Community Infrastructure Levy and Planning Obligations

A guide for developers and land owners (April 2014)

**Version control**

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If you require this document in an alternative format please let us know

**Please Note**

# The information relating to CIL contained in this guide is intended to assist developers and land owners to understand and determine their CIL liability. It should, however, not be regarded as definitive advice. It is not intended to replace the need to read and understand the CIL Regulations and Governmental advice on CIL. If in doubt, developers and land owners are advised to seek their own professional advice.

**Introduction**

The Winchester City Council Community Infrastructure Levy (CIL) will come into force on 7thApril 2014 and developments where planning permission is dated on or after this date will potentially be liable to pay the levy. In addition, certain types of development which are carried out after this date with the benefit of Permitted Development rights will be liable to pay the levy.

The introduction of CIL changes the way in which developers will contribute to the provision of infrastructure in the District. The Winchester City Council CIL will only apply in that part of the District outside the South Downs National Park. The National Park Authority is producing its own CIL Charging Schedule, which will apply in that part of the District. This guide explains the background to CIL, the level of CIL charges in the Winchester City Council CIL area, the processes involved in the collection of the levy and any exemptions that may be applied. It is also intended to help developers in understanding how CIL relates to any S106 contributions that may also be requested.

**What is CIL?**

CIL is a new levy that allows local authorities in England and Wales to raise funds from developers undertaking new building projects in the District. The money collected will be used to help pay for the infrastructure that is needed to support these developments and can be used for a wide range of projects including transport, education, hospitals and other health and social care facilities and open space. Even developments which do not require planning permission from the Council, such as buildings erected under permitted development rights, may still need to pay CIL.

CIL takes the form of a tariff levied on each square metre (sq m) of additional floorspace created by new development. The level of the tariff has been set by Winchester City Council following detailed work on the infrastructure requirements and viability of developments in the area, along with consultation with the local community and stakeholders.

The levy rate(s) applicable for different types of development within the District are set out in the Winchester City Council Charging Schedule: [www.winchester.gov.uk/planning/cil/cil-charging-in-winchester](http://www.winchester.gov.uk/planning/cil/cil-charging-in-winchester)

CIL payments will be held in a separate fund. The money from the fund will then be spent by the Council on infrastructure to support development in the District. The Council will be able to pass on CIL funds to other organisations for them to use to provide infrastructure e.g. to Hampshire County Council for use in connection with the provision of highway and educational infrastructure.

Developers and landowners should be aware that, subject to the CIL Regulations relating to areas where there are Parish Councils or where there is a Neighbourhood Plan in place, there is no requirement for there to be a direct link between the location of new development that pays CIL and the location in the District in which the CIL contributions are spent on infrastructure schemes. CIL could potentially even be spent on infrastructure outside of the District if it is deemed that the infrastructure would support or mitigate the impact of development within the District.

**What happens to developer contributions previously secured by Planning Obligations?**

The Council currently uses planning obligations made under Section 106 of the Town and Country Planning Act 1990 (commonly referred to as S106 agreements) to secure contributions from individual schemes which are then pooled to provide off-site open space and recreational facilities and, on behalf of the Hampshire County Council as Highway Authority, sustainable transport measures. Once the CIL charging comes into effect, the pooling of S106 contributions is restricted to contributions from no more than five developments for each infrastructure project or type. The CIL regime will not, however, completely replace the use of S106 agreements. The use of S106 agreements will still be needed to ensure that developments are satisfactory in their own right and meet the specific infrastructure needs they generate (e.g. on-site open space). S106 agreements will also continue to be used for non-infrastructure purposes, e.g. to restrict the development or use of land or to require that certain specified operations are carried out or that land is used/not used in specified ways. Also, CIL cannot be used to provide affordable housing, so any affordable housing provision/contributions required will be made through S106 agreements.

Many development proposals will give rise to a requirement to both pay CIL and the completion of a S106 agreement. The CIL liability and any contributions secured via S106 planning obligations will however cover different matters and there will be no ‘double charging’.

In order to clarify what types of infrastructure will no longer fall under S106, Winchester City Council has published a list of infrastructure types and projects that it intends will be, or may be, wholly or partly funded by CIL. This is known as the Regulation 123 list (known as the Reg 123 list) and it can be viewed here: [www.winchester.gov/uk/planning/cil/spending-and-reg-123](http://www.winchester.gov/uk/planning/cil/spending-and-reg-123). The list will be reviewed as necessary to take into account any changes in circumstance and / or infrastructure needs identified in the future.

