

<b>Committee(s)</b>	<b>Dated:</b>
Planning & Transportation Committee	29/01/2018
<b>Subject:</b> City Corporation response to consultation on the Mayoral Community Infrastructure Levy 2 Draft Charging Schedule	<b>Public</b>
<b>Report of:</b> Carolyn Dwyer, Director of the Built Environment	<b>For Decision</b>
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### Summary

The Mayor has published a Draft Charging Schedule for a new Mayoral Community Infrastructure Levy (CIL), to replace the existing Mayoral CIL and s106 charges in order to part fund the delivery of Crossrail 2. This follows from consultation on a Preliminary Draft Charging Schedule published in June 2017 that was considered by the Planning & Transportation Committee on 25 July 2017.

The City Corporation supports the delivery of the Crossrail 2 railway and supports in principle the introduction of a new Mayoral CIL charge to contribute towards delivering this strategic transport infrastructure.

The Mayor has made no changes to his Mayoral CIL proposals as they relate to the City of London, retaining an Mayoral CIL general rate for development including housing of £80 per square metre and specific rates of £185 per square metre for offices, £165 for retail and £140 for hotels. The Mayor has provided further viability evidence to support proposed Mayoral CIL charge rates in the City, in response to earlier objections from the City Corporation and others. This revised evidence, alongside experience in the operation of the Mayor's current CIL and s106 charging regimes, suggests that the proposed replacement Mayoral CIL rates should not have an adverse impact on overall development viability in the City. A Mayoral commitment to ongoing monitoring and biennial review of his CIL should provide a mechanism to address any viability concerns that arise.

Although the Mayor has provided further evidence on viability against current planning policies, account does not appear to have been taken of the impact of emerging draft London Plan policy on development costs and viability. The Mayor should commit to assessing the impact of his emerging policies on his proposed Mayoral CIL rates, and borough and City of London local CIL and s106 planning obligations, before he confirms the Mayoral CIL, to provide assurance that there will be no adverse impact.

The Mayor has confirmed his intention that Mayoral CIL funds will be used to part fund Crossrail 2, but has not provided the additional assurance sought by the City Corporation, and others, on how funds would be used in the event that Crossrail 2

does not proceed. Further assurances are sought from the Mayor in this regard, including a commitment to effective liaison with boroughs and the City in the development of funding proposals through the Regulation 123 List.

The City of London CIL sets out a nil charge for health and education facilities, in line with the Mayor's current CIL, but also development used wholly or mainly for the operational purposes of the emergency services. In light of the importance of the emergency services in providing necessary and vital public services in London, the Mayor is asked to introduce a similar nil charge rate for emergency services operational buildings within his Mayoral CIL.

### **Recommendation(s)**

Members are recommended to:

- Agree the key points of the City Corporation's proposed response set out below:  
The City Corporation:
  - Supports the delivery of the Crossrail 2 railway and supports in principle for the introduction of a new Mayoral CIL charge to contribute towards the cost of delivering this strategic transport infrastructure.
  - Has no objection to the proposed Mayoral CIL charge rates applicable within the City of London, but seeks the Mayor's commitment that he will keep these charges under review and work with the City Corporation and London Boroughs to review the Mayoral CIL if evidence emerges of an adverse impact on development.
  - Requests that the Mayor consider in full the impacts on development costs of the emerging draft London Plan on the viability of the Mayoral CIL before CIL rates are confirmed.
  - Requests that the Mayor extend his CIL nil charge rate to cover development used wholly or mainly for the operational purposes of the emergency services.
- Agree that the detailed comments set out in paragraphs 7 - 18 of this report will be forwarded to the Mayor as the City Corporation's response to the Mayor's consultation on the Mayoral CIL2 Draft Charging Schedule.

### **Main Report**

#### **Background**

1. In April 2012, the Mayor introduced a Mayoral Community Infrastructure Levy (MCIL1) applicable across London in order to contribute to a target of £600m funding for Crossrail through CIL and s106 planning obligations. The Mayor now expects to have met this target by April 2019 and intends to continue to levy an amended Mayoral CIL (known as MCIL2) from April 2019 to contribute towards the costs of delivering Crossrail 2 or other strategic infrastructure.

