

Torbay Council

Community Infrastructure Levy

Preliminary Draft Charging Schedule Consultation Document



December 2011

Community Infrastructure Levy: Preliminary Draft Charging Schedule Consultation Document

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**Foreword by Councillor David Thomas
Deputy Mayor and Executive Lead for Planning, Housing and Energy.**

No one really likes paying taxes, but the Community Infrastructure Levy ("CIL") is a good news story. CIL is a levy on development that allows councils to use some of the value generated to help pay for infrastructure such as roads or schools. In addition, thanks to the Localism Act, CIL is a way of letting communities see a tangible "hard cash" benefit from growth.

Hopefully CIL will speed up the development process and give developers certainty too.

I'd like to emphasise that this isn't the Council's strategy for growth. This will be a matter for public debate through the forthcoming Core Strategy and Neighbourhood Plans for the three towns.

But we know that there is an infrastructure funding gap even to provide infrastructure identified in the last local plan which was adopted in 2004. In particular the South Devon Link Road and Western Corridor and sympathetic regeneration of town centres and harboursides are critical to Torbay's wellbeing.

This is an early stage in our consultation of CIL. We are therefore keen to hear to views of developers, residents and other stakeholders. We've asked some specific questions at the end of this document and are particularly interested to engage with the development industry on viability matters.

Rest assured, we will take comments we get very seriously, and use these to prepare the next stage of CIL, which is a Draft Charging Schedule.

Because the consultation goes over Christmas, we've made the consultation period until 6th February to give people enough time to comment. We hope that you will let us know your views.

Community Infrastructure Levy and Preliminary Draft Charging Schedule

Introduction and Background.

This is Torbay's Preliminary Draft Charging Schedule for the Community Infrastructure Levy (CIL). CIL is a tax on new floorspace of certain types of development. It partly replaces Section 106 Contributions, but does not at the time of writing, fund affordable housing.

Community Infrastructure Levy is a tax levied on development of more than 100 m² floor space, or new-build dwellings. It is intended to help fund the infrastructure needed by development.

Comments on this Preliminary Draft Charging Schedule are invited by 10 am on Monday 6th February 2012. In preference they should be emailed to strategic.planning@torbay.gov.uk or sent by post to Spatial Planning, Torbay Council, Floor 2 Roebuck House, Abbey Road, Torquay, TQ2 5TF

Next Steps

Comments received will be taken into account in preparing a Draft Charging Schedule.

Following a second stage of consultation, on the Draft Charging Schedule, the CIL charging schedule will be considered by an independent examiner, who may approve it, reject it or approve it with modifications. Following receipt of the examiner's report, CIL needs to be adopted by full Council.

Where to Find Out More

More detailed advice can be found in the Communities and Local Government publication "Community Infrastructure Levy: an Overview" (May 2011). The CIL is prepared under the provisions of the Planning Act 2008, and the Community Infrastructure Levy Regulations 2010 as revised by the CIL (Amendment) Regulations 2011. It has also been revised by Section 115 of the Localism Act 2011.

The relevant Regulations can be found at:

<http://www.legislation.gov.uk/uksi/2010/948/contents/made>

<http://www.legislation.gov.uk/ukdsi/2011/9780111506301/note>

<http://www.communities.gov.uk/planningandbuilding/planningsystem/communityinfrastructurelevy/>

<http://www.pas.gov.uk/pas/core/page.do?pagelid=122677>

The Torbay Infrastructure Delivery Study

Under the CIL Regulations (2010 and amended 2011), charging authorities are required to publish a charging schedule of CIL rates and identify items of infrastructure they wish to fund through CIL. Charging authorities should assess the impact of CIL on viability and set it at a level that will not jeopardise development.

