

FOLKESTONE & HYTHE
COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE
STATEMENT OF REPRESENTATIONS
OCTOBER 2022

1. Introduction

What is the Community Infrastructure Levy?

- 1.1 The Community Infrastructure Levy (CIL) came into force in April 2010 and is a levy that local authorities can choose to charge on new development, in order to fund a wide range of infrastructure to support planned growth in their area.
- 1.2 Folkestone & Hythe District Council, as the local planning authority, is classed as a charging authority and may therefore charge CIL in respect of development that takes place in the District. CIL is a fixed, transparent charge which means developers have more certainty from the start of the development process regarding the financial contributions they are required to make.
- 1.3 Under the Community Infrastructure Levy Regulations (2010) (as amended), every charging authority must produce a CIL Charging Schedule, which sets out the rates of CIL to be paid for different development typologies across their administrative area.
- 1.4 The current CIL Charging Schedule covering Folkestone & Hythe District (formerly Shepway District Council until April 2018) came into effect in August 2016.

Review of the CIL Charging Schedule

- 1.5 The Council has decided to review its current CIL Charging Schedule to reflect the adoption of the Core Strategy Review 2037 in March 2022 and the changes to the CIL Regulations in September 2019.
- 1.6 This review must be carried out in accordance with the CIL Regulations, which include the requirement for the draft Charging Schedule to be supported by evidence on development viability across the district and a broad understanding of the area's infrastructure needs and the funding currently available to deliver the necessary infrastructure to support planned growth in Folkestone & Hythe.

2. Summary of the consultation process

- 2.1 The CIL Regulations require the Council to carry out public consultation on its draft CIL Charging Schedule, before it can submit the draft document for independent Examination.
- 2.2 Public consultation was conducted from Monday 22nd August to Monday 3rd October 2022. During this consultation period, comments were welcomed on the following documents:
 - A Draft CIL Charging Schedule (setting out revised levy rates for different development typologies across four defined zones in the district)

- The Council's CIL Viability Assessment, August 2022 (providing the development viability evidence on which the proposed CIL rates are based) and an accompanying Appendices Pack.
- An Infrastructure Funding Gap Statement - the CIL Regulations require that, in order to justify charging CIL, the Council must demonstrate that there is a 'gap' between the infrastructure needs of the district and the funding that is available, including anticipated CIL income.

2.3 The Council made all consultation documentation available on its website and in hard copy at its offices and at all the public libraries in the district, as well as the mobile library. The Council sent out a total of 162 emails and 4 letters (parish councils with no email), as drawn from the Council's planning consultation database, which incorporates all the consultation bodies set out in Regulations 16(1A) and 16(2) of the CIL Regulations 2010 (as amended). This email/letter provided background to the CIL consultation and explained where people could view the documents and the various ways in which they could provide comments.

2.4 In total there were 10 respondents to the consultation, including landowners, developers and statutory consultees. The respondents were asked to specify to which document(s) their comments related and the breakdown is shown in Table 1. Some respondents provided comments on more than one document.

Table 1		
Document	No. of respondents	No. of individual comments on the document
Draft CIL Charging Schedule	4	8
CIL Viability Assessment (August 2022)	1	2
CIL Viability Assessment Appendices Pack	0	0
Infrastructure Funding Gap Statement	2	4
Infrastructure Schedule	2	6
General Response / no comment	3	3

2.5 Of the 10 respondents, 2 were landowners or representatives from the development industry (including agents), 7 were statutory consultees and 1 was

from a neighbouring Local Authority. A full list of respondents can be found in Appendix 1.

- 2.6 It is advised that there are also modifications to the Viability Report (and associated appendices) to reflect discussions had between Savills (acting on behalf of Camland Hythe Ltd) and GE (on behalf of the Council) during the CIL Charging Schedule consultation. The corresponding amendments to the Viability Report are captured within the Statement of Modifications, as these points of clarification were not formally made in response to the consultation by Camland Hythe Ltd per se, rather the edits to the Viability Report followed discussions between Savills and Gerald Eve.