2. MCIL1 is levied at a rate of £50 per square metre of new floorspace in the City of London and other parts of Central London. Alongside MCIL1, the Mayor levies s106 planning obligations, with contributions sought from office, retail and hotel development within central London at a rate per square metre of £140 for offices, £90 for retail and £61 for hotels. Contributions under s106 are subject to viability and can be amended if evidence indicates that the contribution would make the development unviable. Where a development is liable for both MCIL1 and Mayoral s106, the Mayor agreed that the total contribution would be the greater of the two charge regimes.
3. In addition to Mayoral CIL and Mayoral s106, the City Corporation levies a City CIL on development at a rate per square metre of £75 for office, hotel and retail development and £95 or £150 for residential. The City Corporation also levies s106 planning obligations on commercial development of £20 per square metre for affordable housing and £3 per square metre for training, skills and education. Residential development is required to make a contribution towards affordable housing equivalent to 30% provision on site or 60% off site. In setting the City CIL and City s106 rates, a viability assessment was undertaken which considered the impact of the City and Mayoral CIL and s106 levies on development and it concluded that contributions at the agreed rates would be deliverable.
4. The statutory process for setting and implementing a CIL requires 2 rounds of formal public consultation on a Preliminary Draft Charging Schedule and a Draft Charging Schedule, followed by a public examination. Proposed CIL rates have to be supported by viability evidence demonstrating that the CIL would not have an overall adverse impact on the viability of development across the area in which the CIL is in place.
5. In June 2017, the Mayor published for consultation a Preliminary Draft Charging Schedule (PDCS) for MCIL2. This was considered by Planning & Transportation Committee at its meeting on 25 July 2017. The Committee expressed support for Crossrail 2 and supported the principle of using MCIL2 to part fund the railway, but objected to the proposed MCIL2 rates for the City until it could be reassured that the rates are supported by robust viability evidence that takes account of City specific issues.

## **Current Position**

6. Following consultation on the PDCS, the Mayor has considered the comments made and published his MCIL2 Draft Charging Schedule for public consultation. The Draft Charging Schedule is accompanied by a Supporting Information document and a revised viability analysis. The Mayor has also published a summary of the 59 responses received to the PDCS including several which reflected City Corporation concerns. The key issues raised by respondents were:
  - a large element of support for Crossrail 2 or the use of MCIL to part fund Crossrail 2;
  - the cumulative impact on viability of MCIL2 and borough CIL and s106 planning obligations;
  - the impact of MCIL2 on the delivery of affordable housing;

- concerns over detailed boundaries;
- potential use of MCIL2 if Crossrail 2 does not proceed;
- viability methodology;
- availability of relief from payment of CIL.

## **Detailed Proposals and Response to City Corporation Concerns**

### **A) Use of MCIL2**

7. The Mayor has restated his intention to use MCIL2 to contribute towards the cost of delivering Crossrail 2 and set this out in his Regulation 123 List (a statutory description of the projects or programmes that will be funded through CIL). Crossrail 2 is a proposed new railway running from SW to NE London, running through central London underground via Victoria, St. Pancras and Angel stations. Although Crossrail 2 would not pass directly through the City, it would result in a significant increase in rail capacity into and through London which will enhance the capital's transport links and its accessibility and network resilience. Crossrail 2 will open up opportunities for further housing growth which will be of particular significance for London as a whole. The City Corporation is committed to both supporting and promoting the case for Crossrail 2 and the Mayor's intention to use MCIL2 to part fund the railway can be supported.
8. In commenting on the PDCS, the Planning & Transportation Committee sought further clarity on how the Mayor would use MCIL2 in the event that Crossrail 2 did not proceed. In particular, whilst supporting the need for London-wide contributions to strategic infrastructure, the Committee felt that specific and higher contributions from offices, retail and hotel development in the City should be used principally to fund new transport infrastructure that directly benefits the central area of London or makes a significant contribution to improving access into the City. In his Draft Charging Schedule the Mayor has reiterated his intention that MCIL2 will contribute towards Crossrail 2 or, in its absence, other strategic infrastructure, but has not provided any further clarity on alternative infrastructure projects other than referring to London-wide proposals contained in his Transport Strategy and the draft London Plan. In the absence of this additional clarity, the Mayor should be asked to commit to full public consultation on potential funding programmes, through his Regulation 123 List, to enable the City Corporation to input into the selection of appropriate strategic infrastructure projects to be funded through MCIL2 in the event that Crossrail 2 does not go ahead.

