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Dear Mr Rivett,

The London Borough of Tower Hamlets' Community Infrastructure Levy (CIL): Response to Representations Received

I write to provide a response, on behalf of The London Borough of Tower Hamlets (herein after referred to as 'the Council') to the Representations received in respect of the consultation on further evidence that ended on the 12th September 2014. This opportunity to respond was set out as acceptable by the Programme Officer, on the Examiner's behalf, in an email to the Council dated the 1st September 2014.

The Council set out its intended approach to the post-hearing submission of and consultation on additional information in its letter to the Examiner of the 12th June 2014 (ED5.18). The approach was agreed by response from the Examiner on 12th June 2014 (ED5.19). The Council understands that responses to this consultation should refer to the additional information submitted and any impact of this information on the proposed Charging Schedule. It should not be used as an opportunity to re-present previous representations or introduce new matters unrelated to the additional information submitted.

Many of the representations received in the consultation period include the re-presentation of previous representations and the introduction of new unrelated matters. The Council have endeavoured to respond comprehensively to the representations received, but are keen to remain focused on the matters under discussion. In some cases it has been appropriate to refer the Examiner to previously provided information rather than re-present it.

However, several of the representations raise some common points. Rather than respond to each of them separately, there are some general points that apply and we have set these out in this letter. The points addressed include: -

- An analysis as to the extent to which Site Allocations share common viability related characteristics and are reflective of development across Tower Hamlets as a whole;
- The relevance of Opportunity Areas in respect of CIL rate setting;
- The balance and reasonableness of the evidence used and approach taken by the Council;

- Market Testing;
- The use of Infrastructure Payments and their related risks;
- The relevance of Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks to the delivery of the Local Plan
- Trafford Metropolitan Borough's CIL;
- Site Specific Viability Issues
- Representation Specific Comments

The London Borough of Tower Hamlets has the highest housing target in London. Its population has increased by 29% since 2001 and is in receipt of the highest new homes bonus in the country. At the same time, 48.6% of the borough's children live in poverty, the highest in the UK, and overcrowding is ranked second nationally. If responding to and anticipating further intensive development activity, it is critical that the borough seeks to deliver this development sustainably by providing supporting infrastructure. It seeks to adopt a CIL that will avoid 'double counting' or complexity, to ensure the delivery of the development plan. The Council now considers it has sufficiently responded to all queries and questions, including those set out by the Examiner in the exchange of letters set out in *ED5.18* and *5.19*, and has justified that its Charging Schedule is informed by appropriate available evidence.

The Council has attempted to engage the Department for Communities and Local Government further in respect of the Regulation 73A matter. This has involved requests for clarification, and to potentially attend the further Examination Hearing. At the time of sending this letter, the Council had received no response.

1. **The extent to which Site Allocations share common viability related characteristics and are reflective of development across Tower Hamlets as a whole**
 - 1.1 In some of the Representations submitted to the further evidence consultation, it was asserted that the allocated sites share a set of characteristics, which may affect the viability of these sites, to the extent that these sites warrant separate treatment from general development in Tower Hamlets.
 - 1.2 Many allocated sites, and indeed typical development sites across the borough as a whole, may demonstrate some of the characteristics that might adversely affect the viability of a site. The characteristics in question include: -
 - The likely build out period of the project;
 - Whether the site is required to deliver significant social infrastructure;
 - Whether the site is likely to have significant abnormal costs;
 - The likely prevailing height of the development to come forward, which links to lower gross to net ratios;
 - The CIL rate imposed.
 - 1.3 In terms of the allocated sites, it is the case that some sites demonstrate some of the characteristics set out above. However, the Council does not consider these characteristics are common across all allocated sites. Therefore there is no justification for treating these sites separately to general development across the borough.
 - 1.4 For example, some sites located in major centres, such as Wood Wharf or Bishopsgate Goods Yard, will be the subject of high rise development, whereas other allocated sites such as Bow Common Gas Works or Ailsa Street are located in District or Neighbourhood centres and will not be the subject of comparable high rise development. In addition, some sites, such as Wood Wharf or Westferry Printworks, are required to deliver significant amounts of social infrastructure, whereas other sites such as the sites within Marsh Wall East or the sites within the Millennium Quarter do not have significant social infrastructure requirements as part of the site allocations. In addition, any abnormal costs associated with these sites will vary significantly.
 - 1.5 The Council would also like to take this opportunity to provide an analysis in respect of whether the Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks sites tested, are reflective of development across the borough as a whole. A simple way of establishing that this is not the case is by reviewing the Council's Local Plan Annual Monitoring Report (AMR) for 2011/12 and 2012/13 (2013/14 isn't available yet). Appendix 2 (pg 87) of the 2012/13 document, and Appendix 2 (pg 67) of the 2011/12 document set out the housing completions in the borough in the according financial years. These two documents are available on the Council's website and the relevant extracts are attached at Appendix A to this document.

- 1.6 It would be an extremely time consuming exercise to analyse each of the sites, set out in the AMR's as having been delivered in 2011/12 and 2012/13, in relation to the characteristics set out in paragraph 1.2 above. However, what is demonstrated is that the vast proportion of development comes forward from small to medium sized sites. It is unlikely that these sites would involve the provision of very tall buildings (and thus not have the potential for low gross to net ratios) and they do not have requirements to deliver social infrastructure. This indicates that, in all likelihood, prevailing development does not have the same potential for viability constraint as the three sites tested. The Council would like to point out that the three sites tested have greater potential for profit than typical development due to potential economies of scale.

