Tower Hamlets Community Infrastructure Levy: Revised Draft Charging Schedule

Consultation Statement

Community Infrastructure Levy Regulations 2010 as amended Regulation 19(b)

February 2014

Contents

1. Introduction

1.1 The Council's *Revised Draft Charging Schedule (RDCS 2013)* and *Draft Charging Schedule (DCS 2013)* were published in accordance with the requirements of Regulation 16 of the Community Infrastructure Levy Regulations (2010 as amended). This statement provides a summary of main issues raised in the representations received during the formal consultation periods on the *RDCS 2013* and *DCS 2013* and sets out the Council's response to these issues.

1.2 This statement addresses the requirements of Regulation 19 (b) of the Community Infrastructure Levy Regulations by setting out:

- if representations were made to the Council within the consultation period that it has specified;
- the number of the representations received; and
- a summary of the main issues raised

2. Representations to the RDCS 2013 and the DCS 2013

2.1 The Council has actively invited and encouraged submission of viability evidence, in particular, appraisals and appraisal inputs/ information, so that the strategic appraisals more accurately reflect the actual schemes coming forward on the strategic sites. The Council organised a developer workshop on 6 July 2012 to which key stakeholders and developers were invited to attend, and developers were invited to provide input as to the proposed methodology and assistance with inputs into the appraisals. No information or follow up was provided by the development industry to this opportunity to provide input into the process at this stage; however, detailed responses have been received during the three formal consultation periods. Further information on the Council's consultation approach is provided in the Statement of Compliance (February 2014).

2.2 On 22 April 2013, the Council published the *DCS 2013*, in accordance with Regulation 16 of the CIL Regulations 2010 (as amended), for consultation between the 22 April and 5 June 2013. The Council received **38** consultation responses of which **five** were received after the close of the formal consultation period. These late responses are included in this summary for completeness.

2.3 Following consultation on the *DCS 2013*, the Council updated its evidence to address the representations received. This led the Council to revise three of the commercial rates proposed. In light of these changes, the Council published a Revised Draft Charging Schedule for consultation between the 21 October and 2 December 2013 (*RDCS 2013*), in accordance with the requirements for Regulation 16 of the CIL Regulations 2010 (as amended) and to address the requirements in the Government's *CIL Guidance, 2013*. The Council received a further **29** responses to the *RDCS 2013* consultation; 20 of these supplemented representations submitted to the *DCS 2013* and nine were new. A list of the **47** organisations and individuals that made representations to either or both the *RDCS 2013* and the *DCS 2013* is provided on page 4.

2.4 Where evidence has suggested rates should be reduced or approaches clarified, the Council has engaged with these representations positively and made changes where these are necessary and justified. This is evident from the additional stage of consultation on the *RDCS 2013* and the additional modifications to the *RDCS 2013* itself which are now being proposed.

Table 2.1 List of the Organisations and Individuals that Made Representations

No	Name of Individual / Organisation	DCS Reference	RDCS Reference
1.	Stephen Ashworth	CIL_DCS01	CIL_RDCS01
2.	James Ball	CIL_DCS02	CIL_RDCS02
3.	National Grid Property Holdings	CIL_DCS03	N/A
4.	Greater London Authority (GLA)	CIL_DCS04	CIL_RDCS04
5.	Lanak Square Ltd	CIL_DCS05	CIL_RDCS05
6.	W.M Morrison Supermarkets Plc.	CIL_DCS06	CIL_RDCS06
7.	Barkantine Management Team	CIL_DCS07	N/A
8.	Thames Water	CIL_DCS08	N/A
9.	Canal and River Trust	CIL_DCS09	CIL_RDCS09
10.	TfL	CIL_DCS10	CIL_RDCS10
11.	London First	CIL_DCS11	CIL_RDCS11
12.	Asda	CIL_DCS12	N/A
13.	One Housing Group	CIL_DCS13	N/A
14.	Environment Agency	CIL_DCS14	CIL_RDCS14
15.	Redrow	CIL_DCS15	N/A
16.	Bishopsgate Goods Yard (BGY) Regeneration Ltd.	CIL_DCS16	CIL_RDCS16
17.	London and Quadrant (Late)	CIL_DCS17	CIL_RDCS17
18.	Berkeley Group	CIL_DCS18	CIL_RDCS18
19.	Aldgate Development	CIL_DCS19	N/A
20.	East Thames Group	CIL_DCS20	N/A
21.	Queen Mary University	CIL_DCS21	N/A
22.	Express Newspapers	CIL_DCS22	CIL_RDCS22
23.	Gateway Housing Association	CIL_DCS23	N/A
24.	Housebuilders Consortium	CIL_DCS24	N/A
25.	Sainsbury's Supermarkets Limited	CIL_DCS25	CIL_RDCS25
26.	Canary Wharf Group	CIL_DCS26	CIL_RDCS26
27.	London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd)	CIL_DCS27	CIL_RDCS27
28.	Travelodge	CIL_DCS28	CIL_RDCS28
29.	MPG St Katharine LP	CIL_DCS29	CIL_RDCS29
30.	GMV Ten Ltd	CIL_DCS30	N/A
31.	Safestore	CIL_DCS31	N/A
32.	Tameric Investments	CIL_DCS32	N/A
33.	GVA on behalf of various clients	CIL_DCS33	N/A
34.	Unite	CIL_DCS34	CIL_RDCS34
35.	Mayor's Office for Policing and Crime (CGMS)	CIL_DCS35	N/A
36.	Aldgate Place(GP) Limited	CIL_DCS36	N/A
37.	Downing	CIL_DCS37	N/A
38.	English Heritage	CIL_DCS38	CIL_RDCS38
39.	Docklands Centre Ltd	N/A	CIL_RDCS39
40.	London Fire and Emergency Planning Authority	N/A	CIL_RDCS40
41.	Theatres Trust	N/A	CIL_RDCS41
42.	Woodchester No 1 Limited	N/A	CIL_RDCS42
43.	Natural England	N/A	CIL_RDCS43
44.	Land Securities	N/A	CIL_RDCS44
45.	Cross Property Investment SARI	N/A	CIL_RDCS45
46.	City of London	N/A	CIL_RDCS46
47.	THHF Development Group	N/A	CIL_RDCS47
	Total number per consultation	**38**	**29 (9 New)**
	Total number overall		**67**