Developer Engagement

- 2.7 Government's Planning Practice Guidance (PPG) advises charging authorities to engage with developers in preparing their draft CIL Charging Schedules. The Council did this through a presentation and workshop session with our viability consultants (Gerald Eve) to explore the assumptions that were used in their viability assessments. Initially a Stakeholder Questionnaire was sent out to over 30 organisations and individuals operating in the district, in June. The questions focused on development in the district and key barriers to this. Three responses were received.
- 2.8 A second Stakeholder Consultation event was held on 14th July 2022. This consultation included a presentation explaining the typologies used; the methodology adopted for benchmark land value, the appraisal inputs used in relation to costs and values; the results of our assessment and our initial conclusions. Over 30 agents/developers were invited to participate in the event, with 5 representatives attending.

3. Main issues raised during consultation

- 3.1 This section provides a summary of the main issues raised by respondents to the consultation and details the Council's response on each of these issues, including an indication of whether we have made minor modifications to the Draft CIL Charging Schedule as a result of the comments made.
- 3.2 A detailed schedule of all comments received during the public consultation period, including summaries, the Council's responses and any modifications to the draft Charging Schedule is attached as Appendix 2.

4. Modifications to the Draft CIL Charging Schedule

- 4.1 In response to a small number of representations made, primarily from Kent County Council and National Highways, a number of proposed minor modifications to the Draft CIL Charging Schedule have been made.
- 4.2 A Statement of Modifications has been prepared, which includes commentary explaining how the changes relate to the comments made and who made them.
- 4.3 Under Regulation 19 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended), the Council is required to send a copy of its Statement of Modifications to everyone who was previously invited to make representations during public consultation on our Draft Charging Schedule and its associated evidence documents. We will also publish this Statement on our website.
- 4.4 Anyone can request to be heard by the Examiner (who is responsible for carrying out the independent Examination of the draft Charging Schedule) in relation to any of the modifications. To do so, your request must be submitted to the Council within four weeks from the date on which we formally submit all our documentation to the Examiner. Your request must include details of the modification(s) on which you wish to be heard.

Appendix 1: List of respondents

	Respondent
1	Affinity Water
2	Environment Agency
3	Southern Water
4	Camland Hythe Ltd
5	Rother District Council
6	Natural England
7	Otterpool Park LLP
8	National Highways
9	Kent County Council
10	Historic England

Appendix 2 – Schedule of Consultation Responses

ID no	Respondent	Document comment relates to	Para or Section	Topic of summary	Summary	Officer response	Modification
1	Affinity Water	n/a	n/a	n/a	No comment	n/a	None required
2	Environment Agency	n/a	n/a	n/a	No comment	n/a	None required
3	Southern Water	CIL Draft Charging Schedule	n/a - general	CIL receipts will not be used to deliver wastewater infrastructure	Confirmation provided that any wastewater infrastructure required for new development would not be funded either through CIL or S106 agreements. The new infrastructure charge is paid directly by developers to the water company for any such provision.	No amendment needed	None required
4	Camland Hythe Ltd	CIL Draft Charging Schedule	Section 5 – viability and rate setting	Exemption of strategic site allocation from CIL	<p>Commentary that exemption of the Nickolls Quarry allocated site from CIL is supported to facilitate the delivery of the remaining 650 homes and associated sports and leisure facilities, neighbourhood centre and employment centre.</p> <p>The applicant/developer wishes to reserve the right to hold further engagement with the Council and to provide a detailed evaluation of the approach and evidence base contained within the Review.</p>	<p>Noted</p> <p>Ongoing dialogue can take place in respect of officer discussions to be held in conjunction with the planning application.</p>	None required
4	Camland Hythe Ltd	Local Plan and CIL Viability Review ('the Review')	General	Methodology	<p>Through initial discussions the site promoter sought further clarity from the Council and Gerald Eve over their approach and methodology in relation to the viability review.</p> <p>The representor acknowledges that the Review is to be considered an update from the previous CIL viability study undertaken by Dixon Searle in 2014. Additionally, the representor</p>	<p>These discussions took place during the consultation period, and both the Council and the representative are duly satisfied with the approach and methodology that has been applied by Gerald Eve on behalf of the Council</p> <p>Noted</p>	<p>None required</p> <p>None required</p>