2. The Relevance of Opportunity Areas in Relation to Rate Setting

- 2.1 The hearing has heard most of the points on this already, and we have made some further points in the Supplementary Evidence Document (e.g. at section 2) (*ED5.21*) which we will not repeat here. However, the representations submitted jointly by DP9 for the Canary Wharf Group and Bishopsgate Goods Yard Ltd states (in particular at para 12) that they remain concerned that a specific area-based viability assessment of the Opportunity Areas has not been undertaken.
- 2.2 The Council notes that no elaboration as to what an area based assessment of the Opportunity Areas would constitute has been provided. The Council considers that any such assessment would need to disregard the viability characteristics of individual sites and consider them as a whole, single development coming forward in a single application. In practice, the individual sites within the OAs will come forward as separate schemes and at different times. Furthermore, as discussed at the Examination, there are no particular policy requirements or other costs that would be applied to sites in the OAs that would not be found elsewhere in the Borough. The Opportunity Areas do not, for example, have extensive requirements for transport infrastructure enhancements that developments need to fund. Undertaking the exercise in the manner suggested in the representation submitted by Canary Wharf Group and Bishopsgate Goods Yard Limited would fail to use appropriate available evidence and wouldn't involve the fine grain sampling required in CIL rate setting.
- 2.3 The Council doubts any area-based assessment of Opportunity Areas would be a useful exercise. Opportunity Areas cover a significant amount of the Charging Authority's area and therefore contain a wide range of economic viability characteristics. In Tower Hamlets, Opportunity Areas

comprise some of the lowest value areas (such as Poplar) and also some of the highest value areas (such as Canary Wharf and the City Fringe) so any rates established on the basis of Opportunity Areas are unlikely to reflect the individual viability characteristics of the different parts of the Charging Authority's Area that are located within Opportunity Areas.

- 2.4 There are 34 different Opportunity Areas throughout London. The Council can find no evidence that any other Charging Authority has undertaken 'an area based approach to Opportunity Areas'.

3. Balance and Reasonableness

- 3.1 Paragraph 23 of the 2013 CIL Guidance states that "*Charging authorities should use an area-based approach, which involves a broad test of viability across their area as the evidence base to underpin their charge*". It is not the purpose of CIL evidence to replicate the site specific detailed viability appraisal associated with the submission of a particular planning application and negotiation of S106. The Council believes that it has provided appropriate evidence at an appropriate level of detail to support the proposed CIL rates. However, the viability evidence base has been subject to representations regarding several of the assumptions used in the evidence. Whilst this has subsequently lead to detailed discussions regarding a number of data assumptions, we should not lose sight of the fact that this is being carried out as an area-based assessment.
- 3.2 It is generally agreed that there is not one defined way to undertake an economic viability appraisal. This is a point that is also made in paragraph 24 of the 2013 CIL Guidance, on Economic Valuation, that there is no requirement to use any particular model or methodology, and there are certainly not one agreed set of assumptions. Given these circumstances, the Council chose to employ industry-leading viability experts, BNP Paribas, to ensure that the approach it took was appropriate. The methodology and assumptions used by BNP Paribas / the Council are industry standard and are consistent with the approach taken by the majority of Charging Authorities, in particular in central London. The Council accept that while there may be different methodologies and assumptions that could be used and that the representatives of individual sites may prefer, this does not mean that the approach selected by BNP Paribas / the Council is incorrect, as is suggested at points by the received representations. Rather the BNP Paribas / Council methodology and assumptions are reasonable and utilise appropriate available evidence.

- 3.3 It is important to stress this point, as it does underline the limited value in this context of discussions regarding matters of opinion relating to the appropriateness of the detailed assumptions used. The Council has repeatedly defended the use of a number of its assumptions against representations that have suggested that they are inappropriate. BNP Paribas have explained why they have taken the approach that they have. It is notable that when those representors objecting have been asked by the Council to supply alternative assumptions with evidence to demonstrate why they are more appropriate than the Council's chosen assumptions they have, in most cases been unable and/or unwilling to do so. The case of Travelodge is a notable exception to this.
- 3.4 We would agree with the general point made by DP9 in their representation on behalf of Canary Wharf Group and Bishopsgate Goodsyrd Regeneration Limited, *"the biggest difference of opinion between the Council and CWG/BGY Regeneration Limited is how the evidence is to be interpreted and the nature of conclusions to be drawn"*. It is reasonable to assume that the conclusions to which DP9 refer are regarding the level of the CIL rates proposed.
- 3.5 Given the way in which many of the representations to the consultation have approached the evidence, the Council wish to stress a number of general points throughout this response that demonstrate why the proposed rates are viable and present a balanced and reasonable approach.
- 3.6 A number of the representations received suggest that given the differences in opinion the Examiner should recommend a CIL rate of £0 sqm for Strategic Sites. This is not a logical suggestion based on evidence and the Council, of course, disagrees with it. The Council has previously presented considerable evidence that the Strategic Sites are deliverable with the CIL as proposed and that CIL is a minor cost when compared to the total cost of development and is therefore very unlikely to be a factor affecting the tipping point of scheme viability. The Council accepts that CIL will impact on the viability of an individual specific site in the exceptional circumstances that it happens to be on the cusp of viability without CIL. As previously stated, the Council are not responsible through the CIL charging schedule to produce a rate that is viable in all circumstances; rather it should aim to meet Regulation 14, which requires the Council to strike the appropriate balance between the need to fund infrastructure and the impact on economic viability of development. The Council considers that it has struck this balance.

