



AGENDA ITEM: 11

SUMMARY

Report for:	Cabinet
Date of meeting:	26th November 2013
PART:	1
If Part II, reason:	

Title of report:	Community Infrastructure Levy (CIL) Update
Contact:	<p>Cllr Andrew Williams, Leader of the Council and Portfolio Holder for Planning and Regeneration</p> <p>Robert Freeman – Strategic Planning and Regeneration Officer (Infrastructure Planning) (ext 2663)</p> <p>James Doe – Assistant Director, Planning, Development and Regeneration (ext 2583)</p>
Purpose of report:	To update Members on the progress towards the adoption of CIL and seek approval for public consultation on a Draft Charging Schedule and associated policies.
Recommendations:	<ol style="list-style-type: none"> 1. To note the progress and programme for the development of a CIL for Dacorum. 2. To recommend that Council approves the content of the Draft Charging Schedule and policies on Discretionary Relief, Exceptional Circumstances Relief from CIL, Instalments, Payments in Kind and Regulation 123 List for public consultation.
Corporate objectives:	<p>Preparation and implementation of a CIL contributes to all of the corporate objectives.</p> <p><u>Affordable Housing</u> Affordable housing will be exempt from paying CIL, and the CIL revenues cannot currently be used for provision of Affordable Housing, which will continue to be provided via S106. Officers from the Strategic Housing service are involved in developing the CIL charging schedule, for which affordable</p>

	<p>housing requirements will be a key consideration. If CIL is set too high then developers may not be able to meet the affordable housing policy requirements.</p> <p><u>Safe and Clean Environment</u> The infrastructure provided through CIL monies is likely to include open space and urban realm improvements to support the development of the borough, both of which contribute to a safe and clean environment.</p> <p><u>Building Community Capacity</u> CIL revenues may be used to social enterprise and local community infrastructure which supports those in the most deprived areas.</p> <p><u>Regeneration</u> CIL will be used in combination with S106 to support the delivery of the key regeneration priorities for the Council.</p> <p><u>Dacorum Delivers</u> Developing the CIL represents Value for Money as it will become cost-neutral once it is up and running as explained below. It will lead to the delivery of infrastructure required to support new development so will improve the reputation of the Council.</p>
<p>Implications:</p>	<p><u>Financial</u> The cost of developing and implementing CIL is being borne by the Local Development Framework (LDF) budget, and may be repaid from future CIL receipts. Once implemented, up to 5% of CIL receipts may be used for its administration. The project is therefore expected to be cost-neutral in the long term.</p> <p>Once CIL is in place the Council will be responsible for collecting and allocating significant sums of money.</p> <p><u>Value for money</u> Where possible, technical work that supports the CIL has been jointly commissioned with adjoining authorities to ensure value for money. Also, see above regarding the project ultimately being cost neutral.</p> <p><u>Legal</u> CIL should reduce the need for involvement of the Council's planning solicitor, as it will reduce the role of s106 agreements. The Council's legal department may need to become involved in cases where liable parties do not pay CIL.</p> <p><u>Human Resources</u> A member of the Strategic Planning and Regeneration team has taken over the role of leading CIL development and associated infrastructure planning work, for an initial two year period. Any additional staff needs will be considered as the project develops. It is likely that the current secondment which</p>

	<p>ends in early 2014 will need to be extended to cover the CIL examination and the early implementation of CIL.</p> <p><u>Land</u> Once in place, CIL will be payable for any chargeable development on Council owned land. The opportunity also exists for the Council to accumulate land for the delivery of infrastructure in lieu of CIL payment in accordance with Regulation 73 of the CIL Regulations. A draft policy on Payments in Kind is included at Appendix 6.</p>
<p>Risk implications:</p>	<p>The Project Initiation Document (PID) was updated in February 2013 and sets out full details of the risks associated with the introduction of a CIL. They include insufficient buy-in from infrastructure providers and key stakeholders, changes in Government policy and team capacity.</p>
<p>Equalities implications:</p>	<p>An Equality Impact Assessment has been carried out for CIL in support of the PID. No significant issues have arisen, largely as any expenditure from CIL monies will need to be reflective of the need to develop infrastructure in the Borough, as set out in the Borough's Infrastructure Delivery Plan.</p>
<p>Health and safety implications:</p>	<p>None</p>
<p>Sustainability implications:</p>	<p>The CIL charging schedule is intended to enable the delivery of infrastructure required to support development planned through the Core Strategy; the Core Strategy has been subject to Sustainability Appraisal incorporating a Strategic Environment Assessment.</p>
<p>Monitoring Officer/S.151 Officer Comments</p>	<p>Deputy Monitoring Officer</p> <p>A robust CIL charging schedule is essential if the Council is to continue to meet the infrastructure requirements arising from development in the Borough. The draft charging schedule appears to be based on sound evidence relating to the infrastructure requirements for the Borough and therefore is fit for the final stage of consultation.</p> <p>The policies on discretionary relief, exceptional circumstances relief, instalments and payment in kind will be important to ensure that the viability of development schemes are not adversely affected by CIL.</p> <p>Furthermore, robust governance procedures will need to be agreed to ensure that funds can be allocated to appropriate infrastructure in a timely and efficient manner.</p> <p>Deputy S.151 Officer</p> <p>No additional Comments to add to this report.</p>

<p>Consultees:</p>	<p>The CIL Task and Finish Group have discussed the programme for the introduction of CIL and draft versions of the Instalments policy and the Regulation 123 List.</p> <p>The supporting CIL policies have been circulated to members of the CIL Task and Finish Group and members of the CIL Working Group by email.</p> <p>The County Council have been regularly consulted over the content of all CIL documents. Their comments and advice received is reflected in this report.</p>
<p>Background papers:</p>	<ul style="list-style-type: none"> • Cabinet Report – 23rd July 2013 • CIL Guidance Notes 2013 (Department for Communities and Local Government) • CIL Regulations 2010 (amended 2011, 2012 and 2013) • Community Infrastructure Levy Viability Study (BNP Paribas Real Estate) (December 2012) • Community Infrastructure Levy Viability Study Update (BNP Paribas Real Estate) (June 2013) • Community Infrastructure Levy Viability Study – Strategic Sites (BNP Paribas Real Estate) (November 2013) • Core Strategy 2006-2031 • Dacorum Infrastructure Delivery Plan (June 2012) • Finance and Resources OSC – November 2013 • Infrastructure Funding Gap Assessment (December 2012) • Preliminary Draft Charging Schedule (December 2012) • Project Initiation Document • Strategic Planning and Environment OSC – June 2013 • Strategic Planning and Environment OSC – November 2013 <p>Key documents can be located on the Council's CIL web pages.</p>
<p>Glossary of acronyms and any other abbreviations used in this report:</p>	<p>BCIS – Building Cost Information Service CIL – Community Infrastructure Levy DCLG – Department for Communities and Local Government DCS – Draft Charging Schedule ECR – Exceptional Circumstances Relief IFGA – Infrastructure Funding Gap Assessment InDP – Infrastructure Delivery Plan NPPF – National Planning Policy Framework PDCS – Preliminary Draft Charging Schedule PID – Project Initiation Document</p>

BACKGROUND

1.0 Introduction:

- 1.1 The Community Infrastructure Levy is a new way of collecting financial contributions from new developments to help fund the provision of infrastructure required to support growth in the Borough. It is a tariff style system applied to the area of the development as a cost per square metre and may vary by both use and location. The level of charge must be informed by evidence of infrastructure need and scheme viability, and once set will be mandatory for developers to pay.
- 1.2 The Council is responsible for setting the charges, collecting the money and allocating the money for spend. Both the rate at which CIL is set and how its revenue is used will have a big impact on the future growth of the borough. The Council can spend CIL revenues on '*infrastructure to support development of its area*'; it can be spent on the provision of new infrastructure or the on-going costs of infrastructure – but it cannot be used to correct existing deficits in infrastructure provision.
- 1.3 The current mechanism for raising funds from new developments to mitigate the impact upon infrastructure is through the use of planning obligations secured under Section 106 of the Town and Country Planning Act 1990 (as amended). These will continue to play a role in funding new infrastructure. However the way that they may be applied to new developments will significantly change. The Government has made it clear through the CIL Regulations and CIL Guidance that it expects the use of S.106 to be scaled back to those matters that are directly related to a specific site and those which are not identified in CIL spending plans. The Government introduced restrictions upon pooling of S.106 agreements at an early stage in the introduction of CIL. The Council will need to develop a clear and co-ordinated approach to the collection and use of CIL and S106.
- 1.4 Regulation 14 of the CIL Regulations requires the charging authority to strike what it considers to be the appropriate balance between the desirability of funding infrastructure from the levy and the potential effects of the levy on the economic viability of the development across the area. The Council set out its initial proposals for CIL rates in a Preliminary Draft Charging Schedule (PDCS) and consulted on a PDCS between December 2012 and March 2013. Members agreed both the timetable for the adoption of CIL and a response to this public consultation at the meeting of Cabinet on the 23rd July 2013.

