

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD2199

Title: Mayoral Community Infrastructure Levy 2 (MCIL2) Draft Charging Schedule – approval for second round of public consultation

Executive Summary:

This MD sets out the findings of the first round of public consultation on the proposal to amend the Mayor's Community Infrastructure Levy to contribute towards the funding of Crossrail 2. It recommends that the Mayor proceeds to the second round of public consultation, the draft consultation stage (DCS), and that public consultation begins in December and runs into January 2018. 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:

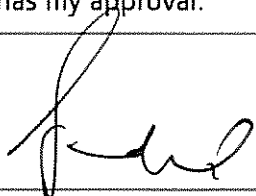
1. Notes the findings of the public consultation on the MCIL 2 - Preliminary Draft Charging Schedule (PDCS) and agrees to amend proposed boundary charging areas as set out on Maps A and B.
2. Notes the findings and conclusions of the updated MCIL2 Viability Evidence Base, prepared by Jones Lang LaSalle, for second round public consultation (Annex B).
3. Approves the MCIL2 Draft Charging Schedule for second round public consultation (Annex C).
4. Approves the MCIL 2 Draft Charging Schedule Supporting Information for second round consultation (Annex D).
5. Agrees to publish the responses to the public consultation on the MCIL2 PDCS on the website, and publish for public consultation the updated MCIL2 Viability Evidence (Annex B), the DCS Charging Schedule (Annex C) and the DCS Supporting Information (Annex D).
6. Delegates authority to the Deputy Mayor for Planning, Regeneration and Skills to agree the timing of public consultation on the MCIL2 DCS and associated documents.

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:

12/12/17

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. This earlier MD spells out in detail how both Section 106 obligations and the Community Infrastructure Levy have evolved over time to provide a funding stream for Crossrail1 of £600m by March 2019.
- 1.2 Developer contributions secured towards Crossrail now stand at £546 million, with the expectation that the £600m target will be reached in early 2018. Mayoral CIL (MCIL) receipts have almost reached £440m, while the Crossrail s106 total currently stands at the £106m mark. The number of receipts continues the recent trend of a higher level by exceeding 600 payments (a record high of 654) for three consecutive quarters. Once the £600 million target has been reached, the Mayor may wish to make a statement on how this funding stream will be used going forward.
- 1.3 The first round of public consultation, the preliminary draft charging schedule (PDCS), took place over June-July 2017. A total of 59 responses were received, Annex A sets out who those respondents were.
- 1.4 Whilst they did contain a large element of support for Crossrail 2 or the use of a MCIL to fund Crossrail 2 they did raise a number of issues. 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 (41)
 - impact of proposed rates on affordable housing delivery (30)
 - disputes over proposed boundary changes (28)
 - use of top-down methodology and adequacy of viability evidence (25)
 - implications if Crossrail 2 is not progressed/use of MCIL2 (25)
 - Support for Crossrail2 or use of MCIL (23)
 - Decision of Mayor not to make certain reliefs available (11)

Cumulative impact

- 1.5 JLL (Jones Lang Lasalle – TfL/the Mayor's CIL viability consultants) have assessed the impact of revised charges in Hounslow, the most marginal Band 2 borough, and 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.

Affordable housing

- 1.6 This is not a new issue. In approving the MCIL2 PDCS for public consultation, the Mayor took a view on the balance between MCIL2 and affordable housing. Nothing has emerged from this 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 doctors, is an integral part of planning for housing delivery.

Boundaries

- 1.7 Officers are proposing minor changes to the boundaries for the Central London charging area in Kensington & Chelsea and in the City of Westminster and to the Isle of Dogs charging area; these will only affect commercial development. These changes are shown on Maps A and B;
- Map A shows minor changes to the boundary in the Royal Borough of Kensington & Chelsea, to exclude an area relatively far from Paddington where little commercial development is likely to take place. Likewise an area in Westminster is proposed for exclusion for similar reasons,
 - Map B shows changes to the Isle of Dogs boundary expanding the charging zone further to the south but removing Poplar High Street from the charging area, these proposals came from LB Tower Hamlets and officers were content to agree to them.

Methodology

- 1.8 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 the CIL nationally) praised the simplicity of the Mayor's approach.

What if Crossrail 2 doesn't happen?

- 1.9 Although the MCIL2 PDCS documentation is clear on the Mayor's view on this issue¹, some respondents want to know what happens if Crossrail 2 does not proceed. The Mayor's Transport Strategy identifies unfunded transport schemes that MCIL2 could contribute towards, but none of them have the significant uplift in capacity that Crossrail 2 would deliver.

Reliefs

- 1.10 Under the CIL Regulations, discretionary reliefs are not part of the charging schedule examination – the Mayor can decide at any time if he wishes to make reliefs available or not. These issues were considered in the February 2017 MCIL1 Biennial Review, and again when the debate around changing CIL instalments policy took place. On both occasions, due to the cost and administrative complexity of making these reliefs available, the Mayor chose to continue to not make discretionary reliefs available for Mayoral CIL.
- 1.11 Accordingly, having carefully considered the issues raised in the first round consultation it is recommended that
- a) the rates proposed in the first round consultation are left unchanged and that;
 - b) only the minor boundaries changes, identified on Maps A and B, are made.
- 1.12 The Mayor is recommended to agree recommendation 1, that he:

- 1. Notes the findings of the public consultation on the Mayoral Community Infrastructure Levy 2 - Preliminary Draft Charging Schedule and agrees to amend the charging area boundaries as shown on Maps A and B.**

