

**FOLKESTONE & HYTHE DISTRICT COUNCIL
COMMUNITY INFRASTRUCTURE LEVY (CIL)**

DRAFT CHARGING SCHEDULE

SUBMISSION VERSION (AS MODIFIED)

November 2022

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1.0 Background

- 1.1 In 2010, Government introduced the Community Infrastructure Levy (CIL) as the preferred mechanism for securing developer contributions towards infrastructure to support growth in an area.
- 1.2 The Council's first CIL Charging Schedule came into effect in August 2016.
- 1.3 This revised Charging Schedule will be implemented from [Date TBC] and includes a brief explanation of CIL and the rationale behind the revision to the CIL Charging Schedule. It is proposed that the rates that were set in the CIL Charging Schedule adopted in August 2016 remain unchanged, other than to account for indexation.
- 1.4 Preparation of the Charging Schedule was supported by the following evidence documents, which can be found on the Council's website.
 - The Infrastructure Delivery Plans (IDPs), which sets out infrastructure requirements to support the delivery of planned development within the Places and Policies Local Plan (adopted 2020) and the Core Strategy Review (adopted 2022) at the time each was compiled;
 - A CIL viability assessment has been undertaken by consultants, Gerald Eve, on behalf of the council and is produced in a CIL Viability Report and Executive Summary, July 2022
 - An Infrastructure Funding Gap Statement, which compares the likely CIL income from anticipated new developments with the cost of infrastructure identified in the Infrastructure Delivery Plans.

2.0 Introduction

- 2.1 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 their area. The money raised can be used to fund a wide range of infrastructure such as transport schemes, schools, community facilities, health and social care facilities, parks, green spaces and leisure facilities.
- 2.2 Amendments to the Community Infrastructure Levy Regulations 2010 were introduced in September 2019. Significant changes included: removal of pooling restrictions for S106 obligations (i.e. the requirement that no more than five S106 obligations can fund a single infrastructure project); 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.
- 2.3 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 District¹. The Council adopted the Core Strategy Review (CSR) in March 2022, and so it is timely that the Council now seeks to amend the adopted CIL Charging Schedule to bring it 'in step' with the adopted Core Strategy Review, as well as amendments to the Government's CIL Regulations.

¹ Under the terms of Part 11 of the Planning Act 2008

2.4 CIL is not charged on affordable housing, buildings used for charitable purposes or self-build housing, provided the relevant exemptions are applied for and agreed. CIL applies to all 'chargeable development' which is defined as:

- All new buildings, but excluding those into which people do not usually, or only occasionally, go (e.g. only to inspect machinery or structures such as electricity pylons or substations)
- Developments of 100m² or more of additional gross internal floorspace
- The creation of one additional dwelling, even if the gross internal floorspace is less than 100m²
- Some developments not requiring planning permission (permitted development) will also be liable for CIL if they do not meet the exemption criteria.

3 Infrastructure

3.1 The infrastructure requirements to support the growth set out in the adopted Folkestone & Hythe Core Strategy Review and Places and Policies Local Plan are set out in in the corresponding Infrastructure Delivery Plans, which provides the details of the infrastructure required to support growth in the District.

3.2 The funding of this infrastructure comes from different sources (including Section 106 agreements, CIL, and Government funding such as the Housing Infrastructure Fund. 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. An Infrastructure Funding Gap Report has been prepared to demonstrate this need.

4 CIL and S106 agreements

4.1 Section 106 agreements and Section 278 Highways Agreements will continue to be used to secure mitigation and affordable housing following the CIL review. The amended CIL regulations no longer contain a restriction on the pooling of monies from more than five S106 obligations to fund a single infrastructure project and both CIL and S106 funding can be secured towards the same piece of infrastructure without the limitation of pooling.

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 us any component of its proportionate share of CIL receipts² to fund education infrastructure.”

4.3 The corresponding figures for education infrastructure are presented in

² As set out in the adopted CIL Governance Framework the District Council assigns 35% of CIL receipts to Kent County Council (KCC) in order to enable KCC to spend this proportion of the receipts in accordance with their own priorities.

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.

4.4 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 National Highways and, in turn, the Secretary of State for Transport, that if development occurs, so too will the required SRN mitigation.

5 Viability and rate setting

5.1 In order to establish levy rates for development, a charging authority should carry out a broad test of viability across its district, together with specific viability testing for strategic sites.

5.2 The Council commissioned consultants Gerald Eve to carry out a review of viability across the District, examining the cumulative impact of the policies in the Core Strategy Review and CIL. This review was undertaken to assess the effect that any revised CIL rates would have on development viability. The outputs from this review are set out in the CIL Viability Report and Executive Summary.

Residential Development

5.3 The viability assessment has shown that residential development across the District is viable. To account for differences in land values across the District, four residential zones are maintained with no change from the adopted CIL Charging Schedule 2016. These are: Lydd, some parts of Folkestone (zone A), Romney Marsh (excluding Dungeness & Lydd), Hawkinge, some parts of Folkestone (Zone B), Hythe, some parts of Folkestone (Zone C), North Downs area, some parts of Folkestone (Zone D).

5.4 The strategic allocations within the Core Strategy Review have also been tested against CIL as part of the Core Strategy Review viability assessments. The infrastructure requirements to bring forward these strategic sites are considerable and these sites will deliver their infrastructure requirements fully through S106/S278 agreements. These sites are shown in Figure 1 and are referred to below. Evidence to support the decision taken to exempt these sites from CIL is provided in support of this Charging Schedule.

- North Downs Garden Settlement (SS6 to SS9)
- Sellindge Strategy Phase 2 (CSD9)

5.5 It is also proposed that the balance of the Nickolls Quarry strategic site, i.e. that area of the site that does not incorporate Phases 1 and 2³, is made exempt from CIL as part of this revision to the Charging Schedule such that it (the balance of the Nickolls Quarry strategic site) will deliver its infrastructure requirements fully

³ Approval of Reserved Matters for two parcels (in accordance with Y13/0736/SH & Y18/1306/FH) relating to Phase 1 (192 dwellings) and phase 2 (208 dwellings) part of that permission has been implemented and is being built out on land to the northeast of this site.

through S106/S278 agreements. Evidence to support the decision taken to exempt this site from CIL is provided in support of this Charging Schedule.

5.6 For clarification, phases 1 and 2 were exempt from paying CIL in the previous Charging Schedule as Reserved Matters approvals were granted in accordance with the original outline permission under planning reference Y06/1079/SH in 2010 that pre-dated the adoption of the previous CIL Charging Schedule in August 2016.

5.7 In addition, there are strategic allocations which were exempt from paying CIL in the previous Charging Schedule. Whilst all of these sites have planning permission, for completeness the exemption on these sites is carried forward into this Charging Schedule. These sites are:

- Folkestone Harbour & Seafront (SS10)
- Shorncliffe Garrison (SS11)
- New Romney Strategy (CSD8)
- Sellindge Strategy Phase 1 (CSD9)

5.8 These sites are shown spatially in Figure 1.

Non-Residential Rates

5.9 The district is currently divided into two zones for retail and related development in the adopted CIL Charging Schedule (defined as A1 – A5 uses, now Class E – Commercial, Business and Service.). The proposed change to be brought about through a revision to the CIL Charging Schedule (thus generating a new CIL Charging Schedule) involved the exemption of the North Downs Garden Settlement from the CIL retail rate. The corresponding information is presented in CIL Table 2. Both the town centre area of Folkestone and the North Downs Garden Settlement are shown in the submitted Figure 2 Map. The rural area, described for these purposes as 'rest of district', is not mapped, as the zone applies to all areas of the district outside the Figure 2 Map. Charging is proposed as follows:

- Folkestone town centre (Appendix E), in which all convenience and comparison retail and other development akin to retail is proposed to be charged with a rate of £0 / sq m.
- North Downs Garden Settlement (Appendix F), in which all convenience and comparison retail and other development akin to retail is proposed to be charged with a rate of £0 / sq m.
- 'Rest of district' matrix:
 - Supermarkets, superstores and retail warehousing (net retail selling space of over 280 sq m) with a rate of £100 / sq m;
 - Other large-scale development akin to retail (net retail selling space of over 280 sq m) with a rate of £100 / sq m; and
 - development akin to retail (net retail selling space up to 280 sq m) with a rate of £0 / sq m.