2.0 The Draft Charging Schedule

- 2.1 The next stage towards the adoption of a CIL is to publish the Draft Charging Schedule (DCS). The DCS should be made available for inspection at the Council offices together with relevant evidence and a Statement of Representations. These documents should also be published on the Council's website.
- 2.2 The DCS is required by Regulation 12 of the CIL Regulations to contain information on (a) the name of the charging authority, (b) the rates (in pounds per square metre) at which CIL is to be charged, (c) the location and boundaries of the zones for differential rates, on an Ordnance Survey base showing grid lines

and references, and (d) an explanation of how the charge will be calculated¹. A copy of the draft DCS is included in Appendix 1 to this report. Cabinet are asked to recommend that Council approves the publication of the DCS for public consultation.

- 2.3 The DCS must undergo a minimum period of 4 weeks consultation, prior to its submission for examination, in accordance with the CIL Regulations 2010 (as amended). It had been proposed to extend this period to some 6 weeks under the DCLG CIL – Further Reforms, however the DCLG have concluded that such matters should be left to the discretion of the charging authority. It is intended to carry out consultation over a 6 week period commencing shortly after the Council meeting of the 15th January 2014, thereby exceeding the Regulations. It is considered that 6 weeks would be a more appropriate consultation period in view of the number of supporting policy documents upon which comments will be sought.
- 2.4 The Council’s legal team has recommended that the DCS should be approved for consultation by Council to accord with the requirements of Section 212 of the Planning Act 2008 and as such it is not possible to carry out consultation on the DCS until January 2014. This change to the timetable for the adoption of CIL should not prevent the submission and examination of the Charging Schedule in accordance with the current timetable as it is considered that time savings will be gained in preparing the Charging Schedule. Members are asked to note this change to the timetable for the adoption of CIL.
- 2.5 The DCS would charge development as set out in Table 1 below. The Charging Schedule is largely as set out in the report to Cabinet of the 23rd July 2013 except for the inclusion of a new charging zone for residential development on Identified Sites.

Table 1: Draft CIL Charging Schedule rates for inclusion in the DCS (November 2013)

Development Type	CIL rate (per sq.m)			
	Zone 1: Berkhamsted and surrounding area	Zone 2: Elsewhere	Zone 3: Hemel Hempstead and Markyate	Zone 4: Identified Sites
Residential	£250	£150	£100	£0
Retirement Housing	£125	£0		
Convenience based supermarkets and superstores and retail warehousing (net retailing space of over 280 square metres)	£150			

¹ This text should be taken directly from the CIL Regulations and as such will be subject to amendment following the CIL Regulations 2014.

Other	£0
Retirement housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities amounting to less than 10% of the gross floor area. These premises often have emergency alarm systems and/or wardens. These properties would not however be subject to significant levels of residential care (C2) as would be expected in care homes or extra care premises.	

Viability Evidence

- 2.6 The Council's CIL rates are set on the basis of viability evidence. The Council's viability evidence comprises a number of documents produced by the consultants BNP Paribas Real Estate. An initial viability study was undertaken prior to consultation on the PDCS and this work was updated following the feedback from the public consultation thereon.
- 2.7 The Council concluded at its Cabinet meeting of the 23rd July 2013 to amend the description of retail development which was subject to a CIL charge and remove charges for retirement housing in the lower value housing sub markets in accordance with the recommendations of this work.
- 2.8 The description of retirement housing has been updated in Table 1 to reflect the comments of consultants BNP Paribas Real Estate in relation to scheme viability. A critical issue in the determining the relative viability of these schemes, care homes and extra care housing is the provision of communal floor space. The proposals are less viable once more than 10% of the gross internal floor area is utilised for communal purposes.

Identified Sites

- 2.9 During the consultation on the PDCS concerns were raised by a number of landowners in the Borough regarding the impact of CIL upon the viability of large housing sites, particularly those set out as Strategic sites and Local Allocations within the Core Strategy. These sites are vital to the overall supply of housing within the Borough.
- 2.10 A number of these sites have key pieces of infrastructure associated with them (often site-specific infrastructure) which the Council and County Council may prefer to secure through the use of S.106. There is perception amongst the development industry that developers will effectively be 'double charged' for these works through CIL and that the costs associated with the planning requirements, CIL and S.106 may be prohibitively high and as a consequence undermine housing delivery. The simplest way to avoid such issues is to avoid levying a CIL on sites where S.106 agreements are sought and vice versa. However this is not realistic and would not maximise the funding opportunities for infrastructure. Where a combination of CIL and S.106 is sought one should ensure that these schemes remain viable.
- 2.11 The Council appointed BNP Paribas to undertake additional site specific viability work to consider the ability of Strategic Sites and Local Allocations and other key housing sites to contribute to the delivery of infrastructure using both planning obligations and CIL payments. This approach was encouraged by the DCLG CIL Guidance 2013.

- 2.12 The following sites were subject to additional viability testing:
- Land at Durrants Lane and Shootersway (SS1)
 - Land at Hicks Road (SS2)
 - Marchmont Farm (LA1)
 - Old Town (LA2)
 - Land West of Hemel Hempstead (LA3)
 - Land at Hanbury's, Shootersway (LA4)
 - Land off Icknield Way, Tring (LA5)
 - Land at Chesham Road/Molyneaux Avenue (LA6)
 - Land at Spencers Park/East Hemel Hempstead
 - Hemel Hempstead Town Centre.
- 2.13 BNP Paribas Real Estate has concluded that, of the sites tested, only the site at land off Icknield Way (LA5) would not be capable of paying CIL, in the current climate, in accordance with the rates identified in the PDCS. They have therefore recommended that the CIL rate for this site is adjusted to £140 per square metre. The report does not identify any other viability grounds for the introduction of new charging zones within the DCS.
- 2.14 The report is based on the limited information available on the delivery of these sites and there may be changes in circumstances which could impact on scheme viability. The Council should however be reassured by estimates of proposed growth in the housing market which should make all of the tested schemes viable come 2021 when the majority of the sites identified in the Core Strategy are due for delivery. It is envisaged that the Charging Schedule would be reviewed prior to this date in conjunction with the early partial review of the Core Strategy.
- 2.15 Notwithstanding the viability evidence, it is proposed to identify two sites at land at West Hemel Hempstead (LA3) and at Spencer's Park, Hemel Hempstead that should be subject to a 'nil' CIL charge.
- 2.16 It is proposed to utilise S.106 agreements to secure infrastructure improvements in relation to these sites in preference to the use of CIL. This approach is endorsed by the County Council as a key provider of local infrastructure.
- 2.17 The benefits in using a S.106 agreement to secure infrastructure improvements over utilising CIL to deliver the same infrastructure items are that S.106 agreements provide greater certainty over both the funding and timing for the delivery of the necessary infrastructure. The alternative would be to set aside significant CIL resources over a longer timescale and to the potential detriment of other infrastructure needs. These benefits need to be carefully balanced against any perceived loss of local influence over determining infrastructure priorities within the area in question. In setting the CIL charge, it is important to recognise that the charge should strike a balance between the viability of the proposed scheme and the need to fund the delivery of infrastructure. Where the necessary infrastructure would be secured by another mechanism, such as a S.106 agreement, the need to charge a CIL to secure infrastructure improvements would be reduced and it would be appropriate, in a limited number of cases, to reflect this within the Charging Schedule.
- 2.18 The viability report sets out that there are large S.106 bills associated with the developments of land at West Hemel Hempstead (LA3) and Spencer's Park,

Hemel Hempstead. These sites are likely to deliver key pieces of infrastructure (for example new education premises at an estimated cost of £7.64 million) which would significantly exceed the value of the CIL bill through their S.106. Any S.106 agreement associated with sites such as these would deal with all the infrastructure needs arising from the development thereby removing the need to levy CIL charges in these instances. The County Council is in favour of this approach to the sites identified as they consider the use of a S.106 agreement to be the most appropriate mechanism for delivery of large infrastructure items.

- 2.19 The delivery of site specific infrastructure associated with these proposals is fundamental to the delivery of sustainable forms of development at these sites and to the wider Place Strategies within the Core Strategy. The application of a 'nil' charge would help ensure delivery of the aims and objectives of the Core Strategy as required by the NPPF.
- 2.20 Officers have reconsidered the approach to land at Icknield Way (LA5) following concerns raised by the FROSC that proposals for a 'nil' CIL charging zone for land at Icknield Way (LA5) were not fully justified and in light of new viability evidence from BNP Paribas Real Estate. Members were also concerned that this approach would result in a loss of CIL income for the Town Council, undermining their ability to deliver localised infrastructure improvements.
- 2.21 Although BNP Paribas Real Estate are suggesting that the charge for this site is reduced from £150 per square metre to £140 per square metre for residential units, it is proposed to keep the land off Icknield Way, Tring (LA5) within the general Tring Charging zone as set out in the PDCS. This is considered reasonable given the expected date of delivery of this housing site and projections over residential growth² to this period.
- 2.22 The expansion of the adjacent Tring cemetery site is identified as a key planning requirement for LA5 within the Core Strategy and officers would give a high priority to securing this item of infrastructure. The amount of land required and the mechanism for securing it will be considered further through the masterplan and Site Allocations DPD. It is now envisaged that this proposal will be secured through the use of, or in lieu of CIL and as such the cemetery expansion has not been incorporated into the residual S.106 contributions for the purposes of undertaking viability appraisals. The Regulation 123 list, previously considered at both FROSC and SPAE OSC has been amended to reflect the change in the mechanism for delivering infrastructure at this site from S.106 to CIL.

