Christchurch and East Dorset Councils
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Christchurch and East Dorset Community Infrastructure Levy

Draft Charging Schedules for Christchurch and East Dorset RESPONSE FORM

	Your Details	Agent's Details *(please **only** complete if you are using an agent)*
Title	Mr	Mrs
Full Name	Paul Hanson	Lisa Jackson
Job Title	Chief Executive	
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Question 1: Do you wish to be heard in support of your representations at the Public Examination of the Draft Charging Schedule?

Please note that the Inspector will decide if a public hearing session is required as part of the examination process. You may choose to request to appear at a public hearing to clarify your comments, but you must communicate this to the Council before the close of the consultation. If you do not wish to be heard at the examination, your written representations will carry the same weight as those made by respondents who appear and are heard in support of their representations.

No, I do not wish to participate at the oral examination: ☐

Yes, I wish to participate at the oral examination: ☒

Question 2: Do you agree or disagree with the proposed rates contained in the Draft Charging Schedule?

Agree: ☐

Disagree: ☒

Further comments on Question 2:

Please see attached response

Question 3: Do you think that the proposed CIL rates strike an appropriate balance between the desirability of funding infrastructure through CIL and the potential effects of imposing a CIL on the Borough and District?

Please see attached response

Question 4: Do you believe the evidence on viability is correct? If not, please set out alternative evidence to support your view?

Please see attached response

Question 5: Do you agree or disagree with the Councils' approach to discretionary relief?

Agree: ☐

Disagree: ☒

Further comments on Question 5:

Please see attached response

Question 6: Do you have any comments on the draft Regulation 123 list which sets out the infrastructure to be funded by CIL and where the Councils will continue to seek S106/S278 contributions?

Please see attached response

Question 7: Do you agree or disagree with the draft CIL instalments policy?

Agree:	☐
Disagree:	☒

Further comments on Question 7:

Please see attached response

Question 8: Do you agree or disagree with the draft 'payment in kind' policy?

Agree:	☐
Disagree:	☒

Further comments on Question 8:

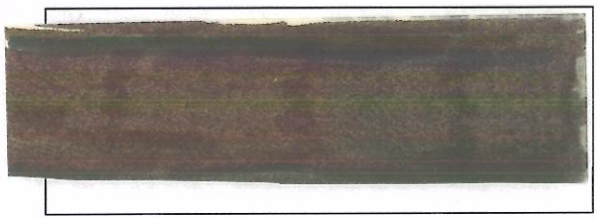
Question 9: Any other comments

Please see attached response

Please indicate if you wish to be notified of any of the following:

That the Draft Charging Schedules have been submitted to the examiner in accordance with Section 212 of the Planning Act 2008	☒
The publication of the recommendations of the examiner and the reasons for those recommendations	☒
The approval of the Charging Schedules by the charging authorities	☒

Please sign and date:

Signature: 

Date: 18 June 2014

Please send completed forms by **Wednesday 18th June 2014** to:

East Dorset District Council, Council Offices, Furzehill, BH21 4HN

Or, alternatively email them to **planningpolicy@christchurchandeastdorset.gov.uk**

Please note: Comments cannot be treated as confidential and therefore by responding, you are agreeing to your information being disclosed to third parties.

All comments made must be supported by your full name and address. Comments will be published on the Council's website along with your full name.

Data Protection *(Please tick the relevant boxes)*

I/we understand that Christchurch Borough Council / East Dorset District Council will use the information that I/we have provided for the purpose of the Community Infrastructure Levy. I/we consent to Christchurch Borough Council / East Dorset District Council disclosing my/our information to third parties for this purpose. ☒

I understand that I/we have the right to ask for a copy of the information held about me/us and which is subject of Data Protection Act 1998 (for which Christchurch Borough Council / East Dorset District Council may make a charge) and to correct any inaccuracies in my/our information. ☒

Data Protection Act 1998: Any information provided will be treated in strict confidence and will be held on and processed by computer.

