
GREATER LONDON AUTHORITY



CROSSRAIL FUNDING

USE OF PLANNING OBLIGATIONS AND THE MAYORAL
COMMUNITY INFRASTRUCTURE LEVY

SUPPLEMENTARY PLANNING GUIDANCE
UPDATED MARCH 2016

LONDON PLAN 2016 IMPLEMENTATION FRAMEWORK

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1. INTRODUCTION

- 1.1 This document is an update of the Mayor's Supplementary Planning Guidance (SPG) on Crossrail funding (Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy) which was published in April 2013.
 - 1.2 It supports London Plan policies dealing with the funding of Crossrail and other strategically important transport infrastructure (Policy 6.5), planning obligations (Policy 8.2) and the Mayor's Community Infrastructure Levy (Policy 8.3). While this document does not have the same formal status as these policies, it has been formally adopted by the Mayor as supplementary guidance under his powers under the Greater London Authority Act 1999 (as amended).
 - 1.3 Almost a decade has passed since the concept of developer contributions to Crossrail funding was first developed. This was finalised in the November 2007 funding agreement between the Mayor/TfL and the Government, which identified contributions of £300m from 'developer contributions' and a further £300m from a 'London Planning Charge' (subsequently to become the Mayor's Community Infrastructure Levy or MCIL)
 - 1.4 The Crossrail Funding SPG was first drafted in 2009 and following consultation was published in July 2010. It was subsequently revised and republished in April 2013 to incorporate details of the MCIL, which following its adoption in April 2012 became one of the first operational CILs in the country.
 - 1.5 The current financial position (February 2016) in respect of Crossrail developer contributions is that almost £300m of the target £600m has been collected to date with MCIL having contributed about three pounds for every pound provided by planning obligations/section 106 (Crossrail S.106).
 - 1.6 This document provides an opportunity to produce a more concise, user-friendly and up to date set of guidance for developers, planning applicants and town planners advising clients and decision makers. It is in effect a refresh of the April 2013 SPG to reflect:
 - changes to the national CIL Regulations
 - the outcome of the Mayor's first two year review of his CIL
 - progress to date in securing funding from the Crossrail S.106 and MCIL mechanisms
 - how the collection of Crossrail S.106 and MCIL contributions are proposed to be managed in the near future
 - the need to ensure that the £600m contribution is not exceeded
 - the need to provide early clarity about arrangements that should put in place to prepare boroughs and the development industry for likely changes to MCIL and Crossrail S.106 liability from 1 April 2019.
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1.7 As SPG, this document does not set new policy, but rather explains how policies in the London Plan should be carried through into action and has weight as a formal supplement to the London Plan. It will assist boroughs when preparing Local Plans and will also be a material planning consideration when determining planning applications. It will also be of interest to communities, businesses, landowners, developers, planning professionals and others concerned with development in London.

1.8 This guidance comprises:

Section 2 Crossrail

- summary information on the Crossrail scheme, its strategic justification and current funding arrangements
- progress in securing developer contributions

Section 3 The Mayor's Community Infrastructure Levy

(applies Londonwide)

- MCIL background, charging rates and calculation
- MCIL collection arrangements, and London boroughs' CILs
- MCIL reporting, monitoring and review

Section 4 The Crossrail planning obligations/S.106 charge

(only applies in certain defined areas of London)

- policy context, indicative charge levels and contribution areas
- MCIL/S.106 relationship
- progress in securing Crossrail S.106 contributions
- bringing Crossrail S.106 contributions to an end *

Section 5 General guidance and implementation issues

- MCIL/S.106 – indexation, measuring floorspace, existing floorspace, mixed use schemes, and payment by instalments
- MCIL exceptional circumstances relief
- MCIL/S.106 – development by charities, social housing

* **Appendix 1 – proposal for the demise of Crossrail S.106 contributions and transition from MCIL to a possible MCIL2**

2 CROSSRAIL

The scheme

- 2.1 Crossrail is a major cross-London rail link project developed to serve London and the south-east of England, providing fast, efficient and convenient rail access to the West End, the City and Canary Wharf and linking existing routes from Shenfield and Abbey Wood to the east to Maidenhead and Heathrow Airport to the west – see Figure 1.



Figure 1: Crossrail Route

- 2.2 The scheme will improve services for rail users by relieving crowding, ensuring faster journeys and providing a range of new direct journey options while also facilitating interchange between different public transport modes. It will also have wider social and economic benefits for London, enabling the continued growth of key economic sectors and locations.

Strategic justification

- 2.3 London Plan Policy 6.4 *Enhancing London's transport connectivity*, Policy 6.5 *Funding Crossrail and other strategically important transport infrastructure*, Policy 8.2 *Planning obligations* and Policy 8.3 *Community Infrastructure Levy* make clear that Crossrail is essential to delivery of the Plan's strategic objectives.
- 2.4 Demand for public transport into and within central London is nearing capacity, with crowding on Network Rail services and on London Underground routes towards the West End, the City and Isle of Dogs. The employment growth expected over the period covered by the Plan will further increase demand. Unless this is addressed, continued development and employment growth in central and eastern London will be threatened.
- 2.5 Crossrail is critical to supporting the growth of the financial and business services sectors in central London and in the Isle of Dogs, where there is market demand for additional development capacity. It will also provide much

needed additional transport capacity to the West End, where it will support the future development of that area as London's premier retail and leisure location. The scheme will also improve links to Heathrow, thereby supporting connections for London's global businesses. By linking these areas, Crossrail will help reinforce the development of London's economic and business core.

- 2.6 The scheme is also crucial to the realisation of regeneration and intensification opportunities around key interchanges within the Central Activities Zone and to its east and west. Crossrail will make a vital contribution to improving the accessibility and attractiveness of the Thames Gateway to the east of the Isle of Dogs, through its cross-river link to south-east London and connection with the DLR network.
- 2.7 Crossrail trains are expected to begin making journeys on the Liverpool Street to Shenfield line during 2017 with services being extended in stages. All 66 new trains are projected to be in operation in December 2019, running from Reading and Heathrow to Shenfield and Abbey Wood. Crossrail will mean faster, more frequent and reliable journeys for people in London, Essex and out to Berkshire. It will help to serve London's growing population and support more jobs and homes, with around 200 million customers expected to travel on Crossrail each year.