4. Market Testing

- 4.1 A number of representations have questioned whether the Council have sufficiently market tested the CIL rates. The Council have noted that the Examiner for the Southwark CIL Charging Schedule examination has also placed a significant weight on market testing, in his recent comments dated 26 August 2014 (that have been appended to some of the representations). As the Examiner knows, it is the Council's case that the rates in the Council's Revised Draft Charging Schedule are based on a clear understanding of the market, and part of the reason for engaging the economic expertise of BNP Paribas was to ensure this. However, it is a relatively-straightforward exercise to show that the CIL rates proposed are reasonable and accord with market testing. Given this, the Council has set out below the information that will help assure the Examiner that this is so in response to the representations made. The information is all publicly available information.
- 4.2 Appendix 2 of the Council's existing Planning Obligations SPD, 2012, provides a case study example of a 50 unit scheme displaying the financial contributions to be sought under the current S106 approach. The Council have calculated the total cost of the example residential contributions and using some standard assumptions converted this to a cost per sqm of residential development. The detailed analysis can be found in Appendix B to this response. In brief, the cost of existing residential S106 contributions, if allocated across the residential floorspace that would be CIL chargeable were the Local CIL in place, would result in a rate of £201.79 sqm. This makes it clear that the Council's current approach to planning obligations requires contributions that are directly comparable to the proposed CIL rate in Zone 1. They are far in excess of the proposed CIL rates for Zones 2 and 3, but of course under the S106 approach would have been negotiated to appropriate levels in the context of site specific viability.
- 4.3 In summary, the Council believe that the analysis of the Planning Obligations SPD 2012 case study example demonstrates that the intention of the proposed CIL charging schedule is to be consistent with the existing policy requirements.
- 4.4 The Council has also looked at its S106 performance over the past few years on those sites that are comparable to the strategic sites for which representations have been received, i.e sites over 200 units, both borough wide and specifically those located in proposed CIL Zone 1. This information is all publicly available via the S106 agreements on the Council's website and has been extracted to assist the Examiner. The Council has taken the total units and total S106 financial contributions from the studied schemes and used the same methodology as used for the SPD case study above to compare it to the proposed CIL rates. The detailed analysis can be found in Appendix B to this response.
- 4.5 Briefly, the results show that the cost of S106 contributions, if allocated across the residential floorspace that would be CIL chargeable were the Local CIL in place, would result in a rate of £261.63 sqm in Zone 1 only and £252.05 sqm borough-wide.

- 4.6 The Council are aware that when looking at the comparison between CIL and S106 on recent permissions there are further, more detailed variables that could be considered in order to fully calculate CIL liability, such as the non-residential liable floorspace. However the results of the study shows that the S106 received could exceed the CIL requirement by 25-30% and the Council believe this is ample room to accommodate the impact on the S106 data by any potential commercial elements of a mixed use scheme, especially considering the proposed CIL rate for non-residential floorspace is significantly lower than the Zone 1 residential rate.
- 4.7 In summary, the Council believe that the results, demonstrate that the proposed CIL rates of £200, £65 and £35 are in an appropriate range, are reasonable, and are certainly not in excess of the prevailing historic performance of planning obligations in the borough. Furthermore, the rates are consistent with existing planning policy, which has seen development consistently delivered during the worst economic crisis in modern history. As a result the Council consider that the proposed residential CIL rates are deliverable.
- 4.8 In addition to checking consistency with the current policy position and historic performance of planning obligations in Tower Hamlets, the Council have also checked their proposed rates against the rates proposed or adopted by other relevant London boroughs. The following table identifies the adopted or currently proposed residential rates in nine London boroughs. These nine boroughs are Tower Hamlets alongside the four boroughs below and four boroughs above in the Mayor of London’s assessment of housing sales values that supported his CIL Charging Schedule.

Table 1

Ranking	Borough	Residential Rates
8	Wandsworth	£565 / £265 / £250
9	Hackney	£190 / £65 / £25
10	Southwark	£400 / £200 / £50
11	Barnet	£135
12	Tower Hamlets	£200 / £65 / £35
13	Haringey	£265 / £165 / £15
14	Lambeth	£265 / £150 / £50
15	Merton	£220 / £115
16	Ealing	£100 / £50

- 4.9 The rates proposed in Tower Hamlets and in particular the peak rate of £200 is comparable to the top rate in most of the boroughs. Those ‘city fringe’ boroughs that appear most comparable to Tower Hamlets Zone 1 would be Southwark, Hackney Wandsworth and Lambeth. Compared to these four boroughs, the £200 peak rate is directly comparable to the peak rates in Hackney and Lambeth and also to the middle rates of Southwark and Wandsworth, where their peak rates are skewed to represent unique riverside locations. In summary, the Council consider that this check

provides further reassurance that the proposed rates are reasonable and at the level which should be expected by the development industry given the proposed and in some cases adopted rates of comparable boroughs.

- 4.10 The market evidence available shows that the proposed rates are justified, balanced, reasonable and - most importantly – viable when taken as a whole across the borough. This means that development and hence the development plan is deliverable in conjunction with the proposed CIL rates.

5. The Use of ‘Infrastructure Payments’ and the Related Risks

- 5.1 A discussion has arisen during the course of the hearings about the ability to use Infrastructure Payments. Further legal submissions have been made on the scope for using these type of payments to deliver infrastructure, and the Council would like to clarify how it intends to use this mechanism. The Council would also like to respond to the points that have been made about the perceived risks by the development industry, of accepting Infrastructure Payments, as well as setting out the perceived risks to the Council, and other Charging Authorities, of them not being able to accept Infrastructure Payments.
- 5.2 The Council notes that no issue has been raised regarding the potential use of Land Payments (under Regulation 73), and therefore does not deal with that issue further here.

