

## Appendix E

### Teignbridge CIL Consultation

#### CIL Regulation 123 List and TDC guidance on the Use of Section 106 upon the adoption of CIL

##### First Consultation – 16 June to 28 August 2015

A consultation was held in summer 2015 upon proposed changes to the Council's CIL Regulation 123 list and associated Section 106 guidance. This is the list of projects and types of infrastructure which may be funded by Community Infrastructure Levy. Its effect is that these items should not be funded through Section 106 agreements. Teignbridge also consulted on a version of the guidance concerning The Use of Section 106. The policy document further explains how Section 106 may be used, taking account of the Regulation 123 List.

A total of 11 responses were received, from which the key comments and issues raised are summarised and responded to below;

Consultee	Comment or Issue	Response or Proposed Change
Natural England	Welcome that European Protected wildlife sites will continue to receive the highest level of funding prioritisation. We agree that the protection and delivery of necessary mitigation measures for European Protected wildlife sites and species will ensure the Council's legal requirements are satisfied.	Noted.
	Welcome that the provision of other Green Infrastructure remains on the Regulation 123 list.	Noted. This has now been more specifically defined.
NHS England	Health does not appear on the Regulation 123 list which may be funded by CIL and medical infrastructure is specifically excluded from use of section 106. It would appear therefore no mechanism exists to offset any health need generated by planning applications.	Health infrastructure does not appear on the Regulation 123 list. This means that it may be funded through Section 106 agreements, as referred to in Annex A of the Council's guidance note.

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Exminster Parish Council	Exminster Parish Council resolved to support the revised document	Noted.
Starcross Parish Council Individual	No formal commitment to fund the A379 improvements as recommended by the Jacobs report.	The Reg 123 list performs a different function to the Infrastructure Delivery Plan. The Regulation 123 list does not prevent such a project from being partially funded by CIL if sufficient funds were available.
Individual	I oppose all use of infrastructure charges as undemocratic. The very approach comprises taxation without representation for projects which should be raised via a wider levy. Whilst the rates system is less than ideal it does in this context provide the additional benefit of public involvement in assessing priorities, holding the project managers to account and ensuring where it is mismanaged there is a wider flight of capital.	Noted, however the consultation is on the Regulation 123 list, not the principle of CIL which has been decided.
Devon County Council	Revision of definition of on and off-site infrastructure is helpful.	Noted. Further R123 amendments are being consulted upon.
	As a general principle (excepting HRA prioritisation) the County would not consider it appropriate for the Regulation 123 List to set out infrastructure funding priorities for CIL funding.	Noted. Paragraph 11 of the S106 guidance note sets out the process by which CIL funding will be prioritised. The R123 sets out likely uses of CIL funds.
	Footnote 1 refers to Submission Local Plan. This should be amended to reference the adopted Local Plan.	Noted. Further REg 123 amendments are being consulted upon.
	In the guidance note it is appropriate to set out that CIL will now be the only source of funding available locally for development related education infrastructure, including consideration of wider County education budgets.	This is not necessary.

Consultee	Comment or Issue	Response or Proposed Change
	It would be helpful if the guidance note clarified how on-site and off-site Habitat Regulation Assessments requirements are funded.	Noted. The Council considers that the Reg 123 list and the S106 guidance are now sufficiently clear.
	In the context of how CIL will be managed, in paragraph 11 of the guidance it would be helpful to set out the importance of coordination of capital programmes of relevant district and County Councils.	The Council will consider adding this point.
	Annex A of guidance should include on-site highway provision.	The Council will consider clarifying this point.
Sport England	Raise concern that there does not appear to be a robust and up to date evidence base for sport and recreation in Teignbridge to inform the Infrastructure Delivery Plan.	Noted. This consultation is regarding proposed clarifications to the Regulation 123 list and S106 guidance.
	Sport England advise that if a specific project is identified and deliverable, then it may be more appropriate to fund through CIL and consequentially should on the Regulation 123 List. We note its inclusion on the current Teignbridge Regulation 123 List.	Noted.
	In removing 'playing fields' from the Regulation 123 List and focussing on the use of Section 106 Agreements the Council should be aware that after April 2015, no more than five planning obligations can be used to pool funds for any one piece of infrastructure/project. Therefore the Council will need to think quite strategically and plan effectively for sports infrastructure delivery in the future linking development sites with specific projects to meet identified sporting needs.	Noted. Further Reg 123 amendments are being consulted upon.
Individual	Consider items 1, 2 and 5 of the R123 should be merged into one item. Present items 1 and 2 are too specific and would not allow TDC to spend CIL on any SANGS land that was not at either of these two locations unless it fell under item 5 and was off-site. Suggest rewording as follows; <i>1. Infrastructure which is required to mitigate the recreational impact on</i>	CIL spending is not restricted to items on the Regulation 123 list. The Regulation 123 list merely prevents the planning authority from relying on a planning obligation as a reason for granting planning permission (where that planning obligation relates to an item of infrastructure on the regulation

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	<i>European designated habitats</i>	123 list). Therefore the Council may spend the CIL on other infrastructure items if necessary.  Further Reg 123 amendments are being consulted upon.
	With regard to the proposed definition of 'On-site': I do not consider that other land in the ownership of the developer or landowner should be included in the definition of 'on-site'. On-site should only be the land within the red line shown on the planning application. See East Devon District Council definition.	Further Reg 123 amendments are being consulted upon.
	As the TDC list and proposed definition of on-site stands none of the CIL money in item 5 could be spent on the proposed temporary SANGS at DA2 and Sentrys Farm, Exminster.	Temporary SANGS is unlikely to be paid for by CIL due to its temporary nature. The SANGS at Sentrys Farm is provided for through a planning condition.
	Include additional project: 'Other infrastructure items as specified or detailed in the TDC local plan 2013-2023'. An additional item such as this would include such projects such as the provision of off road parking at Cockwood, Dawlish as included in policy DA9 item e) iv) on page 123 of the TDC adopted plan.	This proposed approach would have the effect of preventing the Council from collecting any S106 in the district, contrary to the Local Plan.
	Consider a draft budget of all the infrastructure included in the 123 list should be prepared for all the proposed projects and similarly an indication of the amount of CIL that the council expects to receive if all the proposed development in the TDC local plan is completed in the twenty year term of the plan. Any difference between the two could then be considered and the list reviewed if there is an anticipated shortfall.	This information is included in the Infrastructure Delivery Plan.