Funding Crossrail

- 2.8 Government and the Mayor have long recognised that the delivery of Crossrail is fundamental to the future of London's, and in turn the United Kingdom's, economy. Crossrail is jointly sponsored by the Government, through the Department for Transport (DfT), and the Mayor, through Transport for London (TfL).
- 2.9 In November 2007, the joint sponsors signed the Crossrail Heads of Terms (HOT), setting out proposed funding arrangements¹. In order to ensure that Crossrail is fully funded, the agreed funding package involves securing resources from three main sources:
- the taxpayer, via national government;
 - London businesses, including through a business rate supplement and through contributions by developers; and
 - borrowing against the fares to be paid by users of Crossrail, via Transport for London.
- 2.10 The cost of Crossrail is £14.8bn. More than 60% of contributions come from Londoners and London businesses. Contributions from beneficiaries of Crossrail include the City of London Corporation, Canary Wharf Group, Heathrow Airport and Berkeley Homes. The Mayor and TfL are contributing £7.1bn. This includes contributions raised through the Crossrail Business Rate

¹ see

<http://webarchive.nationalarchives.gov.uk/20080809024303/http://www.dft.gov.uk/162259/165234/302038/headsofterms.pdf>

Supplement, and £600m from developer contributions secured via section 106 agreements and through MCIL.

Progress in securing developer contributions

- 2.11 The two developer contributions of Mayoral CIL and Crossrail S.106 operate in tandem, with MCIL payments offset against Crossrail S.106 where necessary, and jointly contribute towards the maximum take of £600m towards Crossrail.
- 2.12 As of February 2016, almost £280m has been collected from developer contributions, with MCIL contributing almost than three-quarters of the total.
- 2.13 The original thinking set out in the 2008 Crossrail Sponsors Agreement was that £300m would be secured from developers via section 106 and £300m from MCIL.
- 2.14 There are a number of reasons why the initial expectation of this balanced contribution (£300m / £300m) is unlikely to be met. These include:
- the primacy of CIL which results in a discounting of Crossrail s106 when a development's location means that both payments are liable (see paragraphs 4.15 to 4.20 below)
 - the different spread of uses – Crossrail S.106 is payable on a limited range of uses (offices, retail and hotel) in defined parts of London, whereas MCIL is levied on a wide spread of uses, including residential , across all of London
 - Crossrail S.106 payments are tied to planning permissions lasting three years and may be phased – together with implementation uncertainties this means that it is difficult, compared to MCIL, to predict a total sum that will be raised from this source.
- 2.15 The April 2013 Crossrail Funding SPG (Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy) indicated that in respect of the anticipated Crossrail s106 demise (para 3.38) that 'arrangements will be made, in consultation with boroughs, developers and other stakeholders, to bring the collection of contributions to an end once the required sum of £300 million has been collected'.
- 2.16 This document, in paragraphs 4.26 to 4.30 and Appendix 1 indicates for the first time what form this may take, setting out a proposed means of managing developer contributions towards Crossrail going forward.
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3. THE MAYOR'S COMMUNITY INFRASTRUCTURE LEVY

The Mayor's Community Infrastructure Levy (MCIL)

- 3.1 National Government has introduced the Community Infrastructure Levy (CIL) – a charge which local authorities (including the Mayor) can levy on most types of development to help fund infrastructure needed to support the development of an area in line with local development plans. The CIL came into force nationally on 6 April 2010.
- 3.2 The process for setting a CIL is set out in the Community Infrastructure Levy Regulations 2010 (as amended), and involves two rounds of consultation and a public examination before the charging schedule – the legal document setting a CIL for an area – can be approved.
- 3.3 The Mayor's CIL (MCIL) is intended to raise £300 million towards the cost of Crossrail, as required by the Crossrail funding agreement (see London Plan Policy 6.5). Work on the Mayor's CIL (MCIL) commenced in 2010, with the publication of and consultation on a preliminary draft charging schedule and subsequently a draft charging schedule. In making these proposals the Mayor had regard to the potential effect on the economic viability of development across Greater London, and the potential effect on the area's overall development.
- 3.4 A public examination was held in late 2011. The Mayor formally approved his charging schedule on 2 February 2012 and charging began on 1 April 2012.
- 3.5 The Mayor has made clear his intention to monitor the effects of MCIL and to conduct two-yearly formal reviews to ensure the rates and other details of the MCIL remain appropriate. Initially at least, the Mayor will only be able to use the MCIL to support transport infrastructure (including Crossrail).
- 3.6 The Mayor's CIL is charged at the flat rate per borough in which the development is located as shown in Table 1. MCIL is levied on all uses except for medical/health and education.

MCIL calculation and reliefs

- 3.7 The sum payable is calculated in accordance with regulation 40 of the Community Infrastructure Levy Regulations 2010 (as amended). A 'CIL Calculator' which can be used to establish an estimate of the sum payable in particular cases can be found on the Transport for London website at <https://tfl.gov.uk/info-for/urban-planning-and-construction/planning-applications/community-infrastructure-levy>
 - 3.8 A number of reliefs can be made available from CIL liability. Some are mandatory (development by a charity for charitable purposes), others are discretionary. The Mayor has decided not to make any of the discretionary reliefs available. Further details are set out in section 5.
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Table 1: Mayoral CIL charging rates ²		
zone	London boroughs	rates (£/sqm)
1	Camden, City of London, City of Westminster, Hammersmith and Fulham, Islington, Kensington and Chelsea, Richmond-upon-Thames, Wandsworth	£50
2	Barnet, Brent, Bromley, Ealing, Greenwich, Hackney, Haringey, Harrow, Hillingdon, Hounslow, Kingston upon Thames, Lambeth, Lewisham, Merton, Redbridge, Southwark, Tower Hamlets	£35
3	Barking and Dagenham, Bexley, Croydon, Enfield, Havering, Newham, Sutton, Waltham Forest	£20
use		rate (£/sqm)
Development used wholly or mainly for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner		Nil
Development used wholly or mainly for the provision of education as a school or college under the Education Acts or as an institution of higher education		Nil

