

Appendix 1: Supporting Information and Impact Assessment

Service / Policy:	Spatial Planning
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Section 1: Background Information

1.

What is the proposal / issue?

The report recommends adopting the Council's Community Infrastructure Levy Charging Schedule (DCS) (with Examiner's Modifications).

This will be carried out in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).

Council resolved to submit CIL with proposed modifications for Independent Examination on 11 May 2016. It was submitted to Intelligent Plans and Examinations Limited for Examination on 11 August 2016. A Hearing was held on 9 November 2016.

The Examiner's Report was received on 5 December 2016. It concluded that:

"The draft Torbay Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area.

The Council has provided sufficient evidence that shows the proposed rates would not threaten delivery of the Local Plan as a whole.

Four modifications are necessary to meet the drafting requirements. These can be summarised as follows:

- *Introduce a zero charge for small sites (1 – 3 dwellings) in Zone 2;*
- *Introduce a zero charge for strategic sites (30+ dwellings) in Zone 3;*
- *Introduce a charge of £140 for schemes of 15 – 29 dwellings in Zone 3; and*
- *Introduce a zero charge for Extra Care Homes, and a definition of extra care homes.*

The specified modifications recommended in this report do not alter the basis of the Council's overall approach or the appropriate balance achieved."

A non-binding suggestion was made that sites of 15-29 dwellings in Zone 3 should be considered as strategic sites, i.e. zero rated for CIL. This would remove an area of concern about viability and simplify the Charging Schedule (in practice there would be three charging zones).

	<p>It is proposed to adopt CIL accordingly.</p> <p>This approach retains S106 Obligations as the main way of funding infrastructure needed for developments of 15 or more dwellings within Zones 3 and 4 (i.e. outside of the built up area).</p>
<p>2.</p>	<p>What is the current situation?</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>The Planning Contributions and Affordable Housing Supplementary Planning Document (SPD) was reported to Council on 8 December 2016.</p>
<p>3.</p>	<p>What options have been considered?</p> <p>Torbay’s proposed CIL has been the subject of several consultations and iterations (see section 11 below). The current approach, as amended by the Examiner’s Modifications, was approved by Council on 11 May 2016.</p> <p>The Examiner’s recommendations must be addressed and are in practice binding. He has also made one non-binding suggestion.</p> <p>The options to the Council are:</p> <ol style="list-style-type: none"> 1) To adopt the CIL Charging Schedule including the Examiner’s non-binding recommendation regarding sites of 15-29 dwellings in Zone 3. This is the preferred approach. 2) To adopt CIL with the Examiner’s Modifications but not his non-binding recommendation. 3) To withdraw the Charging Schedule and rely on s106 Obligations either until a new schedule can be prepared or in perpetuity. <p>Option 1: is recommended as the preferred option. This would allow CIL to be sought imminently and simplifies the charging schedule.</p> <p>Option 2: This Could be adopted. It would result in a charge of £140 per square meter for sites of between 15-29 in Zone 3 (outside the built up area), but zero for similar sites in Future Growth Areas. This would be complicated and the Examiner expressed the need for caution with this approach.</p> <p>Option 3: This would result in a delay of at least 2 years before CIL could be realistically implemented, with the accompanying expenses. The expense of developing CIL thus far would be wasted. The Government has proscribed the use of “tariff style” s106 contributions from sites of less than 11 dwellings (6 in the AONB), so there would be a significant loss of s106 contributions.</p> <p>The Examiner supported the Council on most issues. He did not agree with the Council that it would be viable to seek Contributions for sites of 1-3</p>

	<p>dwelling in Zone 2 (elsewhere in the built up area). This is a binding recommendation on the Council.</p> <p>However the Council has excluded the most affluent parts of Torbay (Watcombe Heights, Ilsham Valley and Bascombe Road from Zone 2, to ensure that small sites in the highest value areas are CIL liable.</p> <p>It is estimated that the scheme of CIL will raise between around £150,000 per year when CIL is implemented, based on past completions of CIL Chargeable development and likely future development on smaller sites.</p> <p>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.</p> <p>What will CIL Pay for?</p> <p>Charging Authorities are required to identify infrastructure items that they intend to fund in whole or part through CIL on a “Regulation 123 List”. This currently covers the South Devon highway and mitigation of recreation impacts on limestone grassland at Berry Head.</p> <p>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.</p> <p>The Regulation 123 list should be reviewed on an annual basis and may be amended speedily, so long as this is advertised. However making the list longer will not result in more money coming in, and will prevent these additional items from receiving s106 funding.</p> <p>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 Regulations.</p>
<p>4.</p>	<p>How does this proposal support the ambitions and principles of the Corporate Plan 2015-19?</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</p>

	<p>budget. It is also proposed to use an element of CIL to alleviate recreational pressure on Berry Head.</p>
<p>5.</p>	<p>Who will be affected by this proposal and who do you need to consult with?</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 upon on four occasions:</p> <ul style="list-style-type: none"> • The Preliminary Draft Charging Schedule was published for consultation purposes between 9 December 2011 and 6 February 2012 • The Draft Charging Schedule was consulted on between 9 February and 23 March 2015. • The Revised Draft Charging Schedule was consulted on between 18 March – 29 April 2016 • The final Submission Draft Charging Schedule incorporating Revised Proposed Modifications was consulted on between 5 September and 17 October 2016 <p>Whilst these were open to anyone to comment; developers, agents and other organisations on Spatial Planning’s database were specifically notified.</p> <p>Objections were considered by the Independent Examiner, through written representations and a Hearing on 9 November 2016.</p>
<p>6.</p>	<p>How will you propose to consult?</p> <p>Extensive consultation has been carried out as outlined in 5 above.</p> <p>Regulation 23 of the CIL Regulations 2010 (as amended) requires publication of the Examiner’s Report.</p> <p>Regulation 25 requires publication of a charging schedule as soon as practical after the charging authority approves a schedule</p> <ul style="list-style-type: none"> • On its website • In libraries, Connections and principal offices • By local advertisement (i.e. Herald Express) • By notifying persons who requested notification of approval <p>The charging schedule takes effect on the day specified for that purpose in the Charging Schedule. It must be published before it takes effect.</p> <p>Providing advance notice of CIL will give developers and agents time to prepare for the process.</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).