By email

18 June 2014

Planning Policy

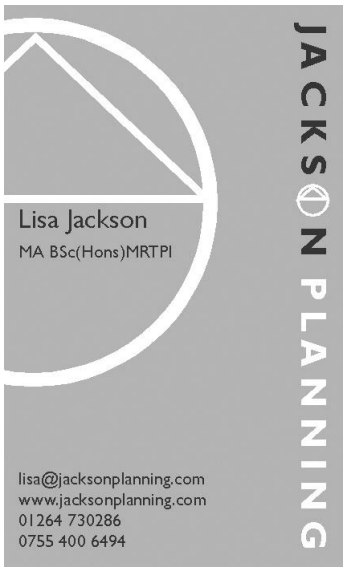
Christchurch Borough Council

Civic Offices

Bridge Street

CHRISTCHURCH

BH23 1AZ



Dear Sir or Madam:

Representations by Meyrick Estate Management Ltd (MEM Ltd) in response to proposed Community Infrastructure Levy (CIL) Draft Charging Schedule

Your consultation paper has posed a series of questions with regard to the draft-charging schedule, to which the responses are made below. The check boxes have been completed on the questionnaire but the substantive responses are included in this letter.

The responses have followed the format of the questions posed but in addition there are some key points made in relation to the ability of the local plan to achieve its aims in relation to the Habitats Directive.

Question 1: Do you wish to be heard in support of your representations at the Public Examination of the Draft Charging Schedule?

MEM Ltd do wish to be heard at examination, given that they act for the landowners and have interests on the strategic sites in Christchurch CN1 and CN2 and that the proposed development in their control may account for as much as 15% of the total anticipated CIL receipt over the plan period for the two councils' areas it is essential that they are heard at examination. MEM Ltd remain concerned that the imposition of CIL as drafted may prevent the development proposed coming forward as planned and therefore jeopardise delivery of the local plan as a whole, particularly with regard to compliance with the Habitat Regulations. MEM Ltd wish reserve the right to present evidence on viability for the examination.

Question 2: Do you agree or disagree with the proposed rates contained in the Draft Charging Schedule?

MEM Ltd strongly disagree with the proposed rates in the draft charging schedule. There are two aspects to this objection.

1. The CIL rate as currently at £100 psm proposed places a high probability that the Councils will not achieve the overall development strategy of the area as none of the strategic greenfield are likely to be

able to deliver affordable housing at the levels set out in the plan. The viability basis for the current CIL residential rate was on the assumption of testing affordable housing at 30%, and not as set out for all of the strategic sites in the adopted plan. The CIL Planning Practice Guidance (PPG) 12.6.14 paragraph 019 confirms that "The sampling should reflect a selection of the different types of sites included in the relevant Plan, and should be consistent with viability assessment undertaken as part of plan-making." The lack of consistency between the adopted plan and the proposed CIL testing is a serious risk.

2. Likewise the single CIL rate for residential use does not take account of the obligation costs of providing for heathland mitigation where this is provided directly by the developer. A single rate for CIL does not differentiate between those sites where SANG will be provided and those that will not. This will mean that where sites are providing SANG they will be paying twice for the same infrastructure. This 'double dipping' is not allowed in the guidance (PPG 12.6.14 paragraph 093). This represents over half of the delivery of all housing development in the plan over the plan period. A differentiated rate is required to reflect direct SANG provision. This approach has recently been approved in Surrey Heath Borough by the examiner reviewing their proposed CIL rates.

Question 3
Do you think the rates proposed strike an appropriate balance between the desirability of funding infrastructure through CIL and the potential effects of imposing a CIL on the Borough and District?

MEM Ltd do not support the imposition of CIL charging through a single flat rate for the Christchurch urban extension site policy CN1 and land south of Burton policy CN2. The imposition of the flat rate will lead to inevitable double charging (see below) for heathland mitigation measures on both the above sites. The intention of MEM Ltd's client, the landowner, is to directly provide SANG to the appropriate standard to mitigate the potential for urban effects on the European site, the SANG will be set out by the landowner and the land will remain in private control. The s.106 agreement associated with the grant of permission for new housing development will ensure performance measures on the SANG are legally binding to satisfy the requirements of the Habitats Directive.

Question 4: Do you believe the evidence on viability is correct? If not, please set out alternative evidence to support your view?

The viability testing is intended as evidence to demonstrate that the proposed CIL rates would not threaten the delivery of the Local Plan as a whole.