5.10 As set out above, Table 2 in the adopted CIL Charging Schedule sets four

different rates, one applied to the Folkestone Town Centre Area and North Down Garden Settlement shown in Figure 2 and three applied to the rest of the district. The Council proposed a zero rate for all retail and related development in the town centre area of Folkestone and for all small scale and convenience retail in the rest of the district in the original CIL Charging Schedule that passed through examination to be adopted in August 2016. A £100 / sq m charge was applied for larger retail and related development in the rest of the district. It had struck a net retail selling space threshold of over 280 sq m (the large shops threshold in the Sunday Trading Act 1994 (as amended)) as the boundary between the zero rate and the £100 rate. The two retail zones are to be maintained with no change, save for the exemption of the North Downs Garden Settlement, from the adopted CIL Charging Schedule 2016 for inclusion in the draft revised CIL Charging Schedule.

- 5.11 The viability of non-residential development in the district has also been assessed. The viability assessment has shown that supermarkets and retail warehousing can support a CIL rate across the majority of the district. Business uses (including offices and industrial developments have been found unable to support a CIL charge.

Rate Setting

- 5.12 In arriving at the CIL rates, an appropriate balance must be struck between the need to fund the infrastructure required to support development and the potential effects that imposing CIL rates may have on the economic viability of development across the District. It is therefore important not to set rates at the margin of viability and so a reasoned judgment has been applied, providing a significant buffer to protect against unforeseen circumstances, such as an increase in build costs. Overall, the review has taken account of the viability evidence in setting the charging zones as set out in Table 1.

6 CIL rates

6.1 The CIL regulations allow us to set differential rates (including zero rates) for different geographical areas or for different land uses across our charging area. The CIL regulations also provide us with the ability to set differential rates in relation to scales of development.

6.2 The CIL rates, shown below in Table 1, are based on the recommendations from the CIL Viability Report. The strategic sites are zero rated and not subject to CIL charges, as they will contribute towards infrastructure solely through S106 agreements. Figure 1 is a map of the CIL charging zones (residential) for the District. Figure 2 is a map of the CIL charging zones (retail) for the District.

Table 1: CIL Charges for residential developments CIL rate by zone

Development type	<u>Proposed CIL rate</u>				<u>Current CIL rate</u>			
	Zone A	Zone B	Zone C	Zone D	Zone A	Zone B	Zone C	Zone D
Residential development	£0	£58.86	£117.73	£147.16	£0	£58.86	£117.73	£147.16
Residential development on strategic site allocations	£0				£0			

Notes:

Strategic site allocations comprise:

- North Downs Garden Settlement (SS6 to SS9)
- Sellindge Strategy Phases 1 and 2 (CSD9)
- Folkestone Harbour & Seafront (SS10)
- Shorncliffe Garrison (SS11)
- New Romney Strategy (CSD8)
- Nickolls Quarry strategic allocation, Hythe (Figure 5.6)

6.3 In respect of strategic site allocations there are several strategic allocations that are exempt from paying CIL in the current charging schedule (five of these already have planning permission with corresponding S106 agreements). The newly allocated sites in the Core Strategy Review will also be exempt from paying CIL. This is because strategic sites will mitigate their development impacts through site-specific S106 contributions and, in doing so, will generally not be viable to pay CIL as well.

6.4 For all other remaining sites the viability assessment has shown that residential development across the District is viable. To account for differences in land values across the District, four residential zones are to be maintained with no change from the adopted CIL Charging Schedule 2016 for inclusion in the draft revised CIL Charging Schedule. The four zones are:

- Lydd, some parts of Folkestone (zone A),
- Romney Marsh (excluding Dungeness & Lydd), Hawkinge, some parts of Folkestone (Zone B),
- Hythe, some parts of Folkestone (Zone C),
- North Downs area, some parts of Folkestone (Zone D).

Table 2. Proposed and current CIL charges (per sq m of chargeable floorspace) for retail use

Zone	Class E – Commercial, Business and Service	Current CIL rate / £ per sq m (as of 1st January 2022)	Proposed CIL rate / £ per sq m
Folkestone Town Centre Area	All convenience and comparison retail and other development akin to retail	£0	£0
Otterpool Park strategic allocation	All convenience and comparison retail and other development akin to retail	n/a	£0
Rest of district	Supermarkets, superstores, and retail warehousing (net retail selling space of over 280 sq m) (a & b)	£117.73	£117.73
Rest of district	Other large-scale development akin to retail (net retail selling space of over 280 sq m) (c)	£117.73	£117.73
Rest of district	Other retail development and developments akin to retail (net retail selling space up to 280 sq m)	£0	£0
<u>Notes</u>			
<p>(a) Includes non town-centre, large stores and supermarkets selling food and non-food items.</p> <p>(b) Includes non town-centre large stores, retail warehouses and showrooms selling items not normally obtained on a frequent basis including – clothing and footwear; DIY, gardening, leisure, sports and recreational items; household goods, carpets, furniture and electrical goods; and vehicles.</p> <p>(c) Includes all other smaller scale town centre and local retail developments</p>			

Table 3. All Other Developments not Addressed by Tables 1 and 2 (B, C1, C2 & D uses)

Other	CIL rate /£ per sq m
All other developments (district wide)	£0

Figure 1. District-wide CIL Charging Zones (residential)