### **B) MCIL2 Charge Rates applicable in the City of London**

9. The Mayor has not made any changes to the proposed MCIL2 charge rates which would apply to development within the City of London. The City remains in the Central London Band 1 area for MCIL payments, with development other than offices, retail and hotels being charged at a rate of £80 per square metre. The Mayor has retained his proposal to transfer current Mayoral s106 charges for offices, retail and hotel development, into MCIL. The proposed charge rates per square metre of development are set out in Table 1, which also provides a comparison with current MCIL1 and s106 planning obligation rates.

**Table 1: Comparison of MCIL2, MCIL1 and Mayoral s106 charge rates**

Land Use	MCIL2 Rate (£)	MCIL1 Rate (£)	S106 Rate (£)
Offices	185	0	140
Retail	165	0	90
Hotel	140	0	61
Other development	80	50	0
Education	0	0	0
Health	0	0	0

10. The viability evidence supporting MCIL2 has been revised and further evidence presented to support the Mayor's proposed rates. In relation to the £80 per square metre general charge (including housing) applicable within Band 1, the evidence has tested viability by considering the MCIL2 rate as a percentage of the highest and lowest average house price across central London. This suggests that MCIL2 would represent between 0.51% and 1.09% of average house prices. The evidence notes that this percentage is modest when compared, for example, to Stamp Duty rates between 1% and 12%, and concludes that other building costs and values over the development cycle are more likely to have an impact on viability than the MCIL2 rate. Given the high development values and costs in the City (for uses other than office, retail and hotel), this conclusion seems justified and therefore the base rate for general development (including housing) of £80 per square metre is acceptable.
11. A greater concern for the City of London is the potential impact of MCIL2 rates for office, retail and hotel development. Very little City specific evidence was provided at the PDCS stage to support the proposed rates and the City Corporation, alongside other central London Boroughs, requested further viability information. The Mayor's viability study has now provided additional information, including an assessment of the impact of MCIL2 on office development in the City, and the impact on office, retail and hotel development in Westminster. In terms of office development in the City, the viability evidence suggests that, for a Grade A office development achieving a rental of approximately £65 per square foot, MCIL2 would represent 1.79% of the development's capital value, with the increase in MCIL2 over current s106 planning obligations representing an additional 0.22% of capital value. For retail in Westminster, MCIL2 is calculated to represent 0.4% of capital value and for hotel 1.62% of capital value. The viability study concludes that these proportions of capital value are unlikely to be of sufficient significance in relation to other development costs to change a decision on whether to proceed or not with development.
12. Although the viability study does suggest that MCIL2 will not impact on the viability of development in the City as a whole, the study has not looked in detail at the combined impact on City development of MCIL2, City of London CIL and City of London s106 planning obligations.
- Cumulative impact on commercial development: When setting the City of London CIL and s106 planning obligations in 2014, the City Corporation commissioned a viability assessment which took into account the cumulative

impact of City Corporation proposals and MCIL1 and Mayoral s106 charges. One test of whether existing rates have impacted on development viability is the extent to which developers have sought to reduce s106 payments (Mayoral and City of London) to deliver new development. To date, no developer has requested a reduction in Mayoral s106 rates for office, retail or hotel development, suggesting that current rates are affordable. The proposed increases in rates through MCIL2 would appear, from the MCIL2 viability assessment, to have a negligible additional impact, so it is unlikely that MCIL2 rates would have an adverse impact on the overall viability of commercial development in the City of London.