MCIL collection

- 3.9 CIL in London has been established differently to the rest of the country with the Mayor as the strategic tier authority setting a levy in addition to those set by the local tier authorities, the London boroughs and the Mayoral Development Corporations (MDCs).
- 3.10 Under the CIL Regulations the Mayor is a charging authority but not a collection authority. The borough or MDC in which the development is located is the both the charging authority for its own CIL and the collection authority for its own CIL and the MCIL. The authority is the collection authority for MCIL even if it does not yet have its own CIL charging schedule in place. These arrangements are defined in the Regulations.
- 3.11 The 35 CIL collecting authorities across London collect and transfer MCIL money each financial quarter to TfL, responsible for receiving and accounting for the MCIL. TfL has agreed a procedure and reporting arrangements to facilitate this process with the boroughs, and all parties work closely to set in and run the CIL in London through mutual co-operation and the sharing of relevant information.

² subject to indexation – see section 5

- 3.12 To facilitate this process TfL coordinates a CIL Collection and Implementation Advisory Group. This meets regularly to provide a forum for discussion about CIL implementation and administration, disseminating advice and good practice and identifying matters on which further guidance might be helpful. This also allows boroughs/MDCs to keep the GLA/TfL and each other informed of their progress in setting their own CILs.
- 3.13 Disputes between applicants/developers and MCIL collection authorities over individual MCIL liabilities and payments must be resolved between the two parties concerned. The CIL Regulations give the Mayor no role in this area

London borough/MDC CILs

- 3.14 In setting their CILs boroughs are required to take account of the rates set by the Mayor. Most authorities across London have developed their CIL proposals to the point where they are now charging.
- 3.15 Alongside other funding mechanisms, the CIL is likely to play an important role in delivering the infrastructure to support London's sustainable growth. This will be increasingly the case as a greater proportion of development across London becomes liable for CIL payments and receipts ramp up.
- 3.16 The Mayor will work closely with boroughs to ensure the CIL is applied appropriately and effectively to achieve the objectives set out in the London Plan and borough local plans – particularly to support optimisation of the opportunity and intensification areas and other strategic development opportunities identified in Chapter Two of the London Plan

MCIL reporting, monitoring and review

- 3.17 As required by the CIL Regulations, the Mayor will publish annual reports as part of the London Plan Annual Monitoring Report³ showing, for each financial year:
- how much has been collected in MCIL by the boroughs on his behalf
 - how much of that money has been spent
 - the items of infrastructure on which it has been spent (in the current case, Crossrail)
 - any amount used to repay money borrowed
 - the amount of MCIL used to cover administrative expenses, and
 - the amount of MCIL retained at the end of the reported year.
- 3.18 The Mayor will keep the operation of the MCIL and the position regarding the funding and implementation of Crossrail under continual review. He intends to conduct biennial formal reviews of the working of his CIL. These reviews will consider in particular whether the MCIL rates set continue to be appropriate,

³ see <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/monitoring-london-plan>

and whether there is evidence that would justify the Mayor in allowing either or both of the forms of discretionary relief. He will publish the results of these reviews and any changes will be subject to public consultation in accordance with the CIL Regulations or the Mayor's usual practice, as appropriate. The first of these reviews took place in 2014⁴. At the appropriate time, the Mayor will make announcements about future uses of his CIL powers.

- 3.19 The development of any successor CIL to the current Mayoral CIL would need to go through the formal approval process as defined in the CIL Regulations, as well as clarifying transition arrangements. The CIL Regulations currently constrain the Mayor to spending MCIL on strategic transport infrastructure including Crossrail.
- 3.20 Early work on the potential for utilising MCIL to support Crossrail 2 has already been published by Price Waterhouse Cooper – see <https://www.pwc.co.uk/capital-projects-infrastructure/assets/crossrail-2-funding-and-financing-study.pdf>
- 3.21 In view of the timescales involved in developing CIL charging schedules, securing approval and putting administrative arrangements in place, it is likely that options for a revised MCIL will be developed during 2016. The 2016 Biennial Review of the MCIL may provide further information to support this consideration.

⁴ see <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy#Stub-96939>

4. The Crossrail planning obligations/S.106 charge

Policy context

- 4.1 Against the background as set out in the ‘introduction’ and ‘Crossrail’ sections of this document, the London Plan policy framework for seeking contributions through the planning system towards funding of the Crossrail project contains policies including:
- Policy 6.5 Funding Crossrail and other strategically important transport infrastructure
 - Policy 8.2 Planning obligations
- 4.2 Under CIL Regulation 122(2) and paragraph 204 of the National Planning Policy Framework (NPPF), a planning obligation may only be taken into account as a reason for granting planning permission if it is:
- necessary to make the development concerned acceptable in planning terms
 - directly related to the development, and
 - fairly and reasonably related in scale and kind to the development.
- 4.3 Under CIL Regulation 123, planning obligations relating to the funding or provision of Crossrail are specifically excluded from S.106 pooling restrictions.
- 4.4 Given the strategic regional importance of Crossrail, and the inclusion of developer contributions in the funding arrangements agreed with Government, the Mayor is satisfied that it is appropriate in terms of Government guidance and the London Plan policies cited above to seek contributions towards the cost of the construction of Crossrail through use of planning obligations from developments that will give rise to the additional demand for public transport that Crossrail will help address
- 4.5 This principle has been fully tested at two London Plan examinations in public – in 2009 into alterations to the London Plan to enable the use of planning obligations in this way (which also considered an earlier version of this document), and into the draft replacement London Plan in 2010.
- 4.6 Earlier versions of this document (July 2010 & April 2013) explain the process that was used to identify the types and locations of development which would give rise to additional demands on the London rail network, and therefore contribute towards further congestion. The approach was based on research to quantify the level of demand from each type of development in different areas in order to demonstrate that the relationship in kind and scale between the location, use and proposed level of S.106 charge was fair and reasonable.
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Crossrail S.106 – indicative charge levels and contributions areas