3.0 CIL Spending Plans – The Interaction of Regulation 123 and S.106

- 3.1 When setting the CIL charging rates it is important to understand the dynamics of CIL and S.106 and how they may be utilised once CIL has been introduced to deliver infrastructure works within the Borough.
- 3.2 The Council is required under Regulation 123 of the CIL Regulations to publish a list of infrastructure types or specific infrastructure schemes that will be wholly or partially funded by CIL (the Regulation 123 List). The Council will not be able to seek S.106 contributions towards infrastructure items upon this list and will be subject to restrictions over the use and pooling of future S.106 monies once a CIL

² BNP Paribas have sensitivity tested a real growth scenario of 14% to 2017 based on research by Savills UK. The site at LA5 is capable of paying CIL at a rate of 150 per square metre for residential under this scenario.

is adopted (or April 2015 whichever is earliest³). Only five contributions under S.106 may be pooled to any one infrastructure project or type. S.106 agreements will however remain an important and appropriate mechanism to enable the expedient delivery of relevant on site infrastructure and affordable housing.

- 3.3 The Regulation 123 List is expected to inform the preparation of an authorities DCS and will now form part of the evidence base at examination. It is considered that the Council should publish the Regulation 123 list at this stage to demonstrate that the Council has considered the mechanism for delivering infrastructure when setting the CIL charge. The publication of this list will provide an opportunity to seek feedback on our approach to delivering infrastructure and allow Officers to prepare for issues that are likely to be raised at examination.
- 3.4 Officers have therefore been set the challenging task of determining from the Infrastructure Delivery Plan (InDP) project schedule and the Infrastructure Funding Gap Assessment (IFGA) those items which will be funded by CIL and those which should or could be secured through S.106 agreement. Officers have been careful to avoid double charging developers when drafting the Regulation 123 list.
- 3.5 The draft Regulation 123 list sets out a number of exclusions (those items which will be secured through S.106) in order to provide the required clarification on how CIL may be spent and to address concerns that developers may be charged twice for the same item of infrastructure. Further clarification and certainty is provided by the removal of a CIL charge for those housing sites at west Hemel Hempstead (LA3) and Spencer's Park. The use of a S.106 agreement will inevitably be preferable where it would provide greater certainty over the delivery of the site specific infrastructure items for both the developer and infrastructure provider than may otherwise be provided under CIL, for example the County Council has a clear preference for the use of a S.106 agreement to deliver a new school at LA3 – Land to the west of Hemel Hempstead. The Council has a comprehensive list of infrastructure improvements associated with Strategic Sites, Local Allocations and key development sites which will be secured in this way and there would also be scope to secure other community benefits identified by the local community through this mechanism.
- 3.6 It is important to note that CIL and S.106 may still be charged on the same site providing one is clear that the S.106 funds will not support the delivery of items on the Regulation 123 list and that appropriate monitoring of the CIL spending is undertaken. It may often be the case that CIL funds from other sites may be used to supplement S.106 projects on individual sites and this is not precluded by the CIL Regulations.
- 3.7 A draft Regulation 123 list is set out at Appendix 2 to this report. Cabinet are asked to recommend that Council approves the publication of this list alongside the DCS for public consultation.
- 3.8 The draft Regulation 123 list has been subject to consultation with the CIL Task and Finish Group, members of the CIL Working Group and key officers at the County Council with the responsibility of delivering Children, Schools and Family services and Transport proposals.

³ This deadline has been amended following the publication of the DCLG's response to the consultation on CIL-Further Reforms and will be included within new CIL Regulations in early 2014.

- 3.9 Members of the CIL Task and Finish Group recognised the need to deliver site specific infrastructure through the use of S.106 agreements and the need therefore to provide two distinct lists as part of the Regulation 123 list (a CIL list with a number of exclusions under S.106) The group assisted in the construction of an early version of the list, agreeing to provide large items of infrastructure on the large housing sites in the Core Strategy through S.106, suggesting that CIL may be used to fund improvements on the hospital site and health services and excluding utilities infrastructure from CIL and S.106 funding.
- 3.10 The Borough Council is required to collaborate with the County Council on the formation of CIL policies and on the formulation of the Regulation 123 list in accordance with paragraph 48 of the DCLG CIL Guidance 2012. County Council officers have informally considered the content of the Regulation 123 list and made some adjustments to introduce thresholds for the provision of County services such as new school buildings and large items of highways infrastructure which would be easier to deliver through the use of S.106 agreements.

4.0 Supporting Policies

- 4.1 Paragraphs 173-178 of the NPPF place an obligation on the Council to ensure that sufficient measures are in place to facilitate the delivery of the Core Strategy and ensure that the viability of schemes is not threatened. The Council has a number of mechanisms that can be used to assist developers with scheme viability. There was clear support during the consultation of the PDCS to the production of the following policies:

Discretionary Charitable Relief Policy

- 4.2 The scope for charitable relief from the payment of CIL may be extended only through the adoption of a Discretionary Charitable Relief policy for which formal notification must be given. Charitable organisations already benefit from a statutory exemption to paying CIL where they can clearly demonstrate they are developing their own land for charitable purposes. They would not qualify for relief were the development not explicitly for charitable purposes such as an investment by a charity from which profits may be used for charitable purposes. Cabinet has opted to offer Discretionary Charitable Relief under Regulations 44 and 45 of the CIL Regulations. This would allow charities to carry out enabling development without triggering a full CIL payment. A Discretionary Charitable Relief policy has been drafted setting out to whom and how the rate will be applied. This is included at Appendix 3 to this report. Cabinet are requested to recommend that Council approves this document for public consultation.
- 4.3 The primary concern of the CIL Task and Finish Group was that charitable relief should not be open to abuse by developers. The policy has been drafted so that the charities that might benefit from Discretionary Charitable Relief will need to demonstrate that they provide a local service. The level of relief is set to account for the requirement to pass a proportion of CIL to the local community for infrastructure works and to limit cases where the offer of relief may raise issues regarding State Aid.

Exceptional Circumstances Relief Policy

- 4.4 Cabinet recommended the publication of a policy on Exceptional Circumstances Relief (ECR) under Regulation 56 of the CIL Regulations. The ECR policy would allow the Council to offer relief from the payment of CIL should there be exceptional development costs which would undermine the viability of a scheme. A draft ECR policy is included in Appendix 4. Cabinet are asked to recommend that Full Council approves this policy for public consultation.
- 4.5 The use of an ECR policy has been limited at a national level with a number of authorities opting not to pursue its use. This had caused some concerns at the DCLG and to address a lack of use of this mechanism the national requirement for a development to have a S.106 which would exceed the CIL Liability to qualify for ECR will be removed in the new CIL Regulations in January 2014. The publication of an ECR policy and its use remains discretionary for the charging authority.
- 4.6 Those authorities that do offer ECR at the moment are in a minority and do not appear to provide any additional guidance on its application other than that set out within the CIL Regulations.
- 4.7 Officers had previously expressed concerns that the broadening of the eligibility criteria at a national level for ECR was illogical given that the policy should only be applied, by definition, to exceptional cases. The introduction of local criteria will therefore need to be carefully considered and officers are of the opinion that these should aim to minimise the number of applications and circumstances for which ECR would be applicable. The proposed policy retains the criterion that the S.106 should exceed the CIL liability, as officers believe that we should be securing commensurate infrastructure improvements to those possible through CIL under any S.106. The proposed policy seeks to restrict applications for ECR to those applications with a significant scale of development or those delivering local infrastructure priorities. It is hoped that this will discourage the submission of applications for ECR that have no reasonable prospect of approval.
- 4.8 The ECR policy has been drafted in consultation with the County Council. The County Council understands that the wording in this policy and the exceptions in the Regulation 123 list are designed to ensure that large items of infrastructure which may be necessary as a result of speculative developments or large windfall proposals are still capable of being delivered via their preferred S.106 route without prejudicing the economic viability of proposals.

Instalments

- 4.9 Cabinet recommended that the Council facilitates the delivery of new residential and commercial developments by opting to introduce an Instalments policy for the payment of CIL. The Council is able to adopt an Instalments policy under Regulation 69B of the CIL Regulations. A draft CIL Instalments policy is included at Appendix 5 to this report. The Instalments policy does not form a formal part of the examination of the CIL Charging Schedule however it is considered an intrinsic part of the CIL "story" which will be presented to the examiner to demonstrate compliance with the requirements of the NPPF. Cabinet are asked to recommend that Council approves the draft CIL Instalments policy for the purposes of public consultation.

- 4.10 The draft Instalments policy has been subject to consultation with members of the CIL Task and Finish Group and CIL Working Group. Members were broadly satisfied that the thresholds for instalments set out in this draft policy are appropriate and strike an appropriate balance between enabling development, administering the charge and funding the delivery of infrastructure. The basic principle within the instalments policy is that most small residential schemes should continue to pay for infrastructure at an early stage in construction in either one or two payments (payments are required prior to the commencement of development under the existing S.106 programme) with longer timescales and more complex arrangements for paying significant sums of money due from larger residential proposals.

