

## Statement of Representation Procedure

Under Section 212 of the Planning Act 2008 (as amended by Section 114 of the Localism Act 2011), Kirklees Council intends to submit a Community Infrastructure Levy Draft Charging Schedule for Examination.

**Kirklees Council is inviting representations on the Draft Charging Schedule from Monday 7th November 2016 to 5pm on Monday 19<sup>th</sup> December 2016 under Regulation 16 and 17 of the Community Infrastructure Levy Regulations 2010 (as amended).**

In accordance with the Regulations, Kirklees Council has made available for consultation:

- Kirklees Council Community Infrastructure Levy Draft Charging Schedule
- Evidence to support the CIL Draft Charging Schedule
- Statement of the Representations Procedure

All of the above documents are published on the Council's website: <https://www.kirklees.gov.uk/beta/planning-policy/community-infrastructure-levy.aspx>.

**Paper copies can be viewed at Civic Centre 3, Huddersfield and Dewsbury Service Centre.**

Comments on the Draft Charging Schedule can be made in writing in the following ways:-

- On the Council's consultation website: <http://consult.kirklees.gov.uk/portal>
- Comment forms are available at Civic Centre 3, Huddersfield and Dewsbury Service Centre, or can be downloaded from the Council's website and returned to us by email at [local.development@kirklees.gov.uk](mailto:local.development@kirklees.gov.uk) or by post at: Planning Policy Group, PO Box B93, Civic Centre 3, off Market Street, Huddersfield, HD1 2JR.

**Any organisation or individual may request the right to be heard at the Examination. This request must be submitted in writing** and received within the specified consultation period 7<sup>th</sup> November 2016 to 5pm on 19<sup>th</sup> December 2016. Representations may also be accompanied by a request to be notified, at a specified address, of any of the following:

- That the Draft Charging Schedule has been submitted to the examiner in accordance with Section 212 of the Planning Act 2008.
- The publication of the recommendations of the examiner and the reason for these Recommendations, and
- The approval of the Charging Schedule by the Council.

Any organisation or individual who makes representations about the Draft Charging Schedule may withdraw those representations at any time by giving notice in writing to the Council, sent to the specified addresses as detailed above.

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## 1 Statement of Statutory Compliance

**1.1** The Community Infrastructure Levy (CIL) Draft Charging Schedule has been approved and published in accordance with the Community Infrastructure Levy Regulations 2010 (as amended 2011, 2012, 2013, 2014 and 2015) and Part 11 of the Planning Act 2008 (as amended by Part 6 of the Localism Act 2011). In setting the levy rates, Kirklees Council considers it has struck an appropriate balance between;

a) the desirability of funding from CIL in whole or in part the actual and estimated total cost of infrastructure required to support the development of its area, taking into account other actual and expected sources of funding, and;

b) the potential effects, taken as a whole, of the imposition of CIL on the economic viability of development across the Kirklees District.

**1.2** This Charging Schedule was approved /adopted by Kirklees Council on [date to be inserted following examination full Council approval].

**1.3** This Charging Schedule will come into effect / be implemented on [date to be inserted following the examination and full Council approval].

## 2 Introduction

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### 2 Introduction

- 2.1** The Community Infrastructure Levy (CIL) is a development tax that local authorities can choose to charge on new developments in their area. The money can be used to support development of the area by funding the infrastructure that the Council, local communities and neighbourhoods deem as necessary.
- 2.2** Kirklees Council is a charging authority for the purposes of Part 11 Section 206 of the Planning Act 2008 and may, therefore, charge the Community Infrastructure Levy in respect of development in the Kirklees district. This document is the Draft Charging Schedule for the Kirklees Community Infrastructure Levy (CIL). It has been prepared in accordance with the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010 as amended by the Community Infrastructure Levy (Amendment) Regulations 2011, 2012, 2013, 2014 and 2015.