3. Summary of Main Issues from Consultation

3.1 The **main** issues raised in the representations the Council received to the DCS 2013 and the RDCS 2013 relate to:

- Impacts of the proposed CIL rates on development and the Development Plan
- Clarification on infrastructure projections and delivery
- Appropriateness of the viability appraisal methodology and assumptions

3.2 A summary of these issues and the Council's response is provided below.

Main Issue: Impacts on Development and the Development Plan

Issue 1: Impacts on Affordable Housing

	Summary of Points Raised	DCS	RDCS
a)	The impacts on affordable housing delivery have not been properly considered and the Council has not had due regard to the affordable housing target of 35-50%.	**Stephen Ashworth; Aldgate Place(GP)**	**GLA; London Quadrant**
b)	There is a failure to identify the scale of affordable housing that will be lost as a consequence of the proposed CIL rate; identifying that CIL is less than 5% of development cost does not address this.		**Stephen Ashworth**
c)	The CIL will be a development cost and *will* impact on the amount of affordable housing that can be provided in schemes	**Tameric Investments; Safestore; GVA (various clients); GVM Ten; Redrow**	**THHF Development Group; Berkley Group**
d)	The implications of the proposed residential rates for estate regeneration schemes and affordable housing from public sector initiatives which rely on cross subsidy from private sales units, has not been properly considered. There is no evidence on estate renewal schemes despite a range of live estate renewal projects across the borough.	**One Housing**	**Stephen Ashworth; GLA**
e)	For estate regeneration schemes, existing built space can be offset in theory but in practice the phasing and decanting associated with estate renewal schemes mean that the 6 in 12 month occupancy test cannot be met.	**One Housing; East Thames Group**	

Council Response

3.3 Tower Hamlets Core Strategy Policy SO2 seeks a minimum target of 35% affordable housing, subject to viability and a 50% overall target. In the current economic climate individual developments in the borough are not always achieving affordable housing targets of 50% or even 35%. The average is close to these targets i.e. some sites deliver less and some more – including right up to 100% affordable housing (see *Section 106 Report, October 2013*).

3.4 Based on Core Strategy Policy S02 and the level of affordable housing historically achieved, the Council has undertaken testing of the CIL rates at higher and lower levels of affordable housing, but considers it appropriate to establish the CIL rate based on the results of the appraisals that assume 35% affordable housing. As the Council has accounted for a policy compliant level of affordable housing when setting the rates, it is reasonable to consider that the introduction of CIL will have no effect on the provision of affordable housing in the borough. Furthermore the rates are based on the appraisals assuming social rented housing as opposed to affordable rent housing and as such they take a cautious approach to the value of affordable housing in schemes.

3.5 For residential schemes, the application of CIL is not likely to be an overriding factor in determining whether or not a scheme is viable. When considered in the context of total scheme value, CIL will be a modest amount, generally accounting for less than 5% of value and as low as 2% in the lower value areas of the Borough (see Table 8.9.1 in *BNP Paribas CIL Viability Study, August 2013*) e.g. between 0.74% and 3.23% of value for Typology 4. For strategic sites located in the opportunity areas it is noted that the maximum rates identified in *BNP Paribas CIL Viability Study, August 2013* are in most instances £500 per square metre, and as such the maximum residential rate adopted for these areas is conservative, effectively building in a further buffer.

3.6 It is acknowledged that estate renewal schemes require cross subsidy from private units; however, the approach adopted in the appraisals is appropriate because:

i. The availability and level of grant and a wide range of other factors unique to the schemes, will determine the viability and as such it is inappropriate to specifically review estate renewal schemes to establish appropriate CIL rates.
ii. Mandatory social housing relief is provided and the existing floorspace discounts have been expanded to 3 years and this discount is extended to all phases that are delivered under an application;
iii. New development should in principle make a contribution towards supporting infrastructure including payment of the Mayor of London's CIL. It should be noted that under the Council's current Section 106 arrangements even the affordable housing element is subject to planning obligation payments.

3.7 Furthermore, the way in which the CIL regime works means that the CIL rates can be varied by area, use and scale but not by the presence or otherwise of enabling development to support affordable housing or any other community benefit. There are a number of major estate renewal schemes and the Council has fairly dense social housing spread across the whole borough, as acknowledged in representations. These schemes will be at a variety of scales and will not be limited to one part of the borough. In this context, consideration of a differential rate/ areas based approach in terms of rate setting for estate renewal schemes would be an ineffective and impractical.

Issue 2: Crossrail Planning Obligations/ Funding

	Summary of Points	**DCS**	**RDCS**
a)	The approach to Crossrail SPG 2013 is contrary to relevant London Plan Policies (London Plan policies 6.5 and 8.2) and the spirit of paragraph 32 of the statutory Guidance.	**GLA; TfL**	**GLA**
b)	The Council's approach to assuming 30% of the Crossrail SPG planning obligations 'top up' is criticised in some representations on the basis that it prejudices Crossrail delivery and/ or that the rationale for this is unclear.	**GLA; TfL; Stephen Ashworth ; London First**	**London First**
c)	The approach taken in relation to Crossrail contribution is supported; suggestions that Crossrail SPG payments should take priority fail to acknowledge the discretion allowed to the Charging Authority.		**Stephen Ashworth**
d)	The Council's approach of assuming an arbitrary Crossrail s106 'top up' in relation to the North Docklands Office rate - where Wood Wharf is located – prejudices Crossrail funding and underestimates cost.	**Aldgate Place(GP)**	**GLA; TfL BGY Regeneration; Canary wharf Group**

	Summary of Points	DCS	RDCS
e)	The Council's approach will risk other strategic transport projects in Tower Hamlets being cancelled or delayed to help make up the gap in Crossrail funding.	**TfL**	**TfL**

Council Response

3.8 Crossrail remains an important priority for the London Borough of Tower Hamlets. The Council has taken full account of the representations that were made to the *DCS 2013* and has reconsidered the overall approach that has been taken where Crossrail may affect the rates proposed in the RDCS. It considers that the approach adopted is reasonable and in accordance with the Statutory Guidance. Many of the representations that have been made do not acknowledge the different approaches that have been taken in the appraisals in order to reflect, as far as is possible, the different ways in which the Crossrail requirements have to be applied in practice.