- Cumulative impact on residential development: The City of London CIL rates for residential development took into consideration MCIL1 rates, plus City of London Local Plan requirements for affordable housing. The viability testing undertaken for MCIL2 suggests that the additional costs imposed on residential developers by the £80 charge are likely to be negligible when compared to other development costs and therefore are unlikely to impact on the overall viability of residential development. Experience within the City is that residential developers often seek to challenge Local Plan affordable housing requirements through viability assessments. Although MCIL2 would increase development costs and have a small impact on residential viability, it is other development costs, particularly land value and purchase costs, that are the key determinant in whether a developer can meet affordable housing policy requirements. Clarification of City of London affordable housing policy through amendments to supplementary planning guidance and changes to City of London Local Plan policy will reinforce the expectation that the full policy costs of development are taken into account in the purchase of sites and this should ensure that higher levels of contribution can be achieved in future.

### **C) Viability Testing under MCIL2**

13. The City Corporation's response to the PDCS raised concerns about the flexibility of the MCIL2 charges, specifically that MCIL2 charges would not be subject to viability testing at the individual development level, unlike current Mayoral s106 charges for office, retail and hotel development. As a result, there was a concern that any adverse impact on development viability could only be mitigated by amendments to City of London s106 planning obligations. The Draft Charging Schedule confirms that the Mayor does not intend to make available exceptional relief from MCIL2 on the grounds of viability. However, even if the Mayor allowed such relief, it is unlikely to be applicable in the City as national CIL Regulations limit the use of such exceptional relief to those cases where sums payable under s106 are greater than those under CIL.

### **D) Impact of Emerging London Plan Policy Requirements**

14. MCIL viability testing has considered the impact of MCIL2 charge rates on development in London in the context of current planning policy. It has not specifically considered the impact of emerging London Plan policy on the costs and deliverability of new development. A number of London Plan draft policies will potentially increase the cost of development through, for example, higher affordable housing requirements, targets for zero carbon development, new

proposals to require the greening of buildings, and requirements for the delivery of affordable and flexible workspace. The cumulative implications of London Plan policy changes and MCIL2 rates should be considered through viability assessment and the MCIL2 Examination in Public.

#### **E) MCIL2 Monitoring and Review**

15. The Mayor has committed to continue his current practice of a biennial review of MCIL which should provide an opportunity to identify any potential adverse impacts of MCIL2 on development viability, including any ongoing impacts arising out of the cumulative effects of MCIL and London Plan policy. The Mayor should be asked, when undertaking this review, to consider the cumulative impacts of MCIL and borough (including City of London) CIL rates and s106 planning obligations to ensure that MCIL2 is not adversely impacting on development viability. Where an adverse impact is identified, the Mayor should commit to joint working with affected boroughs to consider and implement a review of MCIL to ensure that development remains viable in the longer term.

#### **F) MCIL2 Nil Charge Rates**

16. The Mayor is intending to retain within MCIL2 existing MCIL1 nil charge rates for education and health facilities, and this it to be welcomed. Similar nil charge rates have been adopted in the City of London CIL. The City of London CIL also includes a nil charge for development used wholly or mainly for the operational purposes of the emergency services, which would include the needs of the police and fire service within the City. As these are essential public services, necessary to the effective and safe functioning of London as a whole, the Mayor should be asked to include a nil charge rate for the operational purposes of emergency services within MCIL2. Such a change would have a negligible impact on potential MCIL2 income, but would enhance the viability of essential public service development where it is required.