The Inspector Sue Turner, examining the Core Strategy, found that the CIL viability testing had been calculated incorrectly. Paragraph 87 of her report explains this. She states "It is not appropriate to undertake a balancing act between CIL and affordable housing as appears to have been the case in the Whiteleaf study, and the CIL should be assessed on the level of affordable housing in the local plan."

The updated guidance (paragraph 020 PPG 12.6.14) changes the emphasis slightly: "Development costs include costs arising from existing regulatory requirements, and any policies on planning obligations in the relevant Plan, such as policies on affordable housing and identified site-specific requirements for strategic sites."

It follows that using a lower affordable housing figure for viability testing will put the provision of affordable housing at the levels required in the adopted plan at risk. The viability testing has approached the whole premise the wrong way round. This method does not support delivery of the plan as a whole.

Whilst the Council defend this as the average outcome for affordable housing in the plan as a whole, it must be the case that if only the average figure was tested and found viable, the upper limit of 50% affordable units is unlikely to be achieved. Given the Local Plan Inspector robustly upheld the 50% affordable rate on greenfield sites something has to give to achieve the development proposed in the plan, and this can only be the CIL rate if the plan is to deliver the levels of affordable housing now set out in the adopted policy.

Updated Viability modeling – Peter Brett Associates June 2013

For Site CN1 the viability modeling update uses a blanket approach to residential sales revenues of £2800 sqm/£260 sqft. This is in excess of the £250 sqft used by Whiteleaf. It could of course be argued that sales revenues have increased over time although the Roeshot Hill site has a number of challenges as it adjoins a railway line and main road and is adjacent to a significant former council estate. To suggest average revenues might therefore by overly optimistic.

The updated viability report only tests 100 dwellings and has no comparable approach for a complex 950 dwelling urban extension. It cannot therefore be considered reliable in this instance. The report does not allow for unknown infrastructure costs. Both of these will affect the viability of the project.

The CIL Guidance (paragraph 020 PPG 12.6.14) is clear that Charging Authorities should take into account the costs and implications of other planning policies or obligations when setting the rate of CIL and confirms that a realistic understanding of costs is essential to the proper assessment of viability in an area. The evidence of costs and the implications with regard to the mitigation of urban populations on the heathland is not set out in any detail and this is a major weakness with the Councils' approach. This is explained below in relation to the recent Surrey Heath example. This council reduced the CIL rate for sites with SANG by £125 psm. This point was examined by the following question from the Examiner of the Surrey Heath CIL:

"Does the viability evidence support a differentiated approach based on whether or not a development makes its own provision for SANG? Furthermore, if the SANG differentiation is supported, are the different CIL rates (with / without own SANG) informed by and consistent with the evidence?"

The Examiner found that Surrey Heath Borough had provided the evidence to justify the differentiated rate. They calculated this on the basis of: "*that simply reflects the assessed cost of SANG provision spread across the anticipated numbers of market housing."* Whilst this approach is supported the position in relation to affordable housing and self-build housing also has to be considered.

There is no such differentiation or any calculation to justify this approach in the CBC/ EDDC Draft Charging Schedule. More evidence is required to inform a workable solution. This requires data from all the strategic sites where SANG is to be directly provided.

To calculate the discount for a differentiated rate, this must include a discount £psm rate calculated from all the costs of all heathland mitigation for all dwellings that do not provide SANG directly including all affordable dwellings (and a contingency allowance for self-build) whose heathland mitigation would be met by CIL, divided by cumulative chargeable floorspace (sqm) of those dwellings. This discount calculation will need to make assumptions on floorspace and be on the basis of heathland project estimates. There will need to be annual monitoring of this data to ensure that the discount rate reflects actual delivery of both projects and dwellings. This has the added benefit of ensuring that heathland mitigation keeps pace with development.

Question 5: Do you agree or disagree with the Councils' approach to discretionary relief?

There is no evidence from the Councils as to why discretionary relief is excluded at this point. The very basis is discretionary, and it would be practical to allow for this should the circumstances of a particular development justify it. Just because the circumstance may be 'rare' is no reason to exclude it entirely.

Question 6: Do you have any comments on the draft Regulation 123 list which sets out the infrastructure to be funded by CIL and where the Councils will continue to seek S106/S278 contributions?