### General Principles

- 2.3** The CIL is a discretionary, tariff-based development land tax, which the Council can choose to adopt to support the provision of local infrastructure required as a result of new growth. Once adopted, CIL is fixed, non-negotiable and enforceable. CIL will be charged on new development. It is charged per square metre on net additional gross internal floor-space of development. CIL is not charged on social housing, self-build homes and buildings used for charitable purposes.
- 2.4** The amount payable will be set at the time planning permission is granted and payment will be due at the commencement of development. Larger amounts will be payable in instalments over fixed time periods, in-line with an approved instalment policy.
- 2.5** The process for setting and implementing the Charging Schedule is set out in the CIL Regulations 2010, together with subsequent Amendment Regulations in 2011, 2012, 2013, 2014 and 2015. Under the CIL Regulations new restrictions came into force for existing planning obligations (Section 106 agreements) from April 2015, which significantly restrict infrastructure funding practices and pooling of obligations, dated back to 6 April 2010, whether the Council has adopted a CIL charge or not.
- 2.6** The Government advises local authorities to introduce a levy as they consider that it:
- delivers additional funding to carry out a wide range of infrastructure projects that support growth and will benefit the local community;
  - gives local authorities the flexibility and freedom to set their own priorities for what the money should be spent on - as well as a predictable funding stream that allows them to plan ahead more effectively;
  - provides developers with much more certainty 'up front' about how much money they will be expected to contribute, which in turn encourages greater confidence and higher levels of inward investment;
  - ensures greater transparency for local people, because they will be able to understand how new development is contributing to their community; and
  - enables local authorities to allocate a share of the levy raised in a neighbourhood to deliver infrastructure the neighbourhood wants.

### Development Liable for CIL

- 2.7** The CIL Charging Schedule, when adopted, will establish which types of development are liable for a CIL charge as set out in Section 5. It will usually apply to those developments that create net additional floor space of 100 square metres or more, or create a new dwelling. Developments built under general consent are also liable to pay CIL. 'General consent' includes permitted development rights granted under the General Permitted Development Order 2015. Payment is due from the point

of the commencement of development, and liability starts at the point in which planning permission is granted. Further information about which types of development are exempt from CIL charges can be found in Section 7.

## 3 CIL and Planning Obligations (Section 106 Agreements)

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### 3 CIL and Planning Obligations (Section 106 Agreements)

- 3.1 The CIL is intended to help fund infrastructure to support the development of an area rather than making an individual planning application acceptable in planning terms, which is the purpose of a planning obligation (Section 106 agreement). The CIL will not fully replace planning obligations but is a complementary measure for infrastructure delivery.
- 3.2 Planning obligations will continue to be the primary mechanism for securing affordable housing through the planning system. In addition, they will still be used to mitigate the direct impact of the development proposed, to make it acceptable in planning terms.
- 3.3 The CIL Regulations restrict the use of planning obligations to ensure that developments are not charged twice for the same infrastructure type or project (i.e. through both a planning obligation and a CIL charge). The Council is therefore required to publish a list of infrastructure it intends to fund via CIL called the Regulation 123 list. It will not be possible to seek planning obligations towards items on the Regulation 123 list. Furthermore, since April 2015 the Council is only able to pool a maximum of five planning obligations towards a particular infrastructure project or type, dating back to 6 April 2010.

#### CIL and Section 278 Agreements

- 3.4 A 278 agreement (of the Highways Act 1980) is:
  - an agreement between the Council and developer which describes proposed modifications to the existing highway network to facilitate or service a proposed development
  - typically the scope of any off site works that are required to mitigate the impact of the development on the existing road network
  - examples of works covered by this type of agreement could include:
    - roundabouts,
    - signalised junctions,
    - right turn lanes,
    - safety related works such as traffic calming,
    - street lighting,
    - improved facilities for pedestrians and cyclists.
- 3.5 Items identified on the Regulation 123 list for CIL funding will not be able to receive S278 funding agreements as the CIL Regulations prevent double charging similar to S106 agreements. However S278 Agreements are not limited to pooling restrictions like S106 agreements.

