

## PLYMOUTH CITY COUNCIL

<b>Subject:</b>	Adoption of Community Infrastructure Levy Charging Schedule
<b>Committee:</b>	Cabinet
<b>Date:</b>	2 April 2013
<b>Cabinet Member:</b>	Councillor Vincent
<b>CMT Member:</b>	Antony Payne (Director for Place)
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<b>Ref:</b>	PH/CIL/4
<b>Key Decision:</b>	Yes
<b>Part:</b>	I

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### **Purpose of the report:**

This report seeks Cabinet approval for the adoption of the Council's Community Infrastructure Levy Charging Schedule, which has now been through Public Examination.

The Community Infrastructure Levy (CIL) is a new levy that local authorities in England and Wales can choose to charge on developments in their area to help fund infrastructure improvements. It was first introduced in April 2010 and is now a major plank of the localism agenda, with provisions identified in the Localism Act, and with detailed Regulations having been put in place to provide for its implementation. It is the Government's intention that CIL replaces 'tariff' type approaches to Section 106 agreements.

The money raised through CIL can be used to support new development by funding infrastructure that the city, local communities and neighbourhoods need – for example, new road schemes, park improvements or improvements to local school capacity.

The CIL Regulations prescribe the process by which a CIL is introduced. A Preliminary Draft Charging Schedule (PDCS) must be published for consultation, followed by a Draft Charging Schedule (DCS), which sets out for consideration at an independent Public Examination the CIL charge/s that a charging authority is intending to apply to development in its area, expressed in £s per square metre. (Plymouth City Council undertook an additional round of consultation on a Revised Draft Charging Schedule).

The Regulations also prescribe that:

- CIL Charging Authorities (i.e. Councils) must identify the infrastructure on which they intend to spend CIL receipts in what is known as a 'Regulation 123 List'. This list must be published when the CIL Charging Schedule is adopted, to ensure that developers are not also required to pay for the infrastructure identified on the list

through the Section 106 mechanism. The Council's Regulation 123 List is the subject of a separate report to this Cabinet meeting.

- The Charging Schedule must be adopted by Full Council.

A CIL payment Instalments Policy needs to be published alongside the Council's Charging Schedule, to provide developers with clarity about payment procedures and expectations. The Council has consulted on a Draft Instalments Policy, alongside the various drafts of its Charging Schedule.

Once Plymouth's CIL Charging Schedule becomes operational, its current Tariff approach will be defunct, although there will still be scope to seek developer contributions towards infrastructure provision through the Section 106 mechanism, as detailed in the Council's Planning Obligations and Affordable Housing Supplementary Planning Document – Second Review, which was adopted by the Council on 12<sup>th</sup> July 2012. The Council's current Market Recovery Scheme, which provides for the application of discounts to current Tariff charges, and which has its origins in the 2008 Market Recovery Action Plan, will need to be rescinded when the Charging Schedule becomes operational.

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### **Corporate Plan 2012-2015:**

The report directly supports the Council's vision for the city as well as its priority for delivering growth. The Community Infrastructure Levy will deliver resources towards the infrastructure required to unlock the City's growth potential. For example, CIL receipts can be used to:

- Help create the conditions for growth and therefore the achievement of sustainable growth in jobs and GVA (Level 1 indicators).
- Support the achievement of a good range of houses (Level 1 & 2 indicators).
- Assist with the delivery of employment land (Level 2 indicator).

In addition, CIL receipts will support the Council's other three priorities in the following ways:

- 'Providing value for communities' - by ensuring that development contributes to and does not harm local communities, and by securing resources to help deliver improvements in communities.
- 'Raising aspirations' – particularly through securing additional resources that can support the wider learning infrastructure of the city.
- 'Reducing inequalities' – particularly through securing additional resources for infrastructure investments that improve community well-being.