The Mechanism for Receiving Infrastructure Payments

- 5.3 To clarify, the Council does not consider that a separate planning application will necessarily have to be submitted in order for Infrastructure Payments to be allowed under the CIL Regulations. The Opinion the Council received from William Upton of Counsel is an independent review of the potential options. The Council has considered this Opinion in light of CIL rate setting and how it intends to deliver infrastructure. A mechanism to accept Infrastructure Payments can be established that is reasonably simple, presents limited risk to both Developers and the Council, and is compliant with the CIL Regulations.
- 5.4 The mechanism for receiving Infrastructure Payments will involve the Council: -

1. Establishing the Developer's CIL liability in the normal way (in accordance with the CIL Regulations and how CIL liabilities in adopted Charging Authorities are established).
 2. Where a site has been allocated to provide items of infrastructure, the Council's Local Plan, in particular site allocations, as well as the Council's Infrastructure Delivery Plan, will be reviewed to establish the infrastructure to be delivered on site in order to support the development of the area and those items which are necessary to make the development acceptable in planning terms.
 3. Liaising with the Developer to discuss and agree, in principle the extent of the items of infrastructure to be provided as an Infrastructure Payment and that the Council and the Developer wish to proceed in this way.
 4. Instructing a valuation of the relevant items of infrastructure in accordance with CIL Regulation 73A (11).
 5. Entering into an Infrastructure Payment agreement with the developer in accordance with Regulation 73A (7) (C) and (8). This agreement will clarify the extent of the infrastructure to be provided as well as the value of the infrastructure, much like S106 agreements have done historically.
 6. Discounting the CIL liability according to the valuation of the infrastructure payment.
- 5.5 The developer will then deliver the infrastructure in accordance with the agreement and hand over the facility as appropriate. This will be consistent with in-kind infrastructure provision relating to the existing S106 regime.

The Question of Risk

- 5.6 Several representations received set out that implementing Infrastructure Payments presents risks for Developers. The Council considers that, as long as a robust process is set out, risk to Developers will be minimal. In any event, risk is inherent to development and developers should not seek to dismiss a legislative mechanism as a result of the potential for risk or complexity. A similar point could no doubt have been made (and was made by some), about the use of the section 106 obligations when they were first introduced.
- 5.7 A query has been raised by The Berkeley Group in relation to Infrastructure Payments and State Aid restrictions and the EU Public Works directives. The Council has considered these and not identified any according risks. Whilst any relief from the levy must be given in accordance with State Aid rules, the provision of Infrastructure Payments, or Land Payments, is not the provision of relief by the Local Authority. They are a way of satisfying some or all of the existing liability in a different way. The CIL liability remains the same sum. The CIL Regulation also ensure that the assessment of the in-kind payment is established by an independent person, so that there is no scope for an indirect subsidy to otherwise arise.
- 5.8 It is also necessary to consider the other side of the equation, namely the reality that there are significant risks to the Council of not being able to accept Infrastructure Payments.

- 5.9 The main risk relates to how the Council can secure the provision of infrastructure on development sites. If the Council is unable to use Infrastructure Payments then the only option would be to consider using S106. But the problem with this is that CIL Regulation 122 provides three tests which must apply to enable a Council to enter into a S106 agreement. One of the tests in question is that any S106 agreement must be 'fairly and reasonably related in scale' to the development in question. If the Council needs to deliver a facility that is larger than the need created by the development, and is strategic infrastructure, then any S106 agreement could not be taken into account in granting planning permission, as it may not be related in scale to the development. This would leave the Council with the risk of not being able to secure the provision of infrastructure to support the development of its area. Clearly this would significantly impact service delivery as well as the delivery of the Development Plan.

Infrastructure Payments and Compliance with the CIL Regulations and Guidance

- 5.10 The recent Legal Opinions and Note have discussed the relevant parts of the CIL Regulations, as amended. There are some detailed points to make on those (set out in section 9 below) but the part where legal disagreement has arisen relates to the restriction placed on the use of Infrastructure Payments by Regulation 73A(7)(b)(ii). For ease of reference, this is stated below: -
- (7) A charging authority may not accept an infrastructure payment unless—
- (a) ...
- (b) it is satisfied that the infrastructure to be provided—
- (i) is relevant infrastructure, and
- (ii) is not necessary to make the development granted permission by the relevant permission acceptable in planning terms;
- 5.11 This Regulation, in stating 'it [i.e. the Charging Authority] is satisfied', requires that the judgement as to whether the provision of the item of infrastructure is required to make the development acceptable in planning terms, is for the Charging Authority. That judgement must be carried out reasonably, and in accordance with the legislation and its purpose
- 5.12 The Council's interpretation of the term 'to make the development...acceptable in planning terms' is one relating to the infrastructure requirements that arise out of the development. If an item of infrastructure is being provided to only serve the development in question then it is making the development acceptable in planning terms. In this instance the delivery of the infrastructure will comply with the three tests set out in CIL Regulation 122, including the test relating to the S106 agreement as requiring to be 'related in scale' to the development, and thus this infrastructure can be delivered under S106. As soon as an item of infrastructure serves a wider area it is not making that particular development acceptable in planning terms and it must be delivered otherwise (e.g. using Infrastructure Payments).

