

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.

This Consultation Statement supersedes the Statement dated August 2016.

Torbay Council September 2016

Torbay Council Community Infrastructure Levy (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). The development of Torbay's CIL proposals has been an iterative process with several additional rounds of consultation and refreshed viability evidence. Torbay's CIL is currently at the submission stage, where it is submitted to an Independent Examiner.

CIL must be based on an up to date development plan. In this instance, the Torbay Local Plan 2012-30 was adopted by Council in December 2015.

This document is set out in the following sections, with the most recent consultation dealt with at the start of the document.

- Representations on the Revised Draft Charging Schedule (RDCS) consultation that took place between 18th March 2016 and 29th April 2016 (Page 3).
- Representations on the Draft Charging Schedule (DCS) consultation that took place between 9th February 2015 and 23rd March 2015 (Page 15).
- Representations on the Preliminary Draft Charging Schedule (PDCS) consultation that took place between 9th December 2011 and 6th February 2012 (Page 23).

The most recent (August 2016) consideration of viability evidence and Charging Zones is set out in the section on the RDCS at the start of this document. These have indicated that a number of further Revised Proposed Modifications to the Charging Schedule are appropriate. These are the subject of a separate Revised Modifications Schedule, and the Council's rationale for the proposed Replacement Modifications is set out in the following section.

Consultation Statement and Torbay Council's response to representations made on the Revised Draft Charging Schedule (2016), and rationale for the Revised Proposed Modifications

Torbay Council Response to the CIL Revised Draft Charging Schedule (March-April 2016) and subsequent consideration of Viability Addendum Report.

Introduction

The Revised Draft Charging Schedule (RDCS) was published for public consultation between Friday 18th March-Monday 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.

Following consideration of representations on the RDCS, the Council meeting of 11th May 2016 resolved to submit the CIL with Modifications for independent examination. However, a number of issues raised by the representations required further consideration. In particular the viability evidence has been reassessed by Burrows Hutchinson Ltd, and an Addendum Report published (August 2016).

This section sets out the Council's response to the issues arising at the RDCS and its current position on CIL.

Background

The RDCS arose from a number of Member meetings to consider the emerging CIL and comments made on the previous Draft Charging Schedule consultation (which ran from March-April 2015). In particular the Mayor's Executive Group of 3rd March 2016 and Policy Development Group of 9th March 2016 requested that the emerging Charging Schedule be amended to better reflect higher and lower value areas within Torbay, and seek a CIL from small sites in higher value areas. Members also requested that the instalments policy be reconsidered and that discretionary exceptional circumstances relief be offered in order to ensure that marginal developments are not stalled by CIL.

These changes resulted in the Revised Draft Charging Schedule, which was the subject of consultation between Friday 18th March and Monday 29th April 2016. Following consideration of issues in the RDCS, Full Council on 11th May 2016 resolved to submit CIL subject to a number of modifications.

The most significant of these Proposed Modifications is considered to be to seek CIL on small sites within Future Growth Areas (rather than use s106 Obligations). The reason for this is that small sites (including infilling of development sites) are unlikely to generate major strategic infrastructure requirements in the same way that large applications do. In addition, there are restrictions on seeking s106 obligations from small sites. However, large sites in Future Growth Areas are likely to have higher infrastructure costs, which can more effectively be delivered through s106 Obligations.

It was also proposed to reassess viability in the light of detailed comments received from the development industry. However, the Council considered that the proposed rates set out in the RDCS and the overall approach towards CIL remain robust.

Issues arising from the RDCS Consultation and Council Response

The following sets out the main issues arising from the consultations on the RDCS. These were reported to full Council on the 11th May 2016. The Council considers that the RDCS is capable of submission for Independent Examination, subject to minor modifications, which are set out in the schedule of Proposed Modifications. A more comprehensive assessment of comments received is set out in Table 1 of this document.

- **Comments on the definition of Charging Zones and the need to publish the Charging Zones Maps at a larger scale.** It is agreed to publish the Charging Zones at a larger scale (1:5000 maps). Following the May Council meeting, the boundaries of the Charging Zones have been reviewed to ensure that the zones reflect property values.