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### **Implications for Medium Term Financial Plan and Resource Implications:**

#### **Including finance, human, IT and land**

The introduction of CIL will ensure that the Council is able to continue to secure developer contributions to address the community infrastructure implications of development and the growth of the city. CIL receipts will not entirely replace the use of Planning Obligations through the Section 106 process, and when considered alongside those Planning Obligations that are still able to be negotiated, there should

be a significant increase on what has historically been delivered through the Section 106 process alone. However, CIL receipts will take time to build up into a significant resource.

The Council is able to charge an administration fee of up to 5% in levying CIL, which will substantially meet the costs of operating CIL. Cost pressures arising are primarily staffing related and will in the first instance need to be met from the Planning Department revenue budget. There is currently £20,000 in the Planning approved capital programme 2013/14 to acquire a CIL database. Options surrounding its implementation and the need to develop the most cost-effective administration and monitoring system are currently under consideration.

CIL is subject to new enforcement procedures, and there is therefore be a requirement for new legal procedures to be put in place and acted upon.

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**Other implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:**

The Community Infrastructure Levy may support community cohesion, community safety, addressing child poverty or health and safety by, for example, assisting with the implementation of infrastructure that improves road safety, improves defences against flooding, improves healthcare provision, improves open space through better lighting, etc.

An Equalities Impact Assessment has been carried out and this confirms that, by having the effect of helping to mitigate the adverse impacts of development, the impacts of CIL are entirely positive in equalities terms.

The introduction of CIL offers the best prospect of optimising income generated from developer contributions whilst at the same time safeguarding the overall viability of development in the city. Tariff-based approaches to securing developer contributions through Section 106 Agreements are very constrained by the CIL Regulations, which in any case provide for the demise of such approaches by April 2014. CIL will therefore significantly reduce risks associated with Risk No. 80 identified on the Council's Strategic Risk Register (*Planning obligations – implications of new legal framework and current economic circumstances*).

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**Equality and Diversity**

Has an Equality Impact Assessment been undertaken? Yes

Key findings are included in the main body of the report.

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**Recommendations & Reasons for recommended action:**

It is recommended that the Cabinet:

1. Recommend that Full Council adopt the CIL Charging Schedule attached as Appendix I, and set the date for the Charging Schedule to take effect as 1 June 2013.

**Reason:** To ensure that the CIL Charging Schedule is adopted with appropriate authority, (Part 11, s213 of the Planning Act 2008 requires the CS to be adopted by Full Council) and to ensure that Plymouth is thereby well placed to continue to secure developer contributions towards meeting the infrastructure needs of the city.

2. Recommend that Full Council adopt the CIL Instalments Policy attached as Appendix 2.

**Reason:** Whilst there is no legal requirement for the CIL Instalments Policy to be approved by Full Council in the way that Full Council must approve the CIL Charging Schedule, the Instalments Policy is integral to the operation of the Charging Schedule and therefore merits approval alongside the CIL Charging Schedule.

3. Delegate authority to the Assistant Director (Planning) to make available Discretionary Relief in Exceptional Circumstances should the need to offer such Discretionary Relief become apparent.

**Reason:** To provide for the Council to respond expeditiously to any requests for discretionary relief to be made available in the event that exceptional circumstances arise.

4. Formally rescind the Council's Market Recovery Scheme from 1 June 2013.

**Reason:** In considering a report on the Planning Obligations and Affordable Housing SPD Second Review on 17 January 2012, Cabinet agreed to extend the Market Recovery Scheme up until the date that the Council's Community Infrastructure Levy becomes fully operational. The MRS now needs to be rescinded to formally bring its provisions to an end.

5. Instruct Officers to keep under review the effectiveness and impacts of the Charging Schedule.

**Reason:** To ensure that the Community Infrastructure Levy remains responsive to changing economic circumstances.

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#### **Alternative options considered and reasons for recommended action:**

The alternative would be to not adopt the Community Infrastructure Levy. This would leave the existing approach to infrastructure contributions through Section 106 Agreements in place until it was effectively made redundant after April 2014 by Regulation 123 of the Community Infrastructure Levy Regulations. This Regulation will remove the Council's ability to secure any significant level of pooled developer contributions to meeting the infrastructure costs arising from the growth of the city. It is therefore not recommended.

