P10). - Government Policy is that Councils should encourage development and minimise barriers to growth e.g. By setting low CIL rates. -Benchmark value for acceptable return is too low. Do not reflect historic transactions or level of risk in 	<p>Part agree. The PBA viability study considered a range of sites and took account off differing costs. However, agree that it tested viability close to the margin and CIL Guidance/NPPF indicates that CIL should be set at a level to incentivise development.</p> <p>In the current climate there is some justification that Banks will require more than 18-20% return in order to lend. This supports the case for a lower interim CIL until the market picks up.</p> <p>Subsequent to the PDCS, viability has been reassessed by updates in 2014 and early 2016. The 2016 Viability Update assesses that a maximum CIL of £78 per sq m would be achievable (65.5% of total headroom).</p> <p>The DCS proposes a charge of £70, which is 58.8% of available headroom for sites of 4-14 dwellings.</p>

		<p>current climate.</p> <p>-Object to use of notional sites – better to assess actual sites.</p> <p>Developer return of 18-20% is too low. 25% or more is the accepted trigger for developer returns in most situations”.</p> <p>Evidence provided of returns per developers.</p>	
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	CIL levels sought (at £100 per sq m) will reduce levels of affordable housing delivered.	Noted – see Tetlow King’s comments above. Negotiating large sites through S106 will
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	CIL Charging Schedule should clarify what CIL is expected to cover and what other cumulative impacts it does not, i.e. S106 Contributions.	<p>Issue noted. Whilst the Viability assessments have factored in the Council’s affordable housing requirement, it is noted that a high CIL is likely to be at the expense of affordable housing.</p> <p>The Council’s preferred approach in the Draft Charging Schedule is to negotiate larger sites through S106 Obligations, which will allow affordable housing to be given due priority.</p>
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	Current use of S106 contributions exceeds CIL Regs and is unlawful.	<p>Noted – but disagree that current use of S106 is unlawful. Update 3 to the Planning Contributions SPD seeks to ensure that the CIL Regs tests of lawfulness/NPPF paragraph 204 are met.</p> <p>The approach in the DCS of seeking S106 obligations for larger sites will avoid most instances of pooling restrictions.</p>

4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	Object that other cumulative costs have not been modelled e.g. lifetime homes, code for Sustainable Homes. These may be introduced by Core Strategy.	Noted but disagree- the PBA viability assessment does consider Code for Sustainable Homes and affordable housing. The Viability assessment has been updated to consider the impact of the whole plan upon viability.
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	Need for more consultation with the development industry.	Noted- there will be further consultation at Draft Charging Schedule stage.
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	Geographic breakdown needs to be clearly defined on the basis of viability (Great Portland Estate Case)	<p>Noted. There is a trade off between simplicity and seeking to maximise revenue from CIL.</p> <p>Whilst a geographical breakdown for residential would be possible, it would be complicated and viability banding may be somewhat arbitrary given that higher and lower value areas are often closely juxtapositioned.</p> <p>There are higher value areas in Torbay, such as Wellswood and Churston, the amount of development these areas is likely to be relatively limited due to environmental constraints. Any larger schemes that may come forward would be negotiated through S106.</p> <p>Earlier viability assessments (including PBA's 2014 Study) suggested that Brixham was a lower viability area than Torquay and Paignton. However, the 2016 study did not find this.</p>
4	PCL Planning for Strategic Land Partnerships & Mr Burrows (cont).	Recommend a low "interim tariff" e.g. 3 years based on low delivery rates.	<p>Noted. CIL can be reviewed at regular intervals, but amending it would require the Council to comply with the process in the CIL Regulations.</p> <p>Whilst there will always be uncertainty (not least due to international factors), there is more certainty in Torbay in early 2016 due to adoption of the Local Plan and opening of the South Devon Link Road. Therefore, other things being equal, viability should not</p>