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WYG on behalf of Sibelco Europe Ltd	<p>Ambiguity in the meaning of the term 'off-site' as outlined in footnote 2 of the R123 List which has direct relevance to Item 4 and Item 9. We are concerned that in the absence of any definition for 'off-site' land, this leaves significant scope for misinterpretation. From our reading of Footnote 2, there seems to be a big question mark over whether "off-site" land should be determined as anything adjoining the site which would rule out land which is not physically touching the site, or in fact "off-site" is any land that falls outside the red line application boundary, regardless of whether it physically adjoins the site or not. Should the Council be intending to limit "off-site" to only land physically adjoining a development site or local plan allocation, we have strong concerns that this will significantly restrict the opportunity to provide necessary infrastructure and provide an unnecessary burden to delivery.</p>	<p>Noted. Further Reg 123 amendments are being consulted upon.</p>
	<p>The implication of removing the text in Item 6 (Education) seems to be that the Council will no longer accept land or buildings in lieu of CIL contributions. It is understood that the removal of this wording is proposed to avoid duplicating wording in the existing legislation, specifically Section 73 of the CIL Regulations 2010 which states that "a charging authority may accept one or more land payments in satisfaction of the whole or part of the CIL due in respect of a chargeable development". We note that the acceptance of alternative CIL payments is at the Local Planning Authority's discretion although Teignbridge District Council has continued to be supportive of such an approach, including the provision of Kingsteignton Primary School. We therefore consider that it would be appropriate to keep the above wording within the Regulation 123 List to avoid any doubt as to the Council's approach regarding alternative CIL payments.</p>	<p>Where it is appropriate the Council will consider accepting land or infrastructure in kind, in accordance with the CIL regulations. For the avoidance of doubt this is set out in the Council's <a href="#">CIL Supporting Policies</a> document available on the website.</p>

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	<p>With regards to alternative payments in lieu of CIL (e.g. land or buildings), it is considered that the provision of both on-site and off-site payments should be counted against CIL. For example, in the case of bringing forward new infrastructure such as the primary school, there would be little incentive for a landowner or developer to bring forward such infrastructure if this in turn could not count as an alternative payment and they still had to pay the equivalent CIL. The same can be said for the provision of significant on-site infrastructure which should be counted as a payment in lieu of CIL.</p>	<p>Payment of land in kind and infrastructure in kind operate in line with the CIL regulations. It is for the Council to consider if the proposal is appropriate.</p>
<p>PCL Planning on behalf of Waddeton Park Ltd</p>	<p>Concerned that footnote 2, which provides an alternative definition of 'on-site' and 'off-site', does not accord with the statute or Regulations. Sub-sections (3) and (4) of Section 216 of the Planning Act 2008 are clear that certain infrastructure, maintenance and operation activities associated therewith can be excluded from the scope of CIL. However, it is only the Regulations which can restrict the scope of "infrastructure", not by some administrative act of a local planning authority. The CIL Regulations do not therefore permit the limitation of infrastructure in the manner proposed by footnote 2. Footnote 2 should either be removed or amended to the definition provided in the draft 123 list (April 2013) on the CIL examination page of the Council's website.</p> <p>As the proposed changes would significantly increase the s106 burden on sites, in accordance with planning practice guidance (ref ID: 25-098-20140612), the changes should be considered as part of a review of the charging schedule.</p>	<p>Agree that the Reg 123 list cannot and does not define infrastructure. This is a matter for the Act, Regulations and Courts. However, the purpose of the R123 is to define 'relevant infrastructure'.</p> <p>The Council does not agree that this clarification of the existing Reg 123 opens the need to review the Charging Schedule. The clarification provides developers with clarity over the original flexibility that was intended, and is not an additional burden.</p> <p>Further Reg 123 amendments are being consulted upon.</p>
<p>PCL Planning on behalf of Waddeton Park Ltd</p>	<p>Regarding the S106 guidance, the second bullet point to paragraph 7 refers to the joint approach to HRA and states that funding raised through Section 106 obligations will be used to fund revenue costs or other items which are not within the statutory definition of 'infrastructure'. The definition of "infrastructure" set out in section 216 of the Planning Act 2008 Act (in the form amended by both the Regulations and the Localism Act 2011) is an inclusive definition which does not expressly exclude non-physical infrastructure items. An amendment was made to Section 216(1) by the Localism Act 2011 to the effect that CIL is to be raised for the purpose of "<i>supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure</i>". The scope of CIL is not therefore limited merely to the</p>	<p>The very fact that there is a definition of infrastructure means some things are infrastructure and some things are not infrastructure. This document sets out the Council's definition of what is and is not relevant infrastructure.</p> <p>It is our view that the comments made by the judge in the Smyth v Secretary of State case regarding this specific matter were a very general comment and there is nothing in the judgement in the Court</p>