The Council considers that the undeveloped coast (Local Plan Policy C2 area) will have similar viability characteristics to the countryside area (Local Plan Policy C1), and for this reason have added it to Charging Zone 3 (outside the built up area). Similarly, Watcombe Heights and Ilsham Valley, Torquay and land at Bascombe Road, Churston are likely to have similar land values to that outside the built up area and should therefore be located in Zone 3. There have also been a number of minor adjustments, where Lower Super Output Area (LSOA) level data was not considered to reflect on the ground property price differences at a fine enough level.

- **Arguments that a wider range of infrastructure should be included in the Reg 123 List.** The Council considers that this would be counterproductive since the South Devon Highway is a critical piece of infrastructure needed to support growth. There is a significant infrastructure funding gap that will need to be funded through the Council's budget/Council tax if not through CIL. It is accepted that there will need to be an element of cross-subsidisation by the Council of items such as education provision.

- **Call for a larger proportion of CIL should be allocated for the neighbourhood portion.** The neighbourhood portion is specified in the CIL Regulations, and exceeding it would result in less CIL going to Bay-wide priorities such as the South Devon Highway.
- **Objection that exempting strategic sites from CIL will create a perverse incentive to develop greenfield sites rather than urban regeneration.** The Council has proposed to seek s106 obligations from large sites within Future Growth Areas in recognition that such areas are likely to have higher and more easily identifiable infrastructure requirements in terms of transport networks, open space, off-site drainage requirements, education etc. The Council remains of the view that this is the most effective way of delivering infrastructure within these areas. The applications are likely to be large and therefore, the s106 Obligations are likely to be sufficient to avoid pooling issues. It is noted that infrastructure requirements needed to support the development of Future Growth Areas are likely to exceed the amount that would be recouped through CIL.
- **Clarify the relationship between s106 and CIL.** The Charging schedule indicates that “tariff style” s106 contributions will not be sought from developments that are CIL chargeable. Matters that are directly required to render development workable or lawful (e.g. drainage, highway access) will usually be achieved through condition but may occasionally require a s278 or s106 Agreement. It is agreed that the Council may need to cross subsidise other items such as education or off-site greenspace management through other sources including council tax. However, because CIL is already over-subscribed with the South Devon Highway and South Hams SAC, adding additional matters to the Reg 123 list would not improve the chance of them being funded in actual terms.
- **Concerns about viability, and criticisms of the PBA Viability Study.** The Council considers that the PBA Viability Study remains substantially up to date, and PBA confirm their view that it is robust. The Revised Draft Charging Schedule is largely within the viability parameters identified in the PBA Viability Report. However, it is noted that the Revised Draft Charging Schedule introduces charging zones with different rates including a CIL for smaller sites (1-3 dwellings) in more viable areas. On this basis, the Council commissioned Burrows Hutchinson Ltd to produce an Addendum to the PBA Viability Study. This confirmed that Torbay’s CIL rates are for the most part unlikely to jeopardise development. It did raise concerns about small sites. The Council’s response to this is set out in the following section.
- **Viability of sheltered housing with CIL.** The PBA Viability Study indicates that sheltered housing would be marginal with CIL and affordable housing. The Viability Update by Burrows Hutchinson Ltd advises that sheltered housing and retirement living developments are unlikely to be put at risk by the proposed CIL rates. Based on this updated assessment, the Council considers that sheltered housing is likely to be viable with CIL. The RDCS offers discretionary relief for sites that could be invoked should other s106 requirements be considered to be a priority.

Review of Viability Evidence and CIL Charging Zones

In the light of the comments above, the Council commissioned Burrows Hutchinson Ltd and PBA to review and update the January 2016 Viability Report. This document, the Torbay CIL Viability Study Addendum Report (August 2016) is available on the Council's website at <http://www.torbay.gov.uk/council/policies/planning-policies/local-plan/cil/>.