- 5.13 Any Infrastructure Payment required would comprise the delivery of an item of infrastructure, so the definition of this infrastructure, 'in planning terms', is integral to the interpretation of Regulation 73A(7)(b)(ii). Infrastructure can be divided into a number of items, and such items of infrastructure would usually be the items set out in the Site Allocations in ED4.2, the Council's Managing Development Document. This is certainly the case for the sites being analysed for the purpose of CIL rate setting. It would be extremely rare for an item of infrastructure to be delivered outside of it being a site allocation as a developer would be able to resist any such delivery, if it wanted to, as the delivery of such a facility would be outside of the provisions of the Local Plan.
- 5.14 The Local Plan should be the starting point for the consideration of this issue. The Council's Managing Development Document (ED4.2, pg 84, SA.1) makes it clear that these sites 'have been allocated...to make sure the borough has the infrastructure needed to support the anticipated level of growth set out in the Core Strategy'. The fact that the site allocations document, which has been approved by an independent Examiner, states that the provision of infrastructure on site allocations (such as Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks) is to serve the wider area, not the development itself, demonstrates that the infrastructure, via the infrastructure payment, is not being delivered to make that particular development acceptable in planning terms. Therefore an Infrastructure Payment can be accepted.
- 5.15 The overall purpose of CIL is to ensure that the costs of providing infrastructure 'to support the development of an area' can be funded in part by developers (s.205(1) of the Planning Act 2008). As such, any payment sought through CIL once a Charging schedule has been adopted, whether it is cash, a Land Payment or an Infrastructure Payment, is for that purpose.
- 5.16 A practical example of how this applies is if you were to take a primary school. It is not necessarily the case that any of the population created by the development will use the infrastructure, the population might be allocated to other facilities within the wider area. Please refer to Appendix C which provides two flow charts which distinguish the delivery of infrastructure under S106 and using Infrastructure Payments.
- 5.17 It should also be noted that delivering infrastructure, which is required in order to support the development of an area, rather than serve the population that arises out of a specific development, under S106 doesn't comply with the 2013 Guidance, paragraph 87 of which states: -
- When a charging authority introduces the Community Infrastructure Levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site*
- 5.18 S106 must be scaled back to only include the 'matters that are directly related to a specific site'. An infrastructure facility that serves a wider population than that created by the development can't be 'directly related to a specific site'. Therefore, this infrastructure must be delivered using CIL.

- 5.19 The Council reasonably decided that the appropriate method for delivering on-site strategic infrastructure is through CIL *Infrastructure Payments*. This is based on the Council's interpretation that the CIL Regulations enable the delivery of strategic infrastructure through CIL Infrastructure Payments. In addition, the Council's understanding of the CIL Regulations and 2013 Guidance is that they do not allow the provision of 'strategic' infrastructure under S106.
- 5.20 As further support of its proposed approach to securing on-site strategic infrastructure, the Council point to the multiple references regarding the acceptance of infrastructure payments in both CIL Legislation and Guidance. Were it not the intention for Charging Authorities to be able to accept Infrastructure Payments these references would not exist. The Council have contacted CLG and will endeavour to work with *them* and the development industry to improve the clarity of this matter in any further version of the CIL Regulations and Guidance.
- 5.21 Many other Charging Authorities have approached this matter in the same way as the Council are proposing to and have successfully been through Examination and adoption procedures and are implementing their CIL alongside a policy which sets out the use of Infrastructure Payments (e.g. Trafford, Winchester, Dacorum and Shropshire). Many other Charging Authorities have also used a similar, generic, Regulation 123 list as the Council are proposing. If these Charging Authorities have site allocations to provide infrastructure on development sites, then they clearly intend to deliver them using Infrastructure Payments. If they intended to deliver this infrastructure through S106, they would be required to state as much on their Regulation 123 List.
- 5.22 Given the Council's interpretation of the regulations and that the Councils proposed approach is consistent with a multitude of approved and implemented Charging Schedules and Regulation 123 lists, the Council are confident that this represents a resilient and implementable approach to on-site strategic infrastructure delivery.
- 5.23 The Council acknowledge that some Charging Authorities have adopted Charging Schedules with a zero rate for specific sites or areas, based on the assumption that relevant infrastructure on the site / area will be delivered using S106. Their Regulation 123 lists have been presented accordingly to allow for this. The Council is not suggesting that their approach is wrong; it may suit the particular circumstances of proposed development in their charging area. However, the Council are adamant that this is not a suitable approach for Tower Hamlets. There are a number of sites spread geographically across the borough that will deliver on-site strategic infrastructure. The Council consider it unworkable to establish a system whereby the cost of every piece of on-site strategic infrastructure across the borough is excluded from the Regulation 123 list, costed in advance and the Economic Viability Study adjusted to reflect this very specific set of information, for a specific set of sites. CIL Guidance Paragraph 23 requires a Charging Authority to undertake a "broad test of viability across their area". The Council have adhered with this requirement and consider the site specific nature of the alternative as unnecessary and unworkable.

6. The relevance of Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks to the delivery of the Local Plan

6.1 This is a point that was debated at the previous hearings, but where there was still some disagreement about what the significance of these 3 sites was to the delivery of the Local Plan. The Council's further information addressed this point (Section 5 of ED5.21), and further representations have been made regarding this point.

6.2 Whilst these sites are strategically important in their own terms, we are considering a much narrower question for present purposes. The question relates to the setting of a CIL rate that is with regard to their relevance to the delivery of the Local Plan as a whole. The delivery of these sites, and indeed any site that has been allocated under the Local Plan, is relevant to the delivery of the Development Plan to the extent that these sites contribute to the Council's Housing target across the plan period to 2025. Since these sites do not represent a significant part of the Council's Housing target, there is no basis for providing these sites with a differential rate. The Council must set its rates having regard to the delivery of the plan, taken as a whole, not individual sites such as these. If we look only at the sites in question in the context of the development plan, the relationship is as set out in Table 2: -

Table 2

	Existing Housing Target (Based on Core Strategy Policy SP02, 2010 – 2025)	Under SHLAA (2013), no. of Units Site to Deliver	% of Housing Target Site Constitutes
Tower Hamlets (excl. LLDC)	43,275 2,885 per annum	N/A	100%
Wood Wharf	N/A	1,640	3.79%
Bishopsgate Goods Yard	N/A	1,184	2.74%
Westferry Printworks	N/A	663	1.53%

6.3 The data stated in the table above is also set out in Appendix C of ED5.21: LBTH CIL – Supplementary Evidence Requested by the Examiner. It demonstrates that these sites only constitute a very small proportion of the housing target of the Charging Authority's area and are therefore not critical to the delivery of the Development Plan in this regard. As this is the case, the housing contribution is no justification for setting a differential rate for these sites.