			deteriorate- and should improve- in Torbay over the next few years.
5	NLP for Cavanna Homes	Development contributions should mitigate impact of development – but should not undermine viability.	Noted- see above
5	NLP for Cavanna Homes	CIL Proposals, when added to S106 requirements may compromise development viability.	Noted- see above. Viability has been reassessed on a Whole Plan Viability basis. The headline CIL ate has been reduced to £70 per sq m for sites of 4-14 dwellings.
5	NLP for Cavanna Homes	Not sufficiently clear what will be CIL and what will be sought from S106.	Noted. Clarify relation between S106 and CIL. The DCS proposes to limit CIL to smaller sites (subsequently modified to sites of 4-14 dwellings following consultation on the DCS and updated viability evidence). Such sites will not be charged “tariff style” S106 Obligations. The infrastructure needs from larger sites will be sought through S106 Obligations, having regard to the Tests of Lawfulness and pooling restrictions.
5	NLP for Cavanna Homes	Not clear whether CIL will be sought on affordable housing.	CIL Regs currently indicate that affordable housing should be addressed through S106. A Government announcement on whether affordable housing should be funded through CIL.
5	NLP for Cavanna Homes	Object to CIL of £100 per sq m. Will undermine development viability (Particularly if other S106 contributions are sought).	Noted. The headline rate has been reduced to £70 per sq m following updated viability evidence.
5	NLP for Cavanna Homes	Support an Instalment Policy – should reflect/be triggered by completion, <u>not</u> time period.	Issue noted. See above. There is a case for a time trigger as it should help expedite development. Needs to be sufficiently generous to take build out rates into account. The DCS proposes to limit CIL to residential developments of 4-14 dwellings and larger out of centre retail. This should reduce the need

			for complicated phasing arrangements.
5	NLP for Cavanna Homes	'Meaningful proportion' allocated locally needs to be properly accounted for. Local projects should be accounted for in an infrastructure delivery study.	Issue noted. However, the Neighbourhood Portion is intended to be spent in consultation with local neighbourhoods and match priorities expressed by local communities (PPG 25-073-20140612)
5	NLP for Cavanna Homes	Charging schedule should give exceptional circumstances relief.	<p>Noted. CIL Regs stipulate that relief is exceptional and that CIL is not negotiable in the same way as S106 contributions. There are clear conditions that need to be met for CIL relief to apply.</p> <p>The DCS introduced a discretionary Exceptional Relief Policy. It is considered that this could play a useful role in ensuring CIL does not undermine urban regeneration objectives or the role of enabling retail development intended to secure benefits such as the early delivery of (B class) employment.</p>
5	NLP for Cavanna Homes	CIL is premature until a core strategy is adopted.	<p>Issue noted- see above. CIL must be based on an up to date development plan.</p> <p>Based on representations received the Council opted to delay Submission of CIL until the Torbay Local Plan 2012-30 was adopted (December 2015), and updated viability evidence had been carried out (PBA 2016).</p>

6	Jeremy Cavanna For Cavanna Homes	<p>Object that CIL is being used to pay for past failure to provide infrastructure CIL should relate to infrastructure needed to meet development needs.</p> <p>Council should revise Reg 123 list to relate to development infrastructure needed by it.</p>	<p>CIL is based on delivering infrastructure required to deliver the Adopted Local Plan (2012-30). Infrastructure such as the SDLR is needed to support the future development and prosperity of Torbay.</p> <p>There is not a requirement for CIL to be used for infrastructure needed to make development acceptable in planning terms (c.f. CIL Regulation 122 Tests for S106 Obligations). Nevertheless the items on the regulation 123 List are closely related to meeting the needs arising from development in Torbay.</p>
6	Jeremy Cavanna For Cavanna Homes	<p>Town Centre uses should contribute to infrastructure costs.</p> <p>Extension of hospital will impact on infrastructure, but will not pay CIL.</p> <p>Non-residential uses are not charged CIL e.g. Employment and leisure.</p>	<p>CIL rates must have regard to development viability. Town centre uses, (NHS) hospitals etc not viable.</p> <p>Where highway, drainage etc infrastructure is directly necessary to making such development work, it can be secured through planning conditions, S278 or S106 Agreements.</p>
6	Jeremy Cavanna For Cavanna Homes	<p>Object that CIL will undermine viability. CIL proposal would render Yannons Farm non viable.</p>	<p>Issue noted. Viability at Yannons Farm is a useful comparison. However the area has at 2016 largely been developed or secured planning permission. It is therefore unlikely to be affected by CIL.</p> <p>The DCS does not in any event not cover large sites in Future Growth Areas. The infrastructure needs arising from such areas are sought through S106 Obligations, conditions and S278 highways agreements.</p>
6	Jeremy Cavanna For Cavanna Homes	<p>CIL should be re-designed to make it cost neutral viz a viz S106.</p>	<p>There is no requirement in the CIL Regs for CIL to be revenue neutral in relation to S106. Instead it should be strike the appropriate balance between the desirability of funding the infrastructure gap to support the development of the area from CIL and the potential effects (taken as a whole) of the imposition of CIL upon the economic viability of development across the area. (Regulation 14 of the CIL Regs (as</p>