- 4.7 Taking this approach, and following analysis by TfL’s consultants Jones Lang LaSalle and Colin Buchanan, the Mayor decided that contributions should be sought from the uses/areas that generate the most significant contributions to congestion on the rail network. This approach restricts the number of applications in respect of which a contribution will have to be sought, minimising the administrative and cost burden on planning authorities and also the impact on other planning obligations, as follows:
- Planning obligations/S.106 contributions should be sought in respect of retail and hotel and office development in central London and the northern part of the Isle of Dogs, which involves a net increase in office floorspace of more than 500 square metres with contributions proportionate to the calculated impact. This is the form of development that gives rise to the most substantial impact that Crossrail will mitigate.
 - Contributions should be sought in the rest of London in respect of office and retail development within an approximate radius of 1 km around Crossrail stations – other than Woolwich Arsenal (which has its own contributions regime operated by the London Borough of Greenwich).
 - A de minimis threshold excluding development that would result in additional office, retail or hotel floorspace of 500 square metres or less has been set to reflect that developments below this size are unlikely to have crowding impacts sufficient to meet the statutory tests. The benefits of seeking contributions from smaller developments of this scale are likely to be outweighed by the costs of entering into obligations and collecting contributions, and the large number of smaller developments, would make application of a policy of this kind uneconomic to administer.
- 4.8 Table 2 shows the indicative levels of S.106 contributions in the contribution areas. The S.106 contribution areas are shown in map form in Figures 2, 3, 4A and 4B.
- 4.9 As indicated above, specific and separate funding arrangements are in place around Woolwich Arsenal, necessary to secure the addition of Woolwich station to the agreed scheme.
- 4.10 The Vauxhall Nine Elms Battersea (VNEB), the Waterloo and the Elephant and Castle opportunity areas (OAs) have been excluded from the Central London contribution area. This is in recognition of the strategic potential they present for the development of central London identified in the London Plan and the importance of strategic transport schemes other than Crossrail for their development, with other transport needs being met through borough CILs and the use of planning obligations where appropriate. In these areas, the ‘credit’ arrangements to avoid double charging under this policy and the Mayoral CIL will not therefore apply (see paragraphs 4.15 to 4.20), and no ‘top up’ payments to address the difference between the amount to be sought under this policy and the CIL will be pursued.
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Table 2: Indicative level of Crossrail planning obligation/S.106 charge (£/sqm) by land use and location⁵

land use	Central London Crossrail S.106 contribution area (see Figure 2)	Isle of Dogs Crossrail S.106 contribution area (see Figure 3)	Rest of London Crossrail S.106 contribution areas (see Figure 4)
	Including approximate 1 km indicative radii outwards around Paddington and Liverpool Street Stations	Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay inclusive of and south of the Poplar DLR lands	Including approximate 1 km indicative radius outwards around the proposed Canary Wharf station at West India Quay north of the Poplar DLR lands as well as such radii around all other stations outside the Central Contributions Areas apart from Woolwich Arsenal
office	£140	£190	£31
retail	£90	£121	£16
hotel	£61	£84	nil

Notes to Table 2

Where indicative contribution areas overlap, the starting point for negotiations would be the higher of any rates that could be applicable.

Office is defined as any office use including offices that fall within Class B1 Business of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order. Uses that are analogous to offices which are sui generis, such as embassies, will be treated as offices.

Retail is defined as all uses that fall within Classes A1, A2, A3, A4 and A5 of the Town and Country Planning (Use Classes) Order 1987 as amended, or any other order altering, amending or varying that Order, and related sui generis uses including retail warehouse clubs, car showrooms, launderettes

Hotel means any hotel use including apart-hotels uses that fall within Class C1 Hotel of the Town and Country Planning (Use Classes) Order 1987 as amended.

In all cases, contributions should be calculated in respect of developments exceeding 500 sqm with a net increase in floor area of the relevant use.