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#### **Published Work / Information:**

- 12 July 2011 Cabinet Report on CIL and the Plymouth Infrastructure Needs Assessment  
<http://www.plymouth.gov.uk/mgInternet/documents/s29834/Community%20Infrastructure%20Levy%20and%20Plymouth%20Infrastructure%20Needs%20Assessment.pdf>



**Sign off:**

Fin	SG/PlaceFPC12 13016.220213	Leg	LT/17050/1 80313	HR	n/a	Corp Prop	n/a	IT	n/a	Strat Proc	n/a
Originating SMT Member: Paul Barnard, Assistant Director for Planning, Directorate of Place											
Has the Cabinet Member(s) agreed the contents of the report? Yes											

## **1.0 THE COMMUNITY INFRASTRUCTURE LEVY**

- 1.1 The Community Infrastructure Levy (CIL) is a new charge that local authorities in England and Wales can choose to levy on development to help pay for the infrastructure that is required to mitigate the adverse impacts of, and thereby support the delivery of growth. The vision for Plymouth is to grow the city by around 50,000 people, and to deliver around 40,000 new jobs and 30,000 new homes. Significant investment in infrastructure will be required to accommodate this growth. CIL will provide one important source of funding to help provide this infrastructure.
- 1.2 Provision was made for the introduction of CIL by the Planning Act 2008, and it is now a major plank of the localism agenda, with further provisions identified in the Localism Act 2011. Detailed Regulations have been put in place to provide for the implementation of CIL. Section 206 (2) of the Planning Act 2008 identifies the Local Planning Authority as the CIL Charging Authority for its area.
- 1.3 This report is concerned purely with the adoption of the Council's CIL Charging Schedule and associated Instalments Policy. A separate report to this Cabinet meeting deals with the expenditure of CIL receipts.

## **2.0 CHARGING SCHEDULE AND INSTALMENT POLICY - PROCESS**

- 2.1 To meet statutory requirements, and to address issues emerging out of the legal interpretation of the CIL Regulations, the Council consulted three times on draft versions of its CIL Charging Schedule as follows:
  - 25 June to 6 August 2012 – Revised Draft Charging Schedule
  - 7 February to 20 March 2012 – Draft Charging Schedule
  - 1 November to 13 December 2011 – Preliminary Draft Charging Schedule
- 2.2 At each of these consultation stages, the Council consulted on its proposed Instalment Policy alongside its Charging Schedule. The Instalment Policy was not subject to Public Examination.
- 2.3 In arriving at the rates in the CIL Charging Schedule which were subject to Public Examination, Council officers engaged positively and constructively with the Plymouth Regeneration Forum and Plymouth Housing Development Partnership.
- 2.4 The Council submitted its Charging Schedule for Public Examination on 5 October 2012, and the Examination took place on 21 / 22 November 2012.
- 2.5 It is a requirement of the Planning Act 2008 that the Council's Charging Schedule is adopted by Full Council.

## **3.0 CIL CHARGING SCHEDULE – PUBLIC EXAMINATION AND EXAMINER'S REPORT**

- 3.1 The Examination of the Council's Charging Schedule was undertaken by Wendy Burden, a senior inspector with the Planning Inspectorate. Mrs Burden's Examination Report was received on 12 December 2012. The Examiner found that the Council's Charging Schedule provides an appropriate basis for the collection of the levy in its area, that the Council has sufficient evidence to support its schedule, and that the levy is set at a level which will not put the overall development of the Council's area at risk.

- 3.2 The examination looked at two main issues, firstly the Council's ability to charge supermarkets a higher levy compared to other types of retail development. At the hearing Sainsbury's Supermarkets Ltd argued strongly that supermarkets should pay the same as other types of retail development, i.e. £0m<sup>2</sup>, whereas the Council argued in favour of a charge of £100m<sup>2</sup> of gross floor space. The inspector supported the Council. Housing consultants Tetlow King argued that the assumptions underpinning the charges were inconsistent with the Council's position on affordable housing provision. The inspector again supported the Council.
- 3.3 The Examiner concluded that the Council's Charging Schedule provides an appropriate basis for the collection of the levy in its area, that the Council has sufficient evidence to support its schedule, and that the levy is set at a level which will not put the overall development of the Council's area at risk.