Payments in Kind

- 4.11 Cabinet recommended the production of a Payment in Kind policy to highlight the provisions in Regulation 73 of the CIL Regulations which allow for such payments and to encourage the use of this mechanism where appropriate. The Council recognises that there are circumstances where it may be preferable to secure land for the delivery of Infrastructure (or indeed the infrastructure itself) needed to support the growth of the Borough. A draft policy has been written setting out the circumstances in which a land payment may be acceptable to the Council and is included in Appendix 6.
- 4.12 Under the terms of the draft policy, land will only be accepted where it is in an appropriate condition to enable infrastructure to be provided and will be transferred for an appropriate market value. This valuation will need to be undertaken by an independent person(s). The Council may identify suitable sites for transfer through the Site Allocations DPD or Supplementary Planning Documents. Officers have also discussed the creation of a Register of Land of Interest whereby the Council would identify land upon which they would like to deliver new infrastructure. This could encourage the transfer of land as a CIL payment.
- 4.13 At this stage, it is not proposed to publish a policy in relation to payments in kind through the provision of new infrastructure items. It is expected that such payments will be possible following new CIL Regulations in January 2014. However, officers consider that such payments are likely to be limited and will need careful consideration on a case by case basis.
- 4.14 Cabinet are requested to recommend that Council supports public consultation on the draft Payment in Kind policy.

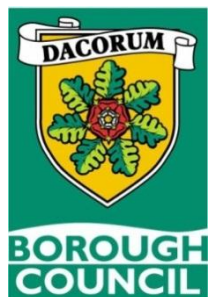
5.0 The CIL Timetable

- 5.1 The following timescales for the project are now envisaged:
- Consideration of DCS and related CIL policies by Council: January 2014
 - Public Consultation on the DCS: January 2014 – March 2014
 - Prepare Charging Schedule for examination: February 2014 - April 2014
 - Submission to the Planning Inspectorate for examination: April 2014
 - Examination completed and Examiner's report received: June 2014
 - Final Charging Schedule considered by Cabinet and Council: October 2014- November 2014
 - Adopt CIL in January 2015.

6.0 Recommendations

- 6.1 Cabinet are asked to note the timescales for the introduction of CIL as outlined in this report. The key dates within the timetable are set out at paragraph 5.0.
- 6.2 Cabinet are also asked to recommend that the policies at Appendices 1-6 are approved by Council in order that public consultation may be undertaken on the DCS and associated documents prior to submitting them for examination.

APPENDIX 1 – DRAFT CHARGING SCHEDULE



Community Infrastructure Levy - Draft Charging Schedule

The Charging Authority

The Charging Authority is Dacorum Borough Council

Date of Approval

This Charging Schedule was approved by the Council on (date to be inserted following examination and Council approval)

Date of Effect

This Charging Schedule will come into effect on the 1st January 2015

CIL Rates

The rate at which CIL is charged shall be:

Development Type	CIL rate (per square metre)			
	Zone 1: Berkhamsted and surrounding area	Zone 2: Elsewhere	Zone 3: Hemel Hempstead and Markyate	Zone 4: Identified Sites
Residential	£250	£150	£100	£0
Retirement Housing	£125	£0		
Convenience based supermarkets and superstores and retail warehousing (net retailing space of over 280 square metres)	£150			
Other	£0			
Retirement housing is housing which is purpose built or converted for sale to elderly people with a package of estate management services and which consists of grouped, self-contained accommodation with communal facilities amounting to less than 10% of the gross floor area. These premises often have emergency alarm systems and/or wardens. These properties would not however be subject to significant levels of residential care (C2) as would be expected in care homes or extra care premises.				

The Charging Areas

The Charging Areas are set out in the Community Infrastructure Levy Charging Area Map in Annex 1 of this schedule

Calculating the Chargeable Amount

The Council will calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with Regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended). This calculation is set out in Annex 2 of this Schedule.

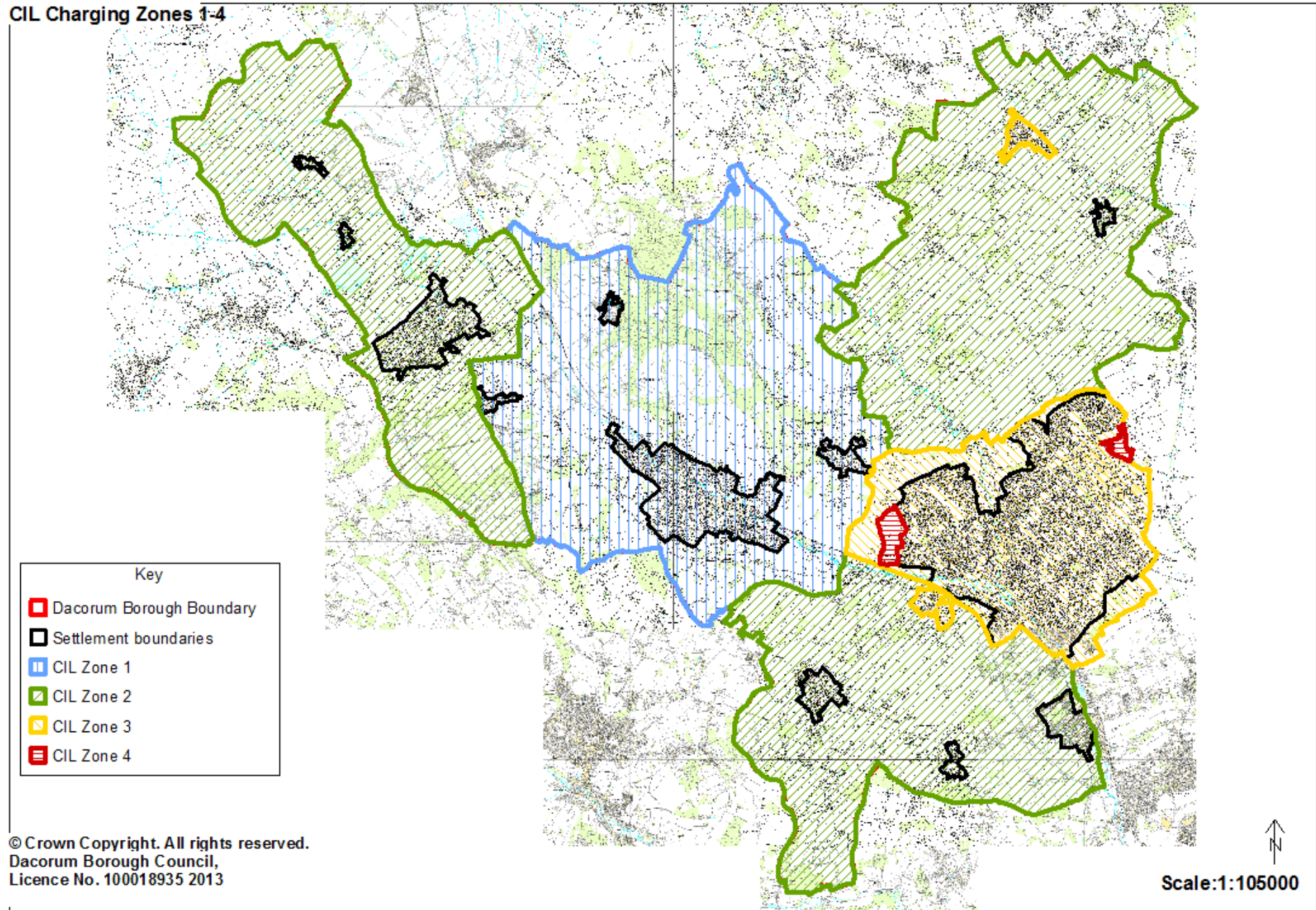
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ANNEX 1 – MAPS