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	<p>provision of infrastructure, but includes the operation or maintenance of infrastructure. This has been endorsed by the Court of Appeal (Smyth v Secretary of State for Communities [2015] EWCA Civ.174). The Court stated at paragraph 119: <i>“Although when regulation 123 came to be applied it would prevent contributions from the JIA being made by way of section 106 agreements, the relevant local planning authorities would be able to impose a levy in exercise of their powers under the CIL Regulations which would have the same practical effect”</i>.</p> <p>It therefore follows that all costs associated with the management and provision of SANGS, SPA's, SAC's and other open space would be covered by CIL. We therefore object to the inclusion of 'non-infrastructure items' included in Annex B on the basis that such action is unlawful. It would also conflict with the pooling restrictions in Regulation 123.</p>	<p>of Appeal or in the earlier judgement in the High Court to indicate that there was any detailed argument about Regulation 123(2) of the CIL Regulations 2010 or about what could or could not go onto a Reg 123 list.</p> <p>The Council is content that the expenditures covered in the guidance Annex are correctly identified as not infrastructure.</p> <p>Further Reg 123 amendments are being consulted upon.</p>

APPENDIX

## Teignbridge District Council CIL Regulation 123 list and S106 Guidance

### Second Consultation: 2 December 2015 – 13 January 2016

Following the summer 2015 consultation regarding the community infrastructure levy and subsequent revisions made to the Regulation 123 list in light of the consultation responses received, the Council carried out a further round of consultation on the revised Regulation 123 List.

The following is a summary of the comments received and the Council's responses.

Consultee	Summary of comments or Issues	Response or proposed change
Newton Abbot Town Council	It is the view of Newton Abbot Town Council that a community hub should be established in the town centre of Newton Abbot (as identified in Plan Teignbridge and the draft Newton Abbot Neighbourhood Development Plan) to provide a full suite of community facilities for the existing and future population of the town and its hinterland. Services to include:- Museum; town hall; access to District and County Council services (serviced and self-serve, including payments); serviced business start-up; affordable and accessible community meeting spaces; information centre; links to all voluntary groups. Therefore, it is requested that this community hub be added to the Regulation 123 List.	This proposal is identified in the Infrastructure Delivery Plan and Teignbridge recognises this as a valuable project in the medium to long term. The proposal may be funded by S106, the town council proportion of CIL or other funding sources. The district Council's likely funding prioritisation for the Newton Abbot area is set out in the IDP. The effect of adding the proposal to the Regulation 123 list as suggested would be to preclude the use of s106 funding. It should also be noted that preclusion from the R123 list does not prevent the District Council from contributing CIL to this project.
Natural England	Regulation 123 list: Natural England welcomes the use of CIL as a means of collecting developer contributions in Teignbridge and the priority given in the Regulation 123 list to financing Habitats Regulations mitigation measures.  The Regulations 123 list, together with the adopted Local Plan which ensures in policy S5 that all mitigation for impacts on European sites shall receive priority funding through CIL, provides confidence that suitable and timely mitigation will be secured and delivered. This confidence would be sustained for as long as those documents remain in force with those provisions intact; any changes to these will	Noted.

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	<p>require fresh consultation.</p> <p>Guidance on the Use of Section 106 in Teignbridge: This guidance is broadly in accordance with the latest CIL Regulations. It is noted that CIL spending will be managed by the Council via its capital programme. We understand that this will bring useful flexibility but we would need reassurance that CIL funding on Habitats Regulations mitigation will be spent in accordance with the priorities of the Regulations 123 list and will not be overridden by other priorities in the capital programme.</p>	<p>The Council is aware of its legal duties in relation to the protection of European Sites, and the Capital Programme reflects this.</p>
Sport England	<p>As the Council will be aware, once CIL is in place, no more obligations may be collected in respect of a specific infrastructure project or a type of infrastructure through a Section 106 agreement, if five or more obligations for that project or type of infrastructure have already been entered into since 6 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.</p> <p>In light of this, Sport England is concerned that the Council could potentially be challenged by developers due to the way in which the Regulation 123 list is worded.</p> <p>The Council's Regulation 123 List advises the following will be funded by CIL:</p> <ul style="list-style-type: none"> <li>- Playing pitches, allotments and parks which are not required through built development allocations or to replace existing open space provision lost as a result of development.</li> <li>- Strategic sports and recreation hub(s) such as a leisure centre including new swimming pool, sports facilities and playing pitches that may reasonably be considered to serve the needs of the wider district. This excludes any infrastructure required in connection with a specific development proposal which meets the tests within Regulation 122(2) of the CIL Regulations 2010 in relation to that proposal.</li> </ul> <p>Whilst it is positive that the Council is seeking CIL to fund sport and recreation and social and community facilities, Sport England would recommend that the Regulation 123 List should state specifically what is needed. By using generic labelling in the Regulation 123 List, a developer could claim that a Section 106 contribution cannot</p>	<p>This is not agreed. The regulation 123 list provides a clear distinction between the facilities to be funded by CIL and those to be funded by s106. Other sources of funding including the Council's own capital programme will also be available. The studies referred to within Sport England's comments will guide future capital investment and related strategic thinking.</p>

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	<p>be collected for a project of this type because contributions for it are already being collected through CIL.</p> <p>A more appropriate approach for sports facilities would be for specific strategic sport projects to be put on the Regulation 123 List for CIL funding, with smaller scale projects to be funded through s106 agreements from identified sites. Due to the pooling restrictions in place, the Council will need to think strategically and plan effectively for sports infrastructure delivery in the future, linking development sites with specific projects to meet identified sporting needs. This will enable the Council to take a proactive approach to ensure the most effective use of planning obligations and CIL together to help meet the needs of the existing and new population.</p> <p>Sport England therefore recommends that:</p> <ol style="list-style-type: none"> <li>1. The Regulation 123 List includes specific projects for sports facilities (indoor and/or outdoor) and not generic statements.</li> <li>2. The statement clarifies that: <ol style="list-style-type: none"> <li>a. Mitigation for loss falls outside the scope of CIL.</li> <li>b. Confirmation that S106 agreements will be used to secure new sports facilities needed to meet new demand arising from development for sports facilities (indoor and outdoor) where not already sought through the CIL (e.g. CIL may be used to fund a new leisure centre to meet growth in demand for swimming pools BUT S106's would be used to fund all outdoor sport).</li> </ol> </li> </ol> <p>The Council's Infrastructure Delivery Plan (2013) and a Playing Pitch Strategy that is being produced for the Teignbridge area will help the Council determine what sports infrastructure is required for playing fields and Sport England intends to work with the Council to ensure that the outputs from this work can be fed into the Council's Regulation 123 List.</p>	
Historic England	HE advises that CIL charging authorities can identify ways in which CIL, planning obligations and other funding streams can be used to implement policies in the local	Noted, it is agreed that the benefits of CIL include the potential to enhance infrastructure with heritage