#### **4.0 INSTALMENT POLICY**

- 4.1 The Council needs to adopt a CIL payments Instalment Policy at the same time as its Charging Schedule, to provide developers with clarity, certainty and flexibility in their payment of CIL charges, bearing in mind the effect of the application of the charges on the deliverability of development. The CIL Regulations provide for the application of legal penalties in the event of non-payment of CIL charges, with the ultimate sanction being imprisonment.
- 4.2 The Instalment Policy needs to be separate from the Charging Schedule so that it can be amended independently of it in the event that the Council determines that a different approach to the payment of instalments would assist development viability.

#### **5.0 DISCRETIONARY RELIEF FROM CIL IN EXCEPTIONAL CIRCUMSTANCES**

- 5.1 The CIL Regulations provide for the Council to offer discretionary relief from CIL in exceptional circumstances – these circumstances are detailed in the May 2011 CLG 'CIL Relief Information Document' at paragraphs 66 to 87 (see weblink in 'Published Work / Information' above). It is anticipated that the circumstances in which such relief can be offered will rarely, if ever, arise, and it is not anticipated that developers will routinely approach the Council seeking such relief, given the anticipated difficulty in meeting the eligibility criteria detailed in paragraph 71 of the aforementioned document. The Council will nonetheless need to be prepared to respond if such circumstances do materialise, and it is considered appropriate to put arrangements in place which provide for the Council to respond to requests for such relief to be made available. Making such relief available simply requires a CIL Charging Authority to issue a statement giving notice that such 'discretionary relief' is available in its area.

#### **6.0 EXPENDITURE OF CIL RECEIPTS**

- 6.1 The Council must make its intentions clear in respect of CIL expenditure. Items on which CIL receipts will be spent must be identified on a list published on the Council's website, which is known as a 'Regulation 123 List' (after CIL Regulations Regulation 123). The Council cannot also seek to fund items on its Regulation 123 List through the Section 106 mechanism. In other words developers cannot be



required to pay for particular pieces or types of infrastructure through both the Section 106 mechanism and CIL. The expenditure of CIL receipts is addressed in a separate report to this Cabinet meeting.

## **7.0 NEXT STEPS – CIL COMING INTO EFFECT / BECOMING OPERATIONAL**

- 7.1 The Council's CIL Charging Schedule becomes operational on a day to be determined by Full Council. This need not be the same day on which the Charging Schedule is adopted by the Council. Indeed, it is considered that there is merit in the Charging Schedule coming into effect on a different date to that on which it is adopted. It is considered appropriate for the Council's Charging Schedule to come into effect on the 1<sup>st</sup> June 2013, some six weeks after its adoption by Full Council on the 22 April 2013. This will allow for the Council's Planning Service to further alert developers to the implications of CIL coming into effect, and for the Planning Service itself to manage the determination of planning applications under existing arrangements for securing planning obligations and under new arrangements once the CIL Charging Schedule is in effect.
- 7.2 Developers will be looking for reassurance about whether their planning applications will be determined under existing or new arrangements, and it is considered that a six week period between adoption and the Charging Schedule coming into effect will help with the transition to new arrangements.
- 7.3 Once the CIL Charging Schedule is in effect, the Planning Service can begin to determine CIL liabilities and issue CIL Liability and (payment) Demand Notices. CIL receipts will not begin to accumulate until developments start on the ground, and will then be received in accordance with the requirements set out in the Council's Instalments Policy (see Appendix 2).
- 7.4 Officers are preparing guidance on the practical application of CIL for developers.
- 7.5 CIL charges are non-negotiable, and in this sense will not be determined through the planning application process. The application of CIL to developments will however affect the ability of many developments to make contributions to mitigating the impacts of their developments through the Section 106 mechanism. Guidance on future arrangements for negotiating Section 106 Agreements will be given to Planning Committee. This will need to be understood in the context of the Council's Regulation 123 List, which will specify what CIL receipts are to be spent on.
- 7.6 Once Plymouth's CIL Charging Schedule becomes operational, its current Tariff approach will be defunct. The Council's current Market Recovery Scheme, which provides for the application of discounts to current Tariff charges, and which has its origins in the 2008 Market Recovery Action Plan, will also be defunct when the Charging Schedule becomes operational.