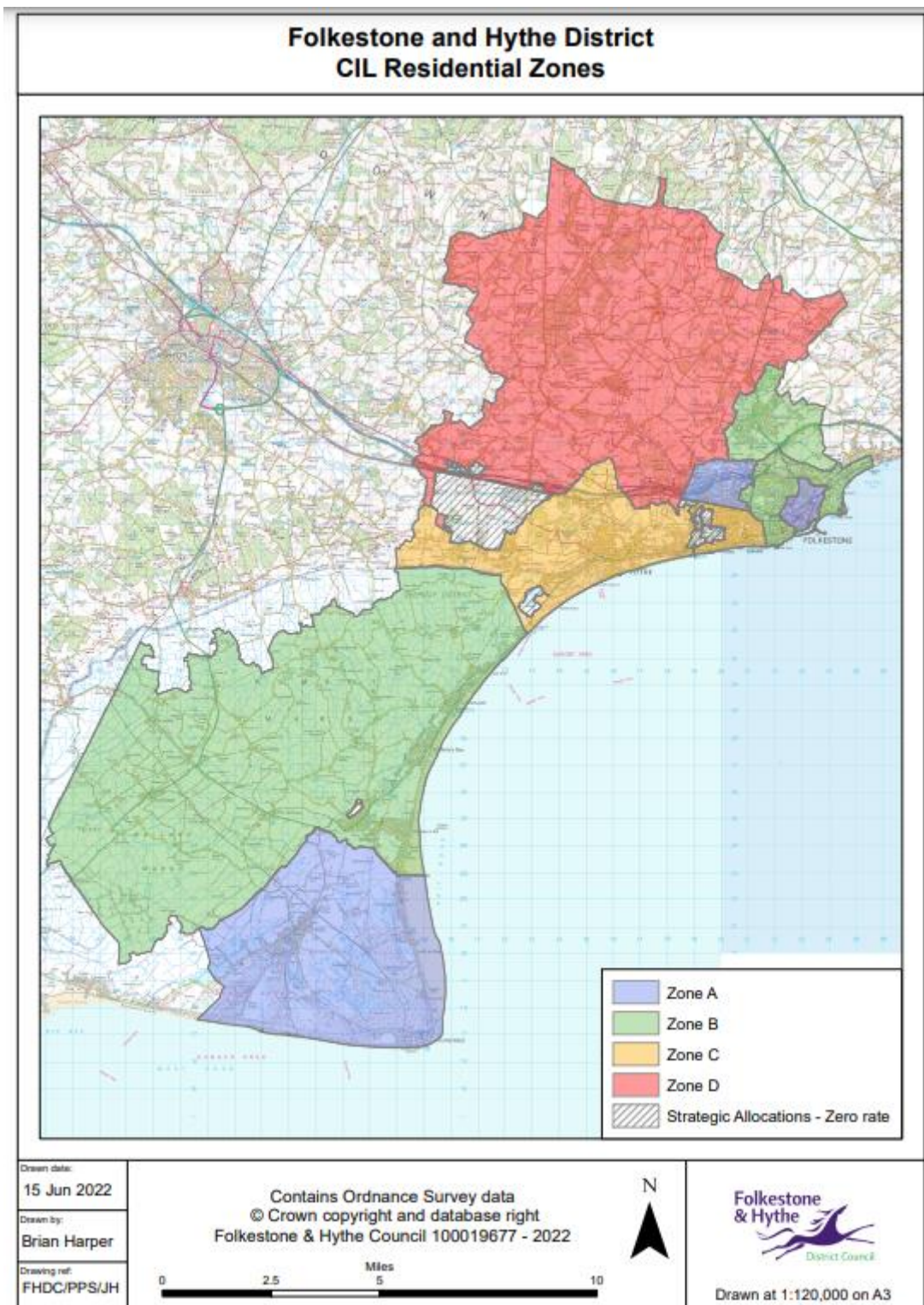
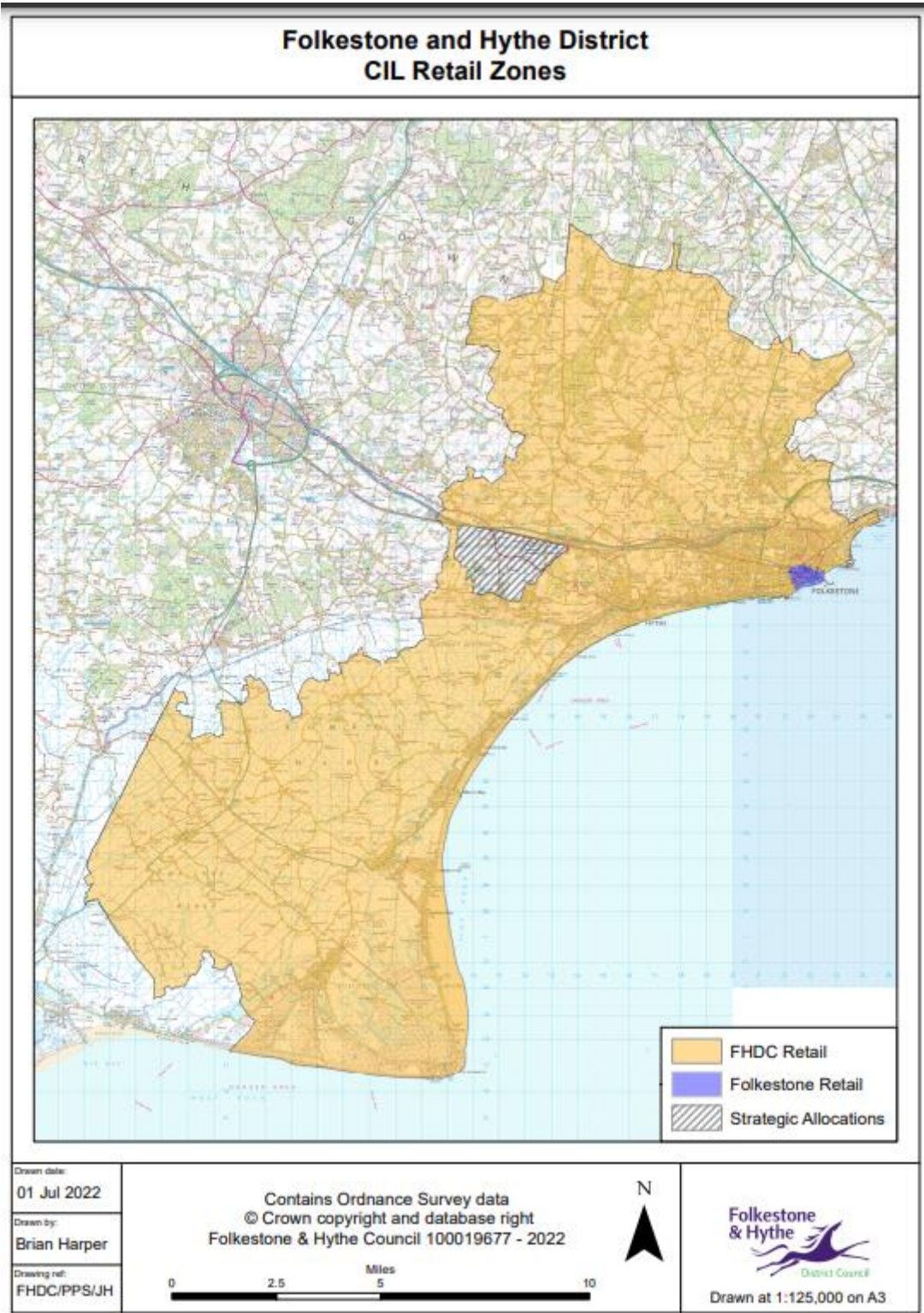


Figure 2. District-wide CIL Charging Zones (retail)



7 Neighbourhood funds

7.1 The Regulations require the Council to pass on a proportion of the revenues from CIL receipts to the towns and parishes within which the chargeable development took place. Parishes with a Neighbourhood Plan will receive 25

per cent of the CIL revenue from new development within their neighbourhood plan area. Parishes without a Neighbourhood Plan will receive 15 per cent of the levy revenue, subject to a cap of £100 per existing council tax dwelling per year.

- 7.2 CIL must be spent on infrastructure. To ensure transparency, both the Council and the town or parish council must report annually on how CIL receipts have been spent. By 31 December each year, the Council must produce an Infrastructure Funding Statement and the town or parish council must submit a financial report to the Council.

8 Calculating the chargeable amount

- 8.1 The amount of CIL charge a development is liable to pay is calculated according to Schedule 1 of the CIL (Amendment) (England) (No. 2) Regulations 2019. The method involves multiplying the relevant CIL rate for the type/location of the development by the net additional floorspace – and factoring in an inflation measure to allow for changes in building costs over time. A summary of the method is set out below:

CIL rate x Net additional new build floorspace x Inflation measure

$$\frac{R \times A \times Ip}{Ic}$$

R – the CIL rate for that use

A – the deemed net area chargeable at rate R

Ip – the index figure for the year in which planning permission was granted

Ic – the index figure for the year in which the charging schedule took effect

The All-In Tender Price Index is an inflation index published by the Royal Institute of Chartered Surveyors Building Cost Information Service

CIL calculations leading to a liability of less than £50 are treated as zero rated and are not payable.

- 8.2 The inflation measure used will be the national 'RICS Community Infrastructure Levy (CIL) Index' published by the Royal Institution of Chartered Surveyors (RICS) in November each year and applied 1 January of the following year. The inflation measure involves dividing the Index costs from the year planning permission is granted, by the Index costs from the year the Charging Schedule is adopted. Full details of the method are set out in the Regulations.
- 8.3 In certain circumstances, where a development includes the demolition of an existing building, the existing Gross Internal Area (GIA) can be deducted from the proposed floorspace. These deductions in respect of demolition or change of use will only apply where the existing building has been in continuous lawful use for at least six months in the 3 years prior to the development being permitted and is still in situ on the day planning permission is granted.