⁵ subject to indexation – see section 5

Figure 2: Central London Crossrail S.106 contribution area

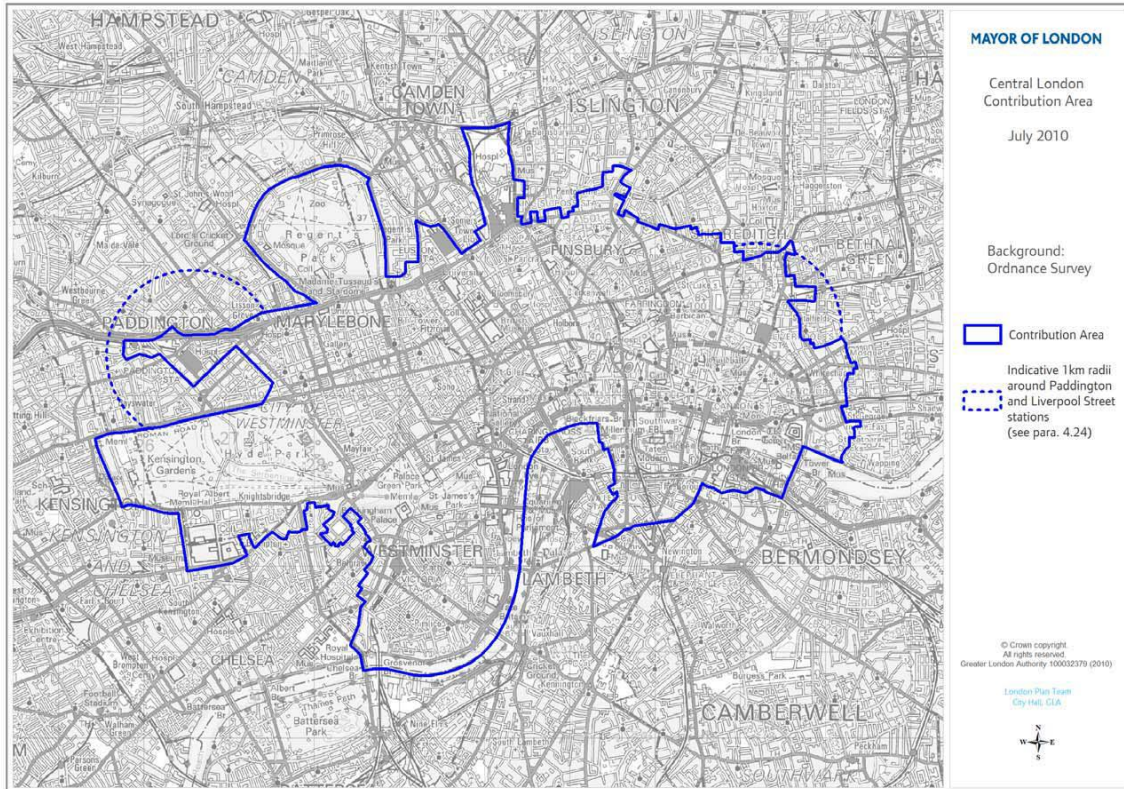


Figure 3: Isle of Dogs Crossrail S.106 contribution area

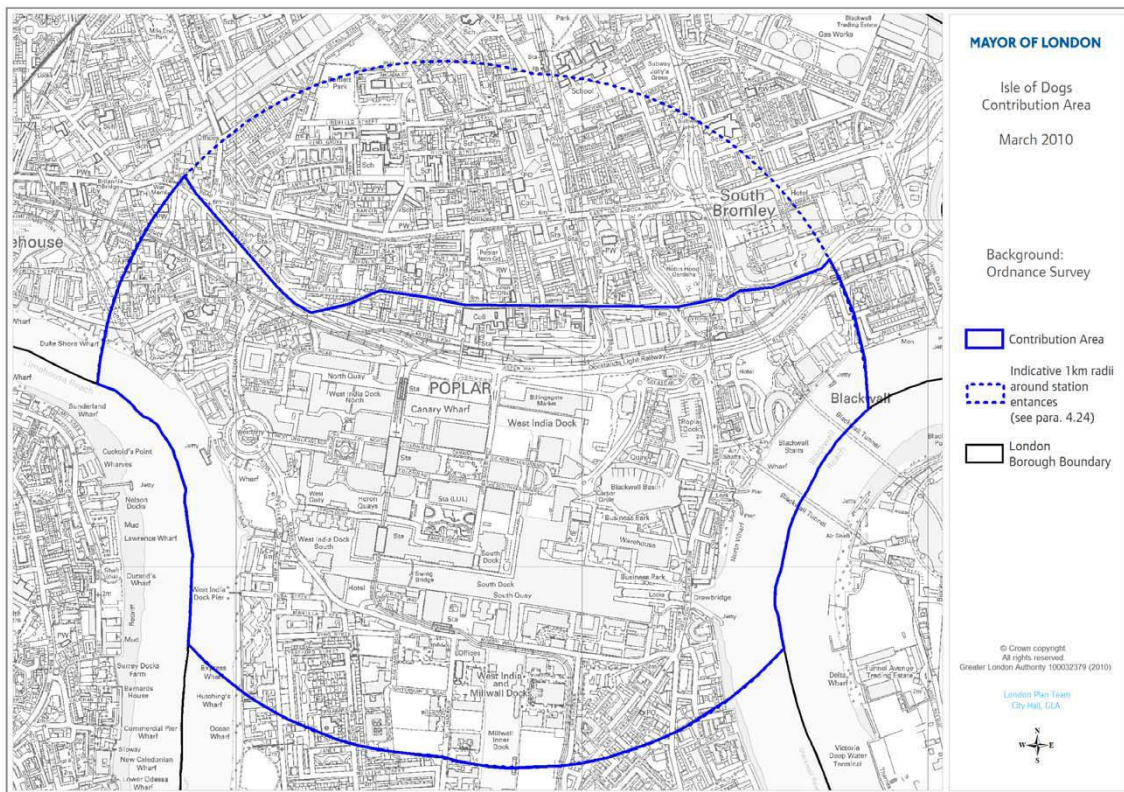
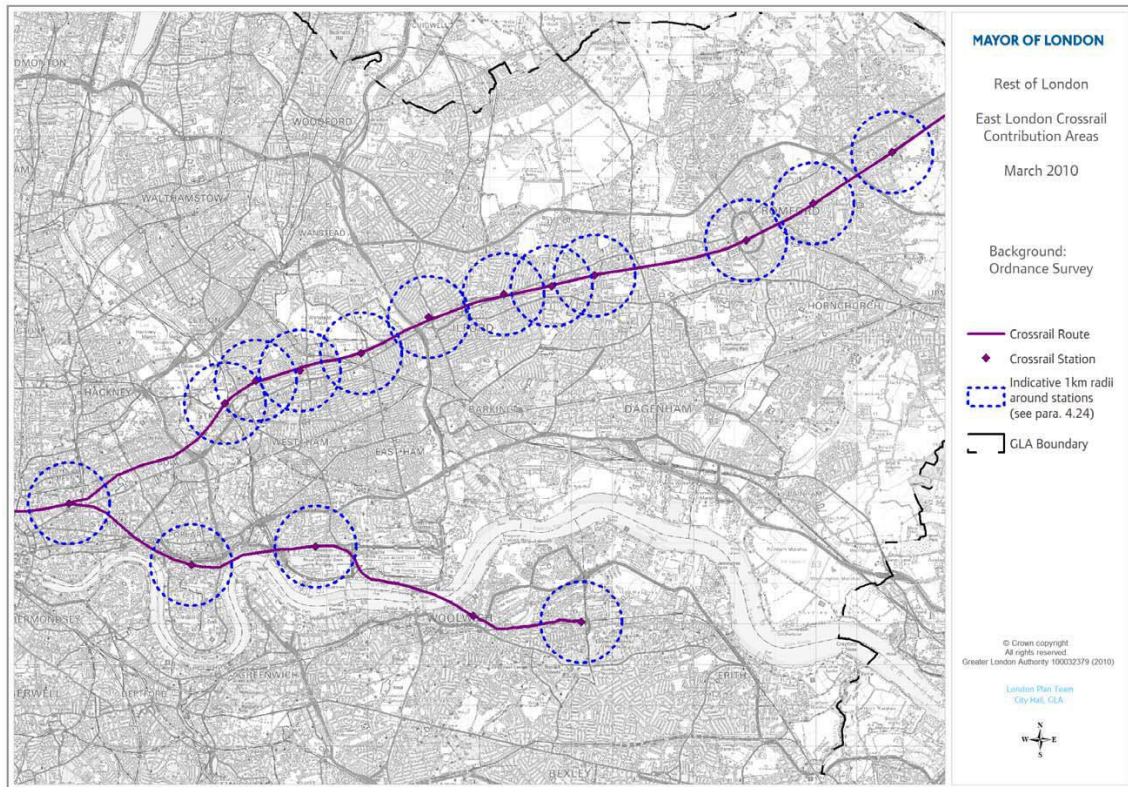