6.4 It might be contended that the commercial and employment space that the three sites might deliver constitutes a contribution towards the delivery of the Development Plan. The Council do not have planning policies which set out specific targets for retail and employment floorspace. The Council's Managing Development Document (ED4.2) provides guidance on the indicative

development capacity for allocated sites, in line with the placemaking aspirations set out in the Core Strategy (2010). For example, the Council's Managing Development Document (ED4.2) indicates that Bishopsgate Goods Yard will have the capacity to deliver approximately 75,000 – 150,000 sq.m of employment, retail and community floorspace (approximately 21% - 43% of the total indicated development capacity of this site). The figures are not specific targets to be met, but serve as guidance for both the Development Management Team and developers when shaping the development proposal during the planning application stage. Therefore, based on current planning policy, the Council conclude that the delivery of these sites is not critical to the delivery of the Development Plan.

- 6.5 An important point arose from the Examination on Lewisham's CIL in relation to the consideration of specific sites at a CIL Examination. In relation to the specific testing of a site called Convoys Wharf, paragraph 36 of the Examiner's report states: -

It is not normally necessary or appropriate to consider in an Examination of this kind the viability of a particular development site and scheme. However, the proposed development of this site (in accordance with the requirements of the policy in the Core Strategy) would contribute almost one fifth of the Borough's housing target and 17% of the Borough's target for business space.

- 6.6 The Examiner makes it clear that it is unusual to consider specific sites in respect of CIL rate setting unless they are of a magnitude, in the context of the Development Plan, which is consistent with a site like Convoys Wharf. None of the site allocations in Tower Hamlets' Charging Area are anywhere near the extent of a site like Convoys Wharf, so the Council cannot justify considering these sites for differential rates, they are simply not critical enough.

7. Trafford Metropolitan Borough's CIL

- 7.1 We note that the representations still place considerable reliance on the CIL Examination carried out for Trafford MBC, a metropolitan borough of Greater Manchester. We have already commented on the differences between our Inner London Borough and Trafford in planning terms, and in terms of what their development plan is seeking to achieve with regard to its handful of large strategic sites [Section 4 of the Supplementary Evidence]. Since the point has arisen again, this section will comment on the relevance of Trafford's CIL in respect of Tower Hamlets.

- 7.2 Trafford's Regulation 123 List comprises of a number of specific projects. The Council's Regulation 123 list is different and provides a more broad definition of the subjects of CIL receipt expenditure. The Council considers its approach is appropriate for the following reasons: -

- The demand for infrastructure in Tower Hamlets will change according to changes in demographics and in relation to the availability of new data. The Regulation 123 List proposed

affords the flexibility the Council requires to deliver infrastructure in accordance with the needs of the borough without the need to amend the Regulation 123 List in the future.

- In setting out that the Council intends to rely on CIL to deliver infrastructure, the Council is providing the development industry with certainty as to the financial liabilities (i.e. CIL as opposed to S106, which could vary) it will face.
- In seeking to provide strategic infrastructure under CIL, the Council considers it is in keeping with the spirit of CIL, which is, according to the Planning Act 2008 'to ensure that costs incurred in providing infrastructure to support the development of an area can be funded (wholly or partially) by owners or developers of land'.
- The Regulation 123 List proposed is consistent with the requirements of the CIL Regulations.
- A number of other London Charging Authorities, who have had their Charging Schedule approved at Examination, have a Regulation 123 List consistent with that of the Council. These Charging Authorities include Barking and Dagenham, Brent, City of London, Croydon, Hillingdon, Lambeth, Lewisham, Newham, Redbridge, Waltham Forest and Wandsworth.

7.3 Trafford's CIL Examination report does however provide a useful methodology to health check the rates proposed. Paragraph 27 of the Examiner's Report states: -

At my request, the CIL charges were calculated as a percentage of GDV, to provide a further health check. This revealed that the CIL charges would amount to 1.1% of GDV in the 'cold' market areas, 1.8% of GDV in 'moderate' areas, and 2.4% GDV in 'hot' market areas. I regard these levels as reasonable and acceptable.

7.4 The Council has undertaken the same exercise with Wood Wharf, Bishopsgate Goods Yard and Westferry Printworks and established that CIL as a percentage of the Gross Development Value (GDV) of each of the sites is lower than the amount found to apply in the 'hot' market areas in Trafford. The results, set out in Table 3 below, demonstrate the reasonableness of the rates proposed: -

Table 3

	Wood Wharf	Bishopsgate Goods Yard	Westferry Printworks
GDV	£ 2,498,076,494	£ 917,723,160	£ 350,322,401
CIL	£ 45,337,912	£ 19,878,082	£ 8,232,762
CIL as a % of GDV	1.81	2.17	2.35

7.5 It should also be noted that Trafford have adopted a Payment in Kind Policy for both Land and Infrastructure. This demonstrates that they consider seeking Infrastructure Payments as legitimate under the CIL Regulations.