The publication of the draft regulation 123 list is welcome, however, it does not go far enough in identifying specific projects that are CIL funded and those that can continue to be s.106 funded. The issue of heathland mitigation remains the main concern.

MEM Ltd believes that strategic maintenance and access management of the heathland mitigation projects can be included in CIL funding. The legislation allows for the improvement, maintenance, replacement and operation of infrastructure (s.216 of the Planning Act 2008 regulation 59(1), both as amended in 2012). The Inspector Sue Turner supported this position at paragraph 121 of her report where she suggests management and maintenance can be funded from CIL. It is therefore incorrect to place this element in the s.106 column in the draft regulation 123 list.

There are also items included that should not be funded by CIL included on the regulation 123 list; this includes strategic renewable energy infrastructure (although it is not specified what this is) and the provision of cemeteries. These are no longer provided under local government monopoly and are commercial business enterprises. They are not infrastructure for the purposes of CIL. (See in particular s.216(2) of the Planning Act 2008).

Question 7: Do you agree or disagree with the draft CIL instalments policy?

Both CIL rates and s.106 costs must be phased to allow the cash flow for the development to work and need to reflect receipts from sales. Payment triggers can be built into the s.106 agreement.

The proposed installment policy would mean the developer would be required to forward fund considerable CIL costs ahead of development as the policy is not geared to the scale of development proposed for site CN1. This would have a negative effect on the cash flow of the project. This in turn would affect the viability of the scheme. CIL payments for a site of this size and infrastructure complexity should be in line with the actual development. Neither Whiteleaf consulting, nor Peter Brett Associates allowed for the effect of 'in advance' payments of CIL in their viability testing.

A bespoke CIL payment mechanism to reflect a commercially sensible and realistic payment profile is required to support the viability of site CN1.

There needs to be certainty that the heathland mitigation is in place prior to occupation in order to satisfy the Habitats Regulations. That is also required by Core Strategy Policy ME2. The alternative suggested solution for monitoring of the SANG discounted rate should ensure that habitat mitigation projects keep pace with occupation of dwellings. The danger comes however, if on a large development there is a significant amount of affordable housing delivered at the outset where no CIL is forthcoming.

Question 8: Do you agree or disagree with the draft 'payment in kind' policy?

This facility of meeting CIL liability is welcomed, however, the regulations governing payment in kind will reduce the scope of this as a potential solution to overcome double counting as suggested in discussion with the Councils' officers.

There are errors in the 'benefit in kind' policy as currently drafted in that it does not fully reflect the CIL Regulations.

a. Infrastructure is not valued at cost (as the Payment in Kind Policy suggests at para. 8), it is rather its value: Regulation 73A(3).
b. The policy fails to note the two restrictions in reg 73(7)(b) and 73A (7)(b)(ii). (See below)
c. The restriction on meaning of land at para 9: the definition is badly expressed because it should state that the land should be not be encumbered in a way that prevents the land being used for a relevant purpose – see reg. 73(5)) It should be recognised and made clear that the definition of land under Regulation 73(4) includes "existing buildings and other structure, land covered with water, and any estate, interest, easement, servitude or right in or over land".

As noted in point b. above any infrastructure provision required as necessary to make the planning application acceptable cannot be provided as a benefit in kind as this is restricted by Regulations 73(7)(b) and 73A (7)(b)(ii). This is a sensible precaution in the Regulations, introduced through amendments, to prevent developers reducing their CIL liability by discounting it with infrastructure they need to provide anyway. This has a particular effect on SANG and heathland mitigation. This means that any site providing SANG cannot transfer the land or infrastructure payments by way of a planning obligation to the charging authority as a benefit in kind as it is specifically precluded by CIL Regulation 2010 reg73(7)(b) and CIL Amendment 2014 reg 73A (7)(b)(ii).

This restriction in the Regulations provides further support for the differentiated SANG rate solution suggested in response to question 4 above, because by having a discounted rate for on-site SANG schemes, where they wish to, developers could provide the benefit of SANG to the charging authority with no fear that this was precluded by the CIL Regulations because they would not need to seek a 'benefit in kind' reduction as it has already been applied through the differentiated CIL rate, and neither are they precluded from entering into a s106 agreement for the SANG.