			amended)).
6	Jeremy Cavanna For Cavanna Homes	Alternative infrastructure funding mechanisms suggested – Council tax surcharge, New Homes Bonus, Prudential Borrowing.	Noted. Council tax is a separate issue. NHB and prudential borrowing are other ways of funding investment, but do not obviate the need for a CIL.
7	Northern Trust	CIL of £100 per sq m is too high – will harm development viability. Suggest £75 per Sq m.	Noted- see above.
7	Northern Trust	Need to clarify additional impact of S106.	Noted- see above.
7	Northern Trust	Viability evidence is too optimistic: <ul style="list-style-type: none"> -Reasonable uplift factor of 1.5 us too low. Needs to be higher. -Insufficient weight given to other costs that impact on development. -Affordable housing assumptions of 55% OMV are too high. Modelling should assume that affordable homes are sold at build cost. -Code for sustainable homes and other requirements will affect viability. 	Issues noted- see above. Subsequent to the PDCS, the Local Plan has subject to a Whole Plan Viability Assessment and subsequent viability assessment (PBA 2014 and 2016 respectively). These considered all Local plan Policy impacts on viability. CIL has been reduced in line with PBA's findings.
	Northern Trust	There is a need for flexibility in CIL.	Noted. Once set CIL is relatively fixed due to the requirements of the CIL Regs. However it can be amended if viability changes significantly.

7	Northern Trust	Support instalments policy should be based on completion/occupation not time based. Suggest 25% quartiles.	Noted- see above. The DCS proposes levying CIL on smaller developments (and out of centre retail) which should reduce the need for phasing.
7	Northern Trust	“Meaningful proportion” should be 25% to provide local incentives.	Noted: The neighbourhood portion has now been set by Reg 59 at 15% or 25% where a neighbourhood Plan has been Made. Guidance on it is set out in PPG 25-072-20140612.
7	Northern Trust	Object to use of CIL for affordable housing – would affect viability and ability to negotiate on-site provision.	Noted- see above
8	WYG Planning, for Sainsbury’s	Object that different rates between different retail uses are proposed. Object to using floor space threshold.	It is considered that these issues have now largely been clarified. It is agreed that different CIL rates must be based on viability and not policy preferences. The Council’s Viability evidence indicates that there is greater headroom for larger retail uses in out of centre locations to pay CIL.
8	WYG Planning, for Sainsbury’s	£150 per sq m is too high Suggests nil rate for retail development.	Disagree that rate should be zero as out-of –centre retail is potentially viable. Based on PBA’s latest Torbay CIL Viability Study (January 2016) the retail CIL has been modified downwards to £120 per sq m.
8	WYG Planning, for Sainsbury’s	Object that CIL isn’t directly related to development.	CIL does not need to relate directly to development in the same way as S106. However it does support infrastructure needed to support growth in its wider sense.
8	WYG Planning, for Sainsbury’s	Viability assessment was carried out at a difficult stage in the economic cycle.	Agree – It has been updated twice since the PDCS (most recently in January 2016