Review of Charging Zones

The Burrows Hutchinson report also recommended that Charging Zones be reviewed to iron out anomalies with land values arising from using Lower Super Output Area (LSOA) level deprivation data. For example, some areas of higher property values were shown as being in deprived LSOAs, and vice versa. The residential CIL Charging Zone maps have accordingly been reviewed by the Council and a number of amendments made, based on the broad marketability of property and property prices in these areas. The Burrows Hutchinson report confirmed that viability outside the built up area is not likely to be a problem.

The Council's review of Charging Zones also considered that sales prices at Watcombe Heights and Ilsham Valley, Torquay and land off Bascombe Road, Churston and are likely to be similar to those achieved outside of the built up area, and accordingly should be within Charging Zone 3. It was not considered that there would be any overarching development cost differences between development in these areas compared to Charging Zone 3.

Whilst there are other higher value urban pockets in the Bay, such as parts of the Warberries, Babbacombe, Livermead and Chelston (Torquay) and parts of Preston (Paignton); these are less well defined in terms geography than Watcombe Heights, Ilsham Valley and Churston. Sales prices in these areas tend to be closer to other areas in Zone 2. Accordingly, it is considered that these areas should be within Charging Zone 2.

Viability of Sites.

The addendum report confirms that most sites within Torbay have a healthy margin of viability for CIL and are unlikely to be undermined by the proposed rates of CIL. It did identify an issue with the viability of sites of 1-3 dwellings in the built up area (Zones 1 and 2). The RDCS does not seek CIL from sites of 1-3 dwellings within Zone 1. However, in discussion with the Executive Lead for Planning, Transport and Housing, the Council considers that it is justified in adhering to its position of May 11th 2016, namely that sites of 1-3 dwellings in Zone 2 would be viable with CIL. Its reasons for asserting this are as follows:

- Charging Zones have been reviewed to ensure that areas of lower viability are within Zone 1 (i.e. zero rated for sites of 1-3 dwellings).
- Small sites are not subject affordable housing or tariff style s106 Obligations. Torbay (unlike its neighbours) offers exceptional circumstances relief to CIL should site-acceptability s106 requirements impact on development viability.
- Small sites have historically been viable with s106 Obligations. Between 2012 to mid 2015 there were 95 sites of 1-3 dwellings which agreed s106 Obligations. The average figure was £3,485 per dwelling. This is on a par with s106 Obligations negotiated from larger sites. Whilst the mapping of Obligations is not complete, s106 transport obligations show wide distribution of obligations throughout the built up area.

S106 Obligations agreed from sites of 1-14 dwellings between 2012-2015. (Source Torbay Council monitoring of s106 Obligations).			
Number of dwellings	Number of sites/obligations	Average per dwelling	
1	62	£3,679	
2	24	£3,153	
3	9	£3,041	
4	9	£2,941	
5	6	£3,379	
6	7	£2,770	
7	0	0	
8	4	£2,915	
9	3	£1,931	The figure is reduced by small sample size and 1 site having significant abnormal costs (Courtland Road)
10	1	£50	This is a single site (Broadway, Churston) P/2014/0687. Junction improvements were required through s278 Agreement.
11	2	£2,123	
12	1	£1,103	Conversion of hotel
13	1	£1,228	
14	14	£3,888	

- Neighbouring areas, such as Teignbridge, Plymouth and Exeter have not excluded small sites from CIL. The closest comparators to Torbay are likely to be Plymouth and Newton Abbot (in Teignbridge). Plymouth's CIL for the majority of the

city is £30 per dwelling (with a zero charge for a small area in the centre), whilst Newton Abbot is £70. Neither set a lower charge for smaller sites.

On this basis, the Council considers that the position taken on small sites in the May 2016 Council report remains justified.