It is important to note that that the Reg123 list is not an exhaustive list of all the infrastructure types or projects that will be funded wholly or partly by CIL. Its role is to indicate what infrastructure types or projects will not be funded by contributions secured by S106 agreements (therefore indicating that S106 agreement may potentially be required for any other matters).

The remainder of this guide is split into two sections — Part One relating to CIL, and Part Two to the future use of S106 planning obligations.

**Part One**

**Winchester Community Infrastructure Levy**

**Will my development be liable to pay CIL?**

Your development will be liable to pay CIL if it is of a type for which a zero rate has not been set in the Charging Schedule and

* It is a building into which people normally go to use,

and

* If upon completion the gross internal floor area of new build will be more than100 sq m (this includes extensions to existing buildings);

or

* It is creating 1 or more dwellings even where it is not a new building (e.g. through a change of use, or an extension to an existing building) and even where the new build floorspace is less than 100 sq m (NB CIL will not apply if existing floorspace is being converted into one or more dwellings **and** no new floorspace is created **and** the former use was lawful and in continuous use for a period of at least six months out of the last three years preceding the issue of planning permission)
* In certain circumstances, it involves the change of use of a building that has been unused for a period of time. See ‘Example CIL scenarios’ section for more details.

Your development will not be liable to pay CIL if

* It is a structure or building into which people do not usually go or go into only intermittently for maintenance (e.g. electricity sub-stations or telecommunications plant rooms) or
* It is a change of use with no additional floorspace and the former use was lawful and in continuous use for a period of at least six months of the three yearspreceding the issuing of the planning permission.
* It is a change of use from a single dwelling house to two or more separate dwelling houses
* It is social housing\*\*
* It will be used for charitable purposes\*\*
* It is a self build new home, extension or residential annexe\*\*

\*\* Please note that if your proposed development is for any of these purposes you will have to formally apply for relief from CIL (see page 17 of this guide).

**Example CIL scenarios**

Below are some example CIL scenarios that illustrate what types of development will or will not be liable to pay CIL.

* A dwelling with a floor area of 85 sq m is to be erected on previously undeveloped land - CIL is payable on the 85sq m, because a new dwelling is being created.
* A commercial building that is not in use\* is to be converted into one or more dwelling(s) - CIL is payable on the floorspace of the new dwelling(s), as new dwellings are being created and no floorspace is discounted.
* A site which has 2000 sq m of existing buildings all of which are in use\* is to be redeveloped for a different use. The existing 2000 sq m are reused and 1000 sq m of new floorspace is created. CIL is payable on 1000 sq m because the existing floorspace will be discounted.
* An existing building with a floor area of 2000 sq m of which 500sq m is in use\* is to be demolished and a new buildinghaving a floor area of 3000 sq m is erected - CIL is payable on 1000sq m, because the whole original building will be considered in use and therefore the whole existing floor area will be discounted.
* A mixture of market and social housing is to be erected on previously undeveloped land - CIL is only payable on the floor area of the market housing because affordable housing relief will be granted (if it is applied for – see page 17 of this guide).
* An existing building of 2000 sq m all in use\* is to be demolished and a new 2099 sq m building is erected - CIL is payable on the additional 99 sq m. There is less than 100 sq m of net additional floorspace, but the ‘less than 100 sq m rule’ does not apply here, as the gross internal area of new build is taken into account.
* A single dwelling is to be subdivided to form two separate dwellings - no CIL is payable, because conversions from a single dwelling to two or more dwelling houses are not liable for CIL.
* An office in use\* is to be converted into one or more dwellings - no CIL is payable because although new dwelling(s) are being created, and the floorspace of the dwelling(s) is therefore theoretically liable, the existing floorspace is discounted.
* Non-residential buildings with a floor area of 85sq m are to be erected on previously undeveloped land - no CIL is payable, because the new development’s floor area is less than 100 sq m.

\* ‘in use’ means that the building, or part of it, was in continuous lawful use for at least six months in the three years prior to the date of the planning permission that authorised the development.

**How much CIL will I be charged?**

The amount of CIL you will be liable to pay (the chargeable amount) depends on the size, type and proposed use(s) of your development. CIL is levied as a charge per sq m of net additional floorspace created by the development. The gross floorspace of any existing buildings on the site that are going to be demolished or reused may be deducted from the calculation of the CIL liability. However, these deductions in respect of demolition or change of use will only apply where the existing building has been in continuous lawful use for at least six months in the three years prior to the development being permitted.

