

GREATER **LONDON** AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2302

Title: Mayoral Community Infrastructure Levy 2 (MCIL2) Draft Charging Schedule – approval for submission to Examination in Public

Executive Summary:

This MD sets out the findings of the second round of public consultation on the proposal to amend the Mayor's Community Infrastructure Levy to contribute towards the funding of Crossrail 2, and potentially other strategic transport infrastructure. It recommends that the Mayor's Draft Charging Schedule (DCS) is submitted for Examination in Public (EiP). There are no direct costs to the Mayor arising from these recommended actions – TfL will recover the cost of MCIL2 preparation from the administrative charge which it is allowed to withhold from MCIL monies collected by the boroughs and the Mayoral Development Corporations on the Mayor's behalf.

Decision:

That the Mayor:

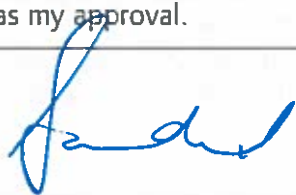
1. Notes the findings of the public consultation on the MCIL 2 - Draft Charging Schedule (DCS). (Annex A);
2. Approves the MCIL2 Draft Charging Schedule for submission for Examination in Public (EiP) (Annex B);
3. Submits the MCIL 2 Draft Charging Schedule Supporting Information for examination alongside the Draft Charging Schedule (Annex C);
4. Notes the findings and conclusions of the updated MCIL2 Viability Evidence Base, prepared by Jones Lang LaSalle (JLL) for submission to Examination (Annex D); and
5. Agrees to publish the responses to the public consultation on the MCIL2 DCS on the website, and the DCS Charging Schedule (Annex B), the DCS Supporting Information (Annex C), and the updated JLL evidence (Annex D).

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:

19/6/17

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

Decision required – supporting report

1. Introduction and background

Funding Transport Infrastructure through the planning system

- 1.1 On the 12th June 2017, the Mayor signed MD2123 authorising approval to undertake the first round of public consultation on amending the Mayoral Community Infrastructure Levy (MCIL) to contribute towards funding Crossrail 2. On 12th December 2017, the Mayor signed MD2199 authorising approval to undertake second round public consultation on MCIL.
- 1.2 The second round of public consultation, the draft charging schedule (DCS), took place over December 2017-February 2018. A total of 43 responses were received. Annex A sets out the issues raised by respondents.
- 1.3 Whilst the responses included support for Crossrail 2 or the use of a MCIL to fund Crossrail 2 they raised a number of issues. The most common of which are referred to below, (the figure in brackets refers to the number of times the issue was raised in the consultation);
 - Cumulative impact on viability of proposed rates and adopted borough rates (33)
 - Impact of proposed rates on affordable housing delivery (22)
 - Use of top-down methodology and adequacy of viability evidence (19)
 - Implications if Crossrail 2 is not progressed/use of MCIL2 (22)
 - Support for Crossrail2 or use of MCIL (20)

Cumulative impact

- 1.4 For the purposes of MCIL, boroughs are grouped into three charging bands. Jones Lang Lasalle (JLL), TfL/the Mayor's CIL viability consultants, have assessed the impact of revised charges in Hounslow, the most marginal Band 2 borough. It found that the impact of the proposed MCIL2 rates plus borough CIL rates can be absorbed and will leave a sufficient buffer – ie development viability should not be threatened within this band. Under MCIL2, MCIL rates are proposed to fall in Band 3 boroughs, so in this band viability should not be threatened – if anything, development viability should improve. Increases in Band 1, the most viable boroughs, should not impact on their viability. Since the introduction of MCIL1 there has been an increase in development activity suggesting that MCIL is not the determining factor in whether development is progressed or not.

Affordable housing

- 1.5 This is a specific sub-point of the cumulative impact point above, and is not a new issue. In approving the MCIL2 Preliminary Draft Charging Schedule (PDCS) for public consultation, the Mayor took a view on the balance between MCIL2 and affordable housing. Nothing has emerged from the consultation to suggest the balance has changed. Delivering improved transport infrastructure can unlock growth leading to more housing delivery and better access to a wider range of jobs. The provision of transport infrastructure, like schools and medical facilities, is an integral part of planning for housing delivery. Boroughs have set their CIL rates at between five to six times the MCIL rate. The new draft London Plan has been subject to viability testing. This work shows that the new London Plan policy requirements and the proposed MCIL 2 rates can be justified.

Methodology

- 1.6 The current approach of a top-down London-wide analysis reflects the same approach used for MCIL1, endorsed by the MCIL1 Inspector in 2011. Earlier this year, the Peace Review (the Government-appointed panel to review CIL nationally) praised the simplicity of the Mayor's approach.