#### **Mayoral CIL 3 (MCIL3)**

17. Within the viability evidence supporting MCIL2, the Mayor has sought to provide longer term certainty to the development industry by including guidance on a possible further amendment to the Mayoral CIL (MCIL3) which is assumed to take effect from 2024. Indicative rates are set out for the current categories of Mayoral CIL chargeable development, which assume that the proposed MCIL2 rates are further uplifted in accordance with build cost indexation. The Mayor also raises the possibility of changes to the allocation of boroughs to MCIL charge bands and the replacement of individual charges for office, retail and hotel development with a single Central London commercial development charge.
18. The Mayor's confirmation that he intends to continue to levy a Mayoral CIL does provide greater certainty to developers in making longer term investment decisions and to boroughs in developing local plan policies and local CIL and s106 charges. The indicative charge rates must, at present, carry little weight given the potential for economic change and change in national, regional and local policy over the medium term. The Mayor should be asked to confirm that he will continue to work closely with the City Corporation and London Boroughs in

the operation of MCIL2, its review and the development of any future proposals for MCIL3.

## **Next Steps**

19. National CIL Regulations indicate that any person or organisation that comments at the Draft Charging Schedule stage will have the right to be heard at the CIL public examination. Following the consultation, the Mayor will appoint an independent examiner to conduct an Examination in Public into the Draft Charging Schedule. The Mayor expects this EiP to take place in the autumn of 2018, potentially alongside the EiP into the draft London Plan. Subject to the outcome of this EiP, the Mayor intends to commence levying MCIL2 charges from April 2019. MCIL2 charges will supersede the current MCIL1 levies and the associated Mayoral planning obligation/S.106 charge scheme applicable in central London and the northern part of the Isle of Dogs.

## **Corporate & Strategic Implications**

20. The proposed introduction of MCIL2 will assist in the delivery of Crossrail 2 required to boost network capacity and resilience, maintain transportation access to and through London, maintaining its attractiveness as a business location and encouraging further housing development, in line with the City's Vision and Key Policy Priorities in the Corporate Plan.

## **Implications**

21. Viability evidence suggests that there will be not be a significant impact on development, particularly office development, following the introduction of MCIL2. Regular monitoring and review by the Mayor will identify any potential adverse impacts which can be mitigated by continuing dialogue with the Mayor and his team.

## **Health Implications**

22. There are no direct health implications arising from this report. However, the proposed nil rate for development providing health facilities should aid the provision of health services in London. A similar nil rate for operational development for emergency services would help wider essential public service delivery if introduced.

## **Conclusion**

23. Following consultation on his Preliminary Draft Charging Schedule for a new Mayoral CIL, the Mayor has published a Draft Charging Schedule for consultation. This proposes replacing the existing Mayoral CIL mechanism and s106 charges, with a new charge which will contribute towards the cost of delivering the proposed Crossrail 2 railway. In the event that Crossrail 2 does not proceed, the Mayoral CIL will be used to contribute towards strategic infrastructure across London.



24. The Mayor's increased charges are supported by a viability appraisal which concludes that these rates would not have an adverse impact on development viability across London, including when taking account of borough and City CIL rates. Where there are issues of development viability, the Mayor considers that these should be addressed through variation in s106 planning obligations levied by boroughs and the City.
25. The City Corporation supports the development of Crossrail 2 and, in principle, supports the introduction of a new Mayoral CIL charge to contribute towards the cost of delivering this infrastructure. Earlier City Corporation concerns about City specific impacts of the proposed new CIL charge have been addressed through a revised viability assessment, which indicates that new MCIL2 charges should not adversely impact on the viability of City development. A commitment to regular monitoring and review by the Mayor should provide a mechanism for addressing any viability concerns that emerge. The Mayor has not, however, addressed the City Corporation's request for greater clarity over how MCIL2 funds would be used if Crossrail 2 does not progress and further assurances are sought in this regard. A new category of a nil CIL charge for operational development by emergency services is sought by the City Corporation which would have a negligible impact on MCIL2, but could have a positive impact on emergency service developments across London.

## **Background Papers**

MCIL2 Draft Charging Schedule, Supporting Information and Viability Evidence Base available on the GLA website at: <https://www.london.gov.uk/what-we-do/planning/implementing-london-plan/mayoral-community-infrastructure-levy>

Planning & Transportation Committee Report: City Corporation response to consultation on the Mayoral Community Infrastructure Levy 2 Preliminary Draft Charging Schedule, 25 July 2017

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