Figure 4A: Rest of London Crossrail S.106 contribution areas – West London



Figure 4B: Rest of London Crossrail S.106 contribution areas – East London



- 4.11 The result is that the only area attracting the Crossrail S.106 charge south of the river in the Central London contribution area is the London Bridge/ Bankside Opportunity Area.
- 4.12 Two stations, Paddington and Liverpool Street, fall within the Central London contribution area but lie close to its boundary and areas within easy walking distance of them (about 1 km), extending outwards from the Contributions Area. Development within such radii, shown as pecked line radii on the Figure 2 plan, would have the same likelihood to require the congestion mitigation that Crossrail would provide as areas within the Central London contribution area, so will be subject to the same contributions regime.
- 4.13 As in the Central London contribution area, there are further areas within easy walking distance (about 1 km) of the proposed new Canary Wharf station at West India Quay that would have the same likelihood to require the congestion mitigation that Crossrail would provide as areas within the defined Isle of Dogs contribution area. Development north of the Poplar DLR lands is, however, likely to be of a very different character and mainly related to supporting the local residential community. It will therefore be subject to the Rest of London contribution area regime.
- 4.14 Any changes by the Mayor to the indicative levels of contribution would be made through new SPG, and this would be subject to full consultation. The S.106 charge levels indicated in Table 2 have remained unchanged since this SPG was originally published in 2010, apart from adjustment for changes in measurement of floorspace. Any new figure would be set to take account of the effect it might have on the viability of development. The selected approach will ensure that contributions are sought only from developments which create, or add to, congestion on London's rail network

Relationship between the MCIL and the Crossrail planning obligations/ S.106 charge

- 4.15 Any development located within a Crossrail contribution area (Figures 2, 3, 4A and 4B) are of course also liable to pay the Mayor's CIL, under the arrangements set out in section 4 of this SPG.
- 4.16 In paragraph 8.16 of the London Plan, the Mayor sets out a commitment to ensure that the decisions he made on both on the CIL charging schedule and the level of section 106 contributions for Crossrail have informed each other.
- 4.17 He has taken the view that the best way of ensuring that developers do not have unreasonable demands made of them by having to make both CIL and section 106 payments towards Crossrail is to:
- treat CIL payments (which are effectively mandatory) as a credit towards any payment sought under the Crossrail S.106 planning obligations policy, should the former be less than the latter, and
 - not to seek a S.106 contribution at all should the obverse be the case.
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- 4.18 For the avoidance of doubt, any CIL surcharge under Part 9 of the CIL Regulations should be disregarded for this purpose.
- 4.19 In practical terms, this means that for developments of a kind and in a location which trigger the potential need to make a Crossrail S.106 contribution, it will be necessary to calculate the S.106 amount involved (Table 2) **and** the amount payable in CIL, applying the rates set out in Table 1.
- 4.20 For mixed use developments, it is the total payable for the development concerned that should be taken into account, (not the amounts for the separate uses involved). The following principle should then be applied:
- where the amount payable under the planning obligations policy is equal to, or less than, that payable in CIL, only the CIL will be payable.
 - where the amount payable under the planning obligations policy is more than that payable in CIL, the CIL will be payable **plus** a 'top up' so that in combination the two payments make up the amount payable under the obligations policy.

Progress in securing S.106 contributions to Crossrail funding

- 4.21 This guidance restates the £600m contribution in respect of developer contributions to Crossrail via a combination of the two mechanisms (MCIL & s106).
- 4.22 The proposed cut-off point for planning permissions that will be liable to make transport mitigation contributions to Crossrail is the end of March 2019. The flow of funds will continue for a period after this date as planning permissions continue to be implemented.
- 4.23 The current forecasts suggest that the £600m total from both sources of developer contributions combined is likely to be secured, although this is subject to future economic conditions. The approach outlined above leaves the Mayor / TfL at risk of needing to make up any shortfall if the £600m is not achieved. The initial expectation at the time that the Crossrail funding agreement was signed (2007) was that there was likely to be a balanced contribution from Mayoral CIL and Section 106, although at that time CIL was still to be developed.
- 4.24 Consideration of progress to date, described earlier, shows that Mayoral CIL currently outstrips Section 106 contributions by a ratio of almost 3:1. This pattern of contributions is likely to continue in the period up to March 2019 (although the rebalancing arrangements set out in Appendix 1 and discussed below) are likely to result in the final adjusted sums being more alike.
- 4.25 The reasons for the current divergence in the respective income streams include:

- Wood Wharf – current development proposals are likely to deliver a significantly lower Crossrail S.106 contribution than initially anticipated
- the primacy of the CIL which results in a discounting of Crossrail s106, and
- the relative performance of offices being developed in comparison to non-Crossrail S.106 uses, particularly residential – i.e. residential pays CIL but not S.106.