### 4 Establishing and Justifying the CIL

- 4.1** The local authority must demonstrate that new or improved infrastructure is needed to mitigate the impact of planned development. It must also show that there is a 'gap' in the available funding for the necessary infrastructure that requires the use of CIL.
- 4.2** In addition, the local authority must demonstrate that, in its informed judgement, the proposed levy rates would not make development proposals unviable across the area as a whole. It is not necessary to show that all developments would be viable, but that the majority of planned developments would not be made unviable by the proposed CIL level.
- 4.3** Kirklees has undertaken a comprehensive viability assessment to determine its proposed CIL rates. The CIL viability assessment work is available on the Council's website at:

<https://www.kirklees.gov.uk/beta/planning-policy/community-infrastructure-levy.aspx>

- 4.4** The following sections outline how the Council has set an appropriate rate of CIL in light of the available evidence on infrastructure (needs, costs and alternative available funding) and viability.

#### Evidence Documents for CIL

- 4.5** All the evidence documents are available on the Council's website:

<https://www.kirklees.gov.uk/beta/planning-policy/community-infrastructure-levy.aspx>

- 4.6** The following supporting evidence documents informed the production of the Preliminary Draft Charging Schedule (PDCS) and were made available for inspection / comment for the PDCS consultation, which took place from 9<sup>th</sup> November 2015 to 1<sup>st</sup> February 2016:-

- Kirklees Local Plan and Community Infrastructure Levy Viability Study, (Cushman & Wakefield, October 2015)
- Kirklees Local Plan Infrastructure Delivery Plan (Arup, October 2015)
- Kirklees Community Infrastructure Levy Preliminary Draft Charging Schedule Background Report (Kirklees Council, November 2015)

- 4.7** The following additional documents have been produced in support of the Draft Charging Schedule:

- Kirklees Local Plan and CIL Viability Addendum (Cushman & Wakefield, September 2016)
- Kirklees Local Plan Infrastructure Delivery Plan Addendum (Kirklees Council, November 2016)
- Draft Regulation 123 List (Kirklees Council, November 2016) (Appendix B)
- Draft CIL Instalments Policy (Kirklees Council, November 2016) (Appendix C)
- Kirklees Community Infrastructure Levy (CIL) Preliminary Draft Charging Schedule Consultation Report (Kirklees Council, November 2016)
- Kirklees Community Infrastructure Levy Draft Charging Schedule Background Report (Kirklees Council, November 2016)

- 4.8** The Infrastructure Delivery Plan (IDP) forms an essential part of evidence for the Local Plan by assessing current infrastructure provision and future needs linked to growth in the Plan. The IDP Addendum provides an update in areas where new information has become available as a result of the on-going infrastructure planning to support the Local Plan. This work further demonstrates that there is an infrastructure funding gap for the infrastructure requirements to support growth, which justifies a CIL charge as required by the CIL Regulations.

## 4 Establishing and Justifying the CIL

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- 4.9** The IDP and IDP Addendum identify infrastructure schemes, costs, delivery bodies, funding sources and gaps. It provides the best available information at the present time about the infrastructure funding gap. The IDP evidence is intended to be a living document which will be updated as necessary.
- 4.10** The Council commissioned Cushman & Wakefield to undertake the Kirklees Local Plan and CIL Viability Study (October 2015). This evidence has been updated by their further work on the Kirklees Local Plan and CIL Viability Addendum. These studies test a selection of hypothetical development schemes across the district confirming that certain types of development could be charged CIL and remain viable. Site specific testing was also undertaken as part of these studies. The testing takes account of all relevant development costs, including national and Publication Draft Local Plan policy requirements.
- 4.11** The October 2015 Study identified a variable rate for residential development across 5 zones, with a district wide rate for retail warehouses. This work was retested in response to representations made at the PDCS stage and updated development market data. This resulted in:
- a reduction of residential charging zones from 5 to 4 merging charging zones 1 and 2;
  - an amendment to the value assumptions based on these revised charging zones which resulted in charging zone 2 setting a charge of £20 per square metre for developments of more than ten units.
- 4.12** In reaching the appropriate balance when setting the rates, it was important for the Council to consider the aims of gaining sufficient funding towards the infrastructure needed to support the delivery of growth set out in the Local Plan, without setting the rates at a level that could threaten the viability of development across the district.