3.9 The Mayor of London's CIL rate for Tower Hamlets is £35 for all uses (except education and health facilities). The *Crossrail SPG 2013 - Use of Planning Obligations in the Funding of Crossrail,* and the *Community Infrastructure Levy, April 2013* guidance identifies that planning obligations payments are also required for certain commercial uses in Tower Hamlets. The Mayor of London's CIL payment can be used to discount this Crossrail *SPG 2013* payment so only the difference or 'top up' payment is required. It also allows for certain existing floorspace to be used to discount the required payment. The *Crossrail SPG, April 2013* (paragraphs 4.21 and 3.36) explains this highly variable application of the Crossrail SPG 2013 payments.

3.10 The proposed charging rates in the Council's *RDCS 2013* are based on 100% of the 'top up' payment for commercial uses (as defined in Crossrail SPG, April 2013) with the exception of the North Dockland office rate which assumes 50% of the top up (splitting the viable amount identified equally between the Crossrail SPG payment and the Council's CIL).

3.11 The site appraisal for Wood Wharf assumes a fully Crossrail SPG compliant contribution top up (see Appendix 6 *BNP Paribas CIL Viability Study, August 2013*). This reflects paragraph 4.21 of the Crossrail SPG which allows the CIL payment to offset the Crossrail SPG 2013 payment. In a mixed use scheme containing residential uses (and it is noted that the site allocations in the Managing Development Document are for mixed use schemes), 100% of the Crossrail SPG 2013 payment will not be achieved because of this offsetting arrangement in any event. The practical implication of accommodating this theoretical 100% 'top up' for office use in North Docklands serves only to artificially suppress the Council's CIL and by extension funding for other critical infrastructure. This could prejudice implementation of the Development Plan. Crossrail is an important priority and this is reflected in the *RDCS 2013*. The Council is still required to provide and plan for a range of infrastructure in line with London Plan Policy 8.2, and reducing the CIL charge when the practical effect is that there will be no equal and corresponding increase in the Crossrail SPG payment is unjustified.

Issue 3: Overall Impacts on Development

	Summary of Points	DCS	RDCS
a)	The effect of the proposed rates on development on London Plan targets for growth in Opportunity Areas, housing targets and commercial targets has not been adequately assessed and considered. The cumulative impact of policies and the costs associated with these need to be understood.	**GLA; London First; Stephen Ashworth; London Newcastle; Canary Wharf Group; Express News**	**London First; BGY Regeneration; London Quadrant; Express Newspapers; Canary Wharf Group; London**

	Summary of Points	DCS	RDCS
			Newcastle and UKI; Land Securities
b)	Exceptional circumstances relief is supported. However, it is discretionary and complicated and must not be at the expense of thorough evidence or be the basis of managing financial viability	**National Grid Property Holdings; Asda; Aldgate Place(GP); Sainsbury's Supermarkets; East Thames Group**	**BGY Regeneration; Sainsbury's Supermarkets; THHF Development Group**
c)	Rates have not been sufficiently informed by the Whitechapel Masterplan		**Whitechapel Estate**

Council Response

3.12 The Council has set rates that support the delivery of plan targets and aspirations *and* that aim to strike an appropriate balance between infrastructure provision and viability. The Council has to take a holistic and balanced view of Development Plan requirements; this includes meeting their anticipated growth targets, providing affordable housing, delivering sustainability objectives and providing supporting infrastructure. Provision of infrastructure to support growth is a key component of the Development Plan for Tower Hamlets. Failure to provide this infrastructure will prejudice the delivery of the plan and sustainable development - a key requirement of the National Planning Policy Framework. The Council has taken the Development Plan objectives and requirements as its starting point in rate setting as reflected in the *BNP Paribas CIL Viability Study, August 2013* and outlined in the Council's response to issues 2, 3 and 10 in this statement.

3.13 The Council has set out its intention to implement an exceptional circumstances relief policy in line with the CIL Regulations 2010 (see *RDCS 2013* appendix 2). However, the purpose in stating this intention is not to replace proper consideration in relation to viability. For those uses and locations where viability is weakest, the Council has sought to apply a zero rate or a lower rate; for example, limiting office and retail charges to high value areas of the borough and a very low residential rate in zone 3 areas. It should be noted that extensive viability testing has taken place across many locations in the borough including Whitechapel and other areas where master plans have been, or are proposed to be, implemented.

Main Issue: Clarifying Infrastructure Projections and Delivery

Issue 4: Infrastructure Projections

	Summary of Points	DCS	RDCS
a)	The Council does not separate out infrastructure required to supported development and infrastructure required for other reasons such as changes in pattern in existing infrastructure assets.	**Stephen Ashworth**	
b)	There are anomalies in the assumptions about future non CIL revenues; overstating Section 106 and underestimated other receipts.	**Stephen Ashworth**	
c)	Level of projected convenience supermarkets, superstores and retail warehousing identified in the Infrastructure Planning and Funding Gap Report are over estimated	**Stephen Ashworth; Sainsbury's Supermarkets**	
d)	The absence of adequate information in infrastructure	**Stephen**	**Stephen**

	Summary of Points	DCS	RDCS
	costs required to support development means that an informed Regulation 14 balance cannot be struck	**Ashworth; London First**	**Ashworth; London First**

Council Response

3.14 The basis for the infrastructure needs is provided by the Core Strategy. Tower Hamlets submitted an Infrastructure Delivery Plan (IDP) for the Core Strategy examination as evidence. The Council quite legitimately see the IDP (or as it is now called, the 'Infrastructure Schedule') as a live document, that is updated regularly as projects are delivered or new information arises, such as strategic planning work for the recent Managing Development DPD. This is reflected in the Infrastructure *Planning and Funding Gap Report, October 2013*.

3.15 The Infrastructure *Planning and Funding Gap Report, April 2013* had overestimated section 106 receipts in a CIL context, including the projected section 106 receipts from convenience supermarkets, superstores and retail warehousing (which will be significantly reduced and limited to historic agreements). This has been corrected in the Infrastructure *Planning and Funding Gap Report, October 2013* which also clarifies the development growth focused nature of the assessment. There is adequate information available on the infrastructure costs required to support development in order to inform its decision about what is the appropriate balance to be struck under Regulation 14.