Table 1 Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. March- April 2016

Person/Organisation	Ref	Summary of Representations Made	LPA Response
National Consultees			
Natural England	RDCS1	<p>The Reg 123 list should include the words “mitigating the effects of development on the SAC”.</p> <p>It should be indicated that sites in Future Growth Areas must mitigate the effects on the South Hams SAC through S106 Obligations.</p>	<p>Noted. Amend the Reg123 list accordingly. It is intended to seek s106 obligations to mitigate the effect of development in Future Growth Areas on the SAC.</p>
Sport England	RDCS2	<p>CIL should be used to contribute towards sport and recreation.</p>	<p>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.</p> <p>It is intended to seek recreation provision through S106 Obligations and/or conditions from larger sites within Future Growth Areas.</p> <p>Where an application involves the loss of public open space, it's replacement is likely to be required as a “site acceptability matter” in line with NPPF Paragraph 74.</p>
Network Rail	RDCS3	<p>Many railway facilities operate close to capacity; there is a case to seek developer contributions towards rail improvements.</p> <p>New railway infrastructure should be exempt from CIL (or treated as payment in kind).</p>	<p>Network Rail’s comments stray into development plan policy. Policies SS6 and SS7 address the need for transport improvements and infrastructure.</p> <p>The Revised Draft Charging Schedule is clear that all uses other than residential and large out of centre stores would be zero rated for CIL. Therefore any railway buildings or infrastructure would be zero rated for CIL (the exception would be if a large 300 sq m retail store was opened up as part of a railway station, but this is extremely unlikely).</p> <p>Consideration has been given to funding Edginswell station through CIL. However, CIL is already oversubscribed. The major developments in the area will either be zero rated for CIL (e.g. Torbay Hospital and employment) or be in Future Growth Areas where infrastructure costs are sought through S106 Obligations</p>

Table 1 Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. March- April 2016

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			(subject to 5 Obligation pooling limit).
Environment Agency	RDCS4	No objections or concerns. Note that developer contributions towards flood infrastructure and removal of surface water drainage will be dealt with through S106 Obligations.	Support noted.
Partner Organisations/Forums			
Torbay Coast and Countryside Trust	RDCS5	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. However, it is considered that this should be a proportion of CIL (10%) up to £20,000 to mitigate impacts arising from development that has paid CIL.
Torquay Neighbourhood Forum	RDCS6	<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. 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. The Council has revised the Charging Zones to exclude small sites within the inner urban area (Zone 1) which is likely to have the lowest viability.</p> <p>On this basis, the Council consider that small housing sites outside of Charging Zone 1 will remain viable with CIL. Further viability work has been commissioned to confirm this (see above).</p> <p>It is noted that the Council is offering discretionary exceptional circumstances relief that will overcome viability issues should they arise from smaller sites.</p> <p>The neighbourhood portion is set out in the CIL regulations (59A). Increasing the neighbourhood portion would jeopardize funding of key Baywide infrastructure.</p>
Cockington and Chelston Community Partnership	RDCS7	Recommend a charge of £30-50 for sites of 1-3 dwellings in the Countryside area.	See Torquay Neighbourhood Forum above.
Paignton Neighbourhood Forum	RDCS8	<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</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>The impact on town centres from discretionary relief to retail development is noted. This would be part of determination of a</p>

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		<p>infrastructure such as the South Devon Highway.</p> <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>planning application which would need to test the impact on vitality and viability of town centres. However, a note can be added to the RDCS to clarify this.</p>
Brixham Neighbourhood Forum	RDCS9	<p>Need for clarity about the definition of large and small scale development</p> <p>Charging Zones need improved transparency.</p> <p>(Late representation received 9th May 2016): Broadsands is shown as within the built up area.</p> <p>Concerned those larger sites should not pay less than small sites. Do not object to the principle of using S106 for larger sites; but S106 requirement should not be less than the CIL that would have been paid.</p>	<p>The Charging Zones are based on Indices of Deprivation LSOAs, which is an objective classification that has been approved by Council. It is agreed that printing these at a larger scale (1:5000) will remove uncertainty about which zone a development is in.</p> <p>Broadsands is outside of the built up area: this appears to be a shading issue on the Charging Zone Maps, which will be clarified through printing maps at a larger scale.</p>
South West Housing Associations and registered Providers (HARP). Tetlow King on behalf of.	RDCS10	<p>Support amendments to DCS to allow social housing relief. Support provision of exceptional circumstances relief.</p> <p>The requirements in the Housing and Planning Bill to provide starter homes will impact on viability. CIL should be interpreted flexibly to ensure that delivery of conventional forms of affordable housing is safeguarded.</p>	<p>Overall support noted.</p> <p>The impact of starter homes will need to be assessed when Regulations implementing the Planning and Housing Bill come into force. However, assuming that the 20% starter home requirement displaces other types of affordable housing, this will have a positive effect on viability, other issues notwithstanding.</p>
Developers			
Rentplus Tetlow King on behalf of	RDCS11	<p>“Rent Plus” tenure is a form of affordable housing and should qualify for mandatory Social Housing relief</p> <p>Representations supported by statements by Ashfords, Tetlow King and Aecom about the Rentplus model.</p>	<p>The Council would need to assess applications for Mandatory Relief against the definitions in the CIL Regulations.</p>
Persimmon Homes	RDCS12	<p>The council should set out how it intends to review the Reg123 List.</p>	<p>Regulation 59 of the CIL Regulations indicates that CIL must be used to support the development of an area, but makes no</p>

