GREATER**LONDON**AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2173

Title: Amendment to the Mayoral Community Infrastructure Levy instalments policy

Executive Summary:
This MD proposes for agreement an amendment to the Mayoral Community Infrastructure Levy instalments policy, under which the threshold above which CIL payments may be made by instalments will be lowered. This will benefit a wider range of planning applicants/developers, including medium sized businesses. The amendment will take effect from 1 January 2018.

Decision:

That the Mayor:

1. Approves an amended Mayoral Community Infrastructure Levy instalments policy, as set out in Annex B, and that this takes effect from 1 January 2018

2. Approves arrangements for publishing the amended instalments policy in September 2017.

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: 27/8/17

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

Decision required – supporting report

1. Introduction and background

MCIL1

1.1 The Community Infrastructure Levy (CIL) came into force nationally on 6 April 2010. CIL is a charge which local authorities (including the Mayor of London) 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.

1.2 In London, the CIL Regulations restrict spending by the Mayor to funding roads or other transport facilities, including Crossrail[1], to ensure a balance between the spending priorities of the boroughs and the Mayor[2].

1.3 MCIL1, as the current Mayoral CIL is now referred to, has been in operation since April 2012. Together with an associated S.106 scheme operating under London Plan Policy 6.5, as of June 2017, a total of £512m had been raised for Crossrail 1.

MCIL2

1.4 The Mayor signed MD2123 on 12 June 2017. This set out viability evidence to support a second round of the Mayor's Community Infrastructure Levy (MCIL2), to commence in April 2019 to contribute towards the funding of Crossrail 2. An MCIL2 PDCS (preliminary draft charging schedule) was agreed for public consultation. This took place from 26 June to 7 August 2017.

1.5 A further MD will be prepared in the Autumn to report on MCIL2 PDCS consultation responses and to propose for agreement an MCIL2 DCS (draft charging schedule) for public consultation commencing in November (the second round of public consultation required under the CIL Regulations). An MCIL2 EiP (examination in public) will be held in late Summer/Autumn 2018. This may form part of the EiP to be held into the London Plan, also to be held in 2018.

CIL instalments policy

1.6 Regulation 69B of the CIL Regulations 2010 (as amended) permits CIL payment by instalments provided the charging authority has approved an instalment policy and it is published on their website. The instalment policy must include:

- the number of instalment payments;
- the amount or proportion of CIL payable in any instalment;
- the time (to be calculated from the date the development is commenced) that the first instalment payment is due, and the time that any subsequent instalment payments are due
- any minimum amount of CIL below which CIL may not be paid by instalment.

1.7 The previous Mayor adopted a CIL instalments policy in April 2013 (Annex A). Where the CIL liability is over £500,000 (MCIL and borough CIL combined), two payments may be made:

- £500,000 or half of the amount owed – whichever of these two is the greater amount – to be paid 60 days after development has begun
- the remainder 240 days after development has begun.

[1] Regulation 59(2), the Community Infrastructure Regulations 2010 (as amended)
[2] National Planning Practice Guidance, paragraph: 008 reference ID: 25-071-20140612 revision date: 12 06 2014

1.8 CIL Regulation 70 provides that where a borough or Mayoral Development Corporation does not have an instalment policy, the Mayor's instalment policy applies to both MCIL and BCIL (borough CIL). Where a borough/MDC has its own instalment policy in place, this applies to both BCIL and MCIL.

1.9 There are currently 14 boroughs which have a BCIL instalments policy where the local instalment policy, and not the Mayor's, determines the collection of MCIL: Brent, Camden, Croydon, Greenwich, Hackney, Harrow, Hillingdon, Islington, Kingston, Merton, Redbridge, Richmond, Wandsworth and Westminster. The Mayor's CIL instalments policy prevails in all other remaining boroughs (including LB Bromley, Havering and Ealing who are yet to adopt a CIL) and in the two MDCs.

1.10 The MCIL2 PDCS makes clear that the Mayor's current instalments policy will be rolled forward to apply to MCIL2 when it is implemented in April 2019.

2. Objectives and expected outcomes

Amending the instalments policy

2.1 In response a request from the Deputy Mayor for Housing & Residential Development to help ease small housebuilders' cashflow by enabling them to pay CIL by way of instalments, it was agreed that Planning, Housing and Legal officers would work up a proposal for consideration by Deputy Mayors and subsequent approval by the Mayor.