### 5 CIL Draft Charging Rates

**5.1** The Council's charging rates are set out in the table below. The Draft Charging Schedule is primarily concerned with the rates proposed rather than the Council's mechanism for allocating the funds.

Kirklees CIL Draft Charging Rates (per sq.m)		
Residential Development (C3)*	More than 10 Units	10 Units or Less
Zone 1	£80	£100
Zone 2	£20	£80
Zone 3	£5	£40
Zone 4	£5	£5
Retail Warehousing (A1)**	£100 district wide	
All other uses	£0	

Table 1

**5.2** *\*Not including 'Retirement Living Accommodation' defined as residential units which are sold with an age restriction typically over 50s/55s with design features and support services available to enable self-care and independent living.*

**5.3** *\*\*Retail Warehouse definition: large stores in edge-of-centre and out-of-centre locations specialising in the sale of household goods (such as carpets, furniture and electrical goods), clothes, DIY items and other ranges of goods, catering mainly for car-borne customers.*

**5.4** The residential charging zones are shown on the Charging Zone Map in Appendix A. The map can also be viewed on the Council's website at:

<https://www.kirklees.gov.uk/beta/planning-policy/community-infrastructure-levy.aspx>

## 6 The Regulation 123 List

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### 6 The Regulation 123 List

- 6.1** The Council is required to set out a list of those projects or types of infrastructure that it intends will be, or may be, wholly or partly funded through the CIL. The list does not identify priorities for spending within it, or any apportionment of the CIL funds across the district, and does not signify a commitment from the Council to fund the projects listed through the CIL.
- 6.2** The list is based on the infrastructure requirements for the Local Plan as set out in the Council's infrastructure planning evidence (IDP & IDP Addendum). The list has been revised from the CIL Preliminary Draft Charging Schedule stage, taking into consideration the representations made and updates on infrastructure projects.
- 6.3** A 'meaningful proportion' of CIL raised in an area (the neighbourhood proportion) must be spent on local infrastructure priorities. The Council will work with local communities and Town and Parish Councils to agree their local spending priorities. The neighbourhood proportion can be spent on items on the Regulation 123 list, but it does not have to be, as long as it addresses the demands that development places on an area.
- 6.4** Once the neighbourhood proportion of the CIL income has been allocated to the relevant neighbourhood in which the development has taken place, the remaining money will be pooled and spent on strategic infrastructure priorities to support growth and economic development in the district. The infrastructure spending priorities will be informed by the Regulation 123 List. The predicted CIL income will not meet the estimated infrastructure funding gap. Therefore, CIL money will be spent on infrastructure priorities in conjunction with other sources of funding.
- 6.5** It is intended that the Council will review the Regulation 123 List periodically where appropriate. This will be informed by the most up to date infrastructure planning evidence and the monitoring of CIL collection and spending. Any changes to the list will be justified, clear and subject to appropriate local consultation, in line with the CIL Regulations.
- 6.6** CIL Regulation 123 restricts the use of Section 106 obligations to ensure that individual developments are not charged for the same infrastructure through the duplication of developer contributions. A Section 106 contribution cannot be made towards infrastructure projects on the Regulation 123 List.
- 6.7** From 6 April 2015 the use of Section 106 obligations has been scaled back. Section 106 obligations will still be used to provide affordable housing contributions and matters required to make a development acceptable in planning terms. Section 106 obligations will need to meet the tests in Regulation 122 and 123. From 6 April 2015 no more than five separate obligations can be pooled for an infrastructure project or type of infrastructure, back dated to 6 April 2010.
- 6.8** The Regulation 123 list can be found in Appendix B. The list includes details about what Section 106 obligations will continue to be used for. For large scale developments there will still be the requirement to provide obligations for matters necessary to make a development acceptable in planning terms, such as open space. For the following sites in the Publication Draft Local Plan, school infrastructure will be required using planning obligations as follows:
- primary provision for Bradley Strategic Site (H1747 & H351)
  - primary and secondary provision for Chidswell Strategic Site (MX1905)
  - primary and secondary provision for Dewsbury Riverside Strategic Site (H2089)
- 6.9** The Council will ensure that these obligations meet the statutory tests, and that such requirements will not be funded in conjunction with CIL receipts. Rather the CIL receipts will be used to fund infrastructure projects needed to support the development of the district. Details of how the CIL has been spent will be set out in an annual report so it is clear that CIL and Section 106 receipts have