Table 1 Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. March- April 2016

Person/Organisation	Ref	Summary of Representations Made	LPA Response
		<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. 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>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 to aid interpretation.</p> <p>The current Zone 1 is based on top 20% deprived LSOAs, which has been approved by Council and is considered to be a fair proxy for property values and therefore development viability in these areas. The boundaries have been reviewed and a Revised Proposed Modification put forward to iron out anomalies with LSOA level mapping.</p> <p>It is considered that instalments based on commencement will incentivise earlier delivery of development. CIL is unlikely to apply to many larger developments which will be negotiated through S106.</p>
Bloor Homes, Boyer Planning for	RDCS13	<p>Support the general approach for seeking S106 Obligations for sites in Future Growth Areas.</p> <p>Express concern about some of the assumptions in the CIL Viability Study. External build costs should be assessed at 15% of build costs (not 10%).</p> <p>A figure for a residual S106/S278 requirement should be taken into account in overall headroom. Items for which S106 Obligations will be sought should be set out.</p> <p>Benchmark land values for are too low in the PBA Report: assumed at £220k per hectare, However Bloor Homes argue that they are £290-£580K which means that the cost of securing land is higher than assumed by PBA.</p> <p>Viability study should allow sensitivity testing to account for changes in land and build costs.</p>	<p>Overall support for broad approach is noted.</p> <p>Most of Bloor Homes' comments relate to Future Growth Areas, for which the Council proposed to seek S106 Obligations.</p> <p>CIL has already been the subject of several viability studies and amendments. The need to consider benchmark land values is noted. PBA's viability Report is recent (January 2016) and PBA confirm that they consider their findings to be robust. However, the Council has reviewed the PBA viability work to test the assumptions made.</p> <p>On this basis, the Council considers that the rates set out in the RDCS, are robust and strike an appropriate balance between the desirability of funding infrastructure through CIL and the effect of CIL upon development viability.</p> <p>The RDCS has a scheme of discretionary exceptional circumstances relief, which is more generous to developers than many other areas' Charging Schedules.</p> <p>Larger sites are likely to be subject to S106 rather than CIL. This</p>