Issue 5: Planning Obligations Policy / Regulation 123

	Summary of Points	DCS	RDCS
a)	The draft Regulation 123 list is too loosely defined to give certainty and the relationship with strategic infrastructure is unclear. Clarification of how the site specific infrastructure will be secured is required.	**MPG St Katharine LP; London Newcastle; Canary Wharf Group; Express Newspapers; Berkeley Group; London & Quadrant**	**Express Newspapers; London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd); MPG St Katharine LP**
b)	The validity of the planning obligations policy approach is challenged on the basis it is non-compliant with regulations and national policy requirements.	**Canary Wharf Group; East Thames Group; London & Quadrant**	
c)	Planning obligations should be retained to deal with local site specific impact e.g. public realm, biodiversity	**Aldgate Development; Canal & River Trust**	
d)	Revisions to the Planning Obligations SPD and the Regulation 123 list provide some clarity.		**Berkeley Group**
e)	Inclusion of reference to in kind payments is supported and should be engaged with proactively; however, the Council should recognise the challenges associated with in kind provision.	**National Grid Property Holdings; East Thames Group; Aldgate Development; Berkeley Group; Barkantine Management Team**	**Land Securities; Berkley Group; THHF; BGY Regeneration Ltd; Berkley Group; Canary Wharf Group**
f)	Evidence of historic Section 106 receipts the extent to which targets have been met should be provided.	**Stephen Ashworth London First Asda Canary Wharf Group**	**London First**
g)	Evidence of historic section 106 receipts is inadequate		**London First; BGY**

	Summary of Points	DCS	RDCS
	and does not meet the intention of the Community Infrastructure Levy Guidance, and should be used to benchmark the proposed CIL compared to Section 106.		**Regeneration Ltd; London Quadrant; Berkley Group; Canary Wharf Group**

Council Response

3.16 The Government's *CIL Guidance April 2013* paragraph 8 identifies that, for transparency, charging authorities should set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets, including for affordable housing. This is identified in the guidance as background evidence to the viability evidence.

3.17 The Council's *Revised Draft Planning Obligations SPD, October 2013* sets out the Council's approach to securing infrastructure and clarifies the mechanism through which it will be sought. It identifies that:

i. Site-specific planning obligations/ section 278 will be almost exclusively restricted to securing site specific measures including the provision of affordable housing.
ii. For infrastructure which serves a need wider / mitigates an impact wider than the individual development, the Council has identified that this will be delivered by CIL / CIL in kind measures to avoid unfairly burdening strategic development sites which are required to include such infrastructure.

3.18 The Council has published additional information on historic section 106 receipts as part of the Revised Charging Schedule consultation (*Section 106 Receipts Background Report, October 2013*). The CIL rate has been set in line with existing guidance and with reference to economic viability rather than attempting to mirror planning obligations tariffs. However, it is noted that historic Section 106 receipts of £11 million per year on average are broadly comparable with annual predicted CIL receipts identified in the *Infrastructure Planning and Funding Gap Report, October 2013*.

Issue 6: CIL Infrastructure Funding

	Summary of Points	DCS	RDCS
a)	TFL wishes to work with boroughs in defining the Regulation 123 list. TfL is also concerned that the approach to Crossrail funding will lead to other strategic transport projects in Tower Hamlets being cancelled.	**TfL**	**TfL**
b)	CIL funding (and the Regulation 123 list) should be expanded to include green infrastructure and relevant Tidal defence works.		**Environment Agency Natural England**
c)	Firefighting and ancillary facilities should be included in the Regulation 123 list		**London Fire and Emergency Planning Authority**
d)	More clarity should be provided on how police facilities/ impacts on police facilities will be mitigated	**Police**	
e)	Wastewater facilities are essential	**Thames Water**	
f)	The Regulation 123 list should make clear what is encompassed under the term 'community facilities'		**Theatres Trust**

Council Response

3.19 The draft Regulation 123 list reflects the range of infrastructure identified in the Infrastructure Planning and Funding Gap Report, which is based on the Council's Infrastructure Delivery Plan examined as evidence to the Core Strategy. The purpose of the draft Regulation 123 list is to provide clarity on those items the Council intends to fund wholly or in part through CIL. In doing so it also defines the infrastructure for which planning obligations will not be sought. The Council will engage with infrastructure providers and communities in relation to the allocation of CIL in line with Government Guidance.

Main Issue: Appropriateness of the Viability Assessment Methodology

Issue 7: Residual / Site Specific Planning Obligations and Phasing

	Summary of Points	DCS	RDCS
a)	The residual site specific Section 106 assumptions used in viability appraisals does not relate to the likely Section 106 payment; a flat rate is not justified in a CIL context.	**London First; MPG St Katharine LP; London Newcastle; Canary Wharf Group; Express Newspapers; London & Quadrant**	**London First; BGY Regeneration Ltd London Quadrant; Express Newspapers; Canary Wharf Group; London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd); MPG St Katharine LP**
b)	The Council has not taken into account Mayor of London's CIL or Crossrail S106 in appraisals as a development cost or in setting its rates contrary to paragraph 29 of the statutory guidance.	**GLA; London First Aldgate Place(GP)**	**GLA; London First**
c)	CIL payments by instalments (which will supersede any Mayor of London instalment policy) is supported.	**Asda; Sainsbury's Supermarkets; East Thames Group; Aldgate Development; Redrow**	**Sainsbury's Supermarkets; Woodchester No. 1; Land Securities; THHF Development Group**
d)	Phasing of CIL payments in appraisals does not match the Council's suggestion of adopting the Mayoral CIL's instalment policy.	**Aldgate Place(GP) Canary Wharf Group**	

Council Response

3.20 The viability appraisals submitted as part of the *RDCS 2013* include cost assumptions for residual Section 106 and Section 278 requirements of £1,220 per residential unit and £53.82 per square metre (£5 per square foot) for commercial uses. This does not indicate the Council's intention to operate these as a fixed charge in a CIL context; instead it is an appropriate estimate of the additional development costs which will suppress the level of CIL that the Council can reasonably levy. There are likely to be instances when no or a lesser contribution might be required, for example, minor schemes would not have a S106 agreement associated with them. This overall approach is reasonable, and is based on the requirements set out in the Revised Draft Planning Obligations SPD where they can be quantified. In addition to this residual section 106 assumption, a further discount or 'buffer' to the maximum CIL rate of 25 % has been applied in order to account for unknown costs.