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	<p>plan, including;</p> <ul style="list-style-type: none"> <li>• Open Space: as well as parks and green spaces, this might also include wider public realm improvements, possibly linked to a Heritage Lottery Fund scheme, conservation area appraisals and management plans and green infrastructure.</li> <li>• ‘In kind’ payments including land transfers; this could include the transfer of an ‘at risk’ building. You have a number of assets on the Register in Teignbridge, such as the Grade 1 Church of St Mary the Virgin, Bickington, the Bovey Tracey or Chudleigh Conservation area which is at risk, or the Bishop’s Palace scheduled Monument at Chudleigh.</li> <li>• Repairs and improvements to and the maintenance of heritage assets where they are an infrastructure item is defined by the Planning Act 2008, such as cultural or recreational facilities.</li> <li>• Historic buildings may offer opportunities for business or employment use – infrastructure to support economic development. Investment in heritage assets and the wider historic character of a place may also serve to stimulate and support the tourism offer and attractiveness of a place and retain and attract economic development, which may be particularly important in supporting the viability of your centres such as Newton Abbot. Conversely, vacant or underused heritage assets not only fail to make a full contribution to the economy of the area but they also give rise to negative perceptions about an area and discourage inward investment.</li> </ul>	<p>benefits.</p>
<p>Network Rail</p>	<p>Network Rail have no specific comment to make on this documents, however, we would ask that the council take account of the following note on the funding of rail improvements which may be relevant to this and future CIL/section 106 policies:</p> <p>Network Rail is a publicly funded organisation with a regulated remit it would not be reasonable to require Network Rail to fund rail improvements necessitated by commercial development. It is therefore appropriate to require developer</p>	<p>Comments noted. The Regulation 123 list includes the proposed new Marsh Barton railway station and other site specific transport needs.</p>

Consultee	Summary of comments or Issues	Response or proposed change
	<p>contributions to fund such improvements.</p> <p>The likely impact and level of improvements required will be specific to each station and each development meaning standard charges and formulae may not be appropriate. Therefore in order to fully assess the potential impacts, and the level of developer contribution required, it is essential that where a Transport Assessment is submitted in support of a site allocation or planning application that this quantifies in detail the likely impact on the rail network.</p> <p>To ensure that developer contributions can deliver appropriate improvements to the rail network we would recommend that Developer Contributions should include provisions for rail.</p> <p>We therefore ask that the council should consider the following:</p> <ul style="list-style-type: none"> <li>▪ A requirement for development contributions to deliver improvements to the rail network where appropriate.</li> <li>▪ A requirement for Transport Assessments to take cognisance of impacts to existing rail infrastructure to allow any necessary developer contributions towards rail to be calculated.</li> <li>▪ A commitment to consult Network Rail where development may impact on the rail network and may require rail infrastructure improvements. In order to be reasonable these improvements would be restricted to a local level and would be necessary to make the development acceptable. We would not seek contributions towards major enhancement projects which are already programmed as part of Network Rail's remit.</li> </ul>	
Devon County Council – Chief Planner	<p>Revised Regulation 123 List</p> <p>Point 7 refers to education infrastructure. This simplification of the existing Regulation 123 List which identifies a series of specific schools is appropriate. There are current debates relating to whether some elements of education infrastructure such as playing pitches or artificial turf pitches which may be formally made available for community use should be funded through Section 106 or CIL. As such, greater clarity would be provided by amending point 7 to read 'Education infrastructure</p>	<p>7: The fact that an item of educational infrastructure may have other uses does not detract from its primary use, which is as educational infrastructure. However, if the primary use is to provide sports facilities to the general public, but the facility is also used for educational purposes, then it is accepted that this</p>

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	<p>excluding sports facilities formally available for community use'. This would help to prevent the issue of 'double-dipping'.</p> <p>Point 9 refers to a road viaduct linking to Kingskerswell Road. Such an improvement would be likely to require provision for walking and cycling. As such, it would be appropriate to replace the reference to the 'viaduct' with 'a road and pedestrian/cycle bridge and associated structures on or related to Kingskerswell Road between Decoy and the South Devon Highway'.</p> <p>Point 10 refers to the A30 Park and Ride car park. This could helpfully be reworded to refer to the 'A30 Park and Ride facility' to better reflect that a park and ride is not a regular car park.</p> <p>Point 11 refers to the A382 Park and Change car park. This could helpfully be reworded to refer to the 'A382 Park and Change facility' to better reflect that a park and change site is not a regular car park.</p> <p>Point 13 refers to infrastructure for cycling, walking and public transport. Further clarity is needed here to set out whether public transport services are included within this definition. In general terms, the County Council would advocate that site specific public transport services should be funded through Section 106.</p> <p>The Use of Section 106</p> <p>Paragraph 11 helpfully sets out how the District Council and County Council will coordinate decisions on spending priorities for key infrastructure. There is an effective, collaborative approach between the Authorities to consider how CIL receipts may be used effectively, particularly on transport and education infrastructure. It is important to note that CIL is the only source of funding available locally for development related education infrastructure.</p> <p>Appendix A would benefit from a revision to the 'highway infrastructure entry' in the Section 106 infrastructure table to remove the reference to 'such as access improvements' as this does not provide additional clarity over the type of improvement which could be funded through Section 106 because there is a range of such improvements in addition to specific access requirements which could be</p>	<p>would not be covered by this description.</p> <p>9: Agree.</p> <p>10: Agree.</p> <p>11. Agree.</p> <p>13. Item 13 of the R123 list specifies that the list excludes any (public transport infrastructure) required in connection with a specific development proposal which meets the tests within Regulation 122(2). This will allow the County Council to seek S106 funding towards public transport services where they can demonstrate this is infrastructure and it satisfies R122(2).</p> <p>Section 106 Guidance:</p> <p>Agree to remove reference to 'such as access improvements'. We will add reference to the R122(2) test instead.</p> <p>As set out above, public transport services may be acceptable as S106 where they are considered to be infrastructure, there is clarity that there is no 'double charging' and the proposal is required in connection with a specific development proposal which meets the tests within Regulation 122(2).</p>