2.2 A CIL instalment policy must apply to all developments (it cannot be aimed at a category of developer nor at a type of land use), and so officers have developed in discussion with Leading Counsel a proposal which complies with the CIL Regulations and reflects as far as possible the spirit of the change sought.

2.3 A proposed amended Mayoral CIL instalments policy is set out in Annex B. Under the proposed amendment, the threshold at which CIL liability may be paid in instalments is lowered from £500,000 to £100,000. This offers the instalment benefit to smaller developments, often brought forward by smaller developers.

Lowering the instalment threshold

2.4 The new threshold has been set at £100,000 as it is considered that lowering it further would lead to increased administrative complexity and costs for the boroughs, who collect the CIL on the Mayor's behalf, possibly leading to them to not adopt it. Several boroughs already have a threshold of £100,000 in their own instalment policies so the proposed change would bring the Mayor's policy into line with many boroughs.

2.5 Decreasing the instalments threshold from £500,000 to £100,000 will mean that TfL will incur delays to an element of its CIL income. Financial modelling undertaken by TfL suggests that the cash impact on TfL in the first full financial year will be between £1.3 million and £2.2 million, depending on how many boroughs apply the policy. This is just a deferral of income, but the part of the next year's income is also deferred – and so TfL never 'catches up'. Over time the total cost is slightly higher, as MCIL income grows, with a net present value of £1.8 million to £3 million. These are real effects, but they are relatively small against the income received from MCIL1 last year (£137 million) or the expected contribution over time from MCIL2 to Crossrail 2 (in the region of £4.5 billion). In respect of the impact of the proposed change on MCIL1, TfL still expects to achieve the £600 million target for Crossrail 1 before March 2019, probably a year early. Looking at the instalment policy in the context of the MCIL2 proposals, the proposed change to the instalment policy is acceptable to TfL.

Implementation

2.6 The CIL Regulations require the Mayor to publish a CIL instalments policy but there is no obligation to consult upon it. It is proposed that the proposed new instalments policy is published on the GLA's website, and made available to members of the public and the boroughs in accordance with the CIL Regulations, in September when the draft London housing Strategy is launched.

2.7 It would be good practice to give the development industry and the boroughs some warning of the change. It is therefore suggested that the new policy comes into force on 1 January 2018 to give all parties time to adjust. There is a forum for meeting borough officers on CIL issues where the new policy will be discussed. There are regular meetings with the development industry at which the new policy can be highlighted.

2.8 The Mayor is recommended to agree that he:

1. Approves an amended Mayoral Community Infrastructure Levy instalments policy, as set out in Annex B, and that this takes effect from 1 January 2018

2. Approves arrangements for publishing the amended instalments policy in September 2017.

3. Equality comments

3.1 In the exercising of his functions, the Mayor has legal duties to consider equality of opportunity, elimination of discrimination and the promotion of good community relations (GLA Act 1999, as amended, Equality Act 2010). This includes the public sector equality duty, as set out in Section 149 of the Equality Act 2010.

3.2 The 2010 Act includes a single public sector equality duty covering race, disability, gender, age, sexual orientation, religion or belief, pregnancy and maternity, and gender reassignment. These are the grounds upon which discrimination is unlawful and are referred to as 'protected characteristics.' The public sector duty requires the Mayor when exercising his functions to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act, 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.

3.3 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, like the annual council tax for example. Most Londoners will never need to pay CIL. CIL is only paid by landowners/developers when a CIL-liable development is implemented. Lowering the CIL instalments threshold is unlikely to impact negatively on people with protected characteristics but will benefit smaller developments, and consequently may bring forward more housing, to the benefit of everyone.

4. Other considerations

Links to Mayoral strategies and priorities

4.1 Supporting small housebuilders is a priority stated in A City for All Londoners:

> *"It will also be important to support a range of developers to build the homes we need. The industry is currently dominated by a small number of large developers – their contribution is vital and must be supported. But I also want to support smaller housebuilders..."*[3]

4.2 Delivering Crossrail 2 is key commitment in A City for All Londoners:

[3] A City for All Londoners, Mayor of London October 2016, page 40

"I am determined to secure … Crossrail 2 by 2033, which will promote house building and create jobs, as well as alleviating overcrowding"[4]

"… first among the many projects critical to London's future growth will be Crossrail 2, which I am determined to keep on track for delivery by 2033"[5]

4.3 Support for small housebuilders will be reflected in the draft London Housing Strategy, due for publication early September 2017. The draft Mayor's Transport Strategy, published in June 2017, prioritises the implementation of 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. This will be reflected in the new London Plan, due for publication late November 2017.

