

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2413

Title: Mayoral Community Infrastructure Levy 2 (MCIL2): Approval of Charging Schedule

Executive Summary:

The GLA is now in receipt of the independent Examiner's Report on the examination of the Mayoral Community Infrastructure Levy Draft Charging Schedule (MCIL2). This MD seeks Mayoral approval of the MCIL2 Charging Schedule and endorsement to proceed to formal adoption. Following adoption, charges within the MCIL2 Charging Schedule will take effect from 1 April 2019.

The Mayoral CIL Charging Schedule (MCIL1) (adopted 2012) and the Section 106 Crossrail Funding from Planning Obligations Supplementary Planning Guidance (adopted 2016) will be superseded by the revised MCIL Charging Schedule.

Decision:

That the Mayor:

1. Notes the findings and conclusions of the Examiner's Report on the Mayoral Community Infrastructure Levy Draft Charging Schedule (MCIL2) (**Annex A**);
2. Approves the Mayoral Community Infrastructure Levy (MCIL2) Charging Schedule in accordance with section 213 of the Planning Act 2008 and for this to take effect from 1 April 2019 (**Annex B**);
3. Approves for the MCIL1 Charging Schedule (adopted 2012) to be superseded by the revised MCIL2 Charging Schedule for chargeable developments first permitted on or after 1 April 2019;
4. Approves for the Section 106 Crossrail Funding from Planning Obligations Supplementary Planning Guidance (adopted 2016) to cease to have effect for planning permissions granted on or after 1 April 2019;
5. Approves the adoption of the MCIL Regulation 123 List (incorporated within the MCIL2 Charging Schedule) (**Annex B**) and for this to take effect from 1 April 2019.
6. Note that it is proposed that MCIL2 will be used to fund Crossrail 1 in addition to the infrastructure identified at the CIL Examination.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:



Date:

8/2/19

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1. The Mayor (as charging authority) has levied a Mayoral CIL charge (MCIL1) on CIL liable developments across London since 1 April 2012 and MCIL1 funds have contributed to Crossrail 1.
- 1.2. The CIL Regulations 2010 (as amended) set out the process for establishing and or reviewing a CIL charging schedule. Under the Regulations, a charging schedule is subject to two rounds of public consultation and scrutiny by an independent examiner at an examination in public.
- 1.3. The Mayor signed MD2123 on the 12 June 2017, authorising approval to undertake the first round of public consultation on amending the Mayoral Community Infrastructure Levy (MCIL1). Public consultation was held on the MCIL2 Preliminary Draft Charging Schedule for a period of six weeks between 26 June and 7 August 2017; a total of 59 responses were received.
- 1.4. A report summarising the findings of the public consultation and seeking approval to proceed to the second round of public consultation was signed by the Mayor MD2199 on 12 December 2017. Public consultation was held on the MCIL2 Draft Charging Schedule for a period of seven weeks between 18 December 2017 and 4 February 2018 for which 46 responses were received.
- 1.5. On 25 June 2018, the Mayor formally submitted the Draft Charging Schedule for public examination. Independent examiner Keith Holland BA (Hons) Dip TP MRTPI ARICS was appointed to examine the MCIL2 Draft Charging Schedule. The examination took place over two days from 11 to 12 September 2018.
- 1.6. The Examiner delivered his Report on the examination of the MCIL2 Draft Charging Schedule to the GLA on 6 November 2018 and this was subsequently published on the GLA website. All persons making representations on the Preliminary Draft and Draft Charging Schedules have been notified of the Examiner's Report. Collecting authorities who collect Mayoral CIL on behalf of the Mayor have also been notified via the CIL Collection Group. A copy of the Examiner's Report is attached as **Annex A**.

2. Objectives and expected outcomes

The MCIL2 Examiner's Report

- 2.1 The Examiner's main findings conclude *that*,

"The Draft Mayor of London Community Infrastructure Levy Charging Schedule provides an appropriate basis for the collection of the levy in the area. The Greater London Authority has provided sufficient evidence that shows the proposed rates would not threaten delivery of the London Plan 2016 as a whole".