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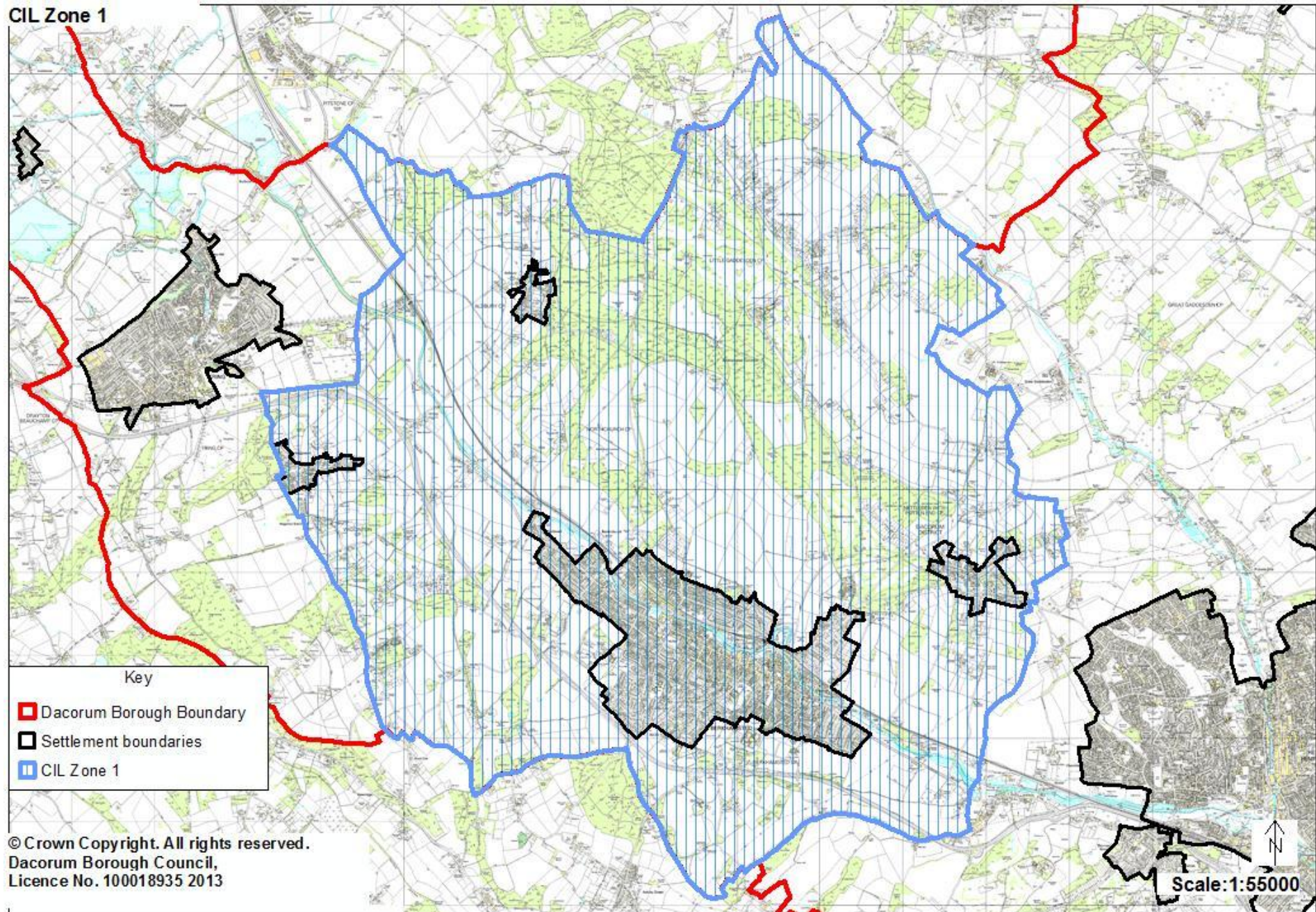
All Zones

CIL Charging Zones 1-4



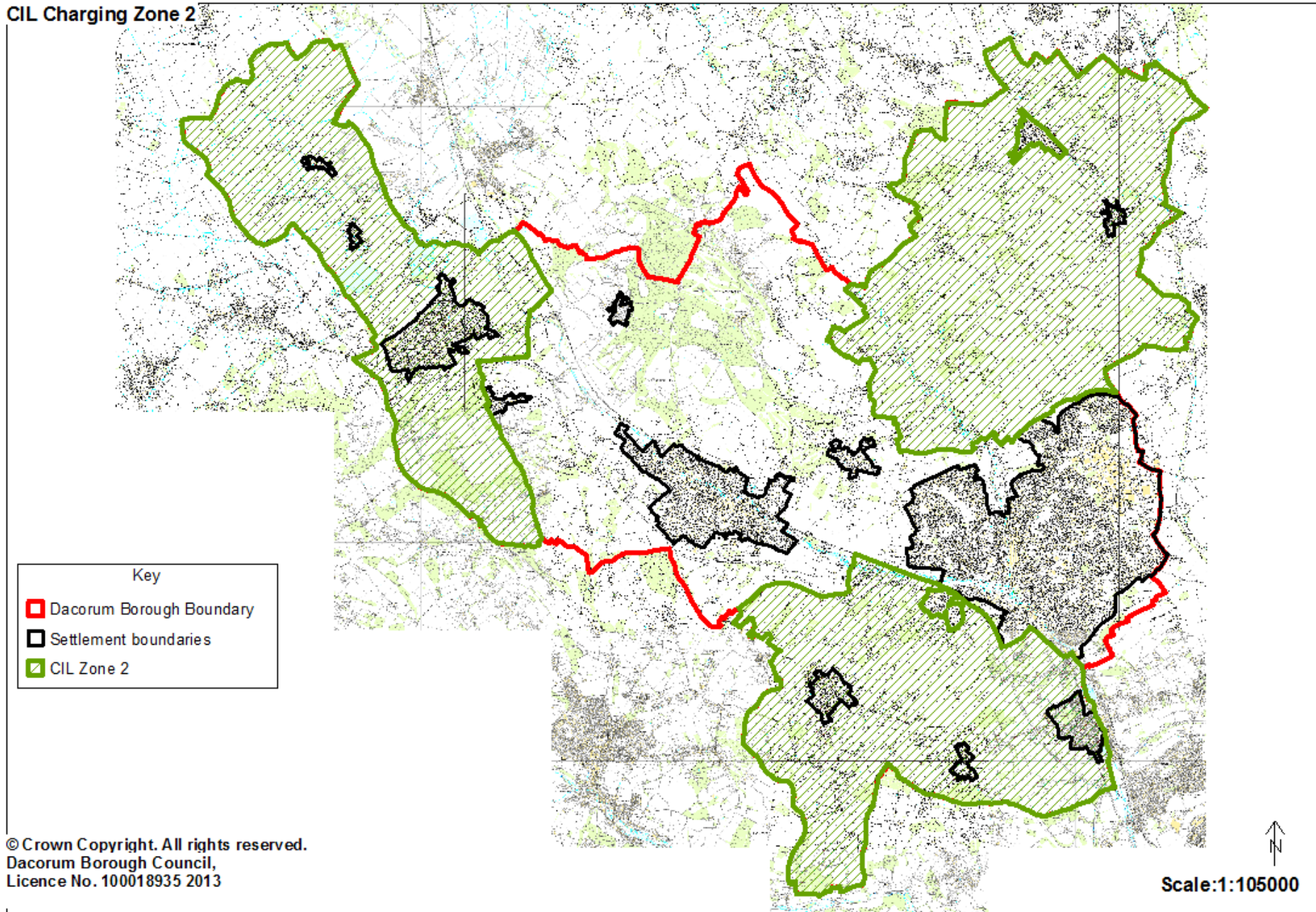
Zone 1: Berkhamsted and surrounding area