Detailed information on the need for infrastructure, funding gap, and the assessment of viability are contained in the Torbay Infrastructure Delivery Study (Baker Associates/Roger Tym and Partners 2011, Chapter 8). This will be published on the Council's website when it is finalised. It may be revised if further evidence on viability becomes available

The CIL and the Emerging Torbay Development Plan

CIL is intended to help provide infrastructure needed by development and should normally be implemented on the basis of an up to date development plan (ideally a Core strategy or new style local plan). The DCLG's "CIL an Overview" (May 2011) guidance advises that a CIL may be prepared on the basis of a draft plan if they are planning a joint examination of the plan and CIL.

This consultation is not about growth levels or potential sites for development. These will be matters for the Council's Local Plan/Core Strategy consultation, which will take place separately.

However it is clear that whatever level of growth takes place in Torbay, there will be an infrastructure funding gap. In particular the need for improved economic prospects is essential to Torbay's future. A number of key infrastructure projects are identified in the Saved Adopted Torbay Local Plan 1995-2011 that remain highly relevant to Torbay's development, particularly the South Devon Link Road and Western Corridor improvements. Infrastructure proposed in the Saved Local Plan is set out in Appendix 1

Who pays CIL?

CIL applies to all developments that create more than 100 sq m gross internal floor space of new development, minus the floor space of any demolished buildings. New-build dwellings are also liable to CIL even if less than 100 sq m. CIL only applies to places where people usually go, so does not cover buildings such as electricity sub stations or telephone masts.

Social housing is exempt, as are charities so long as the development is used for charitable purposes. CIL is not collected if it would be less than £50.

Note that CIL is payable on qualifying developments whether they require express planning permission or are permitted under Local Development Orders (LDOs) etc.

CIL will be used help fund major infrastructure projects set out in the key infrastructure projects list ("Regulation 123" List). However, other infrastructure needs may arise that require CIL funding. The Council will identify these on its website.

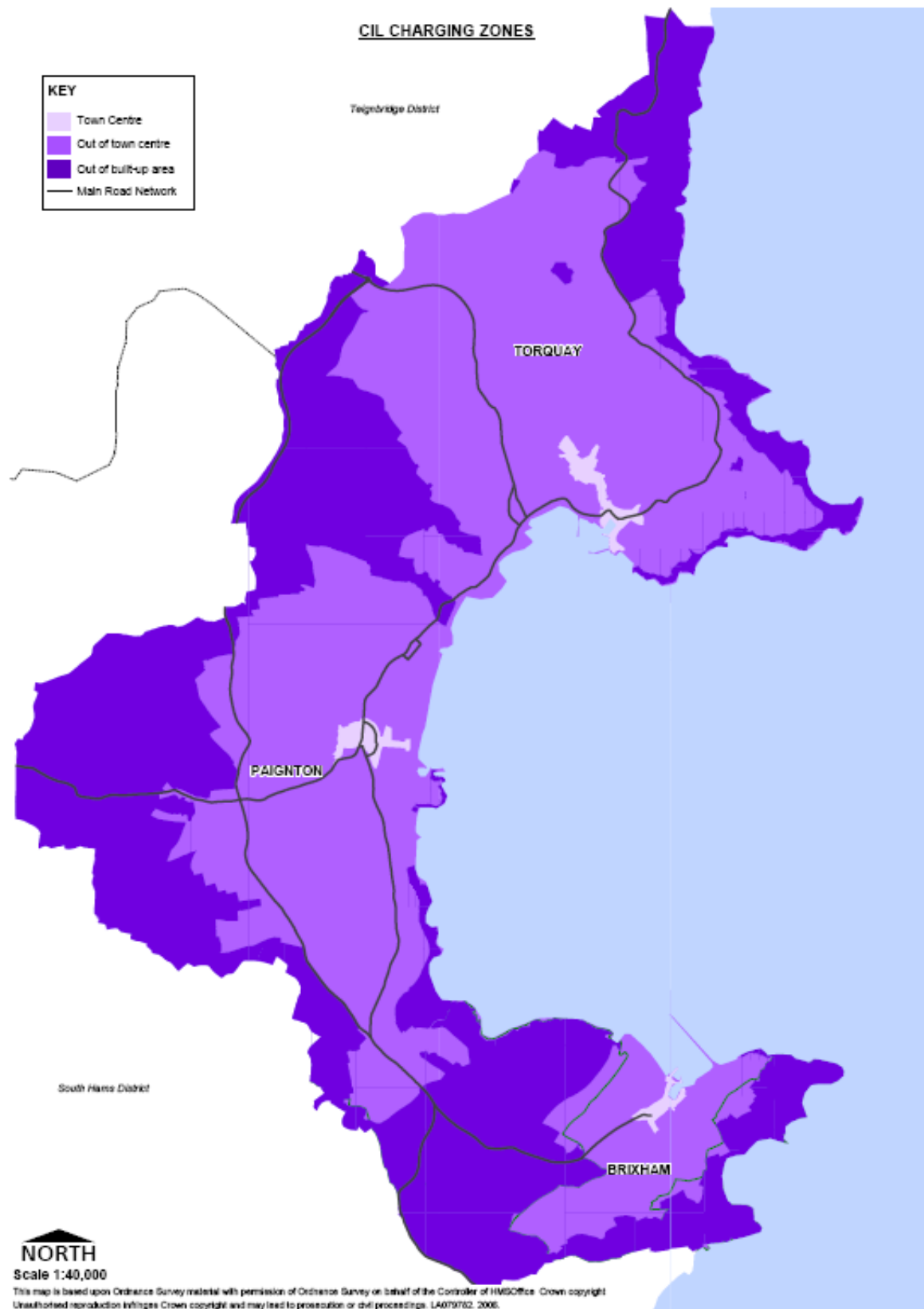
Figure 1 sets out a preliminary draft charging schedule.