When adopted a system of administering CIL will need to be put in place. This includes (but is not limited to):

- Calculation of chargeable floorspace and assessing liability.
- Monitoring commencement of development and liability including instalments.
- Chasing up CIL and initiating CIL enforcement where necessary.
- Monitoring CIL spending and ensuring no “double dipping” with S106.
- Managing the neighbourhood portion of CIL.
- Providing details of CIL receipts and spend in the Authority Monitoring Report (AMR).

These will need to be embedded in the Council’s development management process, and particularly the validation of applications.

Part 9 of the CIL Regulations allows the charging authority to surcharge persons liable to pay CIL where development has been commenced without the requisite notices being submitted.

Regulation 61 of the CIL Regulations allows up to 5% of CIL to be spent on administrative expenses of setting up, examining and managing the Levy. A work programme from the Planning Advisory Service is attached at Appendix 4.

The amount raised by CIL is dependent upon the amount of chargeable floorspace that is commenced through development (principally new housing).

Analysis of the last 3 years’ indicates that if CIL had been in place it would have raised about £1.1 million over three years (about £380k per year) as follows:

- 2013/14: £498,330
- 2014/15: £146,840
- 2015/16: £452,790

To avoid double counting, a figure of £350 per year may be more realistic.

8. What are the risks?

The impact of CIL upon viability is noted below. The more pressing risk to the Council is that if the administrative mechanisms noted above are not put in place, with adequate staff resources, then it will not be possible to implement CIL or adequately monitor or enforce it.

The risk of CIL to the development industry is that it could harm viability and thereby the delivery of new development. This has been tested through

	<p>several viability studies and specifically the CIL Examination.</p> <p>The Examiner’s Report makes a non-binding recommendation of treating sites of 5+ dwellings within Zones 3 and 4 as strategic sites (and therefore subject to S106 rather than CIL). Whilst the Examiner does indicate that a charge of £140 per square meter could be sought on sites of 15-29 dwellings in Zone 3 (outside the built up area); he indicates concerns with this approach and recommends caution. Accordingly, following the informal suggestion will alleviate this risk.</p> <p>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.</p> <p>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. Note that this is at the Council as Charging Authority’s discretion.</p> <p>CIL is not set in stone and may be reviewed. However there are clearly consultation and examination costs associated with reviewing CIL.</p> <p>There is a temptation to include additional items on the CIL Regulation 123 list. However this would preclude such items being funded through S106 Obligations. South Devon Highway 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>
<p>9.</p>	<p>Public Services Value (Social Value) Act 2012</p> <p>See above. The Council’s CIL proposals have been supported by an Independent Examiner.</p>
<p>10.</p>	<p>What evidence / data / research have you gathered in relation to this proposal?</p> <p>The CIL Examination assessed that Torbay’s CIL proposals were justified in terms of :</p> <ul style="list-style-type: none"> • Being based on an up to date development plan. • An infrastructure funding gap can be demonstrated. • Not set at a level that would undermine development viability.
<p>11.</p>	<p>What are key findings from the consultation you have carried out?</p> <p>See separate schedules of representations on previous stages of the CIL at www.torbay.gov.uk/CIL</p> <p>The Current report is in response to the findings of the Independent examiner, who has considered the consultation responses.</p>

12.

Amendments to Proposal / Mitigating Actions

The Examiners Modifications must be addressed by the Charging authority and are, in effect, binding.

It is recommended that the Examiner's non-binding suggestion to seek s106 rather than CIL on sites of 15-29 dwellings in Zone 3 is adopted.

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			It is not proposed to seek CIL

from a minority ethnic background (BME) <i>(Please note Gypsies / Roma are within this community)</i>			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 zero rate of CIL on developments of 1-3 dwellings</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 would reduce the scope to seek affordable housing in practice.</p>	

		<p>in order to safeguard viability. In addition a lower rate of CIL is sought in the lowest value urban areas.</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> <p>Offering discretionary relief will also ensure that affordable housing can be prioritised where appropriate.</p>	
	<p>Public Health impacts (How will your proposal impact on the general health of the population of Torbay)</p>	<p>Positive 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.</p> <p>It is proposed to use CIL on mitigating the recreation impacts on grassland at Berry Head, thereby helping to support the integrity of green infrastructure.</p>		
<p>14</p>	<p>Cumulative Impacts – Council wide (proposed changes elsewhere which might worsen the impacts identified above)</p>	<p>CIL is intended to help fund the cumulative impacts of developments upon infrastructure needs. The South Devon Link Road, and cumulative effects of development upon grassland at Berry Head are identified as CIL items. \</p>		

15	Cumulative Impacts – Other public services (proposed changes elsewhere which might worsen the impacts identified above)	As above.
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