9 Exemptions

9.1 Most development that involves the creation of buildings that people normally use will be liable to pay CIL⁴. However, the Regulations provide for several exemptions to CIL⁵ against which the levy will not be charged, including:

- New buildings or extensions under 100 sqm of gross internal floor space, which do not involve the creation of a new dwelling;
- Dwellings built by ‘self-builders’
- The change of use, conversion or subdivision of a building that does not involve an increase in floorspace;
- The creation of a mezzanine floor within a building;
- Temporary development permitted for a limited period;
- Buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery
- Vacant buildings brought back into the same use;
- Structures which are not buildings, such as pylons or wind turbines;
- Affordable housing (defined as social rented, affordable rented, or other routes to home ownership) provided through a local housing authority, registered provider or charitable body;
- First Homes (as part of affordable housing provision) as defined by government regulations; and
- Development by charities for charitable purposes.

9.2 CIL is charged on the gross internal floorspace⁶ of new development. Where planning permission is granted for a development that involves the extension or demolition and then rebuild of a building in lawful use⁷, the level of CIL payable will be calculated based on the net increase in floorspace. This means that the existing floorspace contained in the building to be extended or demolished will be deducted from the total floorspace of the new development when calculating the CIL liability.

9.3 The Council can claw back any CIL relief where a development no longer qualifies for that relief within a period of seven years from the commencement of the development. For example, should a charity develop a building for charitable purposes and subsequently sell the building to the open market within seven years, then the Council will be able to claw back the CIL that would have been charged on the building had it been originally used for private use. Should a self-builder find that they must sell or rent the new dwelling within 3 years of the completion of the development then the Council will then seek to clawback any CIL relief provided.

9.4 Under CIL Regulation 55, a council can choose to offer exceptional circumstances relief, if charging CIL would have an unacceptable impact on the economic viability of a particular development. Exemptions can also be made for charitable institutions, where this would constitute State Aid (under CIL

⁴ This includes development permitted by a general consent (including permitted development)

⁵ Under Part 6 of the CIL Regulations 2010 (as amended)

⁶ The gross internal floorspace is the internal area of the building, and should include rooms, circulation and service space such as lifts and floorspace devoted to corridors, toilets, storage, ancillary floorspace (e.g. underground parking) etc.

⁷ The definition of lawful use is contained in Schedule 1 Part 1 of the CIL (Amendment) (England) (No. 2) 2019 states that “contains a part that has been in lawful use for a continuous period of at least six months within the period of three years ending on the day planning permission first permits the chargeable development.

Regulation 45). However, in Folkestone & Hythe District, neither discretionary charity relief nor exceptional circumstances relief are currently available and the Council does not propose to revise its exemptions policy.

- 9.5 The Community Infrastructure Levy (CIL) Regulations 2010 (as amended), provide a local authority with the discretion to accept land, buildings or infrastructure payments, as all or part of a CIL payment due in respect of a liable development. Regulation 73 specifies that an agreement to accept land and buildings as payment in kind would be where the value of CIL paid is equal to the agreed value of the land and buildings acquired in kind (as determined by an independent person). Folkestone & Hythe District Council adopted a discretionary payment in kind policy in June 2016 (as amended December 2017), in support of part or all payment of due CIL, subject to certain conditions being satisfied.

10 Spending CIL and Reporting

- 10.1 CIL revenue will be spent on the infrastructure needed to support development in Folkestone & Hythe District. How CIL is spent is currently set out within our CIL Governance Framework. In addition, the Council will produce an Infrastructure Funding Statement which will be published annually by 31 December. The Infrastructure Funding Statement reports on all funds secured, received and spent in the previous financial year for CIL and S106. Kent County Council will also produce its own Infrastructure Funding Statement annually in the same way.

11 CIL Payment in kind policy

- 11.1 It may be possible to pay your CIL liability in kind, through either land or infrastructure, and we will assess each application and make a decision on a case-by-case basis.
- 11.2 In adopting a CIL in August 2016, the Council adopted a Payment in Kind Policy. Whilst this policy specifically mentions both Payments in Kind via the provision of land and the provision of infrastructure to comply with the CIL Regulations, the wording of the policy only specifically referred to the transfer of land within key sections and, therefore, the policy was ambiguous as currently worded. Minor changes were proposed to the CIL Payment in Kind Policy in order to clarify that the delivery of appropriate infrastructure can satisfy a charge arising from the levy. This minor change was approved by Cabinet in December 2017.
- 11.3 Please note, should the district council agree to an in-kind payment of CIL liability, these payments must be agreed through a land or infrastructure agreement before starting on site and can be full or part payment of the CIL liability.
- 11.4 Land or infrastructure must be valued by an independent valuer to ascertain open market value of land or the cost of the infrastructure to decide how much of the CIL liability will be paid by the in kind payment. Further information regarding in kind payments is contained within the CIL regulations.

12 Instalments

12.1 The Instalment Policy is detailed below.

Residential Developments

1) Where the chargeable amount is less than or equal to £50,000, full payment will be required within 60 days of the commencement date.

2) Where the chargeable amount is more than £50, 000 but less than or equal to £100,000, two instalments will be allowed:

- The first instalment representing 50% of the chargeable amount will be required within 60 days of the commencement date; and
- The second instalment representing 50% of the chargeable amount will be required within 180 days of the commencement date.

3) Where the chargeable amount is over £100,000, an approach based on each phase of development will be allowed requiring three instalments:

Therefore, for each phase of a development:

- The first instalment representing 25% of the chargeable amount will be required within 60 days of the commencement date;
- The second instalment representing 25% of the chargeable amount will be required within 180 days of the commencement date; and
- The third instalment representing 50% of the chargeable amount will be required within 360 days of the commencement date.

Large Scale Retail Development outside of Folkestone Town Centre and the North Downs Garden Settlement

Larger scale, retail developments outside of Folkestone Town Centre and the North Downs Garden Settlement are the only other type of use proposed to pay CIL at the current time.

CIL will be payable by two instalments as follows, for all liable retail developments:

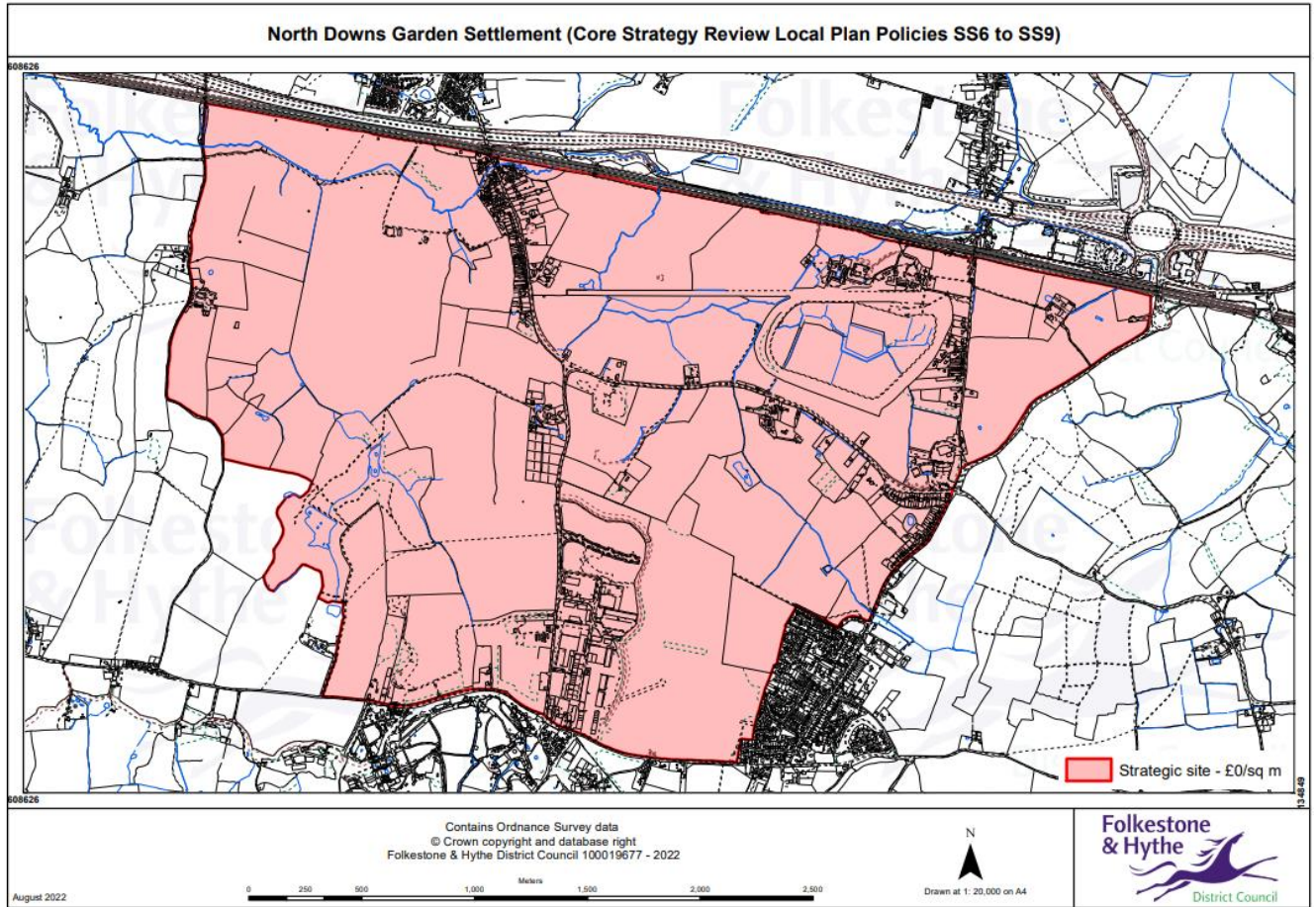
- The first instalment representing 50% of the chargeable amount will be required within 60 days of the commencement date;
- The second instalment representing 50% of the chargeable amount will be required within 240 days of the commencement date.