Your liability will be subject to the liability rules in the ‘**Will my development be liable to pay CIL?**’ section of this guide and will be based onthe CIL charging schedule in force when the development commences.

Winchester City Council has set the CIL charging rate for certain types of development at £0 per sq m so these will not be required to pay CIL. For full details of the rates for each type of development please visit the charging schedule page on our website at: [www.winchester.gov.uk/planning/cil/cil-charging-in-winchester](http://www.winchester.gov.uk/planning/cil/cil-charging-in-winchester)

**It is important to note that the there will be no CIL charged if the development is taking place in any of the ‘Zone 1’ areas identified in the Charging Schedule i.e.Strategic Allocations and South Hampshire Urban Areas. All infrastructure requirements in these areas will continue to be administered under the S106 regime.**

**In addition, a large part (approximately 40%) of the Winchester City Council district is within the South Downs National Park and the South Downs National Park Authority (SDNPA) are the Planning Authority for this area. Although the SDNPA are proposing to adopt a CIL Charging Schedule this is not likely to be before April 2015. Therefore, for this part of the Winchester City Council district S106 agreements for all purposes will continue until further notice. However under the latest regulations it is intended that pooled contributions in the National Park will cease in April 2015 even if the National Park Authority has not adopted CIL by this date.**

The chargeable amount will be calculated using the formulas set out in the CIL Regulations (Regulation 40 of the Community Infrastructure Levy Regulations 2010, as amended in 2011, 2012 and 2014). The formulas are set out in the following pages together with an explanation and worked examples to demonstrate how CIL will be calculated.

The Council has produced a CIL liability calculator which can provide a guide to the amount of CIL you will pay. This calculator can be found on the Council’s website at: [www.winchester.gov.uk/planning/CIL/cil-calculator](http://www.winchester.gov.uk/planning/CIL/cil-calculator)

Where the chargeable amount is calculated at less than £50 the CIL Regulations deem it to be zero.

**What are the CIL rates for Winchester City Council?**

The rates that development in the District will be liable to pay are set out in the CIL Charging Schedule. This has been examined by an independent examiner and found to be fit for purpose and in accordance with the CIL Regulations. The Charging Schedule that will take effect on 7th April 2014 can be found here:[www.winchester.gov.uk/planning/cil/cil-charging-in-winchester](http://www.winchester.gov.uk/planning/cil/cil-charging-in-winchester)

**The Formula for calculating the chargeable amount of CIL**

The amount of CIL chargeable at a given relevant rate has to be calculated by applying the following formula from Regulation 40 of the CIL Regulations:

**R** = relevant CIL rate

**A** = chargeable area

**lP** = index figure for year in which the planning permission was granted.

**IC** = index figure for year in which the charging schedule containing the rate R took effect (2014)

In the case of a simple single use development (for example a hotel or 1 new house; or 10 new houses), your CIL liability will be calculated using this formula. If you have a mixed use development, the formula will be applied for each use, and the results added up to produce your total CIL liability.

**What is the Relevant Rate R?**

The ‘relevant rate’ is the CIL rate for your type of development as set out in the Winchester City Council CIL Charging Schedule that was in effect on the date on which the planning permission for the development was first granted.

**What is the Chargeable Area A?**

Where there is no demolition or reuse of buildings involved in your development, i.e. you are developing a new or a cleared site; the chargeable area is simply the total gross internal floor area (in sq m) of your development. The floorspace will be charged at the rate(s) set for the use(s) you are proposing.

If, however, there are buildings in lawful use on the site at the time planning permission is granted, which are to be re-used or demolished, another formula will be applied to calculate the chargeable area (A) of your development. This formula is:

**GR**= the gross internal floor area of the part of the development which is being calculated i.e. all the floorspace of one type of use within in the development.

**KR** = the gross internal floor area of buildings that are already in use on the site and that will be re-used as part of the new development. For example, if you are proposing 4000sqm of office space, but 600 sq m of that is an existing building that is in use and will be reused as an office on the site, then **GR**- **KR**for office use will be 3400sqm.

**G**= the gross internal floor area of the whole chargeable development.

**E**= the total gross internal floor area of all buildings which are to be demolished.

The purpose of this formula is to calculate what proportion of the development is new, and to fairly apportion any demolition of buildings on the site amongst all the elements of the new development.