Table 1 Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. March- April 2016

Person/Organisation	Ref	Summary of Representations Made	LPA Response
			is in recognition that such sites may have higher infrastructure costs and external works costs.
Savills for Taylor Wimpey and Linden Homes	RDSCS14	<p>Support the general approach of seeking S106 rather than CIL from strategic sites. This should apply to all larger sites and not just those in Future Growth Areas. CIL rates must be based on viability and not as a policy making tool.</p> <p>“Major concerns” about the assumptions in the PBA viability study – sales values, build costs, allowances for external works, abnormal, residual s106/S278 Obligations).</p> <p>Concern that the RDSCS has deviated from the PBA Viability evidence in seeking CIL from sites of 1-3 dwellings.</p> <p>The Council should expand the Reg123 list to cover infrastructure matters relating to developments that are CIL Chargeable. Otherwise the approach implies that they will have to pay S106 Obligations towards these items</p> <p>The Council should clarify scope of S106/S278 Obligations that will be sought and account for these in their viability assessments.</p>	<p>Sites outside of Future Growth Areas are unlikely to be “strategic” in that they don’t fit in with the Local Plan’s strategy. However, if large sites do arise, there is provision in the RDSCS to use S106 Obligations rather than CIL as part of Exceptional Circumstances relief.</p> <p>The RDSCS indicates that “tariff style” contributions will not be sought from developments that have paid CIL. It is accepted that an element of the infrastructure needed by such developments (e.g. education) may need to be funded through general Council spending. However since CIL is targeted at the South Devon Highway (which is needed to support growth and would also needed to be funded through Council tax if not through CIL), there is no net loss to the public purse.</p> <p>Viability concerns are noted. However, most large sites will be zero rated for CIL and infrastructure negotiated through S106 Obligations. The CIL RDSCS also provides for discretionary relief, which will allow viability to be taken into account.</p> <p>PBA’s Viability Update is recent. However, it an Addendum Report has been prepared by Burrows Hutchinson Ltd to test the PBA Viability report. The Addendum has substantially supported the findings of the earlier PBA Report.</p>
PCL Planning for Waddeton Park LTD	RDSCS15	<p>Object that CIL rates are set too high. Technical criticisms of the PBA viability report- insufficient evidence to justify differences in sales values between areas.</p> <p>Seeking CIL on sites of 1-3 dwellings goes beyond the scope of evidence in PBA study.</p> <p>Need to clarify what matters will be funded through S106 and will therefore apply to CIL viable developments</p>	<p>Issues about the Viability study are noted. The differential rates were introduced following Member concerns that a “one size fits all” approach is too blunt. The rates set are within the parameters of the PBA study. The areas of high deprivation are likely to reflect lower property values and values outside these areas are likely to be higher, including for smaller plots.</p> <p>The RDSCS provides a scheme of discretionary relief, which will allow viability problems to be taken into account and not stall development.</p>

Table 1 Torbay Council Response to the Community Infrastructure Levy Revised Draft Charging Schedule. March- April 2016

Person/Organisation	Ref	Summary of Representations Made	LPA Response
		<p>Object that varying CIL in relation to site size and scale of development: argued that this does not conform to CIL regulations. Concerned that CIL is being used as a policy making tool</p> <p>Charging maps need to be clearer Noted that Exceptional Circumstances relief is being granted: this should apply to all developments.</p>	<p>However, it is agreed to provide an independent third party assessment of PBA's study.</p> <p>Reg 13 (1) (d) of the CIL Regulations (inserted 2014) allows Charging Schedules to differentiate between number of dwellings to be constructed.</p> <p>Agree to print zoning maps at a larger scale and with streets visible. (It is proposed to publish these at 1:5000 as PDFs that can be zoomed).</p>
<p>McCarthy and Stone; The Planning Bureau on behalf of.</p>	<p>RDCS16</p>	<p>Sheltered housing and extra care units should be zero rated for CIL purposes, as they would not be viable with CIL</p>	<p>The RDCS indicate that extra care units will be zero rated for CIL.</p> <p>Table 5.1 of the PBA report indicates that "retirement homes" are marginal with S106 and affordable housing requirements. Agree that this should be reexamined as part of the independent assessment of PBA's findings.</p> <p>On this basis Burrows Hutchinson were asked to provide specific advice on sheltered housing. This reassessment of values achieved indicates significantly higher values per sq m achieved for sheltered housing than market dwellings.</p> <p>In addition, sheltered housing schemes are able to offset additional costs such as communal areas, on-site maintenance etc. through service charges to residents.</p> <p>On this basis it is considered likely that they would be viable with CIL.</p> <p>The RDCS offers Exceptional Circumstances Relief, to ensure that schemes will not be jeopardised.</p>