Question 9: Any other comments

CIL and Heathland Mitigation

In addition to the response to the structured questions above, the response below sets out a series of more fundamental problems with the operation of CIL as set out in the Draft Charging Schedule in relation to the mitigation of the urban effects on the Dorset Heaths, and the potential for double charging with any site where mitigation is provided privately. This expands upon the answer to question 2 and 4 above.

These objections reiterate concerns raised at the preliminary draft charging schedule consultation and in relation to the examination of the Core Strategy with regard to policy ME2. This point was highlighted in the Inspector's (Sue Turner's) report at paragraph 121, where she states: "These changes recommended do not in themselves

resolve the situation where developers who provide on site mitigation in the form of SANG will also have to pay CIL which will also fund mitigation projects."

This fundamental issue has not been addressed and this raises serious concerns in relation to the compliance of the delivery of development with the Habitats Directive and therefore the ability to deliver the planned development in the adopted Core Strategy. A solution must be found to this through an appropriate CIL charging regime to ensure the plan is delivered.

The Core Strategy Inspector recorded (at para. 120 of her Report) that the Councils stated that Heathland mitigation would be the first priority on the CIL Regulation 123 list. This reflects the importance that should be given to ensuring compliance with the Habitats Regulations but also ensuring that the necessary development is delivered by the CIL supporting and incentivising that. However, MEM Ltd firmly believes there is a serious danger that the required mitigation for urban effects on the Dorset heaths cannot be secured for certain developments through CIL as currently envisaged and evidenced by the draft charging schedule. There are three development scenarios where the proposed CIL regime does not appear to work. The three scenarios are:

1. **Sites that provide an on-site / near-site SANG**
2. **Affordable Housing**
3. **Self-build housing**

1. Developments with on-site / near-site SANG

On sites where SANG is provided as part of the development package on site or near-site there will be potential for charging twice for heathland mitigation. This is precluded in the CIL guidance as planning authorities should not charge for the same items through s106 and CIL (Planning Practice Guidance 12.6.14 paragraph 093).

It was noted at the Poole Examination report into the CIL charging schedule:

"At present each development contributes directly to Habitats Regulations (HR) mitigation through a Section 106 agreement. When CIL is adopted this direct link will be severed. The DPIDPD proposes that HR mitigation will be funded through CIL, but its inclusion on the CIL Regulation 123 list will mean that it can no longer be funded through Section 106 agreements."

The same conclusion must apply to three development scenarios set out above. As it currently stands, if a site within Poole Borough had its own SANG and was also charged CIL it would be paying for further heathland mitigation in the Borough, where it is not provided on site specific basis. (Poole Borough has no SANG associated with development schemes so this problem does not arise in Poole). SANG by its very nature cannot be open only to the residents of specific new dwellings, so new SANGs will potentially benefit the whole Borough and beyond. This is its intention as an area-wide solution to an area-wide problem, so it must follow that a SANG has the same effects for mitigation as non-site specific projects that create SANG for smaller developments, therefore, if SANG is provided physically as on–site SANG and secured through a s.106 agreement as part of a development to mitigate potential harm to heathland, this is also part of the area-wide solution, which you are proposing is also charged through CIL. This would therefore be charging twice and not be in compliance with the CIL guidance.

2. Affordable Housing and CIL for Heathland Mitigation

Affordable housing does not pay the CIL tariff, so therefore cannot mitigate harmful urban effects on the heath, unless provided directly.

From the Poole CIL Examination report (para. 29) it was concluded: "Affordable housing is not liable for CIL and some conversions from houses to flats may not need to pay CIL if there is no net increase in floorspace. Thus, as soon as CIL is in operation these types of development will not contribute directly to HR mitigation."

As the Council have now identified that all heathland mitigation will be funded by CIL in the regulation 123 list it is clear that units of affordable housing are not CIL rated and there will be no direct link between their impact and mitigation. Previously affordable housing developments paid the Interim Planning Framework tariff, which directly contributed to heathland mitigation. Given that a third of the dwellings coming forward in the local plan are anticipated as affordable houses in the two Councils over the plan period, this must be addressed in the CIL charging regime with costs anticipated for mitigation of the affordable housing being covered by the differentiated CIL rates. To fail to do so would mean that there is a serious risk that the Habitats Regulations would not be complied with.