If the terms of instalment payments are not fulfilled, the district council will issue a Demand Notice which requires full payment immediately.

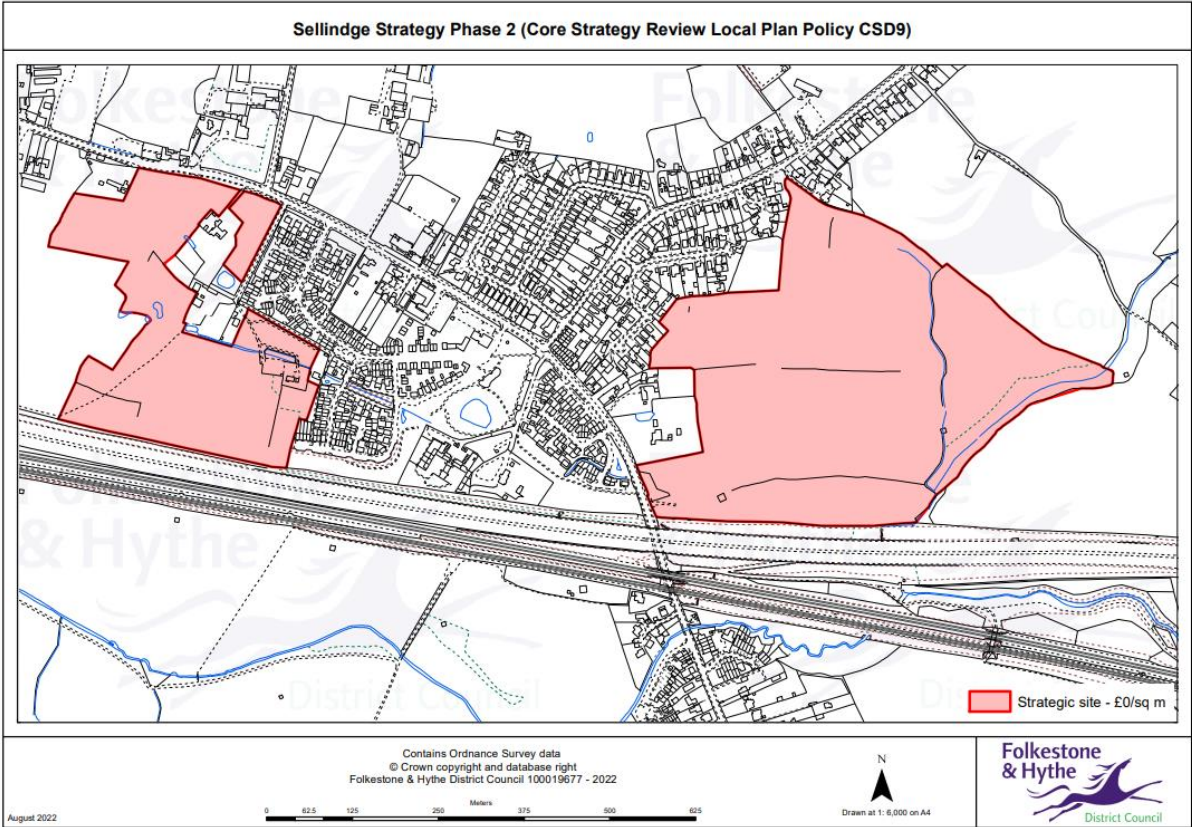
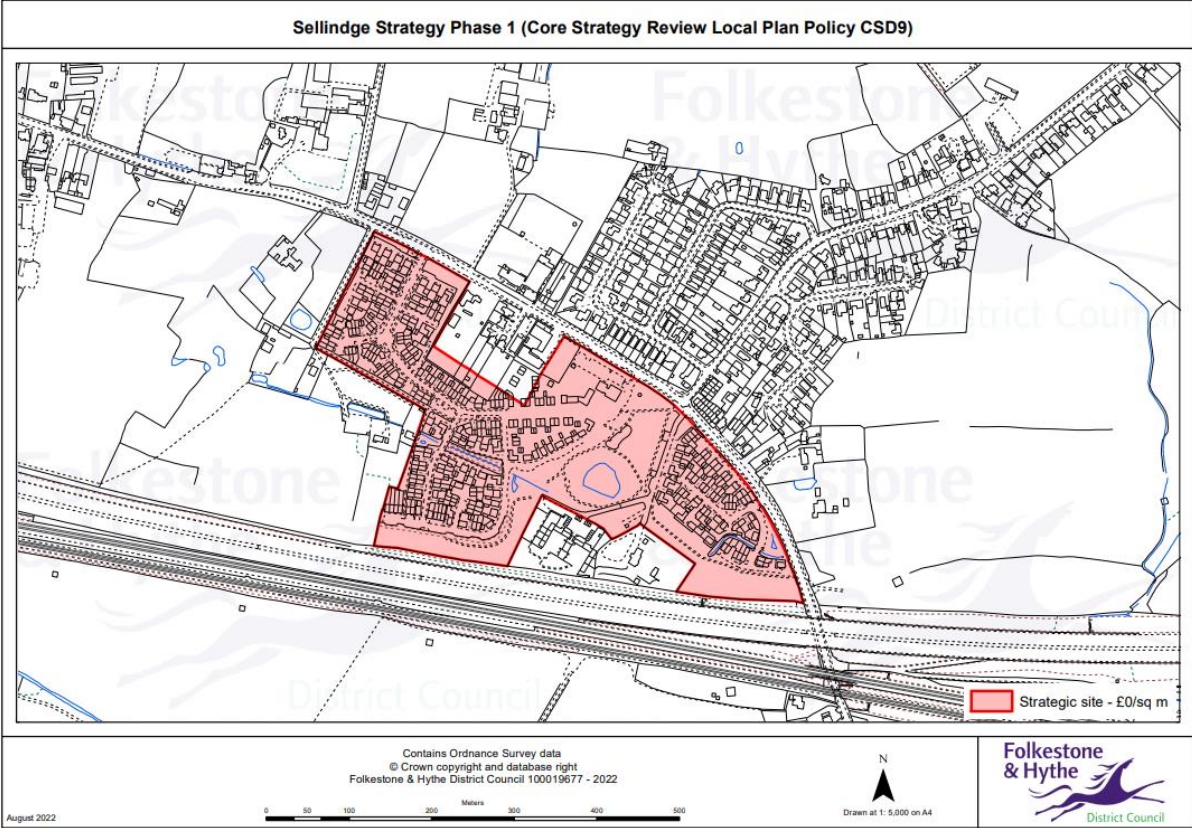
Similarly, if no Commencement Notice is received and the district council will determine the “deemed commencement” date and will issue a Demand Notice for CIL liability, which must be paid immediately in full.