- 2.2 In summary, the Examiner finds that the Charging Schedule:

- Complies with the CIL Regulations and national policy;
- Would make an important contribution towards the cost of Crossrail 2 or alternatively other strategic infrastructure projects;
- Is supported by adequate evidence of the need for improved strategic transport infrastructure, in particular the need for Crossrail 2;

- The viability assessment to be robust and the rates proposed are justified and would not threaten delivery of the London Plan 2016; and
 - That none of the other matters raised provide evidence that the proposed MCIL2 would threaten the balance that has been struck between the need to help fund Crossrail 2 and other transport infrastructure, and the potential effect on the economic viability of development across London.
- 2.3 The three charging bands proposed within the MCIL2 Draft Charging Schedule and the proposed charge rates for retail, office and hotel development within the Central London and the Isle of Dogs charge areas remain unchanged by the Examiner.
- 2.4 The Examiner recommends that the Draft Charging Schedule be approved subject to two modifications;
- The addition of a footnote to Table 2 of definitions for hotel, office and retail uses for clarity; and
 - The exclusion of the Elephant and Castle Opportunity Area from the Central London Charging Area for office, retail and hotel development as, “the proposed rates could put at serious risk commercial development within the opportunity area”.
- 2.5 The modifications recommended by the Examiner have been incorporated within the MCIL2 Charging Schedule and this is appended as **Annex B**.
- 2.6 The Mayor is recommended to agree recommendation (i), that he:
- (i) Notes the findings and conclusions of the Examiner’s Report on the Mayoral Community Infrastructure Levy Draft Charging Schedule (MCIL2) (Annex A).**

Approval of the MCIL2 Charging Schedule

- 2.7 In order for the Mayor to begin charging MCIL2, the MCIL2 Charging Schedule must be formally approved. Under section 213 of the Planning Act 2008 (the Act), a charging authority can only approve a charging schedule when:
- The Examiner has recommended approval; and
 - Subject to any modifications recommended by the Examiner
- 2.8 As noted in paragraphs 2.1 to 2.5 above, these conditions have been met.
- 2.9 In London, the Act requires that the Mayor approve the MCIL2 Charging Schedule personally. Mayoral approval will enable the swift progression to adoption and the implementation of the new charges.
- 2.10 Following approval by the Mayor and as soon as reasonably practicable, the MCIL2 Charging Schedule must be published on the GLA website and made available for inspection at City Hall. A local advertisement must be placed in the Estates Gazette and Evening Standard giving notice of the approval and of where the schedule can be inspected, and the schedule must be sent to all local planning authorities, the Mayoral Development Corporations and the Secretary of State. Notifications must also be sent to all those who requested to be informed of the approval. This is in accord with the requirements in CIL Regulation 25.

- 2.11 Section 214 of the Act empowers the Mayor to personally determine the timing at which MCIL2 takes effect. This Report recommends that the transition from MCIL1 to MCIL2 occurs on 1 April 2019.
- 2.12 The MCIL1 Charging Schedule (adopted 2012) will be superseded by the revised MCIL Charging Schedule for developments first permitted on or after 1 April 2019 and the Section 106 Crossrail Funding from Planning Obligations SPG (adopted 2016) will be superseded for development granted consent on or after that date.
- 2.13 It is important to note that receipts will continue to be collected for MCIL1 from chargeable developments first permitted prior to the 1 April 2019. In phased developments, this may mean that MCIL1 applies to some phases and MCIL2 to phases first permitted after the 1 April 2019. Crossrail SPG payments will also continue to be made for permissions granted before 1 April 2019. In some limited cases Crossrail SPG payments and MCIL2 payments may be payable, with the Crossrail SPG payments reduced to reflect the amount of MCIL2 where agreements provide for this.
- 2.14 The Mayor is recommended to agree recommendations (ii), (iii) and (iv), that he:
- (ii) **Approves the Mayoral Community Infrastructure Levy (MCIL2) Charging Schedule in accordance with section 213 of the Planning Act 2008 and for this to take effect from 1 April 2019 (Annex B).**
 - (iii) **Approves for the MCIL1 Charging Schedule (adopted 2012) to be superseded by the revised MCIL2 Charging Schedule for chargeable developments first permitted on or after 1 April 2019.**
 - (iv) **Approves for the Section 106 Crossrail Funding from Planning Obligations Supplementary Planning Guidance (adopted 2016) to cease to have effect for planning permissions granted on or after 1 April 2019.**

Crossrail 1 and Crossrail 2

- 2.15 As required by the CIL Regulations (R14(1)(a)) and guidance, at the examination evidence was provided by TfL that the cost of Crossrail 2 and other transport projects exceeded the likely receipts from CIL and that it was desirable to use MCIL2 to fund that infrastructure. Although by the time the Examination was held on 11 and 12 September it was known that there would be a delay in the opening of Crossrail 1 the financial impact of such delay was not known and it was well before the conclusion of the negotiations with the Government.
- 2.16 After the Examination, in MD2398, the Mayor made decisions to support further funding needed by Crossrail 1, including a loan by the GLA of £1.3 billion, as part of its overall contribution of £1.4 billion, which is expected to be repaid from the Business Rate Supplement and MCIL. The agreement with the Government includes a Government intention to bring forward legislation to allow the Mayor to borrow against MCIL revenues. The financial comments section of MD2398 and an extract from the written statement to Parliament dated 10 December 2018 are attached for reference as **Appendix 1**.
- 2.17 MD2398 makes it clear that the final details of the borrowing cannot not be resolved at present, not least because the change in the CIL regulations to allow borrowing has to go through a parliamentary approval process. TfL and the GLA have, however, agreed that the MCIL receipts will be transferred to GLA from the 2019/20 financial year. The practice is that the London Boroughs and the two Mayoral Development Corporations are the MCIL Collecting Authorities and they pay the MCIL collected direct to TfL.