not been spent on the same piece of infrastructure. The Council does not have any tariff based policies or other policies relating to planning obligations in the Publication Draft Local Plan that would require amending following the introduction of CIL.

## 7 CIL Exemption and Payment Terms

### 7 CIL Exemption and Payment Terms

7.1 As set out in the CIL Regulations the following do not pay the levy:

- development of less than 100 square metres (see [Regulation 42 on Minor Development Exemptions](#)) – unless this is a whole house, in which case the levy is payable
- houses, flats, residential annexes and residential extensions which are built by ‘self builders’ (see [Regulations 42A, 42B, 54A and 54B, inserted by the 2014 Regulations](#))
- social housing that meets the relief criteria set out in [Regulation 49](#) or [49A](#) (as amended by the 2014 Regulations)
- charitable development that meets the relief criteria set out in [Regulations 43 to 48](#)
- buildings into which people do not normally go (see [Regulation 6\(2\)](#))
- buildings into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery (see [Regulation 6\(2\)](#))
- structures which are not buildings, such as pylons and wind turbines
- specified types of development which local authorities have decided should be subject to a ‘zero’ rate and specified as such in their charging schedules
- vacant buildings brought back into the [same use](#) (see [Regulation 40 as amended by the 2014 Regulations](#))
- where the levy liability is calculated to be less than £50, the chargeable amount is deemed to be zero so no levy is due.
- mezzanine floors of less than 200 square metres, inserted into an existing building, are not liable for the levy unless they form part of a wider planning permission that seeks to provide other works as well.

#### Exceptional Circumstances Relief

7.2 The CIL Regulations allow for the Council to provide further relief at their discretion, to avoid rendering a site with specific and exceptional cost burdens unviable should circumstances arise. The Council do not have to offer this relief, but if they chose to do so, it must adopt a discretionary relief policy. In line with best practice, should the circumstances arise the Council would issue such a policy document in line with the CIL Regulations once the Charging Schedule has been implemented. It should be noted that the power to offer relief can be deactivated at short notice once a Charging Schedule is in place, in line with the CIL Regulations. Exceptional circumstances should be rare and should not constitute state aid.

7.3 The Council can consider implementing exceptional relief if the CIL is adopted.

#### Phased Payments of CIL

7.4 The CIL Regulations allow for the Council to make provisions for phased payments, at their discretion. A phased payment approach and / or an instalment policy helps developers with cash flow, assisting in making development more viable, therefore, helping the charging system to be flexible. Phased payments can be permitted where a planning application is subdivided into phases for the purpose of the levy. This is useful for large scale applications. Each phase would be a separate chargeable development and, therefore liable for payment in line with any instalment policy in force. The principle of phased delivery must be apparent from the planning permission and can be established at the planning application stage.

### **Instalment Policy**

**7.5** The Council has chosen to offer an Instalment Policy which allows developers to pay their CIL charge in instalments to provide flexibility in the CIL charging regime. The details are set out in Appendix C. The policy will be made available on the Council's website on adoption of the CIL. The policy is not subject to an examination and can be revised or withdrawn as appropriate, in-line with the CIL Regulations.