What if Crossrail 2 doesn't happen?

- 1.7 Although the MCIL2 PDCS documentation is clear on the Mayor's view on this issue¹, some respondents want to know what would happen if Crossrail 2 does not proceed. This is not a matter for the examination, as the examination is on the impact of the proposed rates on development viability. Under the regulations the Mayor is required to use MCIL for strategic transport infrastructure, and can determine what items of strategic transport infrastructure the MCIL should be spent on.

Other Issues

- 1.8 Although it only attracted a handful of responses, the issue of the boundary of the Central London charging zone in south London for commercial property was raised. Under the S106 regime only the Bankside/London Bridge area was included south of the river, following changes at the Examination in Public in 2009. Under MCIL2 the southern boundary is proposed to follow the Central Activities Zone (CAZ) boundary and includes parts of Battersea, Vauxhall, Waterloo and Elephant & Castle. GLA officials and viability advisers consider that all these areas do have the characteristics of Central London for commercial development and that the boundary should follow the CAZ boundary unless there is good evidence not to.
- 1.9 Now that second round consultation has finished, the Mayor can choose to either submit the proposed charging schedule for examination in public in front of an independent examiner or modify the proposals in light of the comments made, consult for a further four weeks and then submit for examination.
- 1.10 Accordingly, having carefully considered the issues raised in the second round consultation, and taken advice from Jones Lang LaSalle, your viability consultants on this matter, it is recommended that the Mayor:

- **Notes the findings of the public consultation on the MCIL 2 - Draft Charging Schedule (DCS) (Annex A).**

2. Objectives and expected outcomes

The process for setting a CIL

- 2.1 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. The details are:

- A preliminary draft charging schedule (PDCS) – this took place June -July 2017.
- A draft charging schedule (DCS) – this took place December 2017 – February 2018.
- An Examination in Public (EiP) in front of an independent Inspector – currently proposed for 10th – 12th September 2018.

¹ "Negotiations on the Crossrail 2 scheme are still underway and there is no agreed funding package at present. However, MCIL2 does need to be brought forward now to avoid a charging gap at the end of Crossrail 1 construction and to allow for early funding of the Crossrail 2 scheme. Should no funding deal be achievable, the Mayor will be able to apply the MCIL2 proceeds to fund other strategic transport projects for which there is a significant funding gap." MCIL2 PDCS Supporting Information, Mayor of London, June 2017, paragraph 2.12

MCIL2 DCS and DCS Supporting Information

- 2.2 Officers have prepared the MCIL2 DCS (attached as **Annex B**) for submission to examination and the MCIL2 DCS Supporting Information document (**Annex C**) as a supporting document. These have not been updated from the last version submitted for Mayoral approval. The DCS is the formal statement of the Mayor's proposed CIL rates, prepared in accordance with the provisions of the CIL Regulations. The Supporting Information document, together with the Viability Evidence Base (Annex D), explains how the proposed rates have been arrived at.
- 2.3 The proposed MCIL2 rates are set out in the DCS, and comprise:
- Flat rates in three borough bands for all developments in London – with the exception of office, retail and hotel use in Central London and the northern part of the Isle of Dogs, and health and education across London – as set out numerically in Table 1 and shown geographically in Figure 1 of Annex C. This CIL scheme follows that set in MCIL1, and the levy rates show modest increases – those of MCIL1 adjusted for viability.
 - Higher rates for office, retail and hotel use in Central London and the northern part of the Isle of Dogs, as set out in Table 2 and Figures 2 and 3 of Annex C. This reflects the higher rates for these uses in these areas sustained under the London Plan's Crossrail S.106 policy (the Mayor will cease to apply this policy on commencement of MCIL2).
 - Nil rates for health and education uses, as set out in Table 3 of Annex C.
- 2.4 In setting the CIL rates set out in the Mayoral CIL DCS, the CIL Regulations require the Mayor to strike an appropriate balance between:
- The desirability of using the CIL to fund the cost of infrastructure to support the development of the Greater London area taking into account other actual and expected sources of funding, and
 - The potential effects (taken as a whole) of the imposition of the CIL on the economic viability of development across Greater London.
- 2.5 This requirement is set out in the National Guidance "Charging authorities should set a rate which does not threaten the ability to develop viably the sites and scale of development identified in the relevant Plan (...the London Plan in London). They will need to draw on the infrastructure planning evidence that underpins the development strategy for their area. Charging authorities should use that evidence to strike an appropriate balance between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across their area."²
- 2.6 The evidence for the first bullet point in paragraph 2.4 is set out in Section 2 of the Supporting Information document. It shows the vital strategic importance of Crossrail 2 to the development of Greater London. It also shows that the sum to be raised through MCIL2 will contribute towards funding the project but it will not close the entire funding gap. The evidence for the second bullet point of 2.4 is set out in the Updated JLL Viability Evidence Base. This explains the basis on which the proposed MCIL2 rates set out in the DCS were arrived at, and how the differential charge rates for each London borough and for specific land uses were derived.

