

Community Infrastructure Levy

Accompanying Policies and Regulation 123 List

May 2017

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| The Community Infrastructure Levy Charging Schedule is available…  on the Torbay Council Website:  [www.torbay.gov.uk/strategicplanning](http://www.torbay.gov.uk/strategicplanning)  and at Torbay Council’s Spatial Planning Office at:  2nd Floor, Electric House, Castle Circus, Torquay TQ1 3DR  **If you would like any further information about this document or any aspect of the Torbay Local Plan please use the contact details below:**  **telephone: (01803) 208804**  **email:** [**future.planning@torbay.gov.uk**](mailto:future.planning@torbay.gov.uk)  **Other links that will provide more detailed background information on the spatial planning system include:**  **National Planning Policy Framework** [**www.gov.uk**](http://www.gov.uk)  **The Planning Portal (**[**www.planningportal.gov.uk**](http://www.planningportal.gov.uk)**) is the Government's online service for planning which includes advice and information on the plan-led system** |

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### **Residential Charging Zones** Summary Map and Maps 1-39 showing Charging Zones 1-4. Note that the map boundaries/page numbers correspond to the Adopted Local Plan 2012-30. The maps are designed primarily to be viewed on a screen and may be zoomed into (separate document).

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

# Torbay CIL Accompanying Policies

## Introduction

### This document sets out Torbay’s accompanying policies to its Community Infrastructure Levy (CIL). Note that these do not form part of Torbay’s CIL Charging Schedule and may be updated without requiring a further Examination. Particular attention will be paid to the review of CIL[[1]](#footnote-1).The Council will still make use of s106 Obligations alongside CIL in order to secure sustainable development. These must meet all of the following tests. They must be:

### a) Necessary to make development acceptable in planning terms;

### b) Directly related to the development; and

### c) Fairly and reasonably related in scale and kind to the development.

### From 6th April 2015, no more than 5 s106 obligations for infrastructure matters can be pooled (i.e. collected for one specific project). This does not apply to non-infrastructure items that are not fundable through CIL, such as affordable housing, training or town centre management.

### The Council will keep the ability to pool obligations under review.

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

### Full details of s106 Obligations are set out in the Planning Contributions and Affordable Housing Supplementary Planning Document (SPD), which was adopted by Council on 2nd February 2017.

### The SPD targets planning obligations on delivering the new Local Plan’s growth strategy and provides more details on the implementation of affordable housing and s106 Obligations. Particular attention is drawn to the need to alleviate flood risk and combined sewer overflows, and to protect priority species such as Greater Horseshoe Bats and Cirl Buntings.

## CIL Chargeable residential developments and s106 Obligations

### On sites where CIL is payable, s106 Obligations only will be sought where they are directly necessary to making development acceptable in terms of direct on- and off-site impact (e.g. access, drainage, biodiversity and flooding). Where possible these matters will be addressed through planning conditions rather than s106 Obligations.

### Note that an element of affordable housing is sought on greenfield sites of 3 or more dwellings and brownfield sites of 15 or more dwellings, as set out in Policy H2 of the Adopted Torbay Local Plan. Where development is subject to both CIL and affordable housing requirements, the liability for CIL will be taken into account. Generally s106 obligations (except for site deliverability matters) will be relaxed before CIL. Further details are set out in the Planning Contributions and Affordable Housing SPD.

## Residential development in Charging Zone 3 and s106 Obligations

### For sites of 15 dwellings in Charging Zone 3, the Council will seek s106 Obligations to fund infrastructure needed to support the development.

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

* Direct site deliverability matters (biodiversity, flood prevention, access etc).
* Affordable housing, employment and health.
* Sustainable development contributions (education, lifelong learning, sustainable transport, waste management, green infrastructure, recreation, etc).

### All such contributions will be subject to the tests of lawfulness (see above). Where practical to do so, s278 Highways agreements will be used to carry out improvements to the highway.

### Further details are set out in the Planning Contributions and Affordable Housing SPD.

## Non-Residential Development and s106 Obligations

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

### This includes direct site deliverability matters (access, biodiversity, flooding etc), and dealing with the traffic impacts of proposals through sustainable transport. S106 Obligations will be sought to address other impacts of non-residential proposals. For example, where a development has an impact on regulating the night time economy, it could be the subject of a s106 Obligation towards CCTV or town centre management.

### Further details are set out in the Planning Contributions and Affordable Housing SPD.

## Calculating the Chargeable Amount of CIL

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

### **CIL = CIL rate x gross internal floor area x inflation measure**

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

## ‘Assumed Liability’ and Commencement Notices

### Ultimate liability for CIL runs with the land. However, the CIL Regulations encourage someone to assume liability to pay. It is expected that the developer will often “assume liability”. Forms are available on the Planning Portal (see section 1.2 above). Where developers have assumed liability they must submit a commencement notice to the Council prior to starting development.