9	Amythest Property (Mark Scoot)	Object to retail CIL. Should not charge for retail developments over 300 sq m in district or local centre.	<p>The need to ensure that CIL is based on viability, not policy preference is noted.</p> <p>The Economic Viability Report supports levying a CIL on larger out of centre retail developments (para 7.2.3- 8).</p>
9	Amythest Property (Mark Scoot)	£150 per sq m is too high.	See above. It is proposed to modify the DCS to £120 per sq m in line with the most recent Viability Report (January 2016).
9	Amythest Property (Mark Scoot)	Instalments should be phased for 2 years after store opening.	Need to consider instalments are noted, but 2 years after store opening is too lenient. Large supermarkets are unlikely to face same cash flow problems as housing development.
10	Stephen Ashworth, SNR Denton	Need to base CIL differentials on viability evidence. Failure to do so could result in State Aid.	Noted-need to base differential rates on viability.
10	Stephen Ashworth, SNR Denton	CIL should be set at a level which does not prejudice affordable housing deliver – parliamentary commitments made to this effect.	<p>Noted. Paragraphs 50 and 175 of the NPPF are also relevant.</p> <p>The DCS proposes to use CIL on smaller sites (subsequently modified to 4-14 dwellings in the DCS). Affordable housing and other infrastructure requirements needed by larger developments will be sought through S106.</p>
10	Stephen Ashworth, SNR Denton	Need to introduce mechanism where works are provided in kind. I.e. how the financial value of these are calculated.	<p>Noted. In-kind works would usually be a S278/S106 matter (i.e. they are site mitigation matter). In general CIL would be sought in addition to these. However, there may be exceptional circumstances where the Council considers that the delivery of S106 matters is a more pressing priority than CIL.</p> <p>The DCS proposes to seek CIL on smaller sites, which will minimise the instances where payment “in kind” is relevant.</p>

10	Stephen Ashworth, SNR Denton	S106 contributions may still need to be sought.	Noted. The DCS (and modifications) clarify where s106 will continue to be used. .
10	Stephen Ashworth, SNR Denton	Need to review existing consents when a CIL is proposed in order to avoid re-applications being made to avoid CIL	Noted and agree. There will inevitably be an overlap between CIL and outstanding S106 payments.
11	Paignton Community Partnership – David Watts	Need to keep CIL level under review to it can be revised if economic circumstances or Neighbourhood Planning Change.	Noted and agree. See above.
12	Brixham Town Council - Brian Harland	Support CIL. Request 80% of CIL to be spent in the area in which development arises.	The neighbourhood portion has now been set by Reg 59 at 15% or 25% where a neighbourhood Plan has been Made. Guidance on it is set out in PPG 25-072-20140612 Setting a higher level would undermine CILs role in contributing to items on the Reg123 List.
13	Linden Homes (Galliford Try Group).	Have modelled impact of CIL based upon draft Core Strategy and Infrastructure Study assessment s of viability, including an assessment of 30% affordable housing. This has indicated that £100 per sq m CIL would not be viable. Recommends that around £35 per sq m would be the correct level based upon 30% affordable housing.	Noted-see above. The Whole Plan Viability Assessment and CIL Viability Study (PBA 2014 and 2016) assess viability against the policy requirements in the Local Plan and against current viability circumstances.

13	Linden Homes (Galliford Try Group).	Instalment policy proposed is too restrictive- should be based on occupation of given units/ agreed phases and not on time triggers.	See above. There is a case to revise instalments policy. However making it time-triggered provides an incentive to completed developments. Occupation triggers provide less incentive. Seeking CIL only on smaller sites will reduce the need for a complex instalments policy.
13	Linden Homes (Galliford Try Group).	Meaningful proportion should be as high as possible in order to provide a local incentive to developments. CIL could be ring fenced for local schools and highway improvements.	The neighbourhood portion has now been set by Reg 59 at 15% or 25% where a neighbourhood Plan has been Made. Guidance on it is set out in PPG 25-072-20140612. Setting a higher level would undermine CILs role in contributing to items on the Reg123 List.
13	Linden Homes (Galliford Try Group).	There are practical difficulties with achieving on-site delivery of affordable housing through CIL. Negotiating affordable housing through S106 allows fluctuations in value to be taken into account.	Noted and agree See above.

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.

This section sets out the Council's summary of the consultation responses to the Community Infrastructure Levy Draft Charging Schedule and Regulation 123 List of projects that were intended to receive Funding, together with the Council's response. These were the subject of public consultation between Monday 9th February and Monday 23rd March 2015.

This document lists responses by the organization/person who made comments.