CIL Zone 1



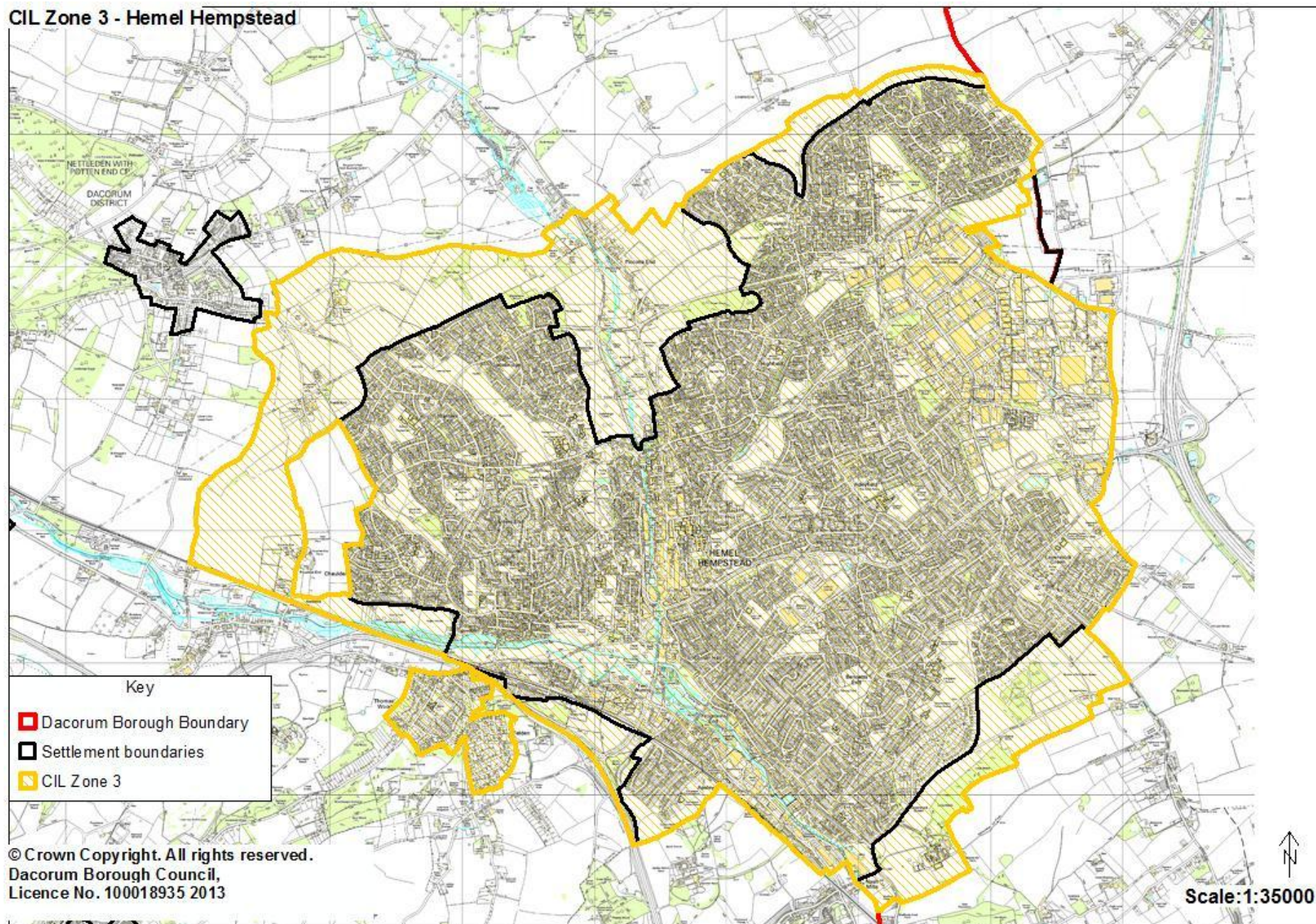
Zone 2 - Elsewhere

CIL Charging Zone 2



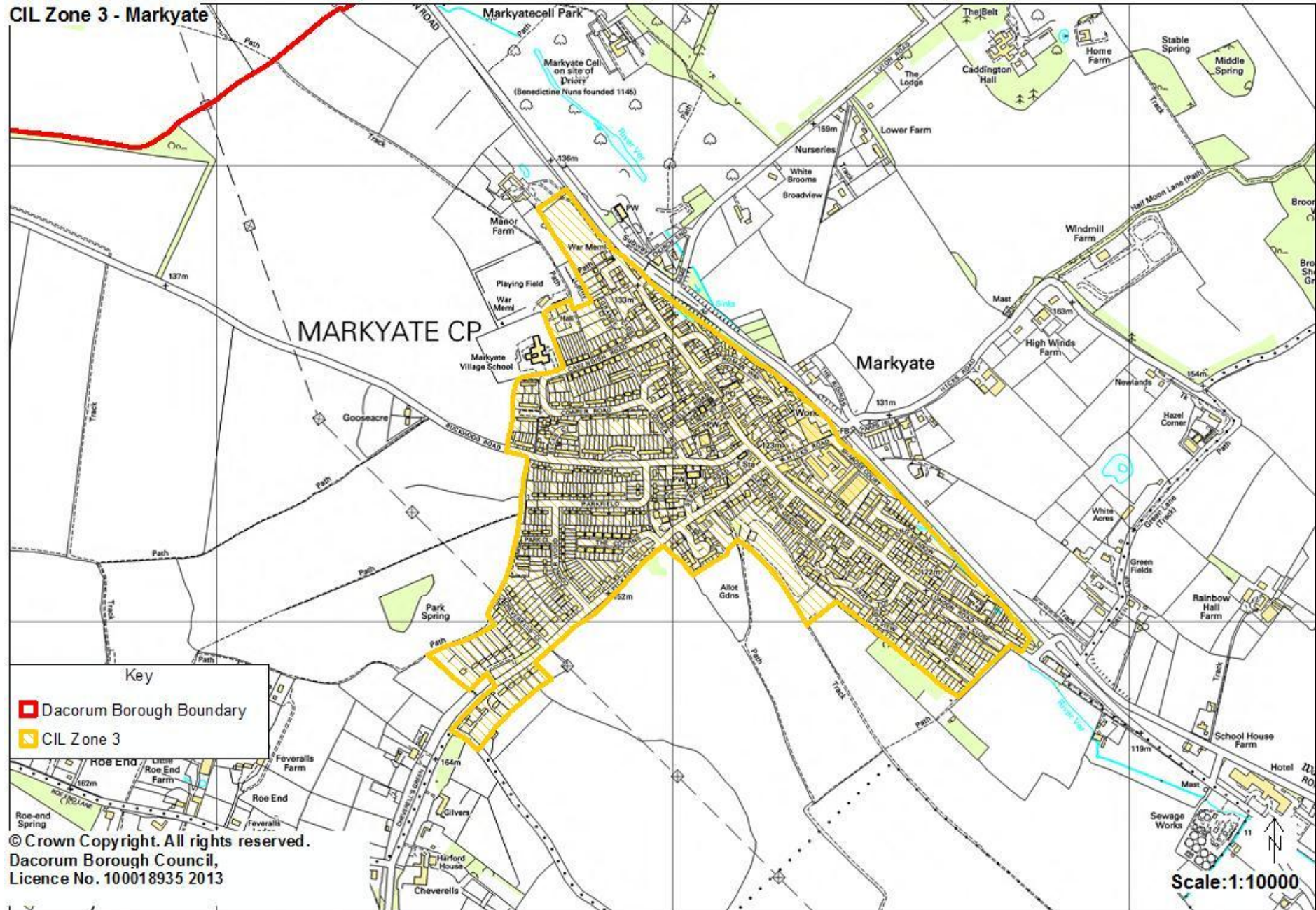
Zone 3: Hemel Hempstead

CIL Zone 3 - Hemel Hempstead



Zone 3: Markyate

CIL Zone 3 - Markyate

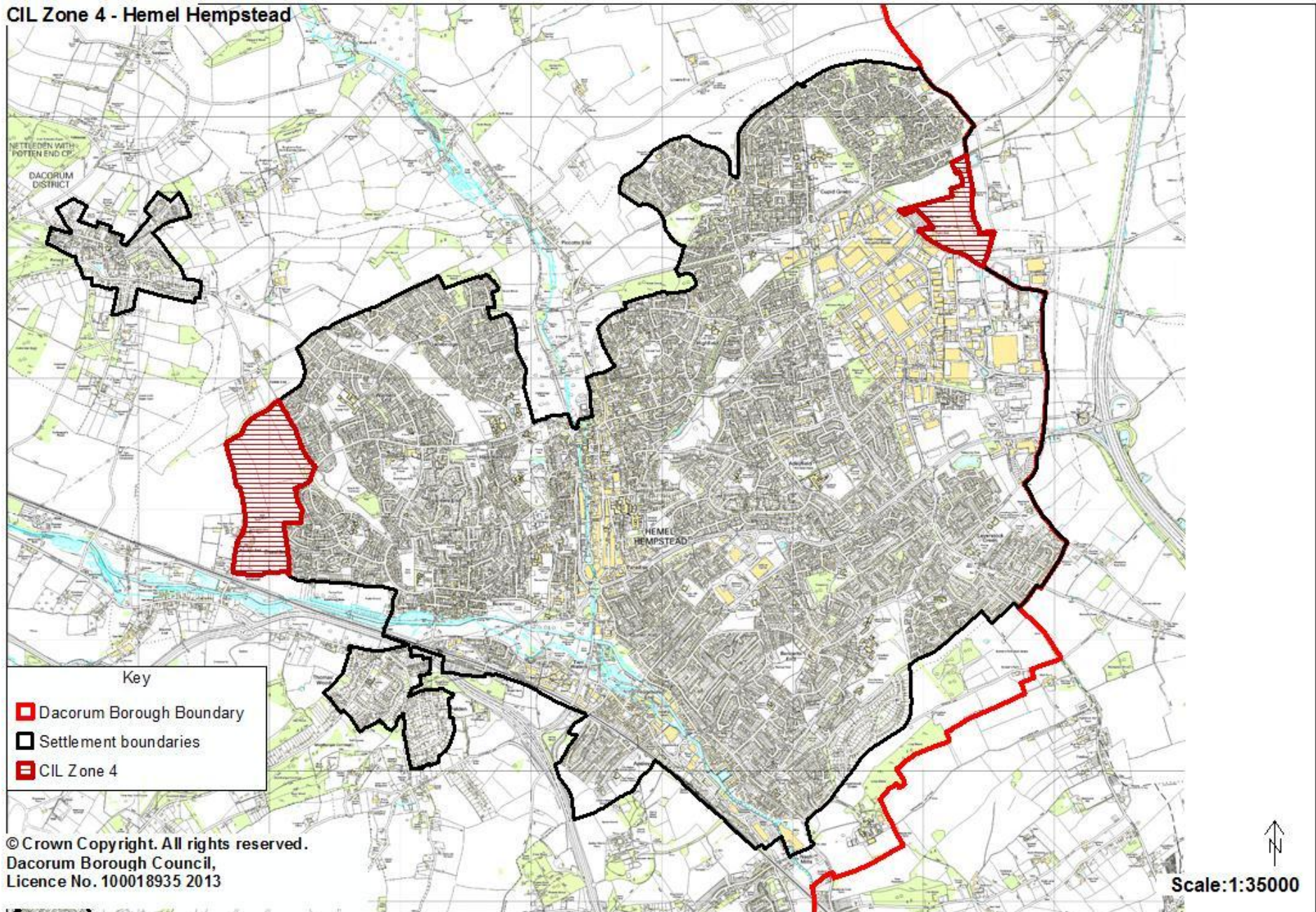


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Scale: 1:10000

Zone 4: Identified Sites - Hemel Hempstead

CIL Zone 4 - Hemel Hempstead



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ANNEX 2 – CIL CALCULATION

The CIL charge must be calculated in accordance with Regulation 40 of the Community Infrastructure Regulations 2010 (as amended). This states that:

- 40 - (1) The Collecting Authority must calculate the amount of CIL payable (“chargeable amount”) in respect of a chargeable development in accordance with this regulation.
- (2) The chargeable amount is an amount equal to the aggregate of the amounts of CIL chargeable at each of the relevant rates.
- (3) But where that amount is less than £50 the chargeable amount is deemed to be zero.
- (4) The relevant rates are the rates at which CIL is chargeable in respect of the chargeable development taken from the charging schedule which are in effect –
- (a) at the time planning permission first permits the chargeable development; and
- (b) in the area in which the chargeable development will be situated.
- (5) The amount of CIL chargeable at a given rate (R) must be calculated by applying the following formula –

$$\frac{R \times A \times I_P}{I_C}$$

Where –

A = the deemed net area chargeable at rate R;

IP = the index figure for the year in which planning permission was granted; and

IC = the index figure for the year in which the charging schedule containing rate R took effect.