Viability

² National Planning Practice Guidance, paragraph: 008 reference ID: 25-008-20140612 revision date: 12 06 2014

2.7 A viability study for a prospective MCIL2 which seeks to meet the 'appropriate balance' test set by the CIL Regulations (see above), and the necessity to contribute to Crossrail 2's funding, has been commissioned by TfL from Jones Lang LaSalle. Following the analysis of the consultation responses, the 'Mayoral Community Infrastructure Levy 2 Viability Evidence Base for Draft Charging Schedule' prepared by JLL has been updated to clarify some points that consultees appeared to have either missed or misunderstood. Some additional work has been undertaken to enhance this document. It is attached as **Annex D**.

2.8 The changes to the JLL Viability Evidence document are a more detailed explanation of the Mayor's approach, more detail on the cumulative impact of developer contributions, more detail on the impact of incorporating S106 obligations into MCIL 2 charging. This document also considered, but rejected, additional charging bands. The Viability Evidence base concludes that the MCIL2 rates proposed should not have an undue impact on the viability of development across Greater London as a whole.

2.9 It is therefore recommended that the Mayor:

- **Approves the MCIL2 Draft Charging Schedule for submission for Examination in Public (EiP) (Annex B)**
- **Approves the publication of the MCIL2 Draft Charging Schedule Supporting Information (Annex C)**
- **Notes and publishes the JLL Viability Evidence document (Annex D)**

Public consultation

2.10 Under the provisions of the CIL Regulations, as outlined in paragraph 2.1 above, the Mayor must carry out two rounds of public consultation on the proposed MCIL2 Charging Schedule:

- First, consultation on a preliminary draft. The Regulations do not specify a time period, but PDCSs are normally consulted on for a period of six weeks. This has already taken place.
- Having considered the comments made on the preliminary draft, the Mayor must then consult again on a Draft Charging Schedule for a period of at least four weeks. This has already taken place. Any person or organisation that makes comments at this stage will have the right to be heard at the CIL examination in public (EiP).
- The Mayor then has a further opportunity to make changes to the Draft Schedule and, if he does so, he has to allow a further four weeks for public consultation on these changes.

2.11 Following this second round of consultation, the Mayor has to appoint an independent examiner to conduct the EiP into the Draft Charging Schedule. This public hearing will ensure that:

- The Mayor has complied with the procedures for setting the CIL as set out in legislation and the CIL Regulations.
- The Schedule is supported by background documents containing appropriate available evidence.

2.12 It is recommended that the Mayor:

- **Agrees to publish the responses on the MCIL2 DCS on the website, and submit for examination the DCS Charging Schedule (Annex B) supported by the DCS Supporting Information (Annex C) and MCIL2 Viability Evidence (Annex D).**

3. Equality comments

- 3.1 In the exercise 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. This duty applies to the consideration as to whether there should be a MCIL2 draft charging schedule and if so, the amounts charged.
- 3.3 MCIL2 will be used to contribute towards the funding of Crossrail 2, and potentially other strategic transport infrastructure. Lower income groups are more likely to be users of public transport. People who are disabled, older, from ethnic minority groups are more likely to be in these lower income groups. Improving the public transport network – which Crossrail 2 will do – is likely to improve these groups' access to services and employment opportunities. The delivery of Crossrail 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.
- 3.4 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, CIL is only paid by landowners/developers when a CIL-liable development is implemented.
- 3.5 Consideration has been given to whether the banding of boroughs for MCIL2 purposes would result in undue impacts (in terms of CIL liability) on parts of London with particularly large Black, Asian and Minority Ethnic (BAME) populations. This shows that 87% of London's BAME population live in boroughs in the lower two charging bands, with 21% in the seven boroughs in the lowest band. Other social groups mentioned in legislation have a more dispersed pattern of settlement. Given this, it is considered that the proposals will not have any significant adverse impact on any particular social group or community in terms of the Mayoral equalities duties.