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.				
ID	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
	Environment Agency	Shaun.pritchard@environment-agency.gov.uk	Consider including flood defenses on Paignton seafront on the Reg 123 list of CIL items.	The Council considers that such impacts should be considered as direct site acceptability matters and where necessary dealt with through conditions or S106 Obligations.
	Natural England	Laura.horner@naturalengland.org.uk	See concerns raised about recreational impact on Berry Head and South Hams Special Area of Conservation in relation to the Submission Local Plan. Pooling limitations on S106 will mean that relatively large number of smaller developments in Brixham Peninsula will not contribute towards impact on Berry Head. Use of Planning Contributions SPD to secure funding for biodiversity would not be an acceptable method of ensuring certainty of funding.	<p>See responses to Natural England on the Submission Local Plan. Policies SS8, SDB1, NC1 et al have been significantly modified to accommodate biodiversity protection and mitigation.</p> <p>It is not considered that CIL will offer greater certainty of funding for Berry Head than s106, especially as a large proportion of smaller development will be zero rated for CIL (not new floor space, self-build, affordable housing etc).</p> <p>£85,000 is being negotiated for Berry Head recreation impact from development at Wall Park. This is likely to be significantly more than CIL would achieve (and could not be sought if Berry Head recreation impact were treated as a CIL item).</p> <p>Whilst the restrictions on pooling are noted, these would not preclude sub-division of biodiversity mitigation measures into discrete green infrastructure projects.</p> <p>In response to Natural England's comments it is recommended that the impacts of small developments upon the South Hams SAC arising from small developments is added to the Regulation 123 List.</p> <p>Note that impacts from larger developments will be sought as a S106 item. Paragraph 118(1) of the NPPF will also apply to all development .</p>

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.				
ID	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
	Sport England	Gary.Parsons@sportengland.org	Supports developer contributions towards recreation projects. Support the general approach to use S106 for sports related matters unless there is a specific project identified. The Council should be aware of pooling restrictions and the need to comply with the tests of lawfulness on S106 Obligations.	Support for general approach is noted. The Council considers that the impacts of larger development can be addressed through on site provision or 106 and are unlikely to amount to more than 5 obligations per infrastructure item.
	The Theatres Trust	Ross.pritchard@theatres.org.uk	The Theatres Trust supports the exclusion of D1 and D2 from the CIL as these uses often do not generate sufficient income streams to cover their costs. And are very unlikely to be built by the private sector if CIL is charged. However it should be noted that similar uses such as theatres are sui generis not D2. It may be easier to list 'All other uses – Nil rate'	Agree. Clarify that theatres will be zero rated for CIL.
	Paignton Neighbourhood Forum	dwdw@paigntonneighbourhoodforum.org.uk	Levying CIL only on smaller sites would appear to be at odds with principle of encouraging development on smaller brownfield sites. More detail should be provided on how much CIL is likely to generate and how this will affect money already allocated for the South Devon Link Road. There is no evidence that CIL will generate sufficient funds to meet infrastructure requirements in the Local Plan and no reference to an Infrastructure Delivery Plan needed to deal with foul water disposal etc	Differential CIL rates must be based on viability considerations and cannot be used as a policy tool to influence development. Note that more detail should be produced (to inform the CIL examination) about how much CIL could raise and its relationship to infrastructure delivery. This will be a closely related matter to the forthcoming Developer Contributions Supplementary Planning Document. CIL is unlikely to raise sufficient money to cover the outstanding cost of the South Devon Link Road and the relocation Torbay School. So there is unlikely to be a significant displacement of funds that would be available for other capital projects.

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.