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	<p>funded through Section 106.</p> <p>Appendix A would benefit from an additional entry in the Section 106 infrastructure table to clarify whether public transport services will be funded through Section 106 or CIL. In general terms, the County Council would advocate that site specific public transport should be funded through Section 106.</p>	
<p>Savills (UK) Ltd on behalf of NA1 (Houghton Barton) landowners consortium</p>	<p>It is important that the existing CIL rates are considered alongside the proposed amendments to the Regulation 123 List, as any items excluded from the List will still be capable of collection under Section 106 (subject to the restrictions imposed by Regulations 122 and 123). This is particularly important for large scale development, such as that proposed at NA1 Houghton Barton; where a number of on-site infrastructure items will be required, in addition to the payment of CIL.</p> <p>We have reviewed the likely policy requirements associated with the Local Plan allocation for NA1. It is anticipated that all of these policy requirements (including on-site site mitigation and affordable housing) will be delivered by the selected developer / delivery partner, in addition to the requirement to pay CIL as set out above.</p> <p>We have previously discussed our concerns with the Council about the potential impact of the current £70 psm CIL rate plus site-specific Section 106 obligations. Clearly these requirements will need to be carefully considered alongside the current CIL rates and Regulation 123 List as the masterplan for NA1 develops. At this stage, our aim is therefore to ensure that the proposed Regulation 123 List does not introduce the potential for “double-dipping”, as this could threaten the viability and deliverability of the site.</p> <p>The most significant change from the draft Regulation 123 List in July 2015 is the inclusion of specific projects (i.e. South Devon Link Road) and the removal of “off-site” and “on-site” definitions. These changes are welcomed, as they remove the potential for ambiguity and provide greater certainty in respect of the items of infrastructure that CIL will, partly or wholly, fund.</p> <p>However, we note that inclusion of the following caveat in respect of points 13 – 15: <i>‘This excludes any infrastructure required in connection with a specific development</i></p>	<p>Comments noted.</p> <p>The S106 guidance document (para 10) already refers to the site-specific development framework plans (SPDs) providing site-by-site consideration of likely s106 requirements, conforming with the Reg 123 list.</p> <p>The agreement and adoption of Development Framework Plans as SPD shall provide the necessary guidance and confidence of S106 requirements for</p>

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	<p><i>proposal which meets the tests within Regulation 122(2) of the CIL Regulations 2010 in relation to that proposal.'</i></p> <p>This caveat is a noticeable improvement from the previous on-site / off-site approach which we believe could be open to misinterpretation. However, we remain concerned that this caveat runs the risk of double-counting in respect of the strategic sites proposed in Teignbridge. We would therefore urge the Council to include reference in the supporting Section 106 policy document to the site specific SPDs for the strategic allocations, which clearly outline the on-site infrastructure requirements to provide further certainty.</p> <p>In addition, we would strongly recommend reviewing the Regulation 123 List and supporting documents alongside the production of any SPDs. This will ensure that any potential cross-over or double-dipping is avoided. It will also provide the Council with greater flexibility to amend the delivery mechanism for specific infrastructure projects following discussions with the selected developer / housebuilder. Where there is concern over the cumulative impact of CIL and Section 106, we would encourage the Council to consider reviewing their Charging Schedule to ensure that an appropriate level of CIL is charged.</p> <p>Finally, we would welcome the opportunity to work collaboratively with the Council to review the role of CIL and Section 106 on NA1 Houghton Barton as the scheme progresses.</p>	<p>strategic sites.</p> <p>It is not possible to commit to a review of the R123 list every time a new SPD is produced, but the Council will keep under review the need to update the CIL supporting documents and will do so when necessary.</p> <p>A charging schedule review is clearly a more complex and lengthy task, and is likely to be carried out only where there is a clear need to do so. This may include circumstances where there have been significant viability/economic changes, or in tandem with a Local Plan review.</p>
<p>PCL Planning Ltd on behalf of Waddeton Park Ltd</p>	<p>Reg 123 -</p> <p>We support the removal of footnote 2 to the 123 List, which sought to provide an alternative definition of 'on-site' and 'off-site', which did not accord with the Planning Act 2008 and the CIL Regulations 2010 (as amended).</p> <p>As set out in our previous representations, we wish to reiterate our support for the inclusion of reference to 'infrastructure and types of infrastructure' which would accords with the wording CIL Regulation 123 (as amended).</p> <p>S106 –</p> <p>The first bullet point to paragraph 7 of the document refers to the joint approach to</p>	<p>We note the support, although we do not accept that the footnote was in contravention of the Act or Regulations.</p>