This approach adopted is also broadly in line with those adopted by many other London boroughs for CIL testing purposes.

3.21 The viability appraisals submitted as part of the *RDCS 2013* amends those that were submitted as part of the DCS 2013, in order to include the Mayor of London CIL as a development cost in all generic appraisals - reflecting its fixed and mandatory nature and the lack of variation in its application based on the form of development. The strategic site appraisals treat the Mayor of London's CIL, the Borough CIL and any applicable *Crossrail SPG 2013* payment as a development cost (see Paragraph 1.3 of *BNP Paribas CIL Viability Study, August 2013*, and see the points made under Issue 2 above).

3.22 For testing purposes, the Council assumed that any CIL due would be split into three equal instalments. A sensitivity analysis of adopting the current Mayor of London's instalment policy was undertaken and this has identified only a marginal impact on viability (see Paragraph 4.33 of *BNP Paribas CIL Viability Study, August 2013).* The Council has set out its intention to develop an instalments policy. The starting position expressed at the *DCS 2013* stage was to adopt the Mayor of London's instalment policy. However, the comments on the impacts of instalments are noted, particularly in the context of large schemes, and the Council intends to keep this issue under review.

Issue 8: Land Value Assumptions

	Summary of Points	DCS	RDCS
a)	Several representations suggest that Market Value should be used in viability appraisals rather than Existing Use Value plus a premium (EUV+).	**W.M. Morrison Supermarkets PLC; London First**	**W.M. Morrison Supermarkets PLC; London First**
b)	Market testing / sense checking of land values should be undertaken - land value assumptions are not justified with reference to the market and they do not reflect local land values.	**Aldgate Place(GP); MPG St Katharine LP**	**W.M. Morrison; Supermarkets PLC; BGY Regeneration ; Express Newspapers; Canary Wharf Group London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd); MPG St Katharine LP**
c)	Use of 4 benchmark land values is overly complex, does not reflect market realities and dilutes recommendations about the actual maximum CIL rate. There are also inconsistencies in the approach (e.g. to profit) and it is unclear how the maximum CIL rates have been derived.	**Aldgate Place(GP)**	**W.M. Morrison Supermarkets PLC**
d)	Site purchase costs are underestimated.	**Aldgate Place(GP)**	
e)	The approach of applying a lower rent and higher yield for existing uses than for planned new floorspace automatically generates positive viability for example, in relation to the retail assessment £6-10 psf and a 6.25% yield on existing floorspace to £21.50 psf and 6.25% yield on new build development. This should be reviewed in the context of market reality.		**W.M. Morrison Supermarkets PLC**

Council Response

3.23 The Royal Institute of Chartered Surveyors guidance note on *Viability in Planning (2012),* which outlines a market value approach, is principally aimed at individual schemes being processed through the development management process. There are a number of limitations associated with adopting a market value approach outlined in detailed in paragraph 2.10 to 2.14 of the document entitled *Summary of Consultation Reponses to the Draft Charging Schedule October 2013*. Actual land transactions are fundamentally misleading as a means of assessing viability of a planning policy. Market transactions will always (or should be) based on current planning policy requirements to determine the price to pay for a site; the costs of complying with policies are accommodated in the valuation process. Accordingly, this does not provide a useful starting point in determining what planning requirements could be sought, as the existing policy requirement is already captured. Furthermore, it is also the case that market transactions often fail to take full account of planning policy requirements (developers have a tendency to 'take a view' on being able to squeeze the affordable housing or S106, thus compensating for overpayment for land). They frequently include expectations of increasing sales values, so they do not reflect the current market.

3.24 Basing the assessment on current use value is an approach that both the RICS guidance note recognises as legitimate *(Pg 18 para 3.4.4 – "For a development to be financially viable, any uplift from current use value to residual land value that arises when planning permission is granted should be able to meet the cost of planning obligations while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project (the NPPF refers to this as 'competitive returns' respectively). The return to the landowner will be in the form of a land value in excess of current use value…"*) as well as the Harman Group guidance; the latter being directly relevant to planning policy testing. It should be noted that the benchmark values used have been derived from local market inputs i.e. rents and yields that are expected to be achieved for sites in certain uses and in this regard the benchmarks are based on market information.

3.25 The appraisals of commercial floorspace test the viability of developments on existing commercial sites. For these developments, BNP Paribas have assumed that the site could currently accommodate one of three existing uses (thereby allowing the site to be assessed in relation to three current use values (CUVs)) and the development involves the intensification of site. Lower rents and higher yields for existing space than the planned new floorspace are assumed. This reflects the lower quality and lower demand for second hand space, as well as the poorer covenant strength of the likely occupier of second hand space. It stands to reason that development is only likely to come forward where the proposed development will achieve a better value than that existing on the site. A modest refurbishment cost is allowed for to reflect costs that would be incurred to secure a letting of the existing space. A 15% - 20% landowner premium is added to the resulting existing use value as an incentive for the site to come forward for development. The actual premium would vary between sites, and be determined by site-specific circumstances, so the 15% - 20% premium has been adopted as a 'top of range' scenario for testing purposes. The premiums over the EUV are clearly set out in sections 4.41 to 4.44 and table 4.48.2.

Issue 9: Discount/ Buffer Applied to Maximum CIL Rate

	Summary of Points	DCS	RDCS
a)	The amount of discount or 'buffer' applied to the maximum CIL that can be charged is inconsistently applied and/ or inappropriate due to being lowest where viability is weakest.	**GLA; Aldgate Place (GP); Aldgate Development**	**GLA; BGY Regeneration Ltd; London Quadrant; Canary Wharf Group London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet**

			Street Hill Ltd); MPG St Katharine LP
b)	The amount of discount (or buffer) applied to the maximum CIL that can be charged has been reduced between the *DCS 2013* and *RDCS 2013* without explanation.		**GLA**
c)	The cumulative costs of the Mayoral CIL and the levy rates need to be reflected when applying the discount (or buffer).		**London First; Canary Wharf Group**

Council Response

3.26 A minimum buffer of 25% has sought to be applied for all developments from the maximum CIL rate identified by BNPPRE's appraisals, with the exception of student accommodation, where a larger buffer of 35% has been adopted. There are no prescribed requirements for setting a buffer when setting CIL rates. The discount or buffer from the maximum rate adopted is a matter for determination by the Charging Authority, in line with Regulation 14. That is, it is for the Charging Authority to determine the balance between funding infrastructure and not threatening the delivery of the sites and scale of development identified in the relevant plan.