4. Other considerations

Links to Mayoral strategies and priorities

- 4.1 Ensuring the delivery of Crossrail 2 was a Mayoral manifesto pledge:
- "I will ... plan for the long term, securing Crossrail 2"³
 - "I will ... Get Crossrail 2 off the ground, using my experience as a Minister responsible for the original Crossrail to secure the funding package, and ensure the route enables the building of thousands of new homes"⁴

³ A Manifesto for All Londoners, Sadiq Khan March 2016 , page 15

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

- "I am determined to secure ... Crossrail 2 by 2033, which will promote house building and create jobs, as well as alleviating overcrowding"⁵
- "...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"⁶

4.3 Both the Mayor's Transport Strategy and the new London Plan will prioritise 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.

Impact assessment

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

4.5 The viability evidence prepared by the Mayor and TfL's consultants, Jones Lang LaSalle demonstrates that the MCIL2 rates proposed in the DCS will not unduly impact on development viability across London.

Public consultation

4.6 There have already been two rounds of public consultation. No further public consultation is required. It will be for the Examiner to decide the arrangements for publicising the Examination in Public, deciding who should be invited to attend.

Key risks

4.7 The principal areas of risk relate to the two areas that will be considered at the public examination of the draft MCIL2 charging schedule – compliance with the legal and procedural requirements and the sufficiency of the supporting evidence. Possible delay is also a key risk as a revised charging schedule needs to be in place by 1st April 2019. There is also a further underlying risk that the national arrangements for CIL may change, as flagged by Government in the February 2017 Housing White Paper.

4.8 Officers are managing these risks by:

- employing professional property consultants to provide the Mayor and TfL with robust viability evidence to ensure that the rates proposed are reasonable and capable of defence at EiP;
- taking appropriate legal advice throughout the preparation of MCIL2, including the opinion of leading counsel if necessary; and
- careful project management by the joint GLA/TfL steering group which from 2008 has overseen the development of Mayoral CIL

5. Financial comments

5.1 The estimated income that will be raised from MCIL2 to assist the financing of Crossrail 2, and potentially other strategic transport infrastructure, is some £8.6bn in nominal terms from 2019-20 to

⁴ Ibid, page 33

⁵ A City for All Londoners, Mayor of London October 2016, page 29

⁶ Ibid, page 47

2042-43. There are no direct costs to the GLA arising from the recommendations. TfL will cover the cost of MCIL2 consultation, publicity, legal advice and public examination from the 1% administration charge allowed under the CIL regulations. The GLA's costs will also be met from this admin charge (TfL to reimburse the GLA for any related costs).

6. Legal comments

- 6.1 At the time the previous Mayor prepared the preliminary draft charging schedule (PDCS) for MCIL1 (2010-11), guidance issued by the Department of Communities and Local Government stated that "Charging schedules will be short financial documents so will not require a Sustainability Appraisal". After taking Leading Counsel's advice at the time, officers concluded that the PDCS for MCIL1 fell within the definition of financial or budget plans and programmes which the EU SEA Directive exempts from the requirement to carry out a Strategic Environmental Assessment (SEA). The same approach applies to MCIL2. In all other respects, the approach and procedures outlined in this report are in accordance with the Planning Act 2008 and The Community Infrastructure Levy Regulations 2010 as amended.

7. Planned delivery approach and next steps

MCIL2 timeline	MCIL2 activity
June 2018	Mayor agrees to submit MCIL2 draft charging schedule (DCS) for examination in public
September 2018	Three-day Examination in Public (10th-12th)
November 2018	Receipt of Examiner's Report for fact check
December 2018	- Formal receipt of Examiner's final report, publication on website. Subject to receipt of a favourable report; - Submit MD seeking approval to adopt revised MCIL 2 charges - Mayor agrees MCIL2 charging schedule for commencement April 2019 concurrent with demise of MCIL1/S.106 Crossrail 1 funding regime
January - March 2019	Undertake events to publicize revised rates in advance of introduction
1 April 2019	- MCIL2 commences - MCIL1/Crossrail 1 S.106 ceases

Appendices and supporting papers

- Annex A** • List of respondents to PDCS consultation
- Annex B** • MCIL2 Draft Charging Schedule
- Annex C** • MCIL2 Draft Charging Schedule for supporting information
- Annex D** • MCIL2 Viability Evidence for DCS prepared by Jones Lang LaSalle for the Mayor and TfL

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? YES?**

If YES, for what reason: It contains material (Annex A) that would be helpful to potential objectors, putting this material in the public arena before the Examination in public may help objectors to the Mayor's proposals

Until what date: 1st October 2018

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:

Peter Heath 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 the 18 June 2018.

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Lelle

Date

18.6.18

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

18/6/2018.