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	<p>HRA and states that funding raised through Section 106 obligations will be used to fund revenue costs or other items which are not within the statutory definition of 'infrastructure', such as staff, monitoring and byelaw reviews.</p> <p>The definition of "infrastructure" set out in section 216 of the Planning Act 2008 Act (in the form amended by both the Regulations and the Localism Act 2011) is an inclusive definition which does not expressly exclude non-physical infrastructure items. An amendment was made to Section 216(1) by the Localism Act 2011 to the effect that CIL is to be raised for the purpose of <i>"supporting development by funding the provision, improvement, replacement, operation or maintenance of infrastructure"</i>. The scope of CIL is not therefore limited merely to the provision of infrastructure, but includes the operation or maintenance of infrastructure. This has been endorsed by the Court of Appeal (Smyth v Secretary of State for Communities and Local Government [2015] EWCA Civ.174 in relation to the joint approach (previously the 'joint interim approach, JIA). Paragraph 34 refers to a standard contribution <i>"...to be used to fund a range of mitigation measures, including nine additional site wardens and purchasing the three strategic SANGS in due course"</i>. The Court stated at paragraph 119:</p> <p><i>"Although when regulation 123 came to be applied it would prevent contributions from the JIA being made by way of section 106 agreements, the relevant local planning authorities would be able to impose a levy in exercise of their powers under the CIL Regulations which would have the same practical effect"</i>.</p> <p>It therefore follows that all costs associated with the management and provision of SANGS, SPA's, SAC's and other open space would be covered by CIL. We therefore object to reference to 'other items which are not within the definition of infrastructure' within the document, on the basis that such action is unlawful. In any event, seeking such contributions via s106 would conflict with the pooling restrictions in Regulation 123.</p> <p>If the Council persists in pursuing an unlawful approach, all decisions taken pursuant to that approach may, in our view, be successfully challenged.</p>	<p>The representation appears to suggest that the definition of infrastructure is so "inclusive" that it is possible to consider virtually anything as falling within it, irrespective of its nature, purpose or relationship with the wording of the Act. This is not accepted by the Council. The very purpose of the definition is to set boundaries between things that are and aren't infrastructure. Our view is that we have correctly defined items which are infrastructure and included them within the Regulation 123 list, while items which are not infrastructure are correctly excluded. The case of Smyth v SoSCLG is of course well known to the Council and it is our view that this does not provide the clarity claimed in this representation. S106 contributions towards non-infrastructure items are not subject to pooling restrictions.</p>

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<p>Ian Jewson Planning Ltd on behalf of Linden Homes</p>	<p><i>Item 7</i> - In terms of the delivery of Education Infrastructure this should continue to include the provision of any land in kind.</p> <p><i>Item 8</i> - For clarity '<i>road improvements</i>' should include appropriate cycle lanes and any necessary footpath improvements.</p> <p><i>Item 13</i> - In relation to new or improved infrastructure for cycling, walking and public transport the previous text which states '<i>(ie excluding transport infrastructure that would reasonably be provided on-site, including land allocations contained in the Local Plan)</i>' should be reinstated and the second sentence contained within the consultation draft should be deleted.</p> <p>S106 Guidance</p> <p>In general it would be useful for the guide to refer to any specific policies and guidance which have been adopted by the Council for the purpose of identifying and calculating s106 contributions. The combination of CIL payments and s106 obligations could potentially represent onerous requirements on development proposals which could affect viability to the extent that development cannot proceed. A clear and transparent basis by which s106 obligations are identified will be critical to avoid uncertainty during the planning process.</p> <p><i>Paragraph 6</i> - The Final sentence should be amended to read as follows: '<i>This will determine identify where (in the view of the LPA) specific planning obligations or conditions will may be required to make the development acceptable in planning terms.</i>'</p> <p><i>Paragraph 13</i> - It is not clear why reference to '<i>robust processes</i>' for negotiating s106 agreements has been deleted. This should be reinstated.</p> <p><i>Annex A</i> –</p> <p>To address the issue of uncertainty raised earlier in this letter a more exhaustive list should be provided where all usual contributions are identified.</p> <p>The inclusion of community facilities and health facilities in Annex A is likely to have a significant effect on the viability of development proposals and as such these items</p>	<p>Item 7: The Council's CIL policies document (available on the Council's website) is clear that land in kind is acceptable in principle. It is not necessary to include this detail in the R123.</p> <p>Item 8 – Disagree – unnecessary detail.</p> <p>Item 13 – The Council believes that the revised second sentence provides greater clarity than the previous definition of on/off site.</p> <p>The S106 guidance indicates the potential S106 contributions which could be sought. These will vary from site to site depending on circumstances. The Development Framework Plans (SPD) for the strategic sites will include a more detailed list of the specific S106 requirements for each site following detailed consultation with stakeholders including developers and statutory consultees.</p> <p>Para 6 - Not necessary – Clearly this reflects the view of the local planning authority.</p> <p>Para 13 – This is a more focussed document.</p> <p>Annex A - Because each site is different, it is not possible to provide a more exhaustive list of all usual contributions.</p> <p>These items (community and health facilities) were never included in the Regulation 123. The amendment clarifies the position between the two documents, as</p>