- (6) The value of A in paragraph (5) must be calculated by applying the following formula –

$$G_R - K_R - \left(\frac{G_R \times E}{G} \right)$$

Where

G = the gross internal area of the chargeable development;

GR = the gross internal area of the part of the development chargeable at rate R;

E = an amount equal to the aggregate of the gross internal areas of all buildings which –

- (a) on the day planning permission first permits the chargeable development, are situated on the relevant land and in lawful use; and
- (b) are to be demolished before completion of the chargeable development; and

KR = an amount equal to the aggregate of the gross internal area of all buildings (excluding any new build) on completion of the chargeable development which –

- (a) on the day planning permission first permits chargeable development are situated on the relevant land and in lawful use;
- (b) will be part of the chargeable development upon completion; and
- (c) will be chargeable at rate R.

(7) The index referred to in paragraph (5) is the national All-in Tender Price Index published from time to time by the Building Cost Information Service of the Royal Institute of Chartered Surveyors; and the figure for a given year is the figure for the 1st November of the preceding year.

- (8) But in the event that the All-in Tender Price Index ceases to be published, the index

referred to in paragraph (5) is the retail price index; and the figure for a given year is the figure for November of the preceding year.

(9) Where the collecting authority does not have sufficient information, or information of sufficient quality, to enable it to establish –

- (a) the gross internal area of the building situated on the relevant land; or
- (b) whether a building situated on the relevant land is in lawful use,

the collecting authority may deem the gross internal area of the building to be zero.

(10) For the purpose of this regulation a building is in use if a part of that building has been in use for a continuous period of at least six months within the period of 12 months ending on the day planning permission first permits the chargeable development.

(11) In this regulation “building” does not include –

- (a) a building into which people do not normally go;
- (b) a building into which people go only intermittently for the purposes of maintaining or inspecting machinery; or
- (c) a building for which planning permission was granted for a limited period

(12) In this regulation “new build” means that part of the chargeable development which will comprise new buildings and enlargements to existing buildings.

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APPENDIX 2 – DRAFT REGULATION 123 LIST



Dacorum Borough Council – Regulation 123 List

Under Regulation 123 of the Community Infrastructure Regulations 2010 (as amended) the Council is expected to publish a list of infrastructure projects that may benefit from CIL funding.

The purpose of the list is to differentiate between those types of infrastructure that the authority intends to fund through CIL and those areas where a planning obligation under S.106 of the Town and Country Planning Act 1990 (as amended) or another source of funding may be pursued to deliver the relevant infrastructure item.

The list below sets out those projects or types of infrastructure that Dacorum Borough Council intend will be, or may be, wholly or partially funded by CIL. In accordance with Regulation 123, developer contributions to the projects listed will not be sought through planning obligations under S.106 of the Town and Country Planning Act 1990 (as amended)

Infrastructure Project or Type (to be secured through CIL)	Exclusions (to be secured through S.106 or alternative measures)
Early Years Education and Childcare facilities	Except where Early Years Education and Childcare Facilities are provided within a new school building secured under S.106
Primary Education Facilities	<p>Primary Education facilities associated with the development of land at West Hemel Hempstead (LA3) and Spencers Park</p> <p>The provision of a school on the Hemel Hempstead Hospital site.</p> <p>Any new primary education facilities arising from developments of 500 new homes or more.</p>

Secondary Education Facilities	
Further Education	
<p>Health Facilities including,</p> <ul style="list-style-type: none"> - the provision of replacement hospital facilities on the hospital zone site - new GP facilities - mental healthcare 	<p>GP facilities associated with the development of land at West Hemel Hempstead (LA3) and Spencers Park</p>
<p>Other Social and Community Facilities including,</p> <ul style="list-style-type: none"> - community halls, - youth facilities - libraries, - Indoor Sports and Leisure Facilities 	<p>Except the provision of community space and facilities directly associated with the development of Strategic and Local Allocations. (Reference is made in the CS to contributions towards community facilities)</p>
Strategic and Local Transport Proposals	<p>Any works necessary to directly access any site identified in the Site Allocations Development Plan Document (these may be secured through S.278 agreements, S.106 agreements or planning conditions)</p> <p>Transport proposals directly resulting from any site requiring a Transport Assessment¹.</p> <p>The provision of junction improvements relating to the junctions of Kings Road/Shootersway/Kingshill Way, Berkhamsted and Durrants Lane/High Street, Berkhamsted (SS1 and LA4)</p> <p>The provision of Sustainable Transport measures associated with the development of land at West Hemel Hempstead (LA3) and Spencers Park</p>

¹ As set out within the County Council publication 'Roads in Hertfordshire'

Green Infrastructure and Open Space	<p>The provision and maintenance of public open space, LAP's, LEAP's and NEAP's on Strategic and Local Allocations</p> <p>The extension of Shrubhill Common Nature Reserve (LA3)</p> <p>The provision of allotments at LA4 (Hanbury's)</p>
Burial Space	
Waste Services	Sustainability Off-setting Measures (CS30)
Public Realm Improvements	Public Realm improvements within the East Hemel Area Action Plan and Maylands Masterplan area.

The inclusion of a project or type of infrastructure in the list does not signify a commitment from the Council to fund (either in whole or part) the listed project or type of infrastructure through CIL. Nor does the order of the table imply any order of preference for CIL funding. The Council may seek to secure contributions towards other projects not recorded in the list of exclusions where it is satisfied that the need is appropriate and not subject to CIL.

The Council will review the list to ensure that it accurately reflects the need for infrastructure as part of its annual review of CIL and will make any necessary alterations to the Regulation 123 list.

The Council considers that in most cases the preferred route for securing infrastructure improvements associated with large sites, particularly the development of Strategic and Local Allocations, will be through the use of S.106 agreements. Where such S.106 agreements would exceed the CIL Liability of the site it may be possible to gain relief from CIL through use of the Exceptional Circumstances Relief policy.

APPENDIX 3 – DRAFT CHARITABLE RELIEF POLICY



Community Infrastructure Levy Discretionary Charitable Relief Policy

Dacorum Borough Council hereby gives notice that the Council is offering discretionary charitable relief in its area under Regulations 44 and 45 of the Community Infrastructure Regulations 2010 (as amended)

The Council will begin accepting claims for relief from the 1st January 2015.

Subject to the requirements of the Regulations, the Council offers discretionary charitable relief:

- a) Where the proposed charitable development will be used to fund the provision of services to residents of the Borough; and
- b) That charitable relief shall be given at the rate of 25% of the amount of CIL due.

Claiming Discretionary Charitable Relief

The Council's ability to grant discretionary charitable relief from CIL is limited by Regulations 44 and 45 of the CIL Regulations. You are advised to consult the Regulations and the Department for Communities and Local Government Guide 'Community Infrastructure Levy Relief' to check whether the chargeable development is eligible before submitting a claim.

The Department for Communities and Local Government guide can be located on line by following the link below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6314/19021101.pdf

Regulation 47 of the CIL Regulations sets out the procedure for claiming Charitable Relief.

If these procedures are not followed, development will cease to be eligible for charitable relief and/or claims for charitable relief will lapse.

All Claims for Charitable Relief should be made on Form 2 "Claiming Exemption or Relief" available on the Planning Portal. These should be submitted alongside Form 1 "Assumption of Liability"

Please send your completed forms to:

Strategic Planning and Regeneration (Infrastructure) Officer,
Dacorum Borough Council,
Civic Centre,
Marlowes,
HEMEL HEMPSTEAD
Herts
HP1 1HH

Further information of CIL is available on the Council's website at:

www.dacorum.gov.uk/cil

If you have any questions in relation to the Council's CIL please contact the Council's Strategic Planning and Regeneration (Infrastructure) Officer:
Email: cil@dacorum.gov.uk
Phone: 01442 228663

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APPENDIX 4 – DRAFT EXCEPTIONAL CIRCUMSTANCES POLICY



Community Infrastructure Levy Exceptional Circumstances Relief Policy

This statement is made in line with Regulation 56 of the Community Infrastructure Levy Regulations 2010 (as amended)

Dacorum Borough Council hereby gives notice that relief for Exceptional Circumstances is available in its area. Relief for Exceptional Circumstances will be available from the day the Dacorum CIL Charging Schedule comes into effect, which is the 1st January 2015.