Figure 1 Preliminary Draft CIL Charging Schedule

Type of Development	Development Charging Zone		
	Town Centre	Out of town centre	Out of built-up area
A1 Shops. Less than 300 sq m	Nil	Nil within district or local centre	£150 per M ²
A1 Convenience retail over 300 sq m	Nil	£150 per M ²	£150 per M ²
A1 Retail warehousing/ bulky retail	Nil	£300 per M ²	£300 per M ²
Food and drink (Class A3, A4, A5) ³	Nil	£100 per M ²	£100 per M ²
Financial and Professional services	Nil	Nil	Nil
Class B employment uses	Nil	Nil	Nil
Residential Development: Class C3 dwellings including holiday apartments, sheltered housing and shared housing. Class C4 and sui generis residential uses such as HMOs with more than 6 residents.	£100 per M ²	£100 per M ²	£100 per M ²
D1 Non-residential institutions ³	Nil	Nil	Nil
D2 Assembly and leisure/non residential institutions ³	Nil	Nil	Nil
Hotels	Nil	Nil	Nil
Class C2 and C2A Residential Institutions ⁴	Nil	Nil	Nil

Notes: (1) Social housing, as defined by PPS3 (as amended) is exempt from CIL
(2) Charitable institutions, e.g. churches are exempt from CIL, so long as the development is used primarily for charitable purposes.
(3) S106 contributions may be sought where a development has an effect on non-CIL chargeable matters, such as the night time economy.
(4) Care Homes are only taken to be non-self contained care homes. Where sheltered dwellings have their own bathroom and cooking facilities, they will be considered to be within Use Class C3.

Figure 2 indicates the CIL charging zones identified in Figure 1.



Calculating the chargeable amount of CIL

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

$CIL = CIL \text{ rate} \times \text{gross internal floor area} \times \text{inflation measure.}$

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”. Where developers have assumed liability, they are required to 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, payments procedure, including instalments where the amount payable is more than £5,000 (see 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 and an inflation measure (as above) will be applied to late payment.

Instalments Policy

In order to make CIL more affordable taking developers' cash flow into account, it is proposed that instalments should be as follows. Instalments only apply where liability for CIL has been assumed and a commencement notice issued; where this is not the case 100% of CIL becomes payable upon commencement.