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	<p>should be reinstated in the Regulation 123 list.</p> <p>Reference to Public Realm should relate to on-site provision only</p> <p>Foul sewerage and drainage improvements should only be required where statutory providers do not already have separate obligations to provide.</p> <p>Cycle and Footpath requirements should be limited to on-site provision</p> <p>Highway infrastructure should be limited to on-site provision.</p> <p><i>Annex B -</i></p> <p>It is not clear why the development of employment sites should be required under a s106. This item should be deleted.</p>	<p>supported by the original viability evidence submitted to the CIL examination.</p> <p>The Council has removed the reference to 'on-site' to improve the clarity of the document.</p> <p>Annex B – Employment sites may be a requirement of a mixed-use site allocation within the Local Plan.</p>
<p>WYG on behalf of Sibelco Europe Ltd and Mrs S Davies of Berry Knowles Farm</p>	<p>We are pleased to note that our comments made in August 2015 relating to the ambiguity of the term “off-site” have been addressed, and this has been removed in the current version of the Regulation 123 List.</p> <p>We note that Education infrastructure (item 7) has been amended to remove reference to specific new school facilities. Our previous representations suggested that the text which referred to the land or buildings being accepted in lieu of CIL contributions should be retained. We also suggested that a paragraph should be included which makes reference to alternative payments in lieu of CIL (e.g. land, buildings or the provision of significant on-site infrastructure) to ensure that there is incentive to bring forward infrastructure where appropriate. We remain of this view.</p> <p>Paragraph 10 of the supporting document ‘The use of Section 106 in Teignbridge’ (December 2015 Consultation Version) refers to payment-in-kind of CIL contributions for larger strategic sites, which will be supported by a Masterplan. The document states that Masterplans will “provide clarity on infrastructure needs and land uses, their locations, phasing and trigger points which will ensure clarity on funding assumptions prior to entering into a S.106 agreement and will provide a framework for consideration of any payment-in-kind of CIL via land and buildings”.</p> <p>There is no recognition of other development sites and therefore we suggest that an</p>	<p>Noted.</p> <p>Item 7 – The Council’s policy on the principle of accepting land and infrastructure in kind is set out in the CIL Supporting Policies document (July 2014) (available on the website). It is not necessary to include this in the R123 list.</p>

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	<p>additional paragraph is required which states:</p> <p>“For other development sites not subject to masterplans, the Council will consider the payment-in-kind of land and/or buildings offered by the applicant as a partial or total off-set of CIL payments for specific items listed in the regulation 123 List”.</p> <p>Paragraph 062 of the Planning Practice Guidance (PPG) requires charging authorities which choose to adopt a policy of accepting infrastructure payments, to publish a policy document which sets out conditions in detail. This document should confirm that the authority will accept infrastructure payments and set out the infrastructure projects, or types of infrastructure, they will consider accepting as payment (this list may be the same list provided for the purposes of Regulation 123). The Council should therefore provide a policy that provides clarification and guidance on payment-in-kind of CIL contributions in accordance with the PPG.</p>	
Imerys Minerals Ltd	<p>Having reviewed the Regulation 123 list IML is in support of those items on the list which favour improvements to the A382 corridor, in particular item 8 on the revised Reg123 consultation dated December 2015. ILM is engaged with DCC with regard to possible land acquisition to facilitate any improvements to the A382 and to facilitate access improvements to IML operations along this particular road corridor.</p>	<p>Comment noted.</p>
Woodland Trust	<p>Whilst we appreciate that the Regulation 123 List constitutes a list of infrastructure types and projects which will not be funded or provided for through a planning obligation and, further, that habitat protection, creation or enhancement is listed in the Section 106 planning obligation guidance, we would nevertheless also like to see the Regulation 123 List reflect the provisions of Policy EN12 Woodlands, Trees and Hedgerows of the Teignbridge Local Plan 2013-2033 (adopted May 2013). Specifically we refer you to paragraph (e), which states that development should “<i>take opportunities for new planting consistent with landscape, wildlife and historic interests</i>” and would therefore like to see woodland creation and tree planting included in the 123 List so that this can be funded – if appropriate – as part of green infrastructure provision. We also note that the Teign Green Network - Heart of Teignbridge green infrastructure strategy (July 2011) refers to CIL funding for green space in paragraph 5.5. We would therefore like to see the wording “green</p>	<p>Not agreed. The effect of adding these proposals to the Regulation 123 list as suggested would be to preclude the use of s106 funding for this purpose.</p>

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	infrastructure including woodland creation and tree planting” added into the Regulation 123 List.	
South West Water	Community Infrastructure Levy cannot be applied to the improvement/upgrading of South West Water infrastructure.	No change.
Exminster Parish Council	<p>Exminster Parish Council on Monday 4 January wish to seek clarification from TDC in connection with the Matford Development;</p> <ul style="list-style-type: none"> <li>• that the Principle and Further Community Buildings, Indoor Sports and Leisure Facilities and Health Provision (as identified in the Community Buildings Justification Report associated with planning application 15/00708/MAJ) and additionally the Artificial Turf Pitch (ATP) will be covered by S.106 funds and,</li> <li>• that the Sports and Leisure Facilities and Artificial Turf Pitch do not fall under categories 6 or 14 in the list of infrastructure projects and types of infrastructure that may be funded wholly or partly by CIL.</li> </ul>	<p>The Regulation 123 list prevents S106 from funding strategic sports, recreation and leisure facilities that serve the needs of the wider district – <i>excluding infrastructure required in connection with a specific development proposal and which meets the tests in Regulation 122(2)</i>. This means that the Indoor sports / leisure building and pitches (including ATP) may be delivered by S106 agreement.</p> <p>The Regulation 123 does not make specific reference to Community Buildings, and therefore these can be funded by S106.</p> <p>This would accord with the Development Framework for SW Exeter.</p>
Kingsteight on Town Council	The Town Council would ask for the Town Centre Enhancement for Kingsteignton be added to the 123 List, and that consideration be given to increased flood defences and more sports/recreation facilities within Kingsteignton on the 123 List.	The District Council’s likely funding prioritisation for the Kingsteignton area is set out in the IDP. The effect of any additions to the Regulation 123 list would be to preclude the use of Section 106 funding.
Cllr William Thorne	The section 123 list has taken a very different shape from that easily interpreted in the earlier IDP. What I am particularly interested in is where is the funding going to come forward from to satisfy Kingsteignton's proven need for additional infrastructure. The IDP listed some of the needs including the new primary school, improvements for the secondary school and then the Town Centre Enhancement plan to list but 3. My worry is that with all the changes Kingsteignton has slipped back into its poor relation situation again. We were just beginning to breathe again	The IDP continues to inform investment priorities. The legal purpose of the CIL Regulation 123 list is to prevent S106 from being collected on those items listed. Based on the December 2015 consultation version of the R123 list and looking at the main infrastructure items required in Kingsteignton (as set