It is important to note that the deductions in respect of reuse (as included in **KR**) or demolitions (as featured in **E**) will only apply where relevant buildings have been in continuous lawful use for at least six months in the three years prior to the development being permitted. In addition, the CIL Regulations exclude from these deductions (a) buildings into which people do not normally go; (b) buildings into which people go only intermittently for the purpose of maintaining or inspecting machinery; and (c) buildings for which planning permission was granted for a limited period.

**What are the Index Figures IP and IC?**

The CIL Regulations specify that the index to be used is 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; and the figure for a given year is the figure for 1st November of the preceding year. In the event that the All-in Tender Price Index ceases to be published, the index to use will be The Retail Prices Index.

In the first year (2014) of the operation of CIL in Winchester, the indexation part of the formula can be disregarded, as the indexes for the year in which the permission was granted and for the year the CIL Charging Schedule first came into effect will be the same and cancel each other out.

**Calculated examples**

**Example 1**

Two houses with a total of 220 sq m of floorspace are to be built on a clear site in Hursley. As the site is clear the chargeable area does not need to take account of existing floorspace. The chargeable area is therefore 220 sq m.

The CIL charge is calculated using the formula:

**R** = relevant CIL rate = £80

**A** = chargeable area = 220 sq m

**IP**= index figure for the year in which the planning permission was granted (2014 – which is the same as the year the charging schedule took effect) = 1

**IC** = index figure for the year in which the charging schedule containing the rate R took effect (2014) = 1

Therefore:

**(£80 x 220 sq m x 1) / 1 = £17,600.00**

**Example 2**

A mixed use development is to built on a site with existing buildings in Bishops Waltham (NB - in the area outside of the South Downs National Park). Once completed there will be 1500 sq m of residential floorspace and a convenience store of 250 sq m.

600sq m of the existing floorspace in lawful use on the site will be carried over into the final residential use of the development and there will be an area of 400 sq m currently also in lawful use that will be demolished.

**Step 1**

We therefore firstly need to calculate the chargeable area for each use using the formula:

So for the residential:

**GR =** proposed residential floorspace = 1500 sq m

**KR =** existing floorspace to be re-used as residential floorspace = 600 sq m

**E** = floorspace to be demolished = 400 sq m

**G** = total proposed floorspace of the development = 1750 sq m

Therefore:

1500 sq m – 600 sq m – ((1500 sq m x 400 sq m)/1750 sq m) = **557.14 sq m**

Then for the convenience store:

**GR =** proposed retail floorspace = 250 sq m

**KR =** existing floorspace to be re-used as retail floorspace = 0 sq m

**E** = floorspace to be demolished = 400 sq m

**G** = total proposed floorspace of the development = 1750 sq m

Therefore:

250 sq m – 0 sq m – ((250 sq m x 400 sq m)/1750 sq m) = **192.85 sq m**

**Step 2**

Now we need to calculate the CIL charge for each use. This is done with the formula:

For the residential:

**R** = relevant CIL rate = £80

**A** = chargeable area = 557.14 sq m

**IP**= index figure for the year in which the planning permission was granted (2014 – which is the same as the year the charging schedule took effect) = 1

**IC** = index figure for the year in which the charging schedule containing the rate R took effect (2014) = 1

Therefore:

**(£80 x 557.14sq m x 1) / 1 = £44,571.43**

For the retail:

**R** = relevant CIL rate = £120

**A** = chargeable area = 192.85 sq m

**R** = relevant CIL rate = £80

**A** = chargeable area = 220 sq m

**IP**= index figure for the year in which the planning permission was granted (2014 – which is the same as the year the charging schedule took effect) = 1

**IC** = index figure for the year in which the charging schedule containing the rate R took effect (2014) = 1

Therefore:

**(£120 x 192.85sq m x 1) / 1 = £23,142.86**

**Step 3**

To calculate the final CIL liability, the two figures are added together:

**£44,571.43 + £23,142.86 = £67,714.29**

**The CIL process**

The CIL collection arrangements are covered in Part 8 of the CIL Regulations, and the government has issued an information document on CIL collection and enforcement:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf>

The process is summarised in the flow chart on page 20 of this guide. Throughout the process a number of forms have to be submitted to the Council. All the CIL forms are available from the Planning Portal. The appropriate links are given for each form as they are mentioned in the following sections.