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Person/Organisation	Ref	Summary of Representations Made	LPA Response
Pegasus Group	RDCS17	<p>Support the distinction between retirement and extra care housing. Support zero rate of CIL for extra care housing. Retirement housing should also be zero rated as it is only marginally more viable than extra care housing and may also be subject to additional S106 request.</p> <p>Concerns about the unit size, density etc assumptions in the PBA Viability assessment.</p> <p>Support discretionary relief and instalments policy</p>	Noted. See response to the Planning Bureau above.
WYG on behalf of Sainsbury's Supermarkets Ltd.	RDCS18	Object to zoning The Willows as an out of town centre store. No evidence has been presented to justify this and The Willows is designated as a District Centre, i.e. Should be zero rated.	The Willows was found by the Torbay Retail Update (2013) to operate as an out of town shopping centre with regard to viability, and it is therefore considered appropriate to treat it as out of centre for purposes of CIL viability.
Individuals			
Leaf Lovejoy	RDCS19	<p>Need to clarify what infrastructure will be funded through CIL, and what through S106.</p> <p>Sewerage and waste water infrastructure need to be properly funded: they are probably the most significant infrastructure constraint</p> <p>Object that exempting large sites in Future Growth Areas from CIL could create a perverse incentive to develop greenfield sites first.</p>	<p>Noted. See comments above. The RDCS indicates that tariff style contributions will not be sought from developments that have paid CIL. However the issue is noted and the Council have undertaken an update/review of the viability evidence.</p> <p>Comments about sewerage infrastructure are noted. It is not proposed to fund these through CIL, but as a "site acceptability" S106 matter. In most instances flooding issues will be addressed through on-site works such as sustainable drainage schemes, which can be secured through planning conditions.</p> <p>Foul drainage will usually be provided in direct agreement with South West Water subject to Policy W5 of the Local Plan.</p> <p>See response to Paignton Neighbourhood Forum on the issue of potential unintended consequence of using S106 in Future Growth Areas. Such areas are likely to have higher infrastructure costs and it will be easier to identify impacts on education need etc, which can be addressed through s106 Obligations without breaching the 5 obligation limit.</p>

Consultation Statement and Torbay Council's response to representations made on the Draft Charging Schedule (2015).

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

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

The main issues raised at the DCS were as follows:

- Few objections on viability grounds.
- 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 consideration of the DCS and updated viability evidence, and the adoption of the Local Plan in December 2015, a number of recommended changes to the DCS were recommended to Members. Members also requested a number of further changes to CIL, including introducing additional Charging Zones. These resulted in the publication of a revised Draft Charging Schedule, which is set out in the previous section.

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

Ref	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
1	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.
2	Natural England	Laura.horner@naturalengland.org.uk	See concerns raised about recreational impact on Berry Head and South Hams Special Area of Conservation (SAC) 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>The Council note that CIL can have a place in addressing impacts on SACs. However it 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 different 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 on the SAC from larger developments will be addressed as a "site acceptability" matter. They will often be dealt with through direct provision of green infrastructure or s106 obligations. Because such projects are likely to be different from those funded through CIL there should not be a "double dipping" issue.</p>

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

Ref	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
3	Sport England	Gary.Parsons@sportengl and.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.
4	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.
5	Paignton Neighbourhood Forum	dwdw@paigntonneighbo urhoodforum.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.

Ref	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
			issues.	
6	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>
7	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</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.

Ref	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
			<p>scope of CIL on smaller sites where the burden of affordable housing has been 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>
8	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>
9	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>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.

Ref	Person /Organisation Consultee	Email contact details	Summary of Representations Made	LPA Response
			CIL needs to be related to infrastructure needed to meet the Local Plan (having 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.	
10	Cavanna Homes	MNewman@cavannahomes.co.uk	No comments other than to point out a typo in the Introduction (Clarify that CIL is not charged on developments of 15+ dwellings).	Noted. Correct typo accordingly.
11	J Sandland LTD	jsandland@msn.com	CIL will harm viability levels and hold back development if based on “silly” square metre fees.	Concern noted, but does not present any particular evidence as to why Draft Charging Schedule proposals will undermine viability. 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. See Comments on the RDCS above.
12	Nigel Bennetto	nbennetto@blueyonder.co.uk	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.	Concern noted, but does not present any particular evidence as to why Draft Charging Schedule proposals will undermine viability. 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. See Comments on the RDCS above.

Consultation Statement and Torbay Council's response to representations made on the Preliminary Draft Charging Schedules (2011/12).