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	<p>when CiL came in but of course we thought the 123 would reflect the IDP however I am at a loss to link the two documents with any accuracy and of course I seem to believe this Kingsteignton items cannot be found largely anywhere. I have studied the new uses of S106 and would also struggle to see how these would fund the items on the IDP for Kingsteignton? CiL now races into the picture and of course few of the major developments extant at the moment in Kingsteignton will generate CiL because they were passed before the start date - correct me if I am wrong? Nevertheless the new primary school apparently is to be partly CiL funded - why, because we all thought it was already fully funded under S106 and direct grants? With so little CiL likely to come into Kingsteignton with this unexpected CiL charge for the primary school there is likely to be none for any other project? Of course we want the school but we also desperately need many other infrastructure items as well and we clearly have to have a funding possibility for these further items which we so sensibly saw originally within CiL. Please can you try to explain where any additional funding for desperately needed infrastructure will come from if you take the match funding CiL of £150000 from us albeit in easy stages as it comes in presumably? I am under the impression it is only the Abbrook site which will generate much CiL in Kingsteignton although the Rackerhayes site still might as no one really knows at what stage the permission on this site is currently if indeed it is ever actually brought forward?</p>	<p>out in the IDP) it is therefore possible to conclude;</p> <ul style="list-style-type: none"> <li>• New primary school and Secondary school expansion – It is not possible to collect new S106 for education infrastructure.</li> <li>• Penn’s mount hilltop park - could be partially funded via CIL.</li> <li>• Town centre enhancement – could be funded via CIL (or S106 subject to tests in R122(2)).</li> <li>• Cycle network – likely to be funded by both CIL and S106 (depending on section/location).</li> </ul> <p>It is correct that developments which secured planning permission before the commencement of CIL (13 October 2014) are not CIL chargeable.</p> <p>The District and Town Councils share the new primary school for Kingsteignton as a key priority. The District Council has sought a Town Council CIL contribution towards the primary school on the basis that funding that had been secured through S106 is now unlikely to come forward. Instead, the relevant development is expected to pay CIL, resulting in around £110,000 new funding for the Town Council.</p> <p>The District Council is keen to continue working with the Town Council to maximise the delivery of shared infrastructure priorities, including those identified through the Infrastructure Delivery Plan.</p>
Individual	<p>In view of the history and all the positive things that have recently been said about the proposals for Chudleigh Town Centre, I thought that this review would be an opportunity to include the town centre enhancement proposals in the CIL investment programme. If that is not to be the case then we are dependent on S106 contributions to improvements to the 'public realm'. In the case of the recent</p>	<p>The R123 list is not a 'CIL investment programme'. To include the Chudleigh Town Centre project on the R123 list would in fact preclude the collection of any future S106 funding for the project. The town centre improvement project is in the Infrastructure Delivery</p>

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	<p>application to develop the green space at the heart of the town centre, it would appear that no attempt was made to secure a contribution to the shared space scheme referred to in the Local Plan. If that is to the case in the future then there is no prospect of the town centre scheme getting off the ground which would be a disaster and contrary to all the commitment that your council has shown over recent years.</p>	<p>Plan and the District Council will bid for any relevant funding opportunities. It should also be noted that the town or District Council may still spend CIL on this project.</p>
Individual	<p>The documents should be written in plain English.</p>	<p>The Council is required to prepare a legally sound document which requires the use of certain words and phrases (relating to planning law) which may therefore not be in plain English.</p>
Individual	<p>CIL funding should not contribute towards the proposed new Coastal park at Dawlish. The Coastal park is not needed, and not wanted. TDC fail to maintain the current pitch and put at dawlish, any spare funding should be channelled into properly maintaining current responsibilities and not creating more unwanted overhead such as the Coastal park.</p> <p>CIL charges should not be applied to self build projects where the completed value of the property is less than £500,000. This is because land prices in the area are so high that normal folk find it hard enough already to self develop, the CIL tax stops many people affording self build and plays into the hands of wealthy developers who are able to afford the tax, then go on to make more profit producing very ordinary properties.</p>	<p>Provision of the SANGS is a requirement of the Habitat Regulations.</p> <p>Self build dwellings are exempted from CIL charges under Regulation 54A of the CIL regulations 2010 (as amended).</p>
Individual	<p>Not enough emphasis on cycling provision in either CIL or 106.</p> <p>Cycle ways still not in some plans and no overall drive in spite of national policies.</p>	<p>The Revised Regulation 123 list proposes a means for spending CIL on strategic cycle infrastructure whilst allowing individual developments to provide on-site cycle and pedestrian infrastructure in accordance with the limitations set out in the CIL regulations 2010 (as amended).</p> <p>The Council strongly disagrees with the comment. The Council has been working closely with partners and</p>

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		<p>has created or improved approximately 33 km of cycle paths over the 2010/11 to 2014/15 period, representing a six fold increase in provision. These include strategic routes (e.g. Stover Trail) and in relation to specific developments (e.g. Hele Park).</p> <p>For further information regarding ongoing cycle infrastructure work see:  <a href="https://www.teignbridge.gov.uk/trails">https://www.teignbridge.gov.uk/trails</a>.</p>

APPENDIX