## **8.0 PROCESS FOR REVIEW OF THE CHARGING SCHEDULE**

- 8.1 The Council's CIL Charging Schedule needs to be kept under review, to ensure that it is responsive to changing economic circumstances. It is anticipated that a full review of the CIL Charging Schedule will be required within the next two to three years.
- 8.2 In order to review the Charging Schedule once adopted, the Council must repeat the process by which its initial Charging Schedule has been developed. In other

words, it must seek Cabinet approval to consult again on fresh Preliminary Draft and Draft Charging Schedules, and it must take any Draft Charging Schedule through the Public Examination process.

# **APPENDIX I: CIL CHARGING SCHEDULE**

## **PLYMOUTH COMMUNITY INFRASTRUCTURE LEVY CHARGING SCHEDULE – 1 JUNE 2013**

### **The Charging Authority**

Plymouth City Council is the Community Infrastructure Levy Charging Authority.

### **Date on which Charging Schedule was Approved by Full Council**

This Charging Schedule was approved by the Council on 22 April 2013.

### **Date on which Charging Schedule Takes Effect**

This Charging Schedule takes effect on 1 June 2013.

### **The Scope of CIL**

The Community Infrastructure Levy is generally chargeable on the net increase in gross internal floorspace of all new development, except where:

- The Charging Authority has evidence to demonstrate that there are viability reasons for not levying a charge on the intended use of development, and these are reflected in its Charging Schedule through the application of a £0m<sup>2</sup> rate; or
- The development is exempt under Part 2 and Part 6 of the CIL Regulations (as amended).

Exemptions from the Levy are as follows:

- Minor development: that is buildings or extensions where the gross internal area of new build is less than 100m<sup>2</sup>, other than where the development will comprise one or more new dwellings (in which case the new dwellings will constitute 'Chargeable Development', irrespective of their size).
- Development of buildings into which people do not normally go, or into which they go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.
- Development of buildings owned by charities and used for charitable purposes.

Relief from the Levy is available for social housing. The Council may also grant discretionary relief from the Levy in exceptional circumstances, subject to developments meeting the eligibility criteria, and provided such relief does not constitute notifiable State Aid. If discretionary relief in exceptional circumstances is to be made available, notification of this will be given on the Council's website.

The Levy applies to new development for which planning permission is granted after the Charging Schedule has taken effect, and the amount of CIL payable (the 'Chargeable Amount') is calculated on the day that development is first permitted by the development (which can be the day on which planning permission is granted, if it is granted without conditions or reserved matters being attached, or which can be the day on which the last pre-commencement condition is agreed / approved).