Bringing Crossrail s106 contributions to an end

- 4.26 The earlier Crossrail Funding SPG (April 2013) indicates at paragraph 3.38 that “arrangements will be made, in consultation with boroughs, developers and other stakeholders, to bring the collection of contributions to an end”.
- 4.27 This document gives advance notice of a proposed approach to Crossrail S.106 demise arrangements to be applied once the required sum of £600 million has been collected from developer contributions. These arrangements will be considered as part of the Mayoral CIL biennial review, with proposals to be firmed up and consultation at a later stage.
- 4.28 While there is some flexibility in the future use of Mayoral CIL, there is a greater challenge in respect of S.106 funding which is providing mitigation via legal agreements tied to planning permissions, lasting for three years. This is further complicated as these developments may or may not be implemented. The result of these factors is that it is impossible to define a total sum that will be raised via Crossrail S.106 obligations.
- 4.29 It is proposed to plan for bringing the S.106 Crossrail contributions scheme to an end in March 2019, to coincide with the proposed transition from MCIL1 to a possible MCIL2. Appendix 1 sets out the proposal in more detail.
- 4.30 The proposed approach in Appendix 1 sets out a means of managing developer contributions towards Crossrail going forward which:
- Reaffirms the maximum contribution of £600m towards Crossrail from the combined mechanisms of Mayoral CIL and Crossrail S.106.
 - In so doing, introduces flexibility in the respective contributions towards Crossrail. This overcomes the issues identified in 4.28.
 - Provides clarity in terms of the arrangements that need to be put in place so that boroughs and the development industry can be prepared
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5. GENERAL GUIDANCE AND IMPLEMENTATION ISSUES

- 5.1 The following section clarifies the respective approach to Crossrail S.106 and MCIL calculation and collection issues. Wherever possible, the Mayor seeks to simplify the administration / respective calculations of these two Crossrail funding streams.
- 5.2 The Community Infrastructure Regulations have been subject to frequent change. In order to maintain a consistent and streamlined approach, the Mayor will aim to ensure that any relevant changes in the CIL regime (e.g. the role of existing floorspace in calculating liability) are also reflected in the calculation of Crossrail S.106 contributions.

Indexation

- 5.3 An index rate should be applied to the £/sqm figures given in Table 1 for the MCIL levy and in Table 2 for the Crossrail S.106 charge.
- 5.4 In accordance with CIL Regulation 40, the indexation figure for MCIL (Table 1) is calculated by looking at the All-in Tender Price Index published by the Building Cost Information Service (BCIS) of the Royal Institution of the Chartered Surveyors. To work out the indexing for MCIL, the figure published for 1 November for the year before the year that planning permission is granted for the development is divided by the figure published for 1 November 2011.
- 5.5 In respect of Crossrail S.106 contributions, the figures quoted in Table 2 are at March 2010 prices. The indexation is calculated from April 2011 until the point that the S.106 payment becomes due. The use of the Consumer Price Index is preferred but as this payment may be one of several set out within a S.106 agreement, boroughs may wish to apply an alternative appropriate index to simplify contributions and provide a consistent mechanism for calculations.

Measuring floorspace

- 5.6 For the purposes of both the MCIL and Crossrail S.106, floorspace should be measured on the basis of Gross Internal Area (GIA):
- the method of calculation set out in the RICS Code of Measuring Practice is helpful – see <http://www.isurv.com/site/scripts/download.aspx?type=downloads&fileID=167>
 - also useful is the Valuation Office guidance on measuring GIA for rating purposes – see <https://www.gov.uk/government/publications/measuring-practice-for-voa-property-valuations/code-of-measuring-practice-definitions-for-rating-purposes>
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Existing floorspace

- 5.7 For both MCIL and Crossrail S.106 contributions, account should be taken of buildings which:
- are situated on the land on the date planning permission first permits development, and
 - have been in lawful use for a continuous period of six months within the three years preceding that date and which would need to be demolished following grant of planning permission for the development to be completed.

Mixed use schemes

- 5.8 For mixed use developments, it is the amounts liable under each of MCIL and Crossrail S.106 that should be taken into account, not the amounts for the separate uses involved. The following principles should then be applied:
- Where the amount payable under Crossrail S.106 is equal to or less than that payable under MCIL, only the MCIL will be payable.
 - Where the amount payable under Crossrail S.106 is more than that payable under MCIL, the MCIL will be payable plus a 'top up' so that in combination the two payments make up the amount payable under the Crossrail S.106 policy.

Payment by instalments

- 5.9 In respect of the MCIL, the Mayor has set out his CIL instalment policy as follows:
- Where the payable amount of CIL is £500,000 or less, the whole amount shall be paid in a single instalment not more than 60 days after commencement of the development
 - Where the payable amount is more than £500,000, developers should have the option to pay two instalment payments:
 - the greater of £500,000 or half the value of the total payable amount 60 days after commencement, and
 - the remainder 240 days after commencement.
- 5.10 Responsibility for administering MCIL lies with the thirty five collecting authorities, and as CIL authorities they are able to apply their own instalment arrangements considered appropriate to their area. CIL Regulation (70) means that, once adopted, any instalment policy adopted by a collecting authority will then also apply to the MCIL.
- 5.11 Any arrangements for paying Crossrail S.106 contributions in instalments – for example, linked to phasing of the development – will be negotiated through the individual S.106 agreement unique to the development.
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MCIL – exceptional circumstances relief

- 5.12 Under CIL Regulations 57 and 58, the Mayor may allow relief for exceptional circumstances (relating specifically to developments in respect of which there is also a section 106 agreement, where sums payable under that agreement are higher than the amount of CIL payable and where the Mayor considers that to charge the CIL would have an unacceptable impact on the economic viability of the development).
- 5.13 The Mayor has decided not to make this relief available at this point. He considers that it would be better to address problems of viability caused by the combined demands of CIL and section 106 agreements by making any necessary adjustments to the latter, in accordance with well-understood and applied planning principles. This approach avoids making administration of the CIL across Greater London as a whole unduly complex and burdensome. He is keeping this position under review.