3.27 There is no requirement to incorporate a buffer into the Mayoral CIL element. It is considered that the Mayor allowed for this when setting his CIL rate and in line with the regulations did not set his rate at the margins of viability. The Mayoral CIL is a fixed and known cost, it is factored into our appraisals as a cost to development when determining the maximum level of CIL that could be set in the borough and does not require a buffer allowance.

Issue 10: Appraisal Assumptions Including Strategic Sites

	Summary of Points	DCS	RDCS
a)	The generic appraisals and the selected strategic site appraisals are an inadequate basis for establishing a charge. No or inadequate justification has been provided for the strategic appraisal sites chosen.	**London First; BGY Regeneration Ltd; Express Newspapers; Canary Wharf Group**	**London First BGY Regeneration Ltd; Express Newspapers; Sainsbury's Supermarkets; Canary Wharf Group; Land Securities**
b)	A number of the strategic sites appraised are not viable – thought should be given to alternative approaches.	**Stephen Ashworth**	
c)	There is no justification for treating opportunity areas/ strategic sites as the same as other development due to different risks, cost and contingencies.		**BGY Regeneration Ltd; London Quadrant; Express Newspapers London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd)**
d)	Site appraisals inputs are incorrect with development costs underestimated, including achievable gross to net ratios, build costs, acceptable IRR levels, letting fees and residual section 106 allowances.	**Canary Wharf Group; BGY Regeneration Ltd; Express Newspapers; Housebuilder's Consortium; Aldgate**	**Canary Wharf Group BGY Regeneration Ltd; Express Newspaper; 2 Millharbour**

	Summary of Points	DCS	RDCS
		Development	
e)	Affordable housing values are underestimated.	**Housebuilders Consortium**	
f)	Affordable housing values assumptions are appropriate.		**Canary Wharf Group; BGY Regeneration Ltd; Express Newspapers**
g)	The Council should recognise the likelihood that Section 106 costs for strategic sites will be high or are unlikely to alter significantly once CIL is in place for opportunity areas / strategic sites.	**Stephen Ashworth; Canary Wharf Group**	**BGY Regeneration Ltd; Berkley Group Canary Wharf Group**
h)	Greater transparency would be provided by the Argus appraisals – the Council has refused to issue these.	**Canary Wharf Group**	**BGY Regeneration Ltd; Express Newspapers; Canary Wharf Group**
i)	There has been a lack of meaningful engagement with the development industry on strategic sites.	**BGY Regeneration Ltd; Canary Wharf Group**	**BGY Regeneration Ltd; Canary Wharf Group**
j)	The profit on cost calculations do not include site value as a cost.		**GLA**

Council Response

3.28 The Council has adopted the widely used approach of using development typologies which has been tested and approved at Examinations in Public for other CIL Charging Schedules (including those post-dating the CIL Guidance, 2013). The Council has undertaken appraisals for residential and commercial development typologies and has also tested the viability of eight strategic sites across the whole borough in accordance with the CIL Guidance 2013. The latter has been tested using Argus Developer software and published the outputs in the *BNP Paribas CIL Viability Study, August 2013*. Of the sites identified as being unviable, this was as a result of other factors such as build costs and sales values; it is not likely that CIL would be the determining factor that would make such developments unviable.

3.29 The Council amended the inputs to appraisals published in the *RDCS 2013* in response to representations received from developer of these sites. These changes are reflected in the *BNP Paribas CIL Viability Study, August 2013* and outlined in paragraph 2.25 of *Summary of Consultation Reponses to the Draft Charging Schedule October 2013* for ease of reference. It is highlighted the approach to these strategic sites appraisals included:

i. Reducing the developable land area for the onsite infrastructure assuming a cautious zero payment for land/ facilities (despite the in kind provisions that would mean a reduction in the CIL payment).

ii. Allowing a 20% allowance on top of the 20% premium on the EUV to allow for further individual site constraints and unknown factors (this is over and above the buffer already provided for in with the CIL rates).

3.30 Responses the *RDCS 2013* have included further commentary on build costs (not provided at DCS stage); however, no detail of the schemes to which evidence and /or justification for the appropriateness is provided to enable consideration of whether costs are reasonable. However the commercial appraisal model has been amended to take into account the profit on the site value as a cost to the development as highlighted in the responses to the *RDCS 2013*. As a result the maximum rates for offices, 'convenience' retail and hotels have changed and this is reflected in the proposed modifications to the *RDCS 2013*.

Issue 11: Residential Rates and Charging Areas/ Boundaries

	Summary of Points	DCS	RDCS
a)	The zone 1 residential rate is too high and / or there is inadequate evidence to justify the different charging areas. The identification of the three residential charging zones is unclear and masks the variation in the housing market across the borough and will inhibit development within the lower value sections of zone 1.	**Stephen Ashworth; Lanark Square Ltd; One Housing; MPG St Katharine LP; London Newcastle; Sainsbury's Supermarkets; Housebuilders Consortium ; Gateway Housing Express Newspapers London & Quadrant; Redrow**	**Berkley Group; London Quadrant; Sainsbury's Supermarkets; Lanark Square Ltd; Express Newspapers London Newcastle and UKI (Shoreditch) Ltd) and UKI (Fleet Street Hill Ltd); MPG St Katharine LP; Woodchester No 1 Limited**
b)	Cubit Town E14 3 should be placed in Charging Zone 3 based on residential sales values not charging zone 1 which is six times as expensive and makes development unviable in these areas.	**James Ball**	**James Ball**
c)	The areas south of Pepper Street including Turnberry Quay/ Lanark Square should be included in Zone 2 (and not Zone 1) where the market is more comparable. The suggestion that that areas immediately to the east of Crossharbour DLR can support £35 but those to the west £200 is inherently flawed.	**Lanark Square Ltd**	**Lanark Square Ltd**

Council Response

3.31 The Council has sought to adopt a three zone approach which merges areas together to avoid undue complexity, in line with paragraph 37 of the CIL Guidance, 2013. It is acknowledged that a range of residential values will be achieved on new build schemes in each zone, for example in zone 1 this is identified as being between £575 and £700 per sq. ft. This will be due to many influencing factors including specification of the development, height of the development, aspect, size of the residential unit in question etc. For a strategic exercise such as this, an approach of taking an average value that reflects the likely values that could be achieved in new developments in the area has been sought to be defined.