Developments where CIL is between £50 and £5,000

- 100% within 60 days of commencement of development.

Developments where CIL is between £5001 and £100,000

- 50% within 90 days of commencement of development
- the remaining 50% within 1 year of commencement of development.

Developments where CIL is more than £100,000

- 25% within 90 days of commencement of development.
- 25% within 1 year of commencement
- 25% within 1 year and 180 days (i.e. 545 days) of commencement
- 25% within 2 years of commencement.

CIL is index linked to inflation using the RICS' Building Cost Information Services all-in tender price index of construction.

S106 Developer Contributions Policy

The scope for using S106 Obligations has been reduced for items that are capable of being charged CIL. S106 contributions may still be sought so long as they meet the following legal tests. They must be:

- a) Necessary to make development acceptable in planning terms.**
- b) Directly related to the development.**
- c) Fairly and reasonably related in scale and kind to the development.**

After 6 April 2014 (or on the adoption of a CIL if sooner), S106 contributions cannot be pooled for more than 5 developments. The tests of reasonableness in Circular 5/2005 still apply to S106 Agreements, but are reinforced by the requirements noted above.

S106 Contributions may still be used for 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.

Section 106 Obligations continue to apply for **direct site acceptability matters**, i.e. those matters needed to make the development work in physical terms, such as access, flood protection and wildlife protection measures. Where possible a planning condition will be used rather than a S106 Agreement, to secure site mitigation matters. Some matters such as highways works or water infrastructure may be provided under other legislation (e.g. s278 of the Highways Act).

Offsite mitigation or provision contributions may still be sought as S106 contributions, so long as they meet the tests above and are not items identified as being funded through CIL. Such matters are necessary to make development acceptable in planning terms and are directly related to the development, but are not necessary to make the development safe in physical terms (which are dealt with above). For example where a development has an impact on regulating the night-time economy, it could be the subject of a S106 contribution towards policing or CCTV. Similarly, an urban extension that gave rise to the need for a school could justify S06 education contributions, if the school was not identified as a CIL funded item.

Affordable housing is still funded through S106 Agreements. The Preliminary Draft Charging Schedule has set CIL at a level that has been assessed as viable with the provision of affordable housing and it therefore expected that on-site provision of affordable housing will be achievable.

The Government has consulted on including affordable housing as part of CIL. If this comes into force, CIL will need to be amended, including arrangements to include on-site provision of affordable housing and to agree a financial value of this.

CIL is not normally negotiable, and is therefore set at a level that has been assessed viable with the provision of affordable housing. An independent assessment of viability will be required in order to negotiate affordable housing or other s106 contributions.

The Funding Gap: Preliminary Draft “Regulation 123” List of Key Infrastructure Projects

A full list of infrastructure needed to support development and an assessment of the likely funding shortfall is contained in the Torbay Infrastructure Delivery Study (Baker Associates, forthcoming 2011). The following list contains infrastructure that has been identified in the Saved Torbay Local Plan or Devon Structure Plan and a cost/funding gap identified in the Infrastructure Delivery Study. This only covers items that are considered essential to deliver levels of growth identified in the Saved Local Plan. Further projects (and funding gap) are likely to emerge as part of the Core Strategy.

A Draft Regulation 123 List, based on delivering infrastructure to support the adopted Local Plan is set out at Appendix 2. It is emphasised that the infrastructure list is likely to change, as infrastructure funding priorities change. Charging Authorities are able to change their Regulation 123 Lists at short notice, so long as they are published on their website.

The Localism Act 2011 has broadened the scope of CIL to cover the provision, improvement, replacement, operation or maintenance of infrastructure. It also makes provision for further Regulations to allow a proportion of CIL to be passed to local bodies either for infrastructure or to meet demands that development places on an area. It is anticipated that a “meaningful proportion” of about 15-20% of CIL could be allocated for local projects through Town Councils or Neighbourhood Forums. However, further guidance/regulations on this will be published by the Government.