**What information will I need to submit with my planning application?**

The introduction of the levy means that the Council now requires additional information to be provided at the planning application stage to determine whether a charge is due and, if it is, to calculatethe amount. Applicants will therefore be required to answer additional questions to enable the Council to calculate your levy liability. **In cases where CIL will be payable, if the relevant information is not supplied, these cases will be deemed invalid.**

The information required is:

* How much floorspace (in square metres) are you proposing?
* Has a building or a part of a building, on the site been in use for a continuous period of at least six months within the past three years?
* What use(s) has it been in? How much gross internal floorspace of this building do you intend to demolish or change the use of?

The planning portal has provided a form which you should fill in and submit with your planning application to provide all the information the Council requires. The form can be found here:

<http://www.planningportal.gov.uk/uploads/1app/forms/cil_questions.pdf>

It is in your interest to provide this information accurately, especially where there are existing buildings in use on your site, as the Council will use it to help calculate any reduction which may be applicable.

Under Regulation 110 of the Community Infrastructure Levy Regulations (2010), It is an offence to knowingly or recklessly supply false or misleading information. A person guilty of such an offence is liable, on summary conviction, to a fine of up to £20,000 or, on indictment, to imprisonment for a term of up to two years and/or an unlimited fine.

**How will I know how much CIL I am liable for?**

This guide provides an overview of how your CIL liability will be calculated. The Council has also produced a CIL calculator to allow you easily to estimate your likely CIL liability. This calculator can be found on the CIL pages of the Council’s website at: [www.winchester.gov.uk/planning/CIL/cil-calculator](http://www.winchester.gov.uk/planning/CIL/cil-calculator)

You will be informed formally of your CIL liability by a ‘CIL Liability Notice’, which the Council will issue at the same time or shortly after planning permission has been granted, or, where planning permission was not required, once you have sent the Council a Notice of Chargeable Development.

If your development is liable to pay CIL, but the chargeable amount is £0 because, for example, your development attracts 100% social housing relief, or if your total liability is less than £50, you will still be sent a CIL liability notice, confirming that your liability is £0.

The CIL regulations state that if your CIL liability is less than £50, it will be deemed to be £0.

**Letting the Council know who will pay the CIL linked to a development**

The person (including the owner of the land on which the development will take place) who wishes to assume liability for the payment of CIL must inform the Council**prior to the development starting on site**. Winchester City Council would encourage this information to be submitted as soon as possible in the applications process or as soon as it is known.

If you wish to assume liability to pay the CIL charge, you must complete an Assumption of Liability form and send it to the Council (‘Form 1: Assumption of Liability), available on the Planning Portal:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_1_assumption_of_liability.pdf>

If you later want to withdraw or transfer liability, for example if you sell the site, you must complete either ‘Form 3: Withdrawal of Assumption of Liability’ or ‘Form 4: Transfer of Liability’ both available from the Planning Portal:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_3_withdrawal_of_assumption_of_liability.pdf>

<http://www.planningportal.gov.uk/uploads/1app/forms/form_4_transfer_of_assumed_liability.pdf>

and send it to the Council.

The Council will issue the CIL Liability Notice to the persons who have assumed liability, as well as the landowner(s), if the two are different.

If no person has assumed liability, the liability to pay CIL defaults to the owner(s) of the land on which the development will take place and the Council may impose a surcharge of £50 on each of the owner(s) if development has commenced.

For more information on the CIL administration and collection process please visit our website: <http://www.winchester.gov.uk/planning/cil/cil-administration-collection>

**Claiming Relief**

If you want to claim mandatory relief **you must make your claim before development commences**, although we would encourage you to do this earlier in the process if appropriate.

To claim Charitable or Social Housing relief, you must use Form 2: Claiming Exemption and Relief, available from the Planning Portal:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_2_claiming_exemption_and_or_relief.pdf>

Note that any relief granted is repayable to the Council if the development ceases to be used for social housing or charitable purposes within the period of seven years from the date of the commencement of the development.

To claim a Self Build Exemption for a new home, you must use Forms SB1-1 and SB1-2: Self Build Exemption Claim Form Parts 1 and 2:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_sb1-1_exemption_claim.pdf>

<http://www.planningportal.gov.uk/uploads/1app/forms/form_sb1-2_exemption_claim.pdf>

To claim a Self Build exemption for an extension or residential annexe, you must use Form SB2: Self Build Annexe or Extension Claim Form:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_sb2_annex_or_extension_claim.pdf>

The Council will send out a revised liability notice if one has previously been issued and relief is subsequently granted.