3.32 The recommendations within the *BNP Paribas CIL Viability Study, August 2013* are based on extensive research into achievable residential sales values across the borough using a number of sources which include Land Registry data on sub-post code areas, EGi London Residential Research data, the Molior database, BNPPRE information on viability assessments of proposed new developments in the borough and data from the Rightmove website (both sold and asking price). The sales values used in the appraisals are considerably lower than the top end of the range and reflect an appropriate average that will be achieved. The 'differences' in values that will occur are accounted for by the 'buffer, or "discount" below the maximum CIL rate that could have been set.

3.33 Some representations have provided land registry data in order to identify areas of higher and lower values in the borough and in particular in the Isle of Dogs area. This is useful information and *has* been considered. However, such data has limitations; for example, the land registry data only provides details of units sold and this can change from month to month so the average values reflected will be dependent on what has transacted and a very few large expensive units or only smaller units could skew the average sales values. It is important to be able to consider the values on a per square foot basis. Furthermore, CIL relates to new development and the Land Registry data takes into consideration both new build and existing properties, the proportions of which are not identified in the data provided by the representations. These issues have weighted the evidence. The values of second hand housing stock in the Isle of Dogs area will achieve lower sales values than new build development, particularly given that much of the second hand stock is old ex-local authority housing. BNP Paribas Real Estate assisted the Council with a viability assessment of proposed new build developments in the area for which the projected sales values far exceeded the current tone of second hand residential units. It is not considered that the boundary should be amended on the basis of this evidence.

3.34 The inclusion south of Pepper Street including Turnberry Quay/ Lanark Square to be in Zone 1 is appropriate. The details of the viability assessment identified in the representations related to this site, form part of a confidential site specific assessment undertaken on behalf of the Council by BNP Paribas Real Estate during the negotiation of S106 and affordable housing contributions. Notwithstanding this, at the time of assessing the scheme the values were assessed based on the fact that the scheme proposed was not to be a high specification scheme and the evidence provided supported the lower values of £625 per sq ft. Further evidence (50% more transactions from the most comparable and appropriate scheme) was, at the time, identified as being available; however this was not forthcoming from the applicant and was not able to be sourced in time for the determination of the application. Subsequent to the application's determination the information was provided by Agents on the comparable development which demonstrated that sales value actually achieved were circa 6% higher at £662 per square foot. The values achievable at the Turnberry Quay development lie within the Zone 1 Range so a change to the residential CIL boundary is not considered appropriate.

Issue 12: Office Rates and Charging Areas

	Summary of Points	DCS	RDCS
a)	The increase in office rate from Preliminary Draft Charging Schedule is not justified.	**Aldgate Place**	
b)	Office rents and yields are over estimated and void periods underestimated.	**Aldgate Place**	
c)	Generic appraisal inputs for build cost are underestimated and should not be based on BCIS information – higher costs should be adopted to include external works and evidence points to a level of £230psf for a mixed-use scheme in London.	**Aldgate Place**	
d)	There is inadequate evidence to justify the different charging areas.	**Stephen Ashworth**	
e)	Offices sought for use as police facilities should be exempt from CIL payments.	**Police**	
f)	The office rate in the City Fringe is too high and / or significantly higher than adjacent areas in surrounding boroughs – including Hackney which has a different rate affecting the Bishopsgate Goodsyard Site.		**BGY Regeneration**
g)	In relation to City Fringe office development, the RDCS sets the maximum CIL with reference to current use value 2. The DCS adopted the more cautious current use value 3. No explanation is given for the change which increases the risk that the adopted rates will make the development unviable.		**GLA**
h)	Thomas More Square should be excluded from the City Fringe office (and retail) charging area.		**Land Securities**
i)	Reduction of City Fringe rates closer to those in the		**City of London**

	Summary of Points	DCS	RDCS
	City of London and assumption of full contribution to both borough and Mayor of London's CIL and Section 106 is supported		

Council Response

3.35 The City Fringe office location was identified at both the Preliminary Draft Charging Schedule and Draft Charging Schedule stages to be a more viable office location. However, the rate at the Preliminary Draft stage was aligned with the lower Docklands office rate to avoid undue complexity. The rates proposed in the DCS diverged from the PDCS in the City fringe area as a result of the Council's decision not to apply the same flat rate across both areas. The proposed rates and corresponding boundaries reflect the viability evidence for new office development. The differentiation in office rates is by use and area.

3.36 BNP Paribas Real Estate has undertaken research using online databases and has had discussions with their City office agency and investment teams who have provided advice on the rents, yields and rent free/void periods to inform the inputs adopted in the viability assessment. Build cost assumptions are supported by information from the BCIS database and the appraisals already include an allowance of 10% of base build costs for external costs, which are considered to be appropriate. Furthermore a 5% contingency on both the external works and build costs is assumed to account for unforeseen costs.

3.37 Transactional data and asking prices for office space at Thomas More Square has been reviewed and while at present this space is not achieving the £35 per sq ft identified in the study, it is noted that the space in Thomas More Square is circa 15 years old. BNP Paribas' City office agency team and Valuations team have advised that new office space would achieve £35 per sq ft. Given that CIL is chargeable on new floorspace we consider the boundary as drawn to be appropriate.

3.38 It is reasonable to expect that an office scheme will come forward in the City Fringe area on a CUV2 basis. The appraisals account for an appropriate incentive to bring such a scheme forward and demonstrate suitable value to a landowner for doing so.