Development by charities

MCIL – development by charities

- 5.14 Under CIL Regulation 44, charging authorities may allow relief for development by charities where the whole or greater part of the development is held by the charity as an investment for charitable purposes. The Mayor has decided not to make this discretionary relief available. He considers that the better approach is to apply the MCIL on the basis of uses rather than ownership, and to keep the overall figure set low. Allowing this relief would also make administration of the MCIL across London as a whole unduly complex and burdensome. He will keep the position under review.
- 5.15 Development by charities for charitable purposes is exempt from MCIL under CIL Regulation 43 (this differs from the discretionary charitable relief under CIL Regulation 44 as set out above).
- 5.16 In considering whether development by charities would benefit from a Regulation 43 exemption, **all** the following conditions would need to be met:
- (a) the development concerned will be occupied by, or under the control of, an institution or by a body established for charitable purposes only; and
 - (b) that institution has a material interest in the relevant land as defined in regulation 4 of the CIL Regulations (so long as that interest is not held jointly with a person who is not a charitable institution) - a freehold or a leasehold the term of which expires more than seven years after the day on which planning permission first permits the chargeable development; and
 - (c) the development concerned comprises accommodation (and other uses where relevant) that will be used wholly or mainly to further that body's charitable purposes (or those of another charitable institution); and
 - (d) allowing the exemption would not constitute State Aid.
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- 5.17 This exemption only available where the development will be used wholly or mainly to further charitable purposes. If, for example, it is intended to be let out on terms that mean it is actually intended to provide an income for investment on anything more than an incidental basis, it would not be eligible for the exemption (but it might for the discretionary charitable relief under regulation 44, should that be available). This will obviously be a question of fact in each case, but factors like whether the development is to be let at sub-market rents would be an important pointer.
- 5.19 It is suggested that collecting authorities ask for the following information from developers seeking to take advantage of a Regulation 43 exemption:
- Their charter or similar statute setting out their charitable purpose
 - Evidence that the institution has a material interest in the land, and that it does not hold that interest jointly with a non-charity
 - Evidence that the accommodation will be used wholly or mainly for a charitable purpose. Collecting authorities could ask charities seeking the exemption to draw on the information they will already be collecting for tax purposes to substantiate this point.
 - Confirmation that allowing exemption would not constitute a State Aid. Collecting authorities will need to consider the nature and degree of risk of challenge in each case, and in cases of particular doubt might wish to consider whether it is appropriate to seek an indemnity from the developer to cover cases in which allowing an exemption is subsequently found to constitute a State Aid.
- 5.20 Development by charities which does not fall under Regulation 43 or Regulation 44 is liable for MCIL in the usual way.

Crossrail S.106 – development by charities

- 5.21 The Mayor will not seek Crossrail S.106 contributions in respect of development by charities where:
- the registered charity has a material interest (a freehold or lease for more than seven years after the date planning permission is granted) in the relevant land; and
 - the development will be used wholly or mainly for charitable purposes (whether those of the charity concerned, or of another charitable institution)
- 5.22 This exemption will not apply where the material interest concerned is owned by the charity jointly with a person or organisation which is not a charity, or where the part of the development to be used for charitable purposes will not be occupied by, or under the control of, a charity. It also does not apply where exemption of the charity from the liability to pay CIL would constitute a State aid. The Mayor will not extend this exemption to development by charities for investment purposes.
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Social housing

- 5.23 The CIL regulations provide a relief for social housing, which effectively exempts this type of housing from CIL liability. To qualify, social housing has to meet one of the conditions set out in CIL Regulation 49. This relief applies to that part of a development that comprises 'qualifying dwellings'. The method for calculating this relief is set out in CIL Regulation 50.
- 5.24 Social housing is effectively exempt from Crossrail S.106, insofar that S.106 contributions are only sought on office, retail and hotel use.
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APPENDIX 1

Proposal for the demise of Crossrail S.106 contributions and transition from MCIL1 to a possible MCIL2

The proposal is to plan for a 'one hit' change, with 1 April 2019 as the key date in respect of both Crossrail S.106 payments and a transition from MCIL1 to a possible MCIL2.

The advantages of a synchronised transition approach reflects the lengthy process required to modify a CIL, and timing that reflects key influences such as the introduction of the Crossrail scheme.

It will be important that the full review of the London Plan reflects the updated position in respect of Crossrail and other transport infrastructure contributions and looks forward beyond the securing of the £600m. This is likely to be in parallel with the potential development of a possible MCIL2 that would need to be approved through the defined CIL consultation and examination process.

How would it work?

1. Q4 2018/19 will be the last period when MCIL1 will apply to planning permissions (although these will continue to be collected in subsequent years as these permissions are implemented)
 2. It is assumed that the introduction of any MCIL 2 will commence from Q1 2019/20 and will apply to planning permissions from 1 April 2019, allowing seamless transition
 3. Q4 2018/19 will be the last period when Crossrail S.106 obligations will apply to planning permissions (although these will continue to be collected in subsequent years as these permissions are implemented)
 4. At a point when the £600m is achieved:
 - any contributions via MCIL1 will go towards other transport infrastructure
 - any contributions via S.106 will be balanced by taking an equivalent sum from the MCIL1 contribution to Crossrail and transferring it to other transport infrastructure. The likely effect of this rebalancing over time will take us closer to the balanced contributions initially envisaged.
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Potential Programme

- 2016
 - 2016 MCIL Biennial Review
 - develop proposals for a revised Mayoral CIL (MCIL2)
 - 2017
 - consult on a proposed MCIL2
 - 2018
 - MCIL2 EiP (examination in public)
 - new London Plan EiP (possibly running the two EiPs together)
 - March 2019
 - last planning permissions where the rates / requirements of MCIL1 and Crossrail S.106 apply
 - April 2019
 - planning permissions are subject to MCIL2
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