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

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) – consultation period at the discretion of the charging authority, but usually six weeks. This took place June -July 2017.
 - a draft charging schedule (DCS) – the subject of this MD, a minimum 4 weeks consultation, it is proposed to undertake at least 7 weeks to allow for the Christmas break.
 - an Examination in Public (EiP) in front of an independent Inspector – currently proposed for Autumn 2018.
- 2.2 Under the CIL Regulations, the Mayor is required to satisfy himself that his proposed CIL rates will not unduly impact on development viability across London as a whole. As set out in 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

Viability

- 2.3 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 re-emphasise some points that consultees appeared to have either missed or misunderstood. Some additional work has been undertaken to strengthen this document. It is attached as **Annex B**.
- 2.4 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 looked at, 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.
- 2.5 The Mayor is recommended to agree recommendation 2, that he:

2. Approves the MCIL2 Viability Evidence Base, prepared by Jones Lang LaSalle, for second round public consultation (Annex B)

MCIL2 DCS and DCS Supporting Information

- 2.6 Officers have prepared the MCIL2 DCS (attached as **Annex C**) and the MCIL2 DCS Supporting Information document (**Annex D**) for Mayoral approval for public consultation. These are updated from the versions of these documents prepared for the first round of public consultation in June 2017. The DCS is the formal statement of the Mayor’s proposed CIL rates, prepared in accordance

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

with the provisions of the CIL Regulations. The Supporting Information document, together with the Viability Evidence Base (Annex B), explains how the proposed rates have been arrived at.

2.7 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 in all 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 – basically 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.

2.8 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 of 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.

2.9 The evidence for the first requirement 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.

2.10 The evidence for the second requirement is set out in the Updated JLL Viability Evidence Base. This explains the basis on which the proposed MCIL2 rates set out in the PDCS were arrived at, and at how the differential charge rates for each London borough and for specific land uses were derived.

2.11 The Mayor is recommended to agree recommendations 3 and 4, that he:

3. Approves the MCIL2 Draft Charging Schedule (Annex C)

4. Approves the MCIL2 Draft Charging Schedule Supporting Information (Annex D)

Public consultation

2.12 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 PDCS's 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 is the next step this MD seeks approval to begin.
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.

- 2.13 Following this 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.
- 2.14 It is proposed that the DCS is consulted on for a period of at least seven weeks, commencing in December 2017, and that the Mayor delegates authority to the Deputy Mayor for Planning, Regeneration and Skills to agree the exact timing of the period of public consultation.
- 2.15 The Mayor is recommended to agree recommendations 5 and 6, that he:

- 5. Agrees to publish the responses on the MCIL2 PDCS on the website, and publish for public consultation the MCIL2 Viability Evidence (Annex B), the DCS Charging Schedule (Annex C) and the DCS Supporting Information (Annex D).**
- 6. Delegates authority to the Deputy Mayor for Planning, Regeneration and Skills to agree the timing of public consultation on the MCIL2 PDCS and associated documents**

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. This duty applies to the MCIL2 preliminary draft charging schedule.
- 3.3 MCIL2 will be used to contribute towards the funding of Crossrail 2. 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 in central London. 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, unlike the annual council tax for example. 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

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 emerging 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 MCIL2 DCS does not require an SEA. 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 At DCS stage – the subject of this MD – the CIL regulations require the Mayor to consult local planning authorities in and adjoining London, residents, businesses, relevant voluntary groups and groups representing businesses.

4.7 The programme for MCIL2 preparation is set out in section 7 below. Sufficient time is programmed to allow officers to undertake further work/seek legal advice if necessary in response to consultation responses received. Once a satisfactory report has been received from the Inspector, the charging schedule can be adopted. This DCS is the second stage in adopting a charging schedule.

Key risks

4.8 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. In order to ensure that MCIL2 is in place by April 2019, the preliminary draft charging schedule – the first step in the process – was issued for public consultation in June 2017. 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.

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

⁴ Ibid, page 33

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

⁶ Ibid, page 47

4.9 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
- 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 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 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.

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
December 2017	• Mayor agrees MCIL2 draft charging schedule (DCS) for consultation
December 2017- January 2018	• MCIL2 DCS public consultation (seven weeks)
February 2018	• Consider responses and decide whether to undertake further work and re-consult for an additional four weeks if necessary. The remaining timetable assumes that the Mayor decides that additional work is not necessary
March 2018	• Mayor agrees to appoint an Examination in Public (EiP) inspector and agrees to MCIL2 DCS for submission for EiP • submit MCIL2 DCS to EiP and appoint inspector
Autumn 2018	• MCIL2 EiP (possibly part of London Plan EiP)
January 2019	• Mayor receives MCIL2 inspector's report
February - March 2019	• Mayor agrees MCIL2 charging schedule for commencement April 2019 concurrent with demise of MCIL1/S.106 Crossrail 1 funding regime
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 Viability Evidence for DCS prepared by Jones Lang LaSalle for the Mayor and TfL
Annex C	• MCIL2 Draft Charging Schedule
Annex D	• MCIL2 Draft Charging Schedule for supporting information

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: This MD should be withheld until the MCIL2 DCS and associated documentation is published for public consultation

Until what date: Jules Pipe to agree exact date – see recommendation 6 but by 18th December 2017

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:

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 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 4th December 2017

EXECUTIVE DIRECTOR, RESOURCES:

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

Signature

M. D. Allen

Date

4.12.17

CHIEF OF STAFF:

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

Signature

D. Bellamy

Date

4/12/2017