Issue 13: Retail Rates and Charging Areas

	Summary of Points	DCS	RDCS
a)	Inadequate testing of retail rates has been undertaken and the differentiations, by use and location, are not supported by fine grained relevant evidence. The state aid implications are not assessed.	**Stephen Ashworth** **Asda** **Sainsbury's Supermarkets**	**Stephen Ashworth** **Sainsbury's Supermarket**
b)	The retail definition is inadequate, it is unclear which will be applied and differentiation by scale is not justified.	**Stephen Ashworth** **Sainsbury's Supermarket**	**Stephen Ashworth** **Sainsbury's Supermarket**
c)	Retail rents are overestimated in City Fringe and range from £16psf to £30; an *average* of £30 does not reflect the market.	**Aldgate Place**	
d)	Costs for supermarket developments are underestimated.	**Asda** **W.M. Morrison Supermarkets PLC**	**W.M. Morrison Supermarkets PLC**
e)	Build costs assumptions for Supermarkets/ Superstores are underestimated/ incorrect based on BCIS construction costs database and should be rerun BCIS is forecasting build cost inflation and this should be factored into testing the CIL rate.	**W.M. Morrison Supermarkets PLC**	**W.M. Morrison Supermarkets PLC**
f)	Profit should be set at 25% not 20% for the supermarket typology.		**W.M. Morrison Supermarkets PLC**

	Summary of Points	DCS	RDCS
g)	Professional fees of 12 % should be used for complex schemes e.g. retail schemes to reflect additional costs, e.g. retail impacts assessments.		**W.M. Morrison Supermarkets PLC**
h)	There is no rationale/ evidence for the percentages of intensification between existing end proposed floorspace (1:1.5).		**W.M. Morrison Supermarkets PLC**

Council Response

3.39 The Council amended the inputs to appraisals in published at the *RDCS October 2013* in response to representation received from developers of these sites. These changes are reflected in the *BNP Paribas CIL Viability Study, August 2013* and summarised in paragraph 2.25 of the *Summary of Consultation Reponses to the Draft Charging Schedule October 2013* and included additional testing of retail rates and amendment of build costs.

3.40 The *DCS 2013* differentiated between the scale *and* type of retail development proposed. This was an approach recognised by the Inspectors report for Wycombe District Council's CIL Charging Schedule. It is acknowledged that size does not necessarily result in the higher values generated by convenience based supermarkets and superstores and retail warehousing uses. Rather, is it a combination of factors (detailed in paragraph 6.31 – 6.34 of the *BNP Paribas CIL Viability Study, August 2013*). Accordingly, the definition now refers to the use rather than the scale. The use and viability characteristics of these different types of retail uses are markedly different justifying the Council's approach and the boundaries of the charging area based on viability considerations.

3.41 The BCIS build costs are appropriate at the time of undertaking the study – August 2013. Build costs will change as time progresses (both up and down) as well as capital values based on changes in rents and yields - including during the life of a Charging Schedule once adopted. This is one of the main reasons for adopting a buffer from the identified maximum rate. It is also noted that:

i. Professional fees can range between 8% and 12% and an allowance of 10% is a more than reasonable level of fees for the majority of schemes.

ii. An assumption of 20% profit on cost is generous and as such is accepted as a more than reasonable market assumption and the suggestion that a 25% profit margin should be assumed due to risk is not supported, particularly as such space is unlikely to be developed speculatively.

Issue 14: Hotel Development

	Summary of Points	DCS	RDCS
a)	Hotel development will be severely impacted and become unviable and a flat rate is not appropriate does not represent the budget hotel market in the borough. The appraisals are inadequate to justify the rate.	**Travelodge Hotels**	**Travelodge Hotels**
b)	Hotel development CIL rates are significantly lower in adjacent boroughs.	**Travelodge Hotels**	**Travelodge Hotels**

Council Response

3.42 The hotel appraisals have been sensitivity tested and this is referenced in the *BNP Paribas CIL Viability Study, August 2013* (see paragraph 6.40). The second appraisal which was erroneously omitted from the appendix at the DCS 2013 stage and this has been corrected in the *BNP Paribas CIL Viability Study, August 2013* which was published alongside the RDCS.

Issue 15: Student Housing

	Summary of Points	DCS	RDCS
a)	The Student Housing rate is too high and unjustified, particularly where affordable housing is included; or the scheme is not private sector led.	**Stephen Ashworth** **Queen Mary University** **Downing**	**Stephen Ashworth** **Unite**
b)	Student housing payments under CIL will exceed those under Section 106 despite students placing less pressure on infrastructure.	**Unite**	
c)	The student housing appraisals do not reflect student developments and have underestimated build costs, and owner premiums are underestimated.	**Downing** **Unite**	
d)	Mile End and Aldgate are identified as areas for student housing. The council needs to assess Existing use Values and rental levels specifically for these areas.		**Unite**
e)	EUV value assumptions and rental values are inaccurate: existing floorspace as a percentage of new should be assumed at 35% in a high density location and £200 term rent and £225 vacation rent represents the likely maximum achievable rents in Mile End.		**Unite**
f)	EUV value assumptions and rental values are inaccurate for Aldgate: the yield rate is too high, existing rent is too low, existing as a percentage of new should be assumed at 35% and £220 term rent and £248 vacation rent represents the likely maximum achievable rents.		**Unite**
g)	The current student housing rate proposed is not viable and can be accommodated at between £166 and £350 and the preferred approach is to set CIL at a lower borough wide level; an alternative would be identify different zones.	**Unite**	**Unite**

Council Response

3.43 The Council's viability evidence suggests that the level of charge proposed can be supported in most instances. In the RDCS, the Council has adopted a larger buffer of 35% for student housing and the costs and assumptions of the viability appraisals have been updated (see S.6.39 of *BNP Paribas CIL Viability Study, August 2013*). The Council's requirement for the provision of affordable housing only applies in those instances where accommodation is not provided specifically for accredited colleges and universities. A specific threshold for affordable housing is not defined in relation to student housing – instead this is calculated 'taking into consideration' relevant affordable housing policies (Managing Development Document, DM3 - Student Accommodation). Accordingly, affordable housing contributions have not been factored into appraisals as unlike for general housing the requirement will not always apply.

3.44 Unite's submission at the *RDCS 2013* stage has been assessed and points in relation to the benchmark land value and rents being higher in the Aldgate and City Fringe area than those achieved in Mile End are reasonable. However, no evidence has been submitted to support the assertion that existing floor areas as a percentage of new should be 35% and not 30%.

4. Conclusions

4.1 The Council is introducing CIL with the aim of seeking to deliver the Development Plan objectives. The Council has sought to strike an appropriate balance between the need to fund infrastructure and the impact of CIL on economic viability of development when taken as a whole across the borough. On that basis it is submitting a Revised Draft Charging Schedule to the Planning Inspectorate in accordance with the Community Infrastructure Levy Regulations 2010 (as amended).