### **Payments in Kind**

**7.6** The CIL Regulations allow for the Council to accept payments in kind, in the form of land or infrastructure, to be offset against the CIL liability, where agreed by the Council as more desirable instead of monies. This must only be done with the intention of using the land to provide, or facilitate the provision of infrastructure to support the development of the area.

**7.7** It is not proposed to offer a payment in kind policy at this time, although this can be considered at a later date if the CIL is adopted.

## 8 Review of the Charging Schedule

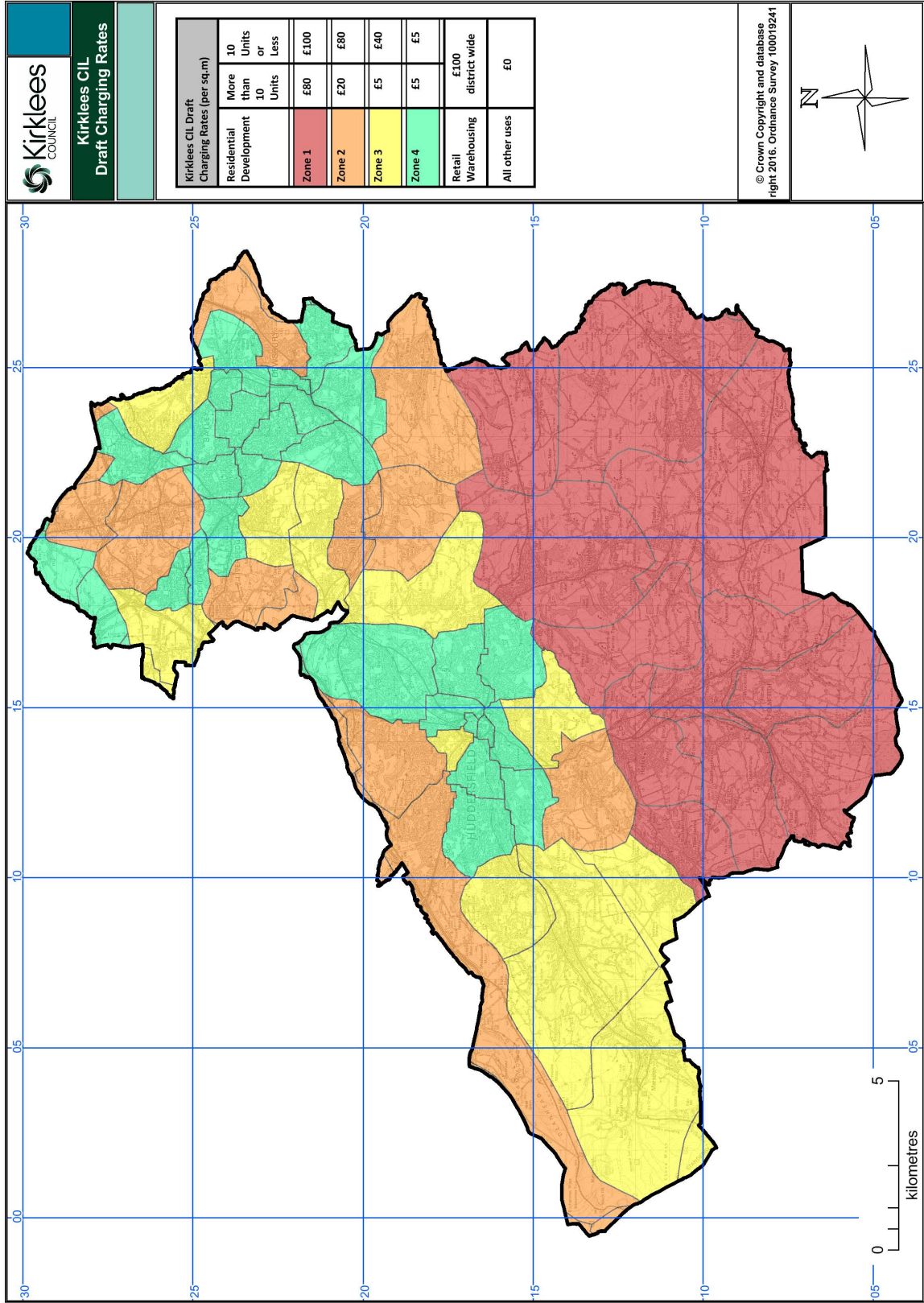
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### 8 Review of the Charging Schedule