As already highlighted, the Government is also consulting on making affordable housing a matter that can be funded through CIL. Torbay’s current Preliminary Draft Charging Schedule assumes that affordable housing remains a matter that is negotiated through “Section 106 Agreements”. The CIL Charging Schedule will therefore be amended in line with any such changes that occur through Regulations.

Appendix 1: Infrastructure Proposed in the Saved Adopted Torbay Local Plan 1995-2011 (Adopted 2004)

The following infrastructure is proposed in the saved Local Plan. Terms have been updated to reflect their current titles, e.g. the Northern Relief Road (T21) is now referred to as the South Devon Link Road.

- Infrastructure needed to deliver Hollicombe (H1.10), Great Parks Phase 2 (Policies H1.11-13).
- Access, landscaping, servicing, flood resilience works needed to deliver employment areas (E1)
- The Port and Waterfront of Brixham, including the Northern Arm Breakwater (E7 and E8).
- Harbourside and Waterfront regeneration in Torquay and Brixham (TU1)
- Infrastructure needed to deliver town centre mixed use regeneration projects (S2)
- Tourist and leisure facilities, Clennon Valley/ Claylands (TU2)
- School extensions in Policies CF8 and 9.
- Health care facility at Great Parks (CF14)
- New playing fields/facilities (Policies R3-R6 as amended by the Greenspace Strategy).
- Country Park management/improvement (Policies R9 and R10)
- Footpath maintenance and improvement (Policy R11 and R12)
- Separate water and foul water drainage (IN1)
- Waste Management facilities (W2,W6 and W7).
- Flood protection measures pursuant to PPS25 and the Strategic Flood Risk Assessment.
- Protection and enhancement of Historic Parks and Gardens (BE8)
- Infrastructure needed in Edginswell Hamlet (BE11).
- Improvement of cycle routes (T3)
- Town centre transportation/environmental improvements (Policies T4-T6)
- Bus network improvements (T9)
- Transportation interchanges (T10)
- Park and ride developments (T11)
- Improvement to Lymington Road Coach Station (T12)
- Edginswell Rail Halt (T14) and railway station improvements (T15 and T16)
- South Devon Link Road (T21)
- Western Corridor (T22)
- Torquay Northern Distributor Road (T23)
- Traffic Management Zones (T24)

Appendix 2: Draft “Regulation 123” Infrastructure List

CIL Critical Infrastructure Item	Total Cost	Funding Shortfall	Delivery Time scale	Development Plan Basis
South Devon Link Road	£130m	£20 Million	By 2016	Devon Structure Plan Policy TR17 Torbay Local Plan Policy T22 Essential to improving accessibility and economic prospects for Torbay.
Western Corridor	£12.1 m	£8.1m	By 2021	Devon Structure Plan Policy TR17 Torbay Local Plan Policy T22 Essential to improving accessibility within Torbay and the economic prospects of Paignton and Brixham.
Flooding Infrastructure Victoria Breakwater	£300k	£300k	By 2021	Necessary to safeguard development in Brixham Harbour and support Policy E7 of the Local Plan. This scheme will be designed to repair the Victoria Breakwater and reduce the risk of coastal flooding in Brixham town centre due to breach failure or overtopping. It is not primarily designed to facilitate development in this area, although it may be necessary to support town centre and harbouride development. Any further flood mitigation required for new development may have to be funded by the developer.
District-wide Flood Alleviation Studies and assessments	£155k	£155k	By 2016	This study will assess the flood risk in Torbay's towns and make recommendations as to possible flood alleviation measures. Necessary to ensure safety of new development.
Goodrington Drainage Scheme	£100k	£100k	2011-2021	Necessary to provide sustainable flood protection in Clennon Valley area. Supports Policy TU2.2 of the Local Plan.
Kings Ash Road Flood Alleviation Scheme	300k	300k	2011-2016	This scheme addresses an existing flooding problem, that could be exacerbated by future development in this area. Further flood mitigation required for new development would have to be funded by the developer.
Paignton Town Centre flood protection	No costs have been assessed for this work as the Paignton Flood Risk Study will have to be undertaken first		By 2026-2031 (?)	Necessary to protect Paignton Town Centre and harbourside from impact of climate change, and to support regeneration of Paignton Town Centre.
Torquay town centre flood alleviation	£6.960 m	£6.96 m	By 2031	This scheme will be designed to alleviate an existing flood risk within Torquay town centre. This is in part necessary to protect Torquay town centre and harbourside from impact of climate change, and to support regeneration of the town centre and waterfront. However, further flood mitigation required for new development may have to be funded by the developer.
Haldon and	8,746k	7,246k		This scheme will be designed to alleviate