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

### Where no one has indicated that they “assume liability”, and/or no commencement notice is submitted by the developer, 100% of CIL is payable upon commencement of development. This will be identified through the Council’s monitoring process and an inflation measure (as above), surcharge and recovery cost will be applied to missed or late payments.

## Instalments Policy

### In order to make CIL more affordable, taking developers’ cash flow into account, CIL may be paid by instalments as set out below. Note that the Council is able to vary its instalments policy in accordance with CIL Regulation 69B. Any revised instalments policy will be published on the Council’s website.

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

### **Where CIL is less than £5,000**

### 100% within 3 calendar months of commencement of development

### **Where CIL is between £5,000-£10,000**

* + - 50% within 3 calendar months of commencement of development
    - 50% within 6 calendar months of commencement of development

### **Where CIL is between £10,001-£20,000**

### 34% within 3 calendar months of commencement of development

### 33% within 6 calendar months of commencement of development

### 33% within 9 calendar months of commencement of development

### **Where CIL is between £20,001- £100,000**

### 25% within 3 calendar months of commencement of development

### 25% within 6 calendar months of commencement of development

### 25% within 9 calendar months of commencement of development

### 25% within 12 calendar months (1 year) of commencement of development

### **Where CIL is £100,001 or more**

### 25% within 6 calendar months of commencement of development

### 25% within 12 calendar months (1 year) of commencement of development

### 25% within 18 calendar months of commencement of development

### 25% within 24 calendar months (2 years) of commencement of development

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

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

## Exceptional Circumstances Relief Policy

### CIL is not intended to be a negotiated item. The CIL Regulations grants mandatory relief for charities, self-build housing and social housing. These must be claimed before development is commenced. CIL Regulations 55-57 (as amended) set out the circumstances and requirements surrounding exceptional circumstances relief.

### In order to avoid exceptional circumstances rendering development unviable, the Council will consider offering “exceptional circumstances relief” . CIL Regulation 55 specifies where exceptional circumstances relief may be granted. Broadly it may only be offered where:

* + - * + It appears to the charging authority that there are exceptional circumstances which justify granting relief.
        + The charging authority considers it expedient to do so.
        + The chargeable development is being carried out pursuant to a planning permission that is subject to an enforceable s106 Obligation that makes the development acceptable in planning terms; and
        + Evidence (in the form of an assessment of viability) is provided to demonstrate that paying the full levy would have an unacceptable impact on the development’s economic viability; and
        + The relief must not constitute notifiable state aid (above a de minimis level currently 200,000 euros over 3 consecutive fiscal years; see PPG paragraph 25-129), unless the development would otherwise be eligible for mandatory charitable relief.

### 

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

### Before granting discretionary relief, developments must be subject to an independent assessment of viability to be carried out at the applicant’s expense. They should indicate that development is not viable with CIL, and that a longer repayment period will not render development viable.

### Exceptional Circumstances relief is at the Council’s, as Charging Authority, discretion. It lapses if development is not commenced within 12 months.

### Where Exceptional Circumstances Relief is granted, it will be published on the Council’s website for 28 days.

### Further details of the Council’s arrangements for assessing viability are set out the Planning Contributions and Affordable Housing SPD.

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

## Payments in kind

### Payments in kind of land or infrastructure may be accepted in lieu of cash payment of CIL where they will assist with the delivery of items on the Regulation 123 list and comply with the legal requirements (currently set out in Regulation 73A of the CIL Regulations). However, because CIL is applied primarily to smaller developments, it is expected that circumstances where payment in kind apply will be rare.

## State Aid

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

## Neighbourhood Portion

### A “neighbourhood portion” of CIL must be spent in the neighbourhood in which CIL arises. When Neighbourhood Plans are in place, this will be 25%. The proportion will be 15% until Neighbourhood Plans are in place. “In place” is defined by CIL Regulation 59A(11)) as being “made” (adopted) and extant.

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

## Review of CIL

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

## Regulation 123 List of Key Infrastructure Projects Proposed to Receive CIL

### It is intended to use CIL to help fund the following items set out in the Regulation 123 List below. Accordingly, s106 contributions will not be sought towards these items. The Council will publish a revised Regulation 123 List should other matters arise that need to be funded through CIL.

|  |  |  |
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| **CIL Infrastructure Item** | **Total Cost** | **Funding Shortfall** |
| South Devon Highway | £130m | £20 Million |
| Impacts on South Hams Special Area of Conservation (Berry Head to Sharkham Point, Brixham) arising from recreational impacts on limestone grassland between Berry Head and Sharkham Point  10% of CIL, up to £30,000 per year will be ring-fenced to address this. | £384,000(Equal to £29,500 per year over the Local Plan period). | £384,000 |

1. A new approach to developer contributions: a report by the CIL Review Team was submitted to Government in October 2016. [↑](#footnote-ref-1)