8. Site Specific Viability Issues

- 8.1 Section 6 of this letter demonstrates that the Council do not consider that the three sites under discussion are critical to the delivery of the Local Plan. However should these sites experience viability concerns the Council believe there are solutions to this situation. As previously stated, the Council are aware that should an individual site be on the cusp of viability it could be affected by CIL, but believe that in these exceptional circumstances the flexibility of the Council's affordable housing policy will accommodate this matter with only a minor adjustment to the development in question.
- 8.2 Under the S106 approach, not every application will deliver 35%-50% affordable housing and a policy compliant S106 contribution. Rather the Council will consider the levels of contributions and affordable housing in the light of the economic viability of a scheme.
- 8.3 A similar approach will exist with CIL. While the CIL liability is not negotiable, there remains a flexible approach to affordable housing delivery that can adjust effectively. The cost of affordable housing is greatly in excess of the cost of CIL and therefore the impact on affordable housing will be small in comparison. The Council has previously provided data (in Appendices P and Q of ED5.21) that demonstrates this point, and has not received any criticism regarding this point. The Council do not anticipate that the introduction of CIL will cause a generic reduction in the amount of affordable housing secured. It is expected that on some sites it will decrease to less than 35%, while on others it will increase to over 35%. As described above, the Council is content that the financial impact of CIL and the existing S106 approach are generally comparable and therefore there should not be an impact on affordable housing delivery as a whole.
- 8.4 In fact, the Council anticipate that there could be a positive impact on affordable housing delivery as a result of CIL. The borough experiences a significant amount of estate renewal and delivery of schemes with high volumes of affordable housing, ranging from 70% - 100% affordable. Under the existing S106 approach, the Council secures financial contributions towards infrastructure from these developments. Under CIL these developments will be able to claim social housing relief for the majority, if not the total of the scheme floorspace. This will reduce costs and hence may potentially make the delivery of affordable housing more appealing.
- 8.5 In exceptional circumstances, should a particular development in the borough be considered undeliverable at the current time due to viability, this is not necessarily a matter of concern for Local Plan delivery. The Council has sufficient flexibility in its plans, so that it is not reliant on any one particular scheme coming forward in order to meet the housing targets set by the Mayor of London, or any other requirements of the development plan.
- 8.6 The Council is confident that the sites identified in the Local Plan are deliverable in the plan period alongside the CIL rates proposed. It is important to recognise that the plan period runs until 2025 and that the Council's housing trajectory does not expect all development to come forward

immediately, but rather, spread over the period until 2025. This means that should a particular development be suffering from viability concerns currently, likely due to a combination of factors (i.e. given that the proposed CIL will be a small proportion of development costs it would not be CIL alone that would contribute to viability concerns of a site/scheme), it is not necessarily of concern to the delivery of the Local Plan. The Council anticipates the scheme to be delivered over the next eleven years and therefore there is time for the development to become viable in the improving economic climate.

- 8.7 The fact that CIL is such a small percentage of costs means that only a small amount of value engineering needs to occur in order for the CIL to be accommodated. For example, on any of the three sites in question, if the build costs were to decrease by less than 5%, then the CIL could be easily accommodated. Or, if the sales values for the units were to increase by less than 5%, the according increase in revenue would be significantly more than the CIL liability.
- 8.8 As previously evidenced in ED5.9, the average residential sales value in Tower Hamlets has risen by 26% between Q1 2012 and Q4 2013. This data suggests that securing a 5% change in sales values over an eleven year plan period is realistic.
- 8.9 If, following the implementation of the range of factors assisting in site viability and delivery outlined in this section, a development was still considered unviable, the Council would consider this position carefully. The Council has the intention to review its CIL evidence base two years from implementation and on an annual basis after that. Should a review identify that a specific site was being inhibited from being delivered due to CIL, the Council would consider reviewing its adopted charging schedule. Given that the plan period runs until 2025, the Council believe that the CIL review timetable provides sufficient flexibility to ensure site implementation comes forward in the plan period.

9. Representation Specific Comments

9.1 The Council would like to address certain specific points relating to some of the Representations received: -

CIL FC 02: GLA/TfL

- 9.2 The Council notes that the GLA/TfL's legal opinion about in-kind payments and their covering note was received at 12:31PM on Thursday the 18th September. The deadline for receiving this was 5PM on the 12th September 2014. We have therefore only had limited time to consider it, and there may be further points that need to be made. We are also slightly surprised to receive it as the GLA/TfL state in the covering note that the legal opinion is unlikely to be actually relevant to their own representations (their para 6).
- 9.3 We note that there are a few inaccuracies in the GLA/TfL covering note. They are wrong to state that Mr Brown considers that the interpretation of CIL Regulations 73 and 73A are not correct (their para 5). In fact, the Opinion of Paul Brown QC is limited to considering Regulation 73A, as he agrees that how Regulation 73 applies is not in issue (his para 4). Whilst there are a number of references made to Regulation 73 in his Opinion, the context for them means that these must be typos and should be references to Regulation 73A. As for the representations made by some of the developers (referred to at TfL/GLA para 3), these have been that they prefer the option of not using in-kind payments, not that they are inappropriate.
- 9.4 We have nevertheless considered what has been said. The Opinion is a critique of the three solutions discussed in the Opinion from Mr Upton that we have submitted in evidence (*ED5.11*). We note that Paul Brown QC does not accept them. But he does not discuss how the provision of in-kind payments can work. This appears to have been outside the scope of his instructions, and may also explain why he does not refer to or discuss the purpose of the underlying Act. Nor does he discuss the extent to which the provision of infrastructure through CIL is now a material planning consideration (as a local finance consideration).
- 9.5 There is therefore only some limited agreement. The option put forward of using separate planning applications would be a simple way of underlining the distinction between different parts of a wider site. If the infrastructure is linked to the main permission by condition or S106 in order to make it acceptable in planning terms, then this division would not provide a solution. But we note that Mr Brown declines to comment either way on the point made about the ability for an Infrastructure Payment (in this case, for the provision of a bridge) to be made with regard to the CIL liability on an earlier Phase of the overall development (see para 25 of Mr Upton's Opinion).
- 9.6 We do not agree with the basis of the criticism by Mr Brown of the second option that infrastructure is not divisible (his para 9). The CIL Regulation themselves refer to "items of