Appendices

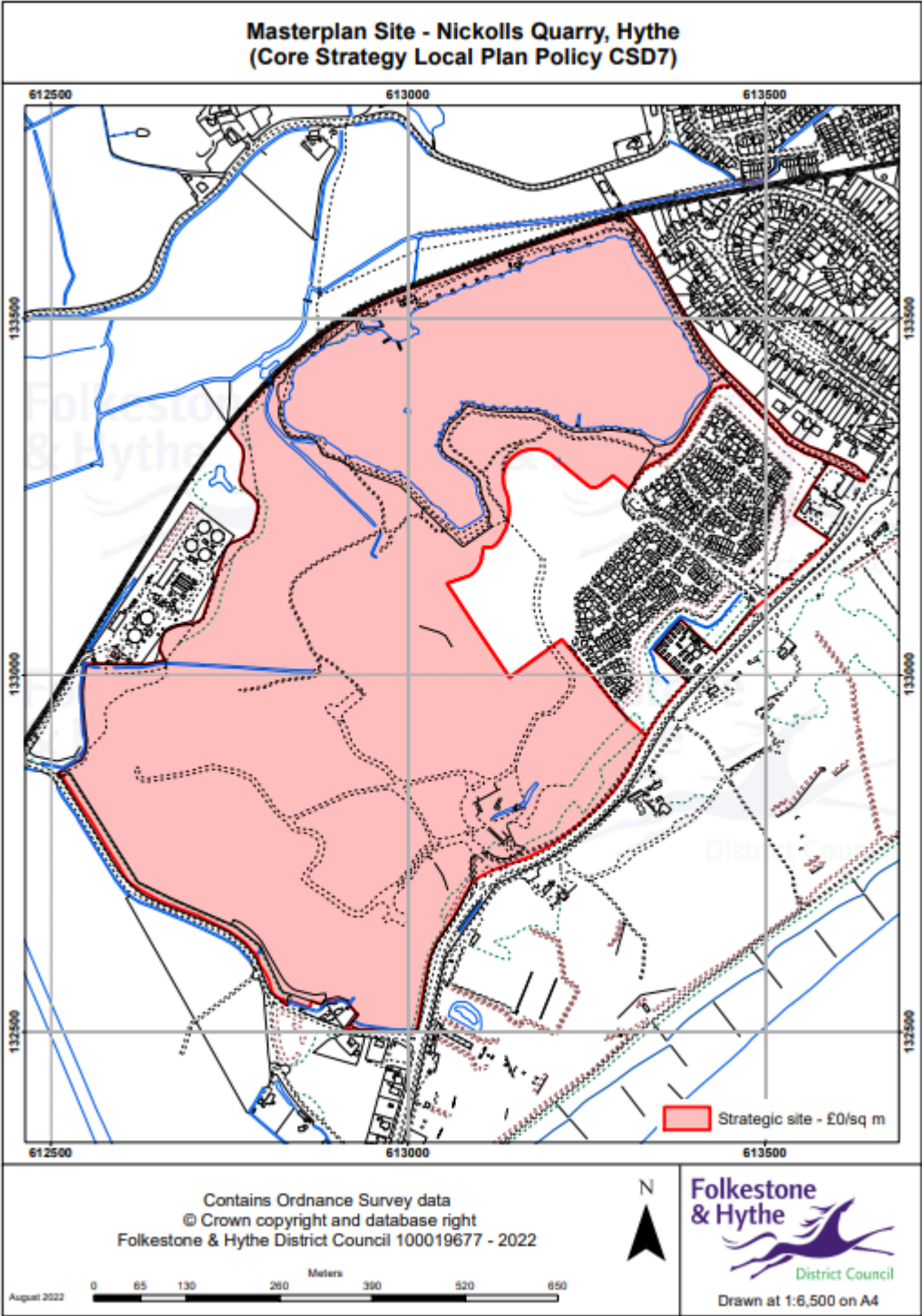
Appendix A: North Downs Garden Settlement strategic site (residential)



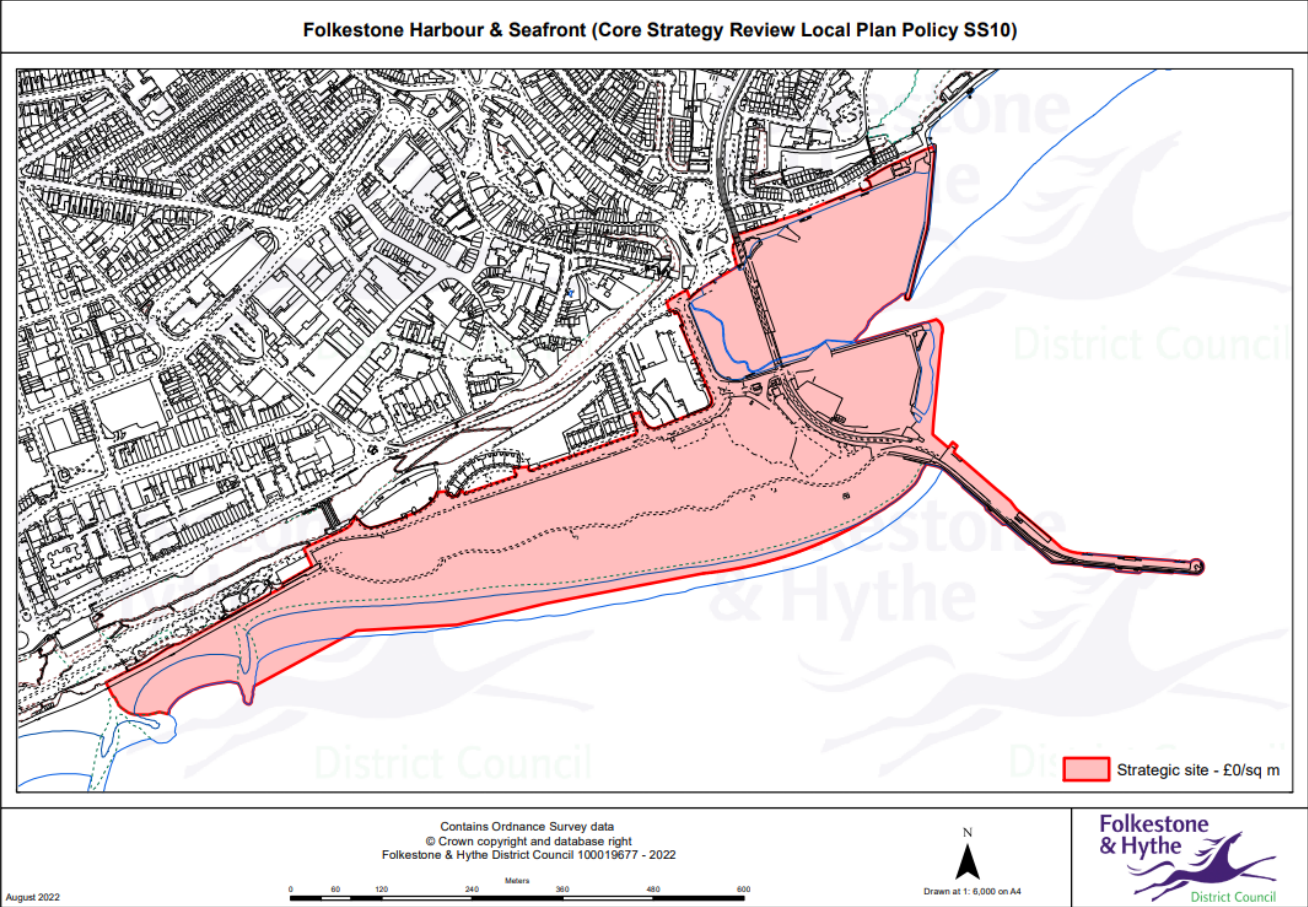
Appendix B: Sellindge Strategy Phase 1 & 2 strategic sites