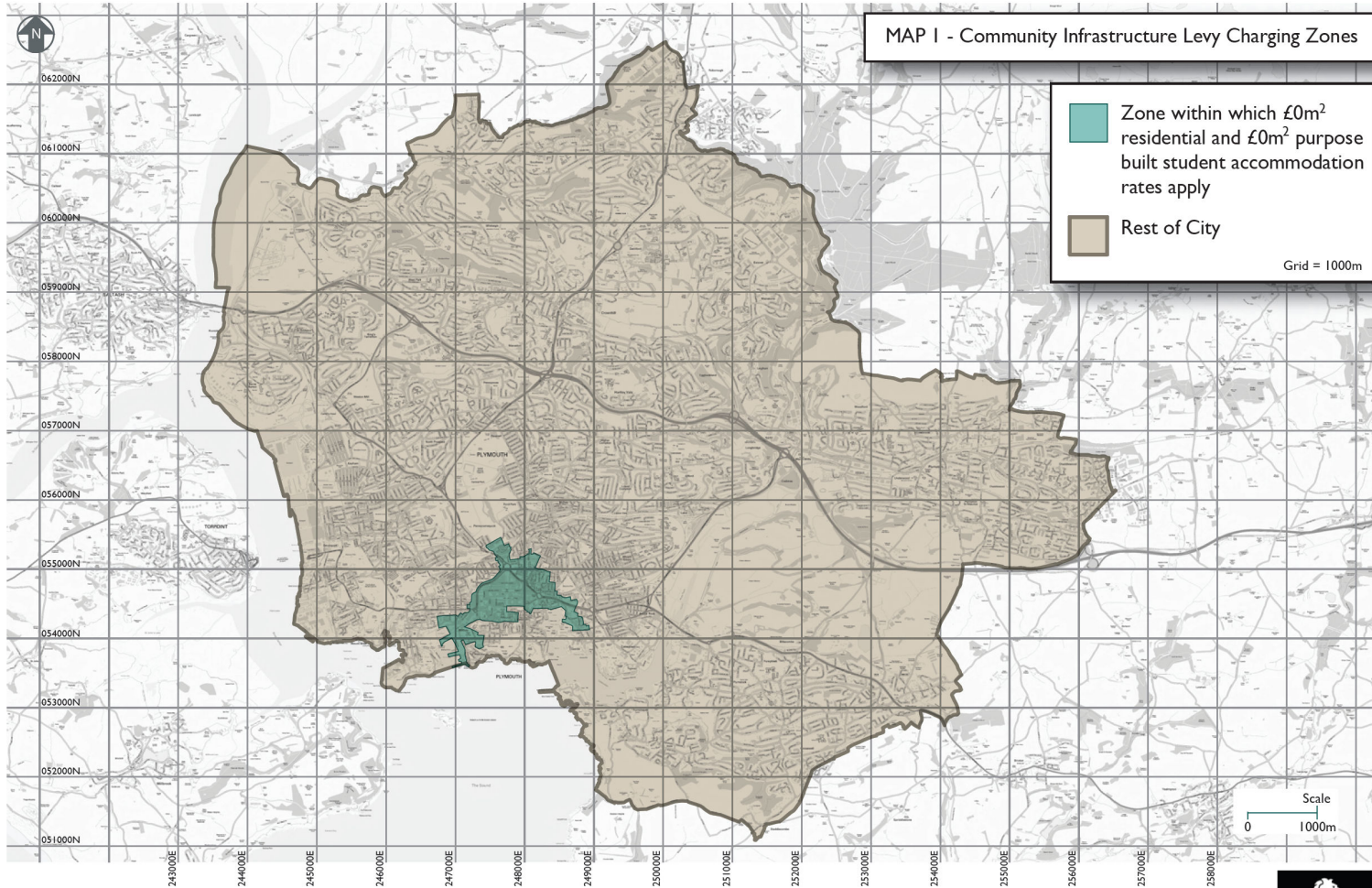
Floorspace to be demolished can be deducted from the net increase in gross internal floorspace when calculating the CIL liability. However, the CIL Regulations, in particular Regulation 40(10), specify that floorspace to be demolished must have been in lawful use for a given period ending on the day on which planning permission first permits the chargeable development.

## Plymouth City Council's CIL Rates

The rates at which Plymouth's Community Infrastructure Levy rates will be charged are as follows:

<b>CIL RATES IN PLYMOUTH – in £s per square metre</b>				
<b>Development Type</b>	<b>Rate</b>	<b>Development Type</b>	<b>Rate</b>	<b>Notes</b>
Residential	£30	Cinemas and Commercial Leisure	£0	*For the purposes of this Charging Schedule, superstores / supermarkets are shopping destinations in their own right, where weekly food shopping needs can be met and which can also include non-food floor space as part of the overall mix of the unit.
Residential – located within the zone identified on Map 1	£0	Offices, Industrial Units, Storage and Distribution	£0	
Residential Institutions	£0	Superstores / supermarkets* of 1000m <sup>2</sup> gross internal floor area or more, including all extensions to such stores.	£100	
Purpose Built Student Accommodation	£60	All other retail uses, and financial and professional services, restaurants and cafes, drinking institutions, takeaways.	£0	
Purpose Built Student Accommodation – located within the zone identified on Map 1	£0	All Other Uses	£0	
Hotels	£0			


Map 1 follows. This is accompanied by an Inset Map which shows in more detail the zone within which the £0m<sup>2</sup> rate for Residential and Purpose Built Student Accommodation applies.