- 8.1** Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule (as specified under the Planning Act 2008, particularly sections 211-214 as amended by the Localism Act 2011, and the levy Regulations).
- 8.2** The Government does not prescribe when a review of the rates should take place. However, National Planning Practice Guidance advises that charging authorities should consider linking a review of their charging schedule to any substantive review of the evidence base for the Local Plan.

# Appendix A: Kirklees CIL Draft Charging Rates Map

## Appendix A: Kirklees CIL Draft Charging Rates Map



CIL Charging Zone Map

## Appendix B: Kirklees CIL Draft Regulation 123 List

### Appendix B: Kirklees CIL Draft Regulation 123 List

(Required by Regulation 123 of Community Infrastructure Levy (CIL) Regulations)

Infrastructure Projects it is intended to fund through CIL\*

<b>Regulation 123 List CIL Infrastructure</b>
Strategic transport infrastructure Kirklees wide
Strategic education infrastructure Kirklees wide
Strategic open space infrastructure Kirklees wide
Strategic flood alleviation schemes Kirklees wide
Strategic community and cultural infrastructure Kirklees wide
Strategic sports, leisure and recreation infrastructure Kirklees wide

Table 2

\*Extracted from the Local Plan Infrastructure Delivery Plan and Infrastructure Delivery Plan Addendum – see for further information on strategic infrastructure projects.

Infrastructure Projects it is intended to fund through S106 & S278 Agreements

<b>S106 &amp; S278 Planning Obligations</b>
Transport infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind.
Strategic development site school provision which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind: <ul style="list-style-type: none"> <li>• primary provision for Bradley Strategic Site (H1747 &amp; H351)</li> <li>• primary and secondary provision for Chidswell Strategic Site (MX1905)</li> <li>• primary and secondary provision for Dewsbury Riverside Strategic Site (H2089)</li> </ul>
On-site open space / green space provision as required by Local Plan Policies (which includes requirements for a financial contribution in lieu of on-site provision in certain circumstances) directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site flooding and drainage mitigation directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site community and cultural infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
On-site sports, leisure and recreation infrastructure directly related to a specific site which makes a development acceptable in planning terms and is fairly and reasonably related in scale and kind
Affordable housing

Table 3



## Appendix C: Kirklees CIL Draft Instalments Policy

### Appendix C: Kirklees CIL Draft Instalments Policy

In accordance with CIL regulations 69B and 70, the Council can introduce an instalments policy to spread the cost of CIL payments for developers. When no instalments policy is in place the CIL payment is required in full after 60 days from development commencing.

The Council recognises that instalment payments for CIL are a practical way that allows developers to manage costs as part of the development of a site, and is particularly useful for larger CIL payments. It is therefore proposed to introduce such a policy, and a draft instalments policy as set out below. The instalments will be calculated from the commencement of development and as detailed by the submission of a commencement notice under Regulation 67.

<b>Kirklees CIL Draft Instalments Policy</b>		
<b>CIL Charge £0-24,999</b>		
Full Amount to be paid within 60 days of commencement		
<b>CIL Charge £25,000 to £149,000</b>		
Instalment	Amount due	Due Date Weeks after Commencement
1	35%	12
2	35%	26
3	30%	52
<b>CIL Charge £150,000 and above</b>		
Instalment	Amount due	Due Date Weeks after Commencement
1	25%	26
2	25%	52
3	25%	78
4	25%	104

Table 4