**Paying the Levy**

Whoever has assumed liability to pay CIL (or the owner of the land) must send a commencement notice (Form 6) ‘Commencement Notice’:

<http://www.planningportal.gov.uk/uploads/1app/forms/form_6_commencement_notice.pdf>

to the Council and to all owners of the relevant land before development commences to notify them of the intended commencement date. The Council will then send a CIL Demand Notice to the person or persons who have assumed liability (or the owner(s)). After this, the liable parties should follow the correct payment procedure, including payment dates as set out in the Demand Notice.

It is vital that the Council receives a Commencement Notice before development commences. If a Commencement Notice has not been received before development commences, the Council may impose a surcharge of 20% of the chargeable amount up to a maximum of £2,500.

The CIL charge becomes due when development commences. The CIL Regulations require payment to be made within 60 days of commencement of the development unless the Council has adopted an instalment policy. Winchester City Council has adopted an instalments policy which will allow payment by instalment for some developments and the details of this can be found here: <http://www.winchester.gov.uk/assets/files/19921/CIL-Regulations-Instalment-Policy.pdf>

Where a development is permitted under planning permission in phases, then each phase will constitute a chargeable development for CIL purposes and, in addition, payment of the CIL charge for each phase may be spread in accordance with the Councils’ instalments policy.

The Council will issue a receipt for all CIL payments that are made.

**Who to contact regarding CIL**

For any enquires regarding CIL please e-mail us at: cil@winchester.gov.ukor call Paul Robinson on 01962 848 359.

Please send all correspondence to the same email address or via post to:

Paul Robinson – CIL Officer

Planning Management

Winchester City Council

City Offices

Colebrook Street

Winchester

SO23 9LJ

**Payment in Kind**

The CIL Regulations allow the Council to accept full or part payment of a CIL liability by way of the transfer of land to the Council. The Council may also enter into agreements to receive infrastructure as payment. Any agreement relating to such a payment must be made before the chargeable development commences.

The value of any land or infrastructure offered by way of payment has to be determined by a suitably qualified independent person.

See CIL Regulations 73 & 74 for the full details.

Note that the Council is not obliged to accept any offer of payment in kind and in most cases it is unlikely to be appropriate.

**Enforcement**

If the correct payments are not received on time, the Council has the power to impose a range of surcharges, to issue CIL stop notices preventing further development and, if necessary, to recover funds through legal action including the seizure of goods. The enforcement options available to the Council are set out in regulations 80-107 of the CIL Regulations 2010. They are also explained in the CIL collection and enforcement information document issued by CLG:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf>

**Monitoring**

The CIL regulations require the council to report on the collection and spending of CIL payments. The councilwill do this annually as part of its Annual Monitoring Report, showing how much CILhas been collected, how much has been spent and on what.

**CIL process - flow chart**



**Other FAQs on CIL Liability**

**Q. What about applications that pre-date the date CIL comes into effect in Winchester?**

A. The Regulations require the levy to be applied to all development for which the planning permission is dated on or after the date on which a charging schedule came into effect (7th April 2014 in Winchester’s case). The date at which the application was made is not relevant, neither is the date of the officer’s recommendation nor the date on which a planning application was considered by the Planning Committee. The Council has no discretion in this matter, as it is set by law. The levy will also apply to any planning consents issued by a Planning Inspector as a result of a successful appeal after the date on which a Charging Schedule comes into effect.

**Q. I have an existing Outline Permission, so would I have to pay CIL when the Reserved Matters are approved?**

A. No, providing the Outline Permission is dated before 7th April 2014.

**Q. My development does not need planning permission. Will I still pay CIL?**

A. Development commenced under a ‘general consent’ is liable to pay CIL if the relevant local authority has a CIL Charging Schedule in effect. ‘General consent’ includes permitted development rights granted under the General Permitted Development Order 1995, and developments permitted through a Local Development Order. If you intend to develop under general consent you must submit a ‘Notice of Chargeable Development’ (Form 5 available on the Planning Portal <http://www.planningportal.gov.uk/uploads/1app/forms/form_5_notice_of_chargeable_development.pdf>)to the Council before you commence this development. You do not need to submit such a notice if your development will be less than 100 square metres of new floorspace and it does not comprise one or more new dwellings.