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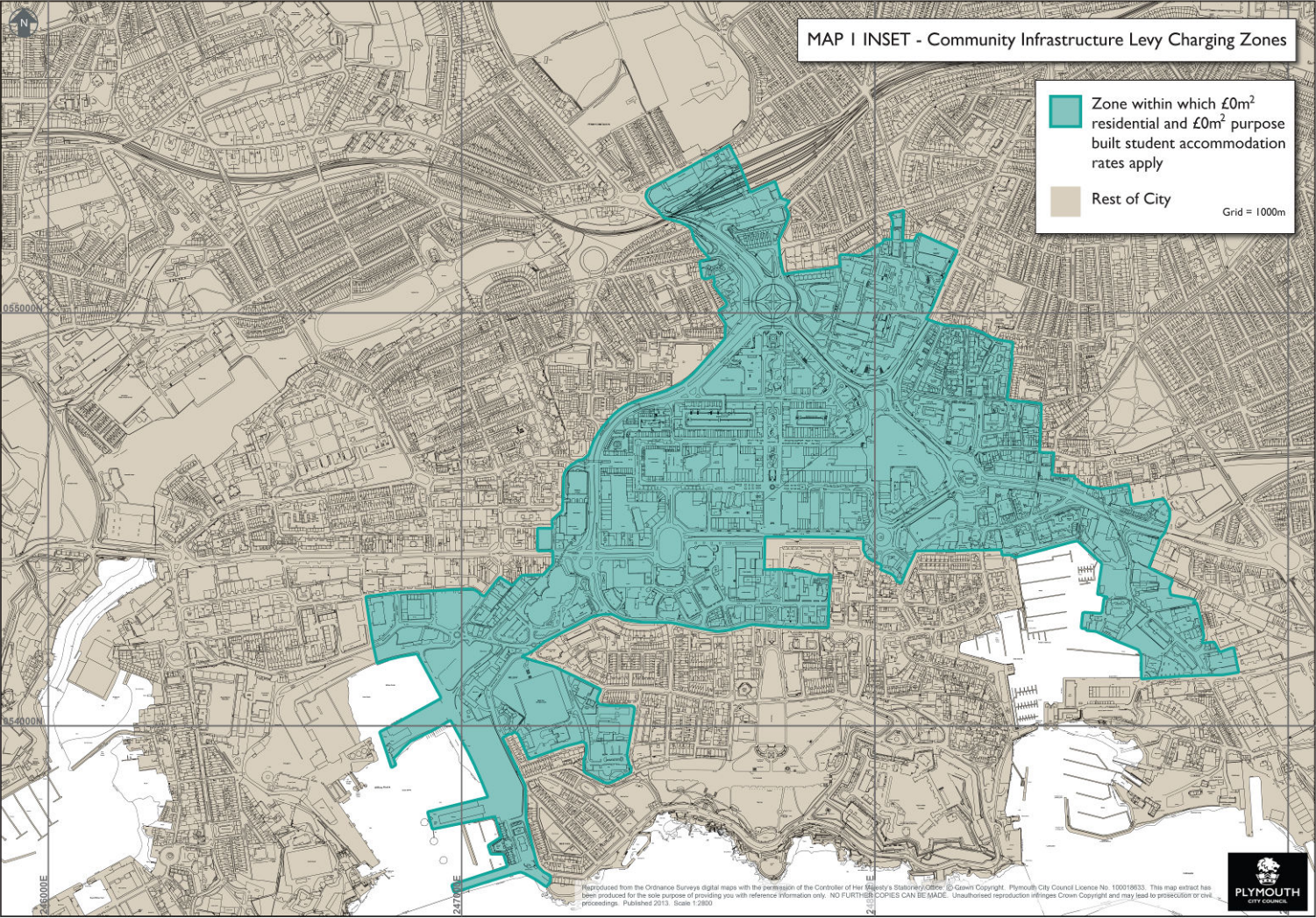