ID	Person /Organisation /Consultee	Email contact details	Summary of Representations Made	LPA Response
			issues.	
	Brixham Neighbourhood Forum	chair@cgbpartnership.co.uk	<p>Unclear how 25% neighbourhood proportion arising in Churston (a non parished area) will be spent in a democratically accountable manner.</p> <p>Levying CIL only on smaller sites would appear to be at odds with principle of encouraging development on smaller brownfield sites.</p> <p>How would funds earmarked for South Devon Link Road be redistributed if CIL helps fund it.</p>	<p>Any CIL arising from un-parished areas will need to be held by Torbay Council and spent in the area in which development arises.</p> <p>When Neighbourhood Plans (which are in conformity with the new Local Plan) are "made" it is envisaged that the Forums would be able to allocate the neighbourhood proportion (25%) of CIL.</p>
	South West Housing Association and Registered Providers Planning Consortium (Tetlow King on behalf of)	all@tetlow-king.co.uk	<p>CIL should not undermine the provision of affordable housing.</p> <p>Welcome that additional viability assessment work has been carried out. The changes to affordable housing/S106 tariffs in the PPG post date the viability testing.</p> <p>Evidence of previous S106/ affordable housing being achieved would enable viability to be better assessed.</p> <p>An estimate of how much CIL would raise will help assess whether the infrastructure funding gap can be bridged. In particular 25% of CIL will need to go to the neighbourhood proportion when Neighbourhood Plans are "made".</p> <p>There appears to be scope to increase scope of CIL on smaller sites where the burden of affordable housing has been</p>	<p>Noted. The Draft Charging Schedule has been based on the PBA Whole Plan Viability Assessment, which found that affordable housing requirements have a major impact upon viability and the scope for CIL. This is a main reason for setting CIL only on sites which fall below the minimum threshold for CIL.</p> <p>The need to estimate what CIL could raise is noted.</p> <p>Extra Care Schemes: The Viability Update (January 2016) confirms that Extra Care Units will not be viable with CIL, and therefore should be zero rated.</p> <p>The Council does not consider that this applies to sheltered housing schemes, which have more in common with general housing and in the vast majority of cases will be above the threshold that the DCS has set for CIL. Such schemes will be negotiated on the basis of S106 Obligations to meet affordable housing and /or other infrastructure needed to make development acceptable in planning terms (see Policy H6 of the adopted Local Plan 2012-30).</p>

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.				
ID	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
			<p>lifted.</p> <p>Extra care schemes have not been viability tested. The additional costs and communal areas is likely to render them unviable for CIL</p> <p>Clarify CIL exemption on small sites and affordable housing</p>	<p>The CIL regulation set out exemptions from CIL for social housing (as defined in the Regs) and Self Build housing.</p>
	Sainsbury's' Supermarkets LTD WYG on behalf of	rachel.robinson2@wyg.com]	<p>Object to treating The Willows District centre as a different charging zone to other in-centre stores. It should be zero-rated for CIL as per other district centres.</p> <p>"Exceptional Relief" for major mixed use developments should be defined more precisely.</p>	<p>The Retail Update (2013) indicates that The Willows has a higher viability to other centres and operates essentially as an out of town retail park. There are therefore viability reasons for charging CIL on development within it.</p> <p>Notwithstanding this, The Willows District Centre is largely developed out, and opportunities for further expansion are relatively limited.</p> <p>The DCS offers Exceptional Relief. If it would help to deliver larger mixed use schemes or early delivery of employment. This is intended to apply to larger mixed use schemes where the delivery of lower value uses (employment, affordable housing, green infrastructure etc) can be secured through retail enabling development, and its delivery ensured by a legal agreement.</p> <p>Note that updated viability evidence indicates that CIL charged on out of centre retail should be reduced to £120 per sq m and it is proposed to modify the Draft Charging Schedule accordingly.</p>
	Gladman Developments	P.Dutton@gladman.co.uk	<p>What appears to be a generalised letter setting out a range of helpful best practice advice to Council's preparing a CIL</p> <p>CIL needs to be related to infrastructure needed to meet the Local Plan (having</p>	<p>Advice is noted. It is considered that the Council has taken this advice into account in drafting the CIL DCS</p>

Torbay Council Response to the Community Infrastructure Levy Draft Charging Schedule.