**Further Information**

**Guidance Documents**

The CIL Regulations and detailed guidance from the Department of Communities and Local Government can be found here:

DCLG – [The community infrastructure levy: a summary](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7607/1772927.pdf)

DCLG –[The community infrastructure levy: an overview](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6313/1897278.pdf)

DCLG – [Community infrastructure levy - collection and enforcement: information document](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6312/1995794.pdf)

DCLG –[Community infrastructure levy relief: information document](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6314/19021101.pdf)

DCLG – [Community Infrastructure Levy – Guidance](http://www.planningportal.gov.uk/uploads/cil/cil_guidance_main.pdf) – February 2014

[The Community Infrastructure Levy Regulations 2010](http://www.legislation.gov.uk/ukdsi/2010/9780111492390/pdfs/ukdsi_9780111492390_en.pdf)

[The Community Infrastructure Levy (Amendment) Regulations 2011](http://www.legislation.gov.uk/uksi/2011/987/pdfs/uksi_20110987_en.pdf)

[The Community Infrastructure Levy (Amendment) Regulations 2012](http://www.legislation.gov.uk/ukdsi/2012/9780111529270/pdfs/ukdsi_9780111529270_en.pdf)

[The Community Infrastructure Levy (Amendment) Regulations 2013](http://www.legislation.gov.uk/ukdsi/2013/9780111534465/pdfs/ukdsi_9780111534465_en.pdf)

[The Community Infrastructure Levy (Amendment) Regulations 2014](http://www.legislation.gov.uk/uksi/2014/385/pdfs/uksi_20140385_en.pdf)

**Part Two**

**Planning Obligations**

**What are Planning Obligations?**

Planning obligations are agreements (also known as S106 agreements) made between the Council and land owners under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) that impose covenants on the land in question to regulate its use, to secure monetary contributions or the provision of facilities.

CIL Regulation 122 states that planning obligations may only be used if they are necessary to make the development acceptable in planning terms. They must also be directly related to the development; and be fairly and reasonably related in scale and kind to the development.

As well as these legal tests the CIL regulations have introduced restrictions on the pooling of S106 contributions, so that no more than 5 developments may contribute to the same infrastructure project. Following the adoption of its CIL Charging Schedule, the Council will no longer collect the tariff type developer contributions towards off-site recreational facilities and, on behalf of Hampshire County Council, sustainable transport infrastructure.

The Council will be publishing a list under CIL Regulation 123 (known as the Reg123 List) which sets out what types of infrastructure it may wholly or partly fund through CIL. From the date of the bringing into effect of its CIL Charging Schedule (7th April 2014) the Council will not use S106 planning obligations to secure contributions towards those items.

The Reg123 list may be changed by the Council at any time subject to compliance with the procedures set out in the CIL Regulations and Government guidance. The Council’s up to date Reg123 list will always be published on the Council’s website.

**Affordable Housing**

The securing of the provision of on-site affordable housing is one of the most common uses S106 planning obligations.

Unless otherwise agreed by the Council, affordable housing must be provided in line with Policy CP3 of the Winchester District Local Plan Part 1, adopted in 2013, which can be found here:

<http://www.winchester.gov.uk/planning-policy/local-plan-part-1/adoption/>

**Possible Future Uses for S106 Planning Obligations**

The guiding principle behind the use of S106 planning obligations is that they must be directly related to the development and necessary to make the development acceptable in planning terms. Planning obligations will therefore only be sought where the nature of a site and the proposals for it make it necessary to do so.

Examples of possible continuing uses of planning obligations are:

* The provision of on-site public open space and arrangements for its long term maintenance.
* Transport and access measures necessary to ensure an acceptable and safe development, such as on-site roads and parking, access to the development and any off-site measures required specifically to serve, accommodate or mitigate the development
* Crime Prevention: crime prevention should be considered as part of the design process of all development. However, sometimes it will be necessary to secure through planning obligations such things as CCTV cameras.
* Contributions towards measures to reduce or mitigate the effects of development on protected habitats (where these do not constitute infrastructure), for example the Solent Disturbance Mitigation Project.
* Sustainability Measures: for example sustainable drainage (see policy CP17 of the Local Plan Part 1).
* Employment and Skills: the Council may seek the provision of skills training or the use of local labour in construction.
* To secure contributions towards the cost of making traffic regulation orders adjacent to application sites.
* To restrict the way in which land is used e.g. to prevent the use of a residential annexe as a separate dwelling house.