MAP I INSET - Community Infrastructure Levy Charging Zones

 Zone within which £0m<sup>2</sup> residential and £0m<sup>2</sup> purpose built student accommodation rates apply

 Rest of City

Grid = 1000m



## **Calculating the Chargeable Amount**

The 'Chargeable Amount' will be calculated by the Council in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010, (as amended).

The chargeable rate is set having regard to viability information, to ensure that the levy does not put at risk the overall development of Plymouth. The rates will be updated annually for inflation, and will therefore be index linked to the national All-in Tender Price Index published from time to time by the Building Cost Information Service (BCIS) of the Royal Institution of Chartered Surveyors. If the BCIS All-in Tender Price Index ceases to be made available, the Retail Prices Index will be used instead.

## **Statutory Compliance**

This Charging Schedule has been issued, approved and published in accordance with the CIL Regulations 2010, (as amended by the 2011 and 2012 CIL Amendment Regulations), and Part 11 of the Planning Act 2008 (as amended by Part 6 of the Localism Act 2011). In setting the CIL rates in this Charging Schedule, the Council has struck an appropriate balance between:

- (a) the desirability of funding from CIL (in whole or in part) the actual and expected 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 its area.

## **Further Information**

Further information on the Community Infrastructure Levy is available on the Council's website – [www.plymouth.gov.uk](http://www.plymouth.gov.uk)

## APPENDIX 2: CIL INSTALMENTS POLICY

### PLYMOUTH COMMUNITY INFRASTRUCTURE LEVY INSTALMENTS POLICY – 1 JUNE 2013

#### Overview

Regulation 70 (7) of the Community Infrastructure Levy Regulations 2010 (as amended) sets a default of full payment of the Levy within 60 days of the commencement of development. The Regulations also enable a Charging Authority to set an Instalment Policy that allows payments to be phased over longer periods.

Plymouth City Council recognises the significant economic constraints upon development and investors at this time, and its policy therefore allows CIL payments to be spread across the development process so that they are, where possible, synchronised with development progress and development cash flows.

#### Policy

Plymouth City Council's Community Infrastructure Levy is payable by instalments as follows. The commencement date is the date given on the commencement notice as advised by the developer under CIL Regulation 67. A failure of the developer to notify the Council of a commencement date results in an automatic surcharge and removal of the privilege to utilise the Council's Instalment Policy.

Where the chargeable amount is <b>less than £15,000</b>	Full payment will be required within <b>90 days</b> of the commencement date.
Where the chargeable amount is <b>between £15,000 and £50,000</b>	First instalment representing <b>25%</b> of the chargeable amount will be required within <b>90</b> days of the commencement date.  The second instalment representing <b>50%</b> of the chargeable amount will be required within <b>270</b> days of the commencement date.  The third instalment representing <b>25%</b> of the chargeable amount will be required within <b>360</b> days of the commencement date.
Where the chargeable amount is <b>over £50,000 but below £100,000</b>	First instalment representing <b>25%</b> of the chargeable amount will be required within <b>90</b> days of the commencement date.  Second instalment representing <b>50%</b> of the chargeable amount will be required within <b>360</b> days of the commencement date.  Third instalment representing <b>25%</b> of the chargeable amount will be required within <b>540</b> days of the commencement date.
Where the chargeable amount is <b>£100,000 or above</b>	First instalment representing <b>25%</b> of the chargeable amount will be required within <b>90</b> days of the commencement date.  Second instalment representing <b>25%</b> of the chargeable amount will be required within <b>270</b> days of the commencement date.  Third instalment representing <b>25%</b> of the chargeable amount will be required within <b>540</b> days of the commencement date.  The fourth instalment representing <b>25%</b> of the chargeable amount will be required within <b>720</b> days of the commencement date.