infrastructure”, and many items may go together to constitute one piece of infrastructure. This is also the approach used in S106 agreements, which allow for partial provision.

- 9.7 As for the reasons for treating the provision of strategic infrastructure through CIL (and possible Infrastructure Payments) separately from S106 undertakings, this is discussed further in section 4 above. The Regulation 123 list should be used as a means of identifying what infrastructure is not required for a specific development as it is likely to be funded by CIL. Given the inclusion (as has occurred in other authorities) in the Regulation 123 list of the caveat that specific contributions may be required to make a development acceptable in planning terms, both parts of Regulation 73A(7)(b) continue to serve a purpose.
- 9.8 In addition, BNP Paribas Real Estate has provided some comments in respect of the specific viability points made in this representation. These comments are attached at Appendix D.

CIL FC 05: Travelodge

- 9.9 The Council would like to clarify that the rate for Hotel Accommodation is £180 per sq. m, not £210 per sq. m as set out on numerous occasions in this representation.
- 9.10 There are a number of detailed points that need to be made. Please refer to Appendix E which sets out a response from BNP Paribas Real Estate in respect of this representation.

CIL FC 07: Canary Wharf Group/ Bishopsgate Goods Yard Limited

- 9.11 This joint set of representations includes some substantial documentation. We note that there is a ‘Position Statement’ submitted as part of the CWG/BGY representations, earlier drafts of which have been discussed with Council officers. This sets out the representor’s view of the differences of opinion between them and the Council; this has not been agreed by the Council. The Council will attempt to agree a Statement of Common Ground with Canary Wharf Group and Bishopsgate Goods Yard beyond submission of this letter.
- 9.12 The Council would like to clarify that it was not sent the Memo included within this representation at Appendix D (the use of in-kind payments and s106), as might be inferred from its format. It looks like it was addressed to the two officers of the Council dealing with CIL, and is dated at the end as 10 September 2014. However, the first time that we saw it was as this appendix to their representations which were submitted on 12 September 2014. Whilst it states that it highlights the challenges and difficulties, it is simply a series of assertions without any detail or testing of the numbers.
- 9.13 BNP Paribas Real Estate has provided a response to some of the more specific viability comments made by Canary Wharf Group and Bishopsgate Goods Yard Limited. This document is attached at Appendix D.

CIL FC 08: Queen Mary University London

- 9.14 In relation to this representation, the Council would like it noted that BNP Paribas Real Estate have asked the Council to state that any advice they gave to Southwark Council in relation to the ability to set a differential rate in respect of University-led Student Development was relevant to Southwark only as they have a Local Plan policy which encourages the delivery of such development.

CIL FC 09: UNITE

- 9.15 We have included this representation in the documents, and would accept that it should be considered even though it was received late. It addresses points that are already before the examination, and the Council considers that the relevant parties are able to deal with points made in the representation.

10. **Conclusion**

- 10.1 The Council would like to conclude by stating that the Council continue to meet the requirements of Regulation 14 in that they aim to strike what appears to be the appropriate balance between the desirability of funding through CIL to support the area, and the impact on economic viability of development. This includes the rates as proposed in relation to the sites at Bishopsgate Goods Yard, Wood Wharf and Westferry Printworks. It is an important consideration that the impact of imposing a zero CIL rate on these sites would have much more of an adverse impact upon the delivery of the development plan than imposing a CIL rate as proposed. The reality is that a number of development plan requirements, such as affordable housing and Crossrail S106, are competing with CIL for the same residual amounts that are achievable on a development. However, that is the same as the current position with the existing S106 regime. The CIL Regulations require a balance to be struck and the Council has done this effectively.
- 10.2 The Council considers that it has provided evidence and reasoning that demonstrates the following:

- The assumptions used in the CIL Economic Viability Study are reasonable, evidenced, justified and in accordance with the CIL Regulations and Guidance. Objections to their use have not been substantiated or evidenced.
- The proposed rates resulting from the evidence are reasonable and provide the appropriate balance between funding infrastructure and allowing the delivery of development, in accordance with Regulation 14.
- The proposed rates have been tested and are consistent with current planning obligations policy and historic planning obligations performance.
- Viability of development, taken as a whole, across the borough is not put in jeopardy by the proposed rates, in accordance with Regulation 14.
- Should exceptional circumstances result in a specific site undergoing viability concerns (due to the CIL or other factors), the Council is equipped with a flexible affordable housing policy that will ensure site delivery. The Council is also considering the implementation of an Exceptional Circumstances Policy which may assist in this regard.
- The Development Plan is deliverable in conjunction with the proposed CIL rates, in accordance with CIL Guidance paragraph 8 and the NPPF.

If there is any further information that we can provide to assist with the Examination process, please contact Anne-Marie Berni on 020 7364 5324/ anne-marie.berni@towerhamlets.gov.uk .

Yours sincerely,



Owen Whalley
Head of Planning and Building Control