					<p>understands that the methodology and approaches taken under Local Plan and CIL viability studies may not consider all site-specific details and rely upon data sets such as benchmarking indices which generalise market data.</p> <p>We would highlight, that this can therefore lead to variations in the outcomes and conclusions made through site specific assessments.</p>		
5	Rother District Council	Infrastructure Schedule	Page 6 (of 9)	Use of CIL receipts	<p>Welcome agreement with the inclusion of infrastructure items relating to the Sustainable Access and Recreation Management Strategy (SARMS) listed in the Infrastructure Schedule.</p> <p>A joint approach with Rother District Council will be required given the cross-boundary designation and the role of the coast as a tourist destination.</p> <p>Rother to consider inclusion of SARMS items as part of future update of their Infrastructure Delivery Plan (IDP).</p>	<p>Noted</p> <p>Outside scope of CIL Charging Schedule</p> <p>Outside scope of CIL Charging Schedule</p>	<p>None required</p> <p>None required</p> <p>None required</p>
6	Natural England	CIL Charging Schedule	General	No comment	Natural England does not consider that this Community Infrastructure Levy Draft Charging Schedule poses any likely risk or opportunity in relation to our statutory purpose, and so does not wish to comment on this consultation.	Noted	None required
7	Otterpool Park LLP	Infrastructure Funding Gap Statement	Strategic highway costs / site specific infrastructure	Total funding gap	<p>The representor raises concerns that the extent of shortfall identified within the Infrastructure Funding Gap Statement (IFGS) is likely to have been overstated as the inputs that inform the calculation were crystallised at a point when the infrastructure required to secure the deliverability of the Core Strategy Review (CSR) was examined in 2021.</p> <p>The point is made that since the examination of the CSR, notably with</p>	Noted, although at the time of writing (October 2022) the outline planning application that relates to the promotion of a significant proportion of the Otterpool Park strategic allocation is still out to consultation, and the S106 Heads of Terms have not been formulated, meaning there is no sound basis upon which to base any revised cost estimates. Discussions	None required

					<p>regard to the Otterpool Park-related Strategic Highways infrastructure requirements, has moved on in favour of a reduction in the overall extent (and thus cost) of these highways works. The likely costs of these worst-case interventions are expected to be significantly reduced.</p>	<p>between the applicant and the statutory authorities (namely Kent County Council and National Highways in respect of highway infrastructure) remain ongoing. Accordingly, no formal view can be taken in respect of the likely costs, meaning the evidence that supported the Core Strategy Review represents the most up-to-date cost information, accepting that the information presented in the Infrastructure Funding Gap Statement is likely to be a worst-case scenario.</p>	
8	National Highways	CIL Draft Charging Schedule	Para. 5.4 and 5.5	S278 and S106 agreements	<p>National Highways point out there are various references to S278 agreements, which are legal agreements under the Highways Act leading to the delivery of mitigation schemes on the public highway including the Strategic Road Network.</p> <p>For the sake of clarity, it is suggested it may be useful to include a separate sentence to explain that National Highways cannot agree to mitigation to the SRN via CIL. This is because CIL lists and associated spending decisions by Members thereto can change, it does not provide the necessary certainty to National Highways and, in turn, the Secretary of State for Transport, that if development occurs, so too will the required SRN mitigation.</p>	<p>The District Council would be prepared to include a sentence to provide appropriate clarity as a minor modification. It should be noted that the District Council has adopted CIL Governance arrangements in place (effective from 2020) whereby decisions on future spend of CIL receipts by the District Council is made by three FHDC Directors who sit on the CIL working group. Accordingly, Members have no direct operational involvement over the spend of CIL receipts.</p>	<p>Modification suggested. Proposed wording to be included as a new paragraph within the CIL Charging Schedule is as follows:</p> <p><i>“National Highways cannot agree to mitigation to the Strategic Road Network (SRN) through use of CIL receipts because it does not provide the necessary certainty to</i></p>

							<p><i>National Highways and, in turn, the Secretary of State for Transport, that if development occurs, so too will the required SRN mitigation.”</i></p> <p>Corresponding changes to the Infrastructure Funding Gap Statement to reflect removal of several strategic highway projects from the Infrastructure Schedule</p> <p>None required.</p>
8	National Highways	CIL – Infrastructure Funding Gap Statement	Table 2	Appropriate mitigation on the Strategic Road Network (SRN)	<p>National Highways acknowledge that various sites, including Otterpool, will be exempt from CIL since separate, bespoke arrangements for infrastructure delivery and mitigation will be applied. National Highways are content with this arrangement and will engage with the Council and relevant applicants to agree any required, bespoke infrastructure and mitigation in connection with the SRN.</p> <p>Identified that development must comply with national policy, including that set out in DfT C2/13 and MHCLG NPPF2021, which require that any unacceptable, adverse impacts on the safety, reliability and/or operational efficiency of the SRN arising from Local Plans and/or applications on the SRN must be appropriately mitigated.</p> <p>National Highways advise they are working with the Council with regards</p>	Noted	<p>Noted, but considered to be outside scope of CIL Charging Schedule</p> <p>None required</p> <p>None required</p>