- 2.18 The approach recommended to the Mayor, consistent with MD 2398, is that all MCIL2 receipts should continue, at present, to be paid towards the Crossrail 1 project. The receipts in 2018/19 above the £600 million target will go to TfL; and the receipts in 2019/20 year and afterwards will go to the GLA to repay the £1.3 billion loan.
- 2.19 As noted below MCIL can lawfully be used to pay for Crossrail 1. The present intention to use MCIL2 for Crossrail 1 does not invalidate the evidence presented to the Examination that MCIL2 was required to fund relevant transport infrastructure. The need for additional funding for Crossrail 1 serves to emphasise that the need for CIL is greater than anticipated at the Examination.

MCIL Regulation 123 Infrastructure List

- 2.20 Under Regulation 123 of the CIL Regulations 2010 (as amended), there are restrictions on the approach to section 106 and CIL, where it is proposed to be used to pay for the same item or type of infrastructure. Charging authorities can however, publish on their website a list of projects or types of infrastructure that may be funded in whole or part by CIL; this is known as the Regulation 123 List. Since 1 April 2012, the Mayor has been using MCIL1 to fund Crossrail 1.
- 2.21 A draft Regulation 123 List was incorporated as an explanatory note within the MCIL2 Draft Charging Schedule, but it does not form part of the formal Charging Schedule itself. The Mayor now intends to use MCIL2 to fund Crossrail 1 and for the position regarding Crossrail 2 to be kept under review. In order to retain flexibility, it is proposed that reference is now made to Crossrail 1 and Crossrail 2 in the Regulation 123 list. This is different from the approach outlined to the Examiner in his Report (see Annex A, paragraph 11), but meets the legal tests set out in Regulation 59 in terms of the infrastructure on which MCIL2 can properly be spent. These are that MCIL, "must be applied to funding the provision, improvement, replacement, operation or maintenance of roads or other transport facilities, including, in particular, funding for the purposes of, or in connection with, scheduled works within the meaning of Schedule 1 to the Crossrail Act 2008".
- 2.22 The actual use of MCIL receipts is a matter for the Mayor. The policy change in the proposed use of MCIL2 receipts will be explained to developers, boroughs and other stakeholders. There is the opportunity in 2019 to rework the Crossrail 2 business case, in discussion with Government, before the Comprehensive Spending Review and, in due course, it is expected that MCIL2 receipts will be used for Crossrail 2 and/or other transport projects consistent with the evidence given at the Examination.
- 2.23 The Mayor is recommended to agree recommendations (v) and (vi), that he:

- (v) Approves the adoption of the MCIL Regulation 123 List (incorporated within the MCIL2 Charging Schedule) (Annex B) and for this to take effect from 1 April 2019.**
- (vi) Note that it is proposed that MCIL will be used to fund Crossrail 2 in addition to the infrastructure identified at the CIL Examination.**

3. Equality comments

- 3.1 Section 149(1) of the Equality Act 2010 provides that in the exercise of their functions, public authorities must have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 3.2 The obligation in section 149(1) is placed upon the Mayor of London, as decision maker. Due regard must be had at the time a decision is being considered. The duty is non-delegable and must be exercised with an open mind.
- 3.3 The CIL is analogous to a tax on development. The proceeds from CIL are put towards infrastructure necessary to support the development of an area. The CIL does not fall on all households, unlike the annual council tax for example. CIL is only paid by landowners/developers when a CIL liable development is implemented. As specified above, MCIL2 will be used to contribute towards the funding of Crossrail 1 & 2.
- 3.4 Lower income groups are more likely to be users of public transport. People who are disabled, older or from ethnic minority groups are more likely to be in these lower income groups. Improving the public transport network, which Crossrail 1 & 2 will do, is likely to improve these groups' access to services and employment opportunities in central London. The delivery of Crossrail 1 & 2 will also unlock significant additional housing provision, a proportion of which will be affordable and thus give increased housing opportunities to lower income Londoners.
- 3.5 It is considered, given the above, that the proposals will not have a significant adverse impact on any particular social group or community. By helping finance Crossrail, the charging schedule will facilitate economic growth and increase access to opportunities, helping to improve outcomes for all.
- 3.6 The procedural legal requirements contained within Part 11 of the Planning Act 2008 and the Community Infrastructure Regulations 2010 as amended have been complied with.