ID	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
			<p>regard to other funding streams). Differential CIL rates must not harm viability and must be based on viability considerations alone. They should make provision for provision in-kind (e.g. land) and set an instalments policy to facilitate development.</p>	
	Cavanna Homes	MNewman@cavannahomes.co.uk	<p>No comments other than to point out a typo in the Introduction (Clarify that CIL is not charged on developments of 15+ dwellings).</p>	<p>Noted. Correct typo accordingly.</p>
	J Sandland LTD	jsandland@msn.com	<p>CIL will harm viability levels and hold back development if based on “silly” square metre fees.</p>	<p>Concern noted, but does not present any particular evidence as to why Draft Charging Schedule proposals will undermine viability.</p> <p>Subsequent to this consultation, the Council has updated its viability evidence (PBA2016) that confirms that sites of 1-3 dwellings should be zero rated for CIL. Modify Charging Schedule accordingly.</p>
	Nigel Bennetto	nbennetto@blueyonder.co.uk	<p>Recommend that CIL is not proceeded with as it could harm the housing market. Previous land tax schemes have not worked and there is ongoing political uncertainty over CIL</p>	<p>Concern noted, but does not present any particular evidence as to why Draft Charging Schedule proposals will undermine viability.</p> <p>Subsequent to this consultation, the Council has updated its viability evidence (PBA2016) that confirms that sites of 1-3 dwellings should be zero rated for CIL. Modify Charging Schedule accordingly.</p>

Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. (Additional comments to be verbally reported by the Executive lead for Planning, transport and Housing)

Person/Organisation	Email contact details	Summary of Representations Made	LPA Response
Torbay Coast and Countryside trust	Heather Carstens [heather@countryside-trust.org.uk]	CIL contributions should be ring fenced to meet legal requirements under the Habitat and Species Regulations	Based on previous assessment, about £20,000 per year would need to be ring fenced.
Sport England	Gary.parsons@sportengland.org	CIL should be used to contribute towards sport and recreation.	Note that this was debated at DCS stage. Whilst CIL could be used to fund sport and recreation; this would mean that S106 Obligations could not be used. The Reg123 List
Torquay Neighbourhood Forum	Lanscombe House [lanscombehouse@aol.com]	<p>Recommend a charge of £30-50 for sites of 1-3 dwellings in the Countryside area.</p> <p>The neighbourhood portion should be increased, in recognition that S106 and not CIL is being used for major developments in Future Growth Areas. Plan. On this basis it is argued that 100% of CIL should be spent on local projects identified as needed to deliver the Neighbourhood Plan.</p>	<p>Note comments about smaller sites outside the built up area. These are not supported by viability evidence. However, the issue is noted and CIL could be reduced for smaller sites outside the built up area should viability evidence indicate that this is necessary. This would require a Modification to the CIL.</p> <p>It is noted that the Council is offering discretionary exceptional circumstances relief that should overcome viability issues.</p> <p>The Neighbourhood portion is set out in the CIL regulations (59A). Increasing the neighbourhood portion would jeopardize funding of key infrastructure.</p>
Paignton Neighbourhood Forum		<p>Object to exclusion of sites within Future Growth Areas from CIL. Viability evidence indicates that they could afford to pay CIL. Charging a zero rate of CIL will give an advantage to greenfield sites over urban regeneration.</p> <p>Major developments also benefit from key infrastructure such as the South Devon Link Road.</p>	<p>Seeking infrastructure contributions from strategic sites through S106 rather than CIL is not intended to advantage such sites, but is intended to aid the negotiation of infrastructure provision on strategic sites.</p> <p>Impact on town centres from discretionary relief issue is noted. This would be part of determination</p>

Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. (Additional comments to be verbally reported by the Executive lead for Planning, transport and Housing)

Person/Organisation	Email contact details	Summary of Representations Made	LPA Response
		<p>Suggest a charge of £70 per sq m.</p> <p>Exceptional relief should not be given to out of centre retail if it harms the vitality and viability of town centres.</p>	<p>of a planning application. However a note can be added to the RDCS to clarify this.</p>
Persimmon Homes		<p>The council should set out how it intends to review the Reg123 List.</p> <p>A review mechanism should be put in place to assess the impact of starter homes.</p> <p>The Zoning maps should be printed at a larger scale.</p> <p>Object to instalments policy being time based (rather than at stages of development). Approach implies land banking, which house builders do not engage in.</p>	<p>Regulation 59 of the CIL Regulations indicates that CIL must be used to support the development of an area, but makes no stipulation about how these are identified. Reg 123 (4)(a) indicate that CIL infrastructure to be funded through CIL should be published the Charging Authority's website.</p> <p>Agree to print the CIL charging zones at a larger scale.</p> <p>It is considered that instalments based on commencement will incentivise earlier delivery of development. The instalment periods are more generous than neighbouring authorities, and is unlikely to apply to larger developments which will be negotiated through S106.</p>