**Planning Obligations – The Process in Winchester**

The Council uses the following procedure in relation to planning obligations:

The Council will expect infrastructure which is necessary to make the development acceptable in planning terms to be provided on-site as an integral part of a development, wherever possible and appropriate, in accordance with the approach set out in Local Plan Part 1 policy CP21. Planning obligations will be used to secure on-site infrastructure and such off-site measures as may be needed to make the development acceptable in planning terms, including mitigation of impacts which are attributable directly to the development. Obligations will only be used where the development should not be permitted without the measures, i.e. where the measures are necessary to make the development acceptable in planning terms.

The Council will assess each planning application individually to determine whether an obligation is needed and what matters it should address. However, items of infrastructure for which planning obligations will frequently be needed are:

* On-site open space, sport and recreation provision, which would normally be expected on housing sites of 15 dwellings or more;
	+ On sites of this size, the City Council expects that natural green space, informal open space and equipped children’s and young people’s space, provision will be made on-site, to the standards set out in Local Plan Part 1 (policy CP7). Provision of allotments will also be acceptable in principle. More substantial infrastructure schemes (parks, sports and recreation grounds, and built facilities) will normally only be required on very large schemes (in compliance with policy CP7 standards), although off-site provision will be acceptable in principle, and the limited pooling of contribution funds will also be acceptable, subject to the caveats below;
	+ On sites below the 15 dwelling threshold, there will be no requirement for S106 contributions, although on-site provision (and off-site in appropriate circumstances acceptable to the LPA) of open space remains acceptable in principle should the developer wish to enhance a scheme by making provision (for example, in relation to amenity open space) in addition to the CIL charge;
* Where open space provision is made (irrespective of the 15 dwelling threshold), the Council would also expect provision through a S106 obligation for an on-going management and maintenance regime by an acceptable management company arrangement or through a commuted sum;
* Measures to mitigate the impact of residential development on the Solent European Marine Sites, which are designated as being of international nature conservation interest. Current (interim) proposals for visitor management do not constitute infrastructure and a number of local authorities along the south coast have agreed to collectively pool S106 contributions towards these measures to enable housing developments within a defined zone to address their impacts on nature conservation interests. Failure to do this would otherwise be likely to lead to refusal of planning permission. Future mitigation measures could involve the provision of infrastructure and therefore would be a potential area for expenditure using CIL funds rather than S106. The City Council aims to cooperate with neighbouring authorities to implement a consistent approach.

**Timings**

Where a proposed development is likely to require the completion of a S106 planning obligation, this will be brought to the developer’s attention as soon as possible in the process. This is likely to be at the pre-application stage if pre-application advice is sought. For more details of the Council’s pre-application advice service, applicants should refer to the Council s website at: <http://www.winchester.gov.uk/planning/planning-applications/application-pre-application-advice/>

**Fees**

Developers will be expected to pay the Council’s reasonable legal costs associated with the drafting and completing of S106 planning obligations. Those costs must be paid on or before the completion of the obligation. In some cases the payment of a contribution towards the costs of monitoring compliance with the terms of the planning obligation may also be required.

**Monitoring**

Following the completion of a s106 planning obligation, a copy will be placed on the planning register and an appropriate entry made on the Local Land Charges Register. Information relating to the agreement is then entered into a database for the purpose of monitoring.

**Enforcement**

If it is evident that a S106 planning obligation is not being or has not been complied with, formal enforcement action will be initiated once other efforts to secure compliance have failed. The formal method of enforcing compliance with planning obligations is by applying to the Courts for an injunction, which if granted, may have the effect of stopping the development proceeding. The Council also has the power to enter the land and carry out any works required by the planning obligation and then recover the costs of so doing from the land owner. Any person who obstructs the Council carrying out such works commits an offence and is liable, on conviction, to a fine of up to £1000.

Any planning obligation relating to a monetary contribution will contain a provision for interest to be payable on late payments.

**Highways Requirements**

Hampshire County in its capacity as Highway Authority will continue, in appropriate circumstances, to require the completion of agreements under S278 of the Highways Act 1980. Any such agreements are not currently subject to the ‘pooling’ restrictions contained in the CIL Regulations. However, there are restrictions on the use of planning obligations and conditions where a local authority has a Reg123 list in place and planning obligations and conditions cannot be used to require a developer to enter into a S278 agreement to provide items that appear on the Reg123 list.

These restrictions do not apply to highways agreements drawn up by the Highways Agency (or any subsequent body on behalf of the Secretary of State for Transport).