The Preliminary Draft Charging Schedule (PDCS)

The Preliminary Draft Charging Schedule (PDCS) was the subject of consultation between 9th December 2011 and 6 February 2012. It proposed a Baywide residential CIL rate of £100 per sq m. 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 residential 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.

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 schedule 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 (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 (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 (2011, 2014 and January 2016). It has been an iterative process to seek to keep the evidence up to date with a changing market climate. 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 (cont).	£100 per sq m is too high.	The Draft Charging schedule revised the figure downwards to £70 per sq m and further reductions were made in the revised Draft Charging Schedule.
4	PCL (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 (cont).	Support Phasing and Instalment Policy. Instalments should be based on completion, <u>not</u> time.	Support for instalments noted. Disagree that it should be based on occupation as this would remove an incentive to complete developments.

4	PCL (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 current climate. Object to use of notional sites – better to assess actual sites. <p>Developer return of 18-20% is too low. 25% or more is the accepted trigger for developer returns in most situations” Evidence provided of returns</p>	<p>Partly 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>Torbay Council Community and Development: Consultation Statement and Summary of Representations on PDCS, DCS and RDCS. September 2016 Page 29</p>			

4	(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 enable strategic infrastructure to be delivered as well as affordable housing. This gamut of infrastructure and affordable housing demands is likely to render strategic sites in the Future Growth Areas unviable for CIL.
4	PCL (cont).	CIL Charging Schedule should clarify what CIL is expected to cover and what other cumulative impacts it does not, i.e. S106 Contributions.	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. 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.
4	PCL (cont).	Current use of S106 contributions exceeds CIL Regs and is unlawful.	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. The approach in the DCS of seeking S106 obligations for larger sites will avoid most instances of pooling restrictions.
4	PCL (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 (cont).	Need for more consultation with the development industry.	Noted: there will be further consultation at Draft Charging Schedule stage.

4	PCL (cont).	Geographic breakdown needs to be clearly defined on the basis of viability (Great Portland Estate Case)	Noted. There is a trade off between simplicity and seeking to maximise revenue from CIL. See revisions to CIL in the subsequent consultations, which introduce charging zone based on geographical areas.
4	PCL (cont).	Recommend a low “interim tariff” e.g. 3 years based on low delivery rates.	Noted. CIL can be reviewed at regular intervals, but amending it would require the Council to comply with the process in the CIL Regulations. 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 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.	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. The DCS introduced a discretionary Exceptional Relief Policy, which was expanded in the Revised draft Charging Schedule. 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.

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	Object that CIL will undermine viability. CIL proposal would render Yannons Farm non viable.	<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	CIL should be re-designed to make it cost neutral viz a viz S106.	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 amended)).
6	Jeremy Cavanna For Cavanna Homes	Alternative infrastructure finding 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, and subsequent iterations of the emerging Charging Schedule.
7	Northern Trust	Need to clarify additional impact of S106.	Noted- see above.
7	Northern Trust	<p>Viability evidence is too optimistic:</p> <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. 	<p>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.</p> <p>CIL has been reduced in line with PBA's findings. See later in this document.</p>

	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.	The need to ensure that CIL is based on viability, not policy preference is noted. The Economic Viability Report supports levying a CIL on larger out of centre retail developments (para 7.2.3- 8).
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.	Noted. Paragraphs 50 and 175 of the NPPF are also relevant. 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.

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.	<p>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</p> <p>Setting a higher level would undermine CILs role in contributing to items on the Reg123 List.</p>

13	Linden Homes (Galliford Try Group).	<p>Have modelled impact of CIL based upon draft Core Strategy and Infrastructure Study assessments of viability, including an assessment of 30% affordable housing.</p> <p>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.</p>	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).	<p>Instalment policy proposed is too restrictive- should be based on occupation of given units/ agreed phases and not on time triggers.</p>	<p>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.</p> <p>Seeking CIL only on smaller sites will reduce the need for a complex instalments policy.</p>
13	Linden Homes (Galliford Try Group).	<p>Meaningful proportion should be as high as possible in order to provide a local incentive to developments.</p> <p>CIL could be ring fenced for local schools and highway improvements.</p>	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).	<p>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.</p>	Noted and agree See above.