					<p>the Local Plan and various applications, including Otterpool, to discern the detailed impacts, and the location, form, timing, cost, delivery and funding of any required mitigation. National Highways seeks to facilitate development but can only do so when confident that development will be supported by appropriate mitigation. Where doubts exist, National Highways will recommend appropriate conditions to manage the delivery of development commensurate with the delivery of mitigation. We understand that the Council, as per its Local Plan and other responsibilities, is seeking to identify ways and means to fully, and to the required degree of certainty, securely fund all the mitigations identified as being required to support the Local Plan. National Highways will review and respond to this evidence in due course.</p>	<p>Noted, but considered to be outside scope of CIL Charging Schedule</p>	
8	National Highways	Infrastructure Schedule		<p>National Highways notes that the schedule echoes the Funding Gap Statement, while also adding details regarding the mitigation required for the SRN to support the Local Plan.</p> <p>As stated, National Highways shall continue to engage with all parties regarding the location, form, timing, cost, delivery and funding of the various strategic highways schemes listed. Therefore the details in the table are apt to change over time.</p> <p>Also for the sake of clarity, the table should include the names of those bodies who are responsible for ensuring that the mitigations are fully funded and delivered. In all the cases listed this will be a combination of the Council as local planning authority/</p> <p>Clarification over body/bodies responsible for ensuring mitigation are fully</p>	<p>Noted</p> <p>Noted</p> <p>Noted. Modification to be made to the Infrastructure Schedule</p>	<p>None required</p> <p>None required</p> <p>Inclusion of an additional column in the infrastructure schedule to provide details of the body/bodies</p>	

				funded and delivered	local plan maker and the relevant site promoter. While National Highways will most probably be party to any of the S278 Highways Act legal agreements that lead to the schemes being delivered, it will not be the promoter or holder of any contributions nor responsible for ensuring they are fully funded.		responsible for ensuring mitigation are fully funded and delivered
9	Kent County Council	CIL Draft Charging Schedule	Section 4	Sources of infrastructure funding – S106 vs CIL	Use of S106 to fund education infrastructure, CIL receipts to not be used by KCC to fund education infrastructure going forward	Following discussions between KCC and FHDC, the lead FHDC officer provided and agreed with KCC the wording for two additional paragraphs of text to be inserted into section 4 of the CIL Draft Charging Schedule	<p>Add two paragraphs into the CIL Charging Schedule, to be referenced as paragraph 4.2 and 4.3, as follows:</p> <p>4.2 In respect of education infrastructure, Kent County Council have advised that: "Section 106 is the appropriate mechanism for securing developer contributions towards the delivery of necessary education infrastructure and this is reflected in the FHDC CIL Infrastructure Funding Statement schedule. Accordingly, KCC will not use any component of its proportionate share of CIL receipts to fund education infrastructure."</p> <p>4.3 The corresponding figures for education</p>

							infrastructure are presented in Table 2 of the Infrastructure Funding Statement, albeit that the education infrastructure figures are not carried forward into the total values in Table 2 as KCC will not be utilising their proportionate share of CIL receipts to fund education infrastructure.
10	Historic England	CIL Charging Schedule		Regulation 123 list Use of CIL receipts	There is currently no reference to the historic environment within the draft Charging Schedule. Historic England encourages that additional text is included to refer to the historic environment as a form of infrastructure. The respondent recommends that the Regulation 123 list requests investment in the protection, conservation and enhancement of heritage assets and their settings to ensure CIL monies are available to fund appropriate initiatives	Relevant commentary is set out in paragraph 2.2. of the CIL Charging Schedule, which asserts that amendments to the Community Infrastructure Levy Regulations 2010 were introduced in September 2019. Significant changes included: removal of the requirement for a Regulation 123 list (i.e. a list of infrastructure projects that CIL might be spent on); and introduction of a new requirement to produce an annual Infrastructure Funding Statement.	None required