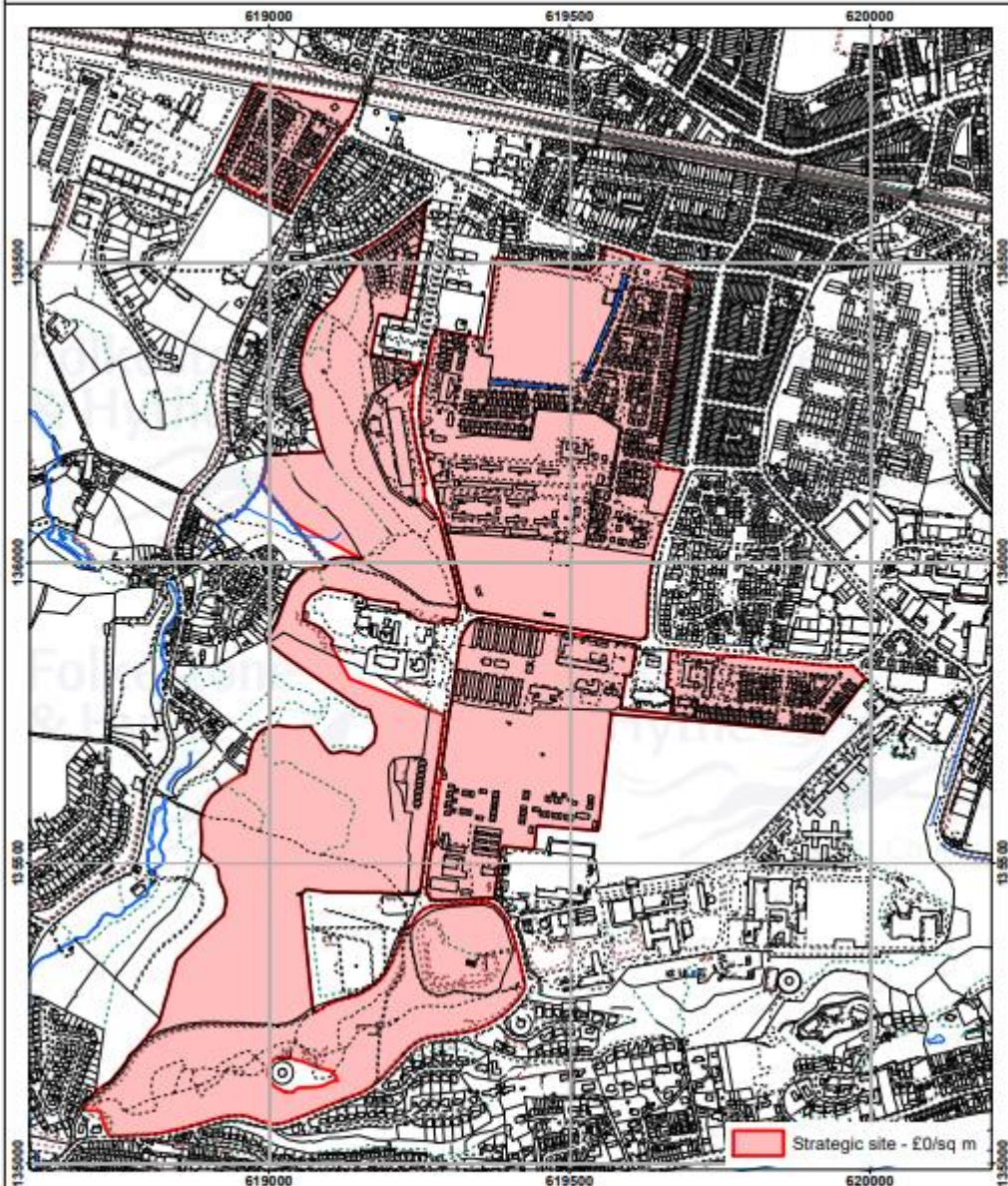
Appendix C: Hythe Strategy 'New development site' (Nickolls Quarry)



Appendix D: Core Strategy Review other Strategic Sites (SS10, SS11, CSD8)



Shorncliffe Garrison (Core Strategy Review Local Plan Policy SS11)

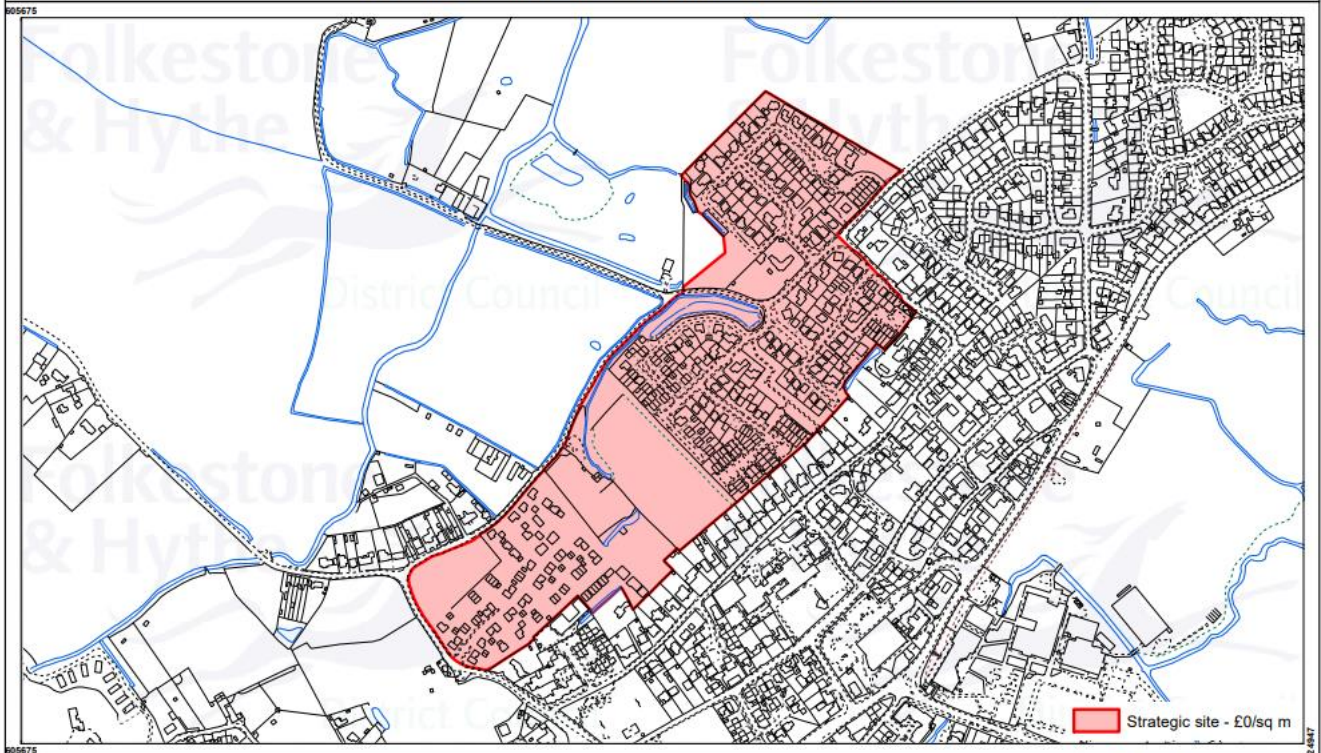


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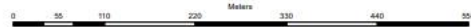
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New Romney Strategy (Core Strategy Review Local Plan Policy CSD8)