4. Other considerations

Links to Mayoral strategies and priorities

- 4.1 Both the Mayor's Transport Strategy, the adopted London Plan and the emerging new London Plan prioritise the implementation of the Elizabeth Line (Crossrail 1) and Crossrail 2 to help deliver a large part of the capacity increases the transport network needs to both accommodate and facilitate London's anticipated growth.

Impact assessment

- 4.2 The MCIL2 charging schedule does not require a Strategic Environmental Assessment (SEA). Equalities impacts are addressed in section 3 above.
- 4.3 The viability evidence prepared by the Mayor and TfL's consultants, Jones Lang LaSalle demonstrates that the MCIL2 rates proposed will not unduly impact on development viability across London; the Examiner supports the approach taken in the viability evidence section in his report on the MCIL2 draft charging schedule examination.

Key risks

- 4.4 Risk of delay in the charging schedule taking effect on 1 April 2019. To ensure that MCIL2 is in place by 1 April 2019, officers are managing this risk by:
- Taking appropriate legal advice throughout the preparation and adoption of MCIL2, including the opinion of leading counsel where necessary;

- Careful project management by the joint GLA/TfL CIL steering group which from 2008 has overseen the development of MCIL2; and
- Regular liaison with collecting authorities via the CIL Collection Group to ensure that back office systems are in place to enable the collection of MCIL1 and MCIL2.

State Aid

- 4.5 State aid arises where state resources are made available selectively to an undertaking or undertakings in a manner that is likely to distort trade. Taxing and charging regimes like CIL can in principle give rise to state aid. Applying higher charges in one area than another can similarly, in principle, give rise to state aid.
- 4.6 Where differential charges are levied care needs to be taken to ensure that that does not offer a selective advantage (or disadvantage) to undertakings. The Courts have been clear that where there is an objective justification, or it is in the nature of the scheme, for differential rates then there will rarely be state aid. Different viability characteristics in one area compared to another, or one land use compared to another, can be a legitimate objective justification.
- 4.7 MCIL2 (like MCIL1) has differential rates for different areas and land uses based on evidence of the broad viability characteristics in those areas for those land uses. The evidence was considered by the Examiner who reviewed the objections made. Subject to some modifications he concluded that the evidence supported the different rates in different areas, and different rates for different land uses. Although the Examiner's role was not to examine the draft charging schedule for state aid compliance his report supports the GLA and TfL view that the proposed approach set out in the charging schedule does not amount to state aid.

5. Financial comments

- 5.1 *The estimated income that will be raised from MCIL2 to assist the financing initially of Crossrail 1 and then of Crossrail 2 is some £8.6bn in nominal terms from 2019-20 to 2042-43. There are no direct costs to the GLA arising from the recommendations. TfL have to date covered the cost of the MCIL2 consultation, publicity, legal advice and public examination from the 1% administration charge allowed under the CIL regulations. TfL will use the 1% administration fee to cover procedural costs associated with the adoption of the charging schedule; including adoption notices, notification and publication of the schedule. The GLA's costs will also be met from this admin charge.*

6. Legal comments

- 6.1 In all respects, the approach and procedures outlined in this MD are in accordance with the Planning Act 2008 and The Community Infrastructure Levy Regulations 2010 as amended.

7. Planned delivery

- 7.1 If the Mayor decides to adopt the MCIL2 Charging Schedule, it will come into effect on 1 April 2019.

Appendices and supporting papers:

- Appendix 1: Extracts from financial section of MD2398 report
 Annex A: Examiner's Report on Mayoral CIL Draft Charging Schedule.
 Annex B: MCIL2 Charging Schedule.

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FoIA) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after it has been approved or on the defer date.

Part 1 - Deferral

Is the publication of Part 1 of this approval to be deferred? NO

Until what date: (a date is required if deferring)

Part 2 - Sensitive information

Only the facts or advice that would be exempt from disclosure under FoIA should be included in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form - NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Darren Richards has drafted this report in accordance with GLA procedures and confirms the following:

✓

Sponsoring Director:

Lucy Owen has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser:

Jules Pipe has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

Corporate Investment Board

This decision was agreed by the Corporate Investment Board on 4 February 2019.

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

M. J. Allen

Date

4.2.19

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

D. Bellamy

Date

4/2/2019.