The Council will consider applications for Exceptional Circumstances relief on chargeable developments from landowners on a case by case basis.

To qualify for relief the Council must be satisfied that:

- a) A valid S106 agreement is in place for the chargeable development,
- b) the value of complying with a section 106 agreement for the site would exceed the CIL charge for the development,
- c) that paying the CIL charge in respect of the chargeable development would have an unacceptable impact on economic viability and,
- d) that relief would not constitute State Aid.

The onus is on the applicant to demonstrate that they qualify for relief and in order to do so they must submit appropriate supporting evidence to the Council.

The value of complying with a Section 106 agreement will need to be independently assessed and applicants will also be expected to provide an independent assessment of economic viability.

Exceptional Circumstances Relief will rarely be granted and will only be available where

- a) it can be demonstrated that the requirements of the S.106 provide items of infrastructure which have been identified as essential infrastructure within the Council's Infrastructure Delivery Plan.
- b) the infrastructure items secured via the S.106 are identified as being necessary to support development in a Development Plan Document or Supplementary Planning Document, or

c) the chargeable development would constitute a large scale major development¹.

Anyone wishing to claim relief for Exceptional Circumstances must follow the procedure set out in Regulation 57 of the Community Infrastructure Levy Regulations 2010 (as amended) and supply the documents listed therein.

A relief claim form is available at the website of the planning portal at:

<http://www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil>

In all cases, Exceptional Circumstances Relief will only be available on up to 25% of the total CIL Liability and will fail to be applicable in the event of a deed of variation to the S.106.

4th October 2013

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¹ For dwellings a large scale major development is one where the number of residential units to be constructed is 200 or more. For all other uses a large scale major development is one where the floor space to be built is 10,000 square metres or more or where the site area is 2 hectares or more.

APPENDIX 5 – DRAFT INSTALMENTS POLICY



Community Infrastructure Levy (CIL) Instalments Policy

This policy takes effect on the 1st January 2015

In accordance with Regulation 69B of the Community Infrastructure Levy Regulations 2010 (as amended), Dacorum Borough Council will allow the payment of CIL by Instalments as set out in the following table. The instalments permitted will be linked to the amount payable (the chargeable amount) as recorded on the Demand Notice.

Dacorum Borough Council CIL Instalments Policy		
Total CIL Liability	Number of Instalments	Payment Period
Less than £20,000	1	100% payable within 60 days of the commencement date.
Equal to or greater than £20,000 but less than £30,000	2	1 st Instalment of 50% payable within 90 days of the commencement date and 2 nd Instalment of 50% payable within 120 days of commencement date.
Equal to or greater than £30,000 and less than £50,000	2	1 st Instalment of 50% payable within 90 days of commencement date and 2 nd Instalment of 50% payable within 180 days of commencement date.
Equal to or greater than £50,000 but less than £100,000	3	1 st Instalment of 25% payable within 120 days of commencement date 2 nd Instalment of 25% payable within 180 days of commencement date and 3 rd Instalment of 50% payable within 270 days of commencement date.
Equal to or greater than £100,000 but less than £500,000	3	1 st Instalment of 25% payable within 120 days of the commencement date and 2 nd Instalment of 50% payable within 270 days of the commencement date and 3 rd Instalment of 25% payable within 365 days of the commencement date.

Equal to or in excess of £500,000	4	1 st Instalment of 25% payable within 180 days of the commencement date and 2 nd Instalment of 25% payable within 365 days of commencement date 3 rd Instalment of 25% payable within 540 days of commencement date. 4 th Instalment of 25% payable within 720 days of commencement date.
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Notes:

- 1) Where an outline planning permission permits development to be implemented in phases, each phase of the development is a separate chargeable development which may be collected in accordance with this Instalments policy
- 2) The Instalments policy does **not** apply to charges arising from retail developments which shall be due within 90 days of commencement date unless otherwise agreed in writing with the charging authority **prior** to the commencement date.
- 3) Nothing in this Instalments Policy prevents the person with the assumed liability to pay CIL, to pay the outstanding CIL (in whole or in part) in advance of the Instalment period set out in this policy.

The Instalments Policy only applies in cases where the person(s) liable for paying CIL have complied with **all** the relevant regulations and requirements. These requirements are set out in the CIL Instalments Notes on the following page.

CIL Instalments Guidance Notes

Regulation 70 of the Community Infrastructure Levy Regulations 2010 (as amended) sets out the requirements that must be complied with in order to benefit from the CIL Instalments Policy

The CIL Instalments Policy will only apply in the following circumstances:

- 1) Where the Council has received a CIL Assumption of Liability form prior to the commencement of the chargeable development (Regulation 70 (1) (a)), and
- 2) Where the Council has received a CIL Commencement Notice prior to the commencement of the chargeable development (Regulation 70 (1) (b))

If either of the above requirements are not complied with, the total CIL liability will become payable within 60 days of the commencement of the chargeable development. In addition, surcharges may apply due to the CIL Assumption of Liability Form and/or the CIL Commencement Notice not being submitted to the Council prior to the commencement of the chargeable development.

Once the development has commenced, all CIL payments must be made in accordance with the CIL Instalments Policy. Where a payment is not received in full on or before the day on which it is due, the total CIL liability becomes payable in full immediately (Regulation 70 (8) (a))

This policy **will not** apply if any or more of the following applies:

- a) A commencement notice has not been submitted prior to the commencement of the chargeable development, as required by Regulation 67 of the Community Infrastructure Regulations 2010 (as amended)
- b) On the intended date of commencement
 - i) Nobody has assumed liability to pay CIL in respect of the chargeable development,
 - ii) A commencement notice has been received by Dacorum Borough Council in respect of the chargeable development and
 - iii) Dacorum Borough Council has not determined a deemed commencement date for the chargeable development, and therefore payment is required in full, as required by Regulation 71 of the Community Infrastructure Regulations 2010 (as amended)
- c) A person has failed to notify Dacorum Borough Council of a disqualifying event before the end of 14 days beginning with the day on which the

disqualifying event occurs, as per the Community Infrastructure Regulations 2010 (as amended)

- d) An instalments payment has not been made in full after the end of a period of 30 days beginning with the day on which the instalment payment was due, as per the Community Infrastructure Regulations 2010 (as amended)

Where the instalments policy is not applicable, the amount must be paid in full at the end of the period of 60 days beginning with the notified or deemed commencement date of the chargeable development or the date of the disqualifying event, whichever is the earliest, unless specified otherwise within the Community Infrastructure Levy Regulations 2010 (as amended)

APPENDIX 6 – DRAFT PAYMENT IN KIND POLICY



Community Infrastructure Levy (CIL)

Payment in Kind Policy

This policy takes effect on the 1st January 2015

In accordance with Regulation 73 of the Community Infrastructure Levy Regulations 2010 (as amended), Dacorum Borough Council may support the payment of part of your CIL requirement in the form of one or more land payments. This will be subject to the following conditions:

- 1) The Council must be satisfied that the land to be transferred would be appropriate for the provision of necessary infrastructure to support the growth of the Borough. It is entirely at the Council's discretion as to whether to accept a land transfer in lieu of CIL.
- 2) The chargeable development must not have commenced before a written agreement with the Council to pay part of the CIL amount in land has been made. This agreement must state the value of the land to be transferred
- 3) The person transferring the land to the charging authority as payment must have assumed liability to pay CIL and completed the relevant CIL forms.
- 4) The land to be transferred must be valued by a suitably qualified and experienced independent person as agreed with the Council. The valuation must represent a fair market price for the land on the day that it is valued and reflect the relevant purposes for which the land will be utilised.
- 5) The value of the land to be transferred shall not exceed 50% of the total CIL liability for the chargeable development.
- 6) The land, subject to the transfer, must be free from any interest in land and any encumbrance to the land, buildings or structures

- 7) The land, subject to the transfer, must be fit for a relevant purpose being the provision of necessary infrastructure to support the growth of the Borough¹.
- 8) The Council may transfer the land, at nil cost, to a third party² for the provision of infrastructure.
- 9) The Council would encourage the transfer of land allocated or safeguarded in a Site Allocations DPD or Supplementary Planning Documents for infrastructure.

If you are interested in paying CIL in this way and have not commenced development of the site in question you should discuss this with the Strategic Planning and Regeneration (Infrastructure) Officer

It should be noted that the agreement to pay in land may not form part of a planning obligation entered into under Section 106 of the Town and Country Planning Act 1990 (as amended)

¹ This may require the owner to demonstrate that the land is suitable through the submission of further information to the Council, including but not limited to, topographical information, reports on contamination and archaeology and details of any underground services.

² This would be limited to other infrastructure provider's e.g Hertfordshire County Council, Network Rail and the Dacorum Sports Trust/Sportspace.