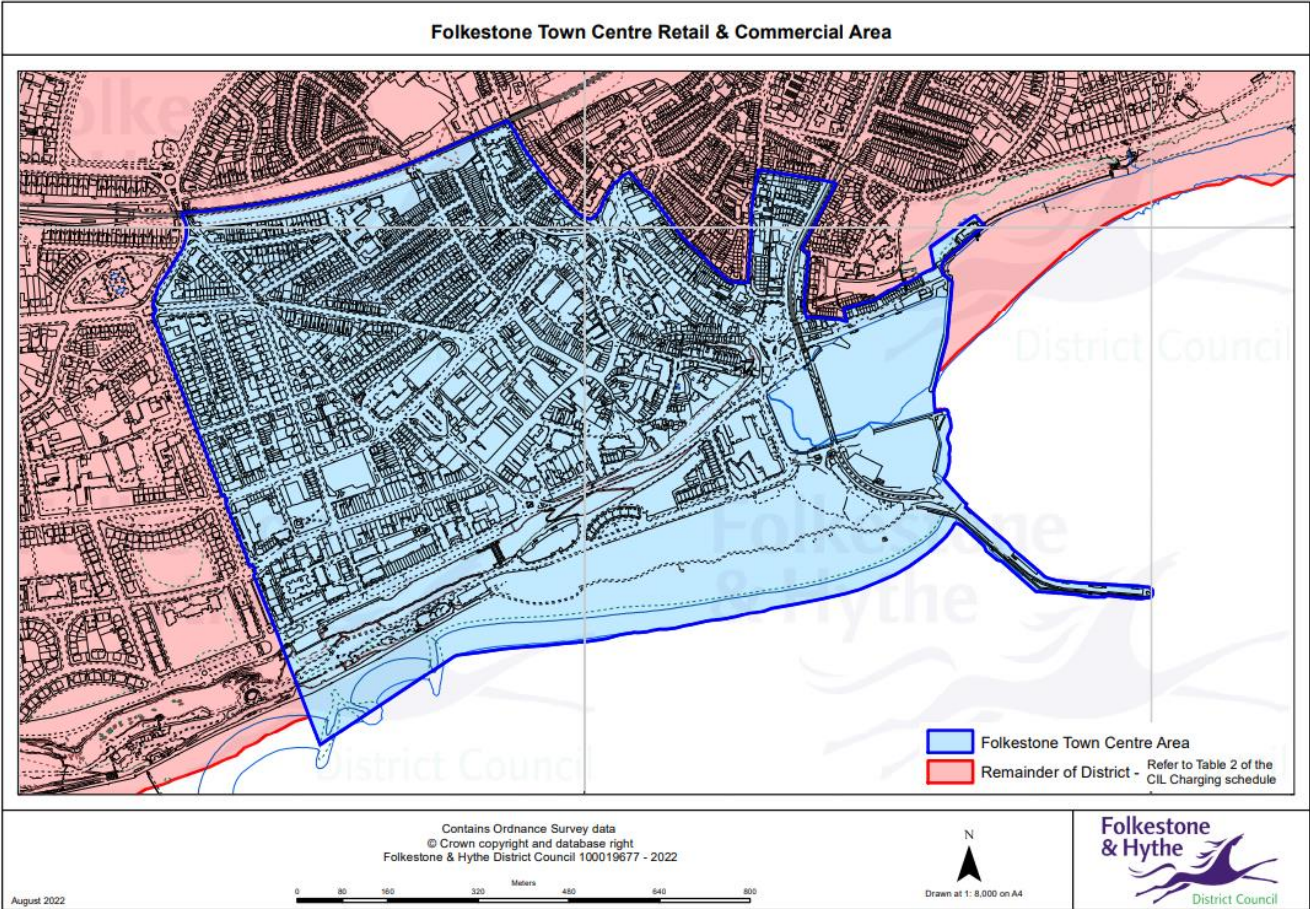


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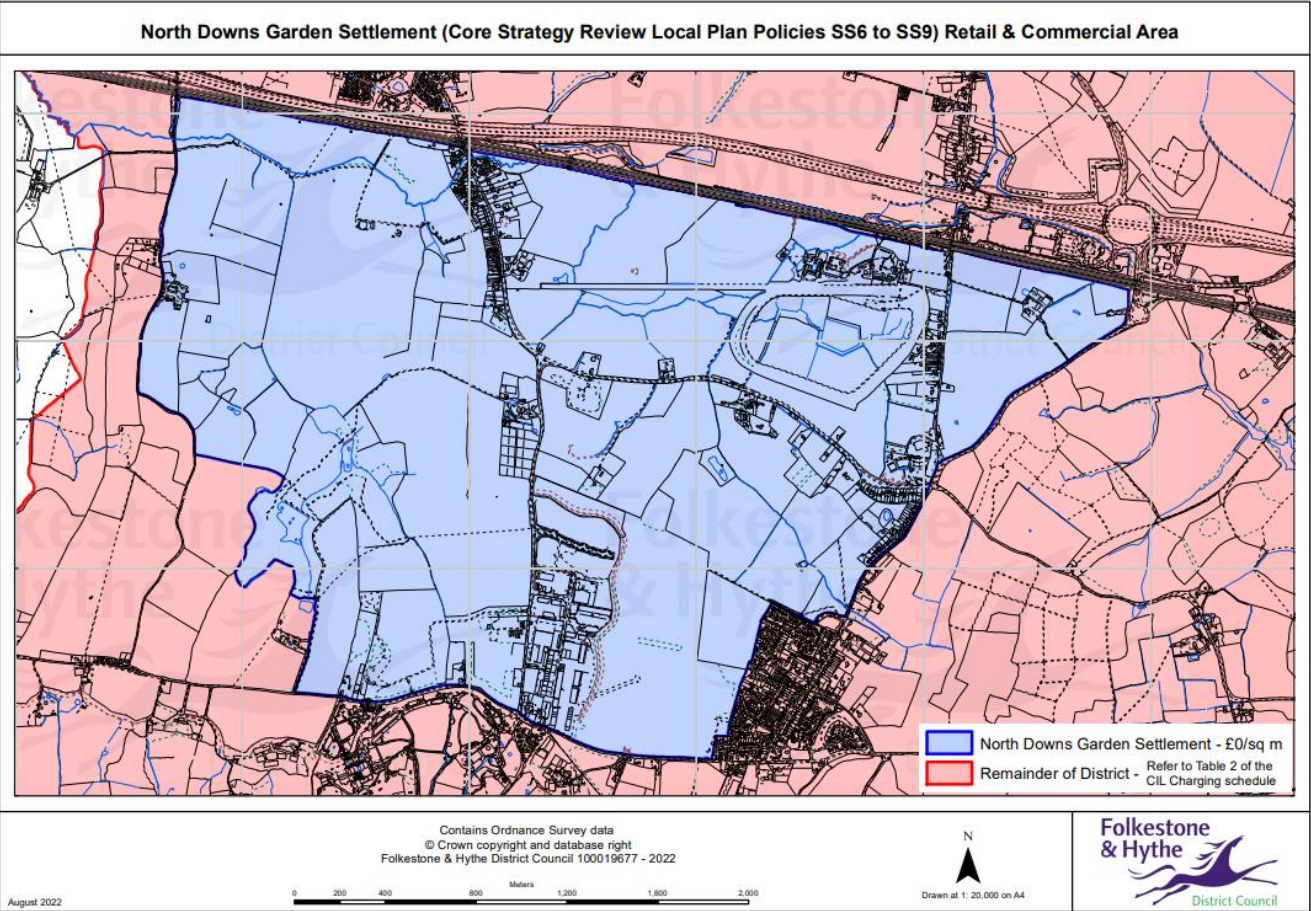
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Appendix E: Folkestone inset map for retail development



Appendix F: North Downs Garden Settlement map for retail development



Appendix G: Folkestone and Hythe District CIL Residential Zones