3. Self Build Housing

As with affordable housing, self-build housing is no longer liable for CIL. This type of development will not directly mitigate for heathland impact unless a specific regime is put in place to ensure that other forms of development will fund a sufficient area-wide mitigation package. This is a recent change to the CIL regulations and the implications have not been considered in relation to the Habitat Regulations.

Other Heathland Mitigation Issues
Neighbourhood Top Slice

CIL amendment Regulations issued in February 2014 have identified the proportions of CIL receipts that will be available to the community; where neighbourhood plans are in place it is 25%, otherwise 15%. It is not clear with the community top slice how the Local Authority will continue to secure heathland mitigation. How can there be certainty that heathland mitigation will be provided if local communities do not wish to spend their CIL share on such projects? This issue needs to be addressed as part of the overall solution to heathland mitigation.

Securing Mitigation in Proportion to dwelling occupation

MEM Ltd believes that in order to satisfy the Habitat Regulations it is necessary to set out in detail costed evidence of heathland mitigation projects and their capacity to mitigate development because it is necessary to ensure that CIL receipts and mitigation, provided by those receipts, keeps pace with occupation of new dwellings. If mitigation capacity is not available, development should not be occupied until it is in place. This is the case in Surrey Heath Borough. This is the only way to ensure development is compliant with the Habitats Directive.

A Suggested Solution

Solutions found elsewhere in Councils affected by SPA issues can provide a model for CIL in CBC and EDDC.
In the Surrey Heath Borough CIL examination the Inspector found (at paras. 6 and 30 of his Report):

"The special qualities and statutory protection of habitats on the Heathlands that cover a significant part of the borough have major implications for development plan strategy……. and this is reflected in the Councils' CIL proposals. The CIL charges are differentiated not only geographically (Eastern/western zones) but also by applying different CIL rates dependent on whether or not developments provide on-site avoidance mitigation through the provision of suitable

accessible natural greenspace (SANG). In the western charging zone the CIL charge would be £180 psm with developments not providing SANG on site, and £55 psm for the development providing SANG on site. In the eastern charging zone, respective charges would be £220 psm and £95 psm.

……..The difference between the two rates is £125 psm in each zone and that simply reflects the assessed cost of SANG provision spread across the anticipated numbers of market housing. The approach ensures that all housing developments contribute fairly to SANG infrastructure provision. In practice, and in line with the Council's policy approach, only larger developments (100+ units) will provide on-site SANG."

The threshold for on-site SANG provision in EDDC and CBC is lower than in Surrey Heath at around 50 units. It is quite possible to differentiate between those sites that will provide SANG and those that will not by reference to the threshold. However, there may be some sites under the threshold, for example CN2, where SANG will be provided as part of the scheme. The more difficult problem is calculating the discount rate as there is no evidence on the cost of mitigation. This approach may not be entirely appropriate to the South East Dorset mitigation method as it does have differences to the Thames Basin Heath approach to protected heathland mitigation, but it serves to demonstrate that the problem of double charging is recognised and can be dealt with positively in relation to heathland mitigation.

Conclusion

MEM Ltd remains very concerned that significant issues around heathland mitigation have not been resolved, despite this issue being raised at the stakeholder workshop, at the preliminary draft charging consultation and at the Core Strategy consultation and examination as well as in discussions with Natural England. We know that the Councils considered a discounted rate for on-site SANG developments; it was discussed at the Core Strategy Examination under Matter 10, and the Inspector asked for examples from other Councils. MEM Ltd suggested that it may be appropriate to resolve the issues raised in the earlier response, through a meeting with your consultants but this offer was not acted upon by the Council.

In this respect the Councils appear to have failed in their duty to achieve the support from local developers, with the exercise focusing on the strategic sites. However, MEM Ltd remain of the view that it would be better to resolve these issues through dialogue, if at all possible, rather than these issues being left for the examination, and therefore request a meeting to discuss the issues raised by this consultation response.

MEM Ltd suggests that the authorities should make modifications to the Draft Charging Schedule and regulation 123 list as allowed for in the planning practice guidance on CIL in paragraph 032. Given the changes required to make the CIL workable and viable for the strategic sites in Christchurch are substantial an additional formal consultation period may be necessary before submission to the Examiner.

Yours sincerely

Lisa Jackson MA BSc MRTPI