Impact assessment

4.4 The MCIL Instalments policy does not require a Strategic Environmental Assessment. Equalities impacts are addressed in section 3 of this MD.

Public consultation

4.5 The CIL Regulations do not require the Mayor to undertake public consultation on amending his instalments policy. The amendment will be posted on the GLA website and notification will be given as described in paragraph 2.6. There is a formal network for discussing CIL issues with the boroughs, this issue will be raised at these meetings. There are informal meetings with the development industry at which these issues will be raised.

Key risks

4.6 Analysis by TfL suggests that MCIL income delays can be accommodated without undue risk to the funding of Crossrail 1 (MCIL1 up to March 2019) and Crossrail 2 (MCIL2 from April 2019).

4.7 Under the CIL Regulations, a borough instalments policy outranks the Mayor's policy. Where the Mayor's CIL instalment policy applies, boroughs who do not wish to support the amended policy – because of administrative complexity, or the deferral of BCIL income, for example – may choose to bring forward their own instalments policy to override the Mayor's. This will limit the impact of the Mayor's policy to those yet to adopt a CIL and to those agreeing with the new instalments policy. The chosen thresholds should mitigate this risk.

4.8 To minimise the risk of legal challenge, officers have sought advice from leading Counsel that the proposed policy amendment complies with the CIL Regulations.

5. Financial comments

5.1 There are no direct financial implications for the 2017-18 London Plan Programme budget arising from the decision to amend the Mayor's CIL instalments policy.

5.2 Decreasing the instalments threshold from £500,000 to £100,000 will mean that TfL will incur delays to an element of its CIL income. Financial modelling undertaken by TfL suggests that the cash impact on TfL in the first full financial year will be between £1.3 million and £2.2 million, depending on how many boroughs apply the policy. This is just a deferral of income, but the part of the next year's income is also deferred – and so TfL never 'catches up'. Over time the total cost is slightly higher, as MCIL income grows, with a net present value of £1.8 million to £3 million. These are real effects, but they are relatively small against the income received from MCIL1 last year (£137 million) or the expected contribution over time from MCIL2 to Crossrail 2 (in the region of £4.5 billion). In respect of the impact of the proposed change on MCIL1, TfL still expects to achieve the £600

[4] Ibid, page 29
[5] Ibid, page 47

million target for Crossrail 1 before March 2019, probably a year early. Looking at the instalment policy in the context of the MCIL2 proposals, the proposed change to the instalment policy is acceptable to TfL.

6. Legal comments

6.1 Officers have sought advice from leading Counsel and the proposed instalments policy would comply with the relevant CIL Regulations.

7. Planned delivery approach and next steps

MCIL timeline	MCIL activity
September 2017	• Mayor agrees to amend MCIL instalments policy (this MD)
September 2017	• Officers publicise new arrangements on website, at meetings
January 2018	• New policy come into force on 1 January 2018.

Appendices and supporting papers

Annex A – current Mayoral CIL instalments policy		
amount of CIL liability	**number of instalment payments**	**amount or proportion of CIL payable in any instalment/time at which payments are due**
£500,000 or less	no instalments	total amount payable within 60 days of commencement of development
£500,001 or more	two	• the greater of £500,000 or half the value of the total amount payable within 60 days of commencement of development • the remainder within 240 days of commencement of development

Annex B – proposed amended Mayoral CIL instalments policy • to be published on the GLA's website in September 2017 • to take effect on 1 January 2018		
amount of CIL liability	**number of instalment payments**	**amount or proportion of CIL payable in any instalment/time at which payments are due**
£100,000 or less	no instalments	total amount payable within 60 days of commencement of development
£100,001 or more	two	• the greater of £100,000 or half the value of the total amount payable within 60 days of commencement of development • the remainder within 240 days of commencement of development

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) 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 approval or on the defer date.

Part 1 Deferral:

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

If YES, for what reason:

Until what date:

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be 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: Richard Linton has drafted this report in accordance with GLA procedures and confirms the following:	✓
Sponsoring Director: Fiona Fletcher-Smith has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.	✓
Mayoral Adviser: Jules Pipe, James Murray and Val Shawcross have been consulted about the proposal and agree 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 29 August 2017	

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature M. D. Gallo **Date** 29.8.17

CHIEF OF STAFF:

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

Signature D. Bellamy **Date** 29/8/2017.