Princess Piers, Structural Repairs				an existing coastal flood risk from breach failure and overtopping, around the Torquay harbour and town centre area. This is in part necessary to protect Torquay town centre and harbourside from impact of climate change, and to support regeneration of the town centre and waterfront. Further flood mitigation required for new development would may to be funded by the developer.
Repairs to Meadfoot Sea Wall	£120k	£120k	By 2021	Necessary to protect Meadfoot Road from flood risk. It should be noted that this work is only repairing the existing sea wall; it will not take into account any future impact of climate change.
Repairs to Livermead Sea Wall	£175k	£175k	By 2021	Necessary to protect Torquay Road from flood risk. It should be noted that this work is only repairing the existing sea wall; it will not take into account any future impact of climate change.
Water Act Compliance works on water outlets e.g. parks and beaches	£120k	£120K	By 2016	Needed to ensure that additional population pressure does not lead to deterioration in water quality.
Traffic management	£600k	£225 k	By 2016	Support traffic movement and safety in built up area.
Hele Village Traffic Improvements (Including Air Quality Management)	£175k	£175k	By 2016	Needed to improve traffic flow and air quality in vicinity of Hele Road (B3199).
Edginswell Rail Halt				
Claylands Redevelopment	1.7m	1.7m	By 2016	£1.7 Servicing and remediation of site. An additional £1.7 is estimated for highways works, but not accounted for in this section to avoid double counting with Western Corridor works. Site is allocated for tourism use in TU2 of the Saved Torbay Local Plan, but would be suitable for a range of other employment uses.
Primary School places/expansion. Shortfall in Torquay and Paignton	£4 Million	£4 Million	By 2016	Needed to ensure that increased demand for school places is adequately accommodated.
Torbay Leisure Centre facilities –repairs and upgrading	£1 Million	£1 Million	By 2016	Needed to upgrade leisure facilities, promote healthier lifestyles and meet increased demands from increased population
Total	£165.551 Million	£61.671 Million		Estimated Funding gap needed to deliver infrastructure identified in the saved Adopted Torbay Local Plan.

Note. The above is indicative of the cost of delivering infrastructure identified in the saved Torbay Local plan. The final Regulation 123 List will need to be amended in line with the infrastructure spending priorities and the emerging Local Development Plan/Core Strategy.

Appendix 3: Consultation Questions

We are interested to hear the views of the development industry and others on the impact of CIL. In particular we would welcome evidence about viability and related matters.

Please note that this is not a consultation about growth levels. These will be determined in due course through the Core Strategy consultation.

In particular we are interested in responses to the following questions:

- 1) Do you agree with the rates of CIL set out in Figure 1 Preliminary Draft Charging Schedule?

- 2) Do you agree with the instalments policy?

- 3) Under the Localism Act a “meaningful proportion” of CIL may be required to go directly to neighbourhoods where development takes place. What proportion of CIL should be so allocated, and how?

- 4) Would it be practicable and appropriate for affordable housing to be provided through CIL in Torbay, if the Regulations were changed to allow this to happen?

Please submit comments by 10 am on Monday 6th February 2012. The can be emailed to strategic.planning@torbay.gov.uk or sent by post to Spatial Planning, Torbay Council, Floor 2 Roebuck House, Abbey Road, Torquay, TQ2 5TF