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05 June 2013

CIL Consultation,
Infrastructure Planning Team,
London Borough of Tower Hamlets,
2nd Floor Mulberry Place,
5 Clove Crescent,
London
E14 2BG

Dear Sir,

LONDON BOROUGH OF TOWER HAMLETS, COMMUNITY INFRASTRUCTURE LEVY, DRAFT CHARGING SCHEDULE
REPRESENTATIONS OF CANARY WHARF GROUP

I am writing on behalf of Canary Wharf Group ('CWG') in relation to the consultation on your Draft Charging Schedule for the proposed Community Infrastructure Levy ('CIL') in the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority').

CWG has substantial land and development interest in LBTH. Canary Wharf forms part of the Isle of Dogs as an Opportunity Area (as identified in the London Plan (2011)) and is identified by the Tower Hamlets Core Strategy (2010) and Managing Development Document (2013) as a Preferred Office Location and Major Centre. CWG and its joint venture partners have planning permission to approximately double Canary Wharf's working population over the next 20 years. These sites offer bespoke office buildings designed and constructed to the highest standards of architecture, infrastructure and resilience. CWG is currently preparing a planning application for the comprehensive redevelopment of Wood Wharf. This is located within the Isle of Dogs Opportunity area and is designated by LBTH as a strategic site in its Managing Development Document. It is an important site insofar that it has the potential to deliver a significant proportion of new homes and jobs, underpinning both London Plan and LBTH growth forecasts.

Overall, CWG has extensive experience of market conditions and development viability within LBTH, and has achieved many viable planning consents which have delivered significant development and associated substantial infrastructure contributions.

As stated previously at the Preliminary Draft Charging Schedule stage, CWG is would like to work closely with the Council to ensure that proposed CIL rates do not pose a serious risk to the viability and deliverability of future development, especially that associated with the Opportunity Areas and strategic sites.

This letter follows the submission of representations by CWG in respect of the Preliminary Draft Charging Schedule ('the January 2013 Representations') which raised a number of significant concerns related to the approach, methodology and evidence underpinning the Council's proposed CIL rates. These concerns mirror those raised by other stakeholders, as set out in the Council's 'PDCS: Summary of Consultation Responses' (April 2013).

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Infrastructure Planning Team,
London Borough of Tower Hamlets,
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E14 2BG

Dear Sirs,

REVISED PLANNING OBLIGATIONS SPD – MARCH 2013
SUBMISSION OF REPRESENTATIONS BY CANARY WHARF GROUP

On behalf of Canary Wharf Group, we write to submit representations to the above document, as set out below. These representations are to be read alongside those submitted by Canary Wharf Group in relation to the Council's CIL Draft Charging Schedule.

Representations:

1. It is explained, on pages 3 and 4 that the purpose and objective of the Draft SPD is to, inter alia: explain the relationship between CIL and Section 106 planning obligations; improve transparency in the priority and calculation of planning obligations; provide a consistent methodology for calculating obligations; provide more certainty to all parties. Overall, the Draft SPD is high-level and broad-brush. It goes some way to assisting developers in understanding the main topics and items that the Council will typically seek to be included within Section 106 or 278 Agreements.

2. The document falls short of providing greater certainty or transparency for the development industry. This is especially the case regarding the relationship between planning obligations and CIL. The 'tick-box' style approach taken in Chapter 2 of the document is over simplified, particularly in respect of the Council's strategic sites. It would appear, for example, that unless a developer is able to transfer land to the Council, then in-kind on-site infrastructure will continue to be secured through planning obligations. The likelihood and complications around transferring land to the Council is not considered and ought to be more fully addressed. This then needs to feed through to the Council's approach and thinking in relation to their CIL setting. In our opinion, payment in kind through the transfer of land is very unlikely to occur – especially for multi-phased mixed use strategic developments – and should not be the Council's base assumption (e.g. see paragraphs 2.13, 2.15, 2.17 and 2.20).

3. Paragraph 1.1 of the document explains that the Council "will consider the combined impact of [Section 106 planning obligations, CIL, planning conditions and Highways Section 278 agreements] … on development when considering any planning decision." Linked to this the Council addresses, albeit briefly, the matter of development viability at paragraphs 5.14-5.17. What the Council has not done – either as part of the this Draft SPD or the evidence base supporting the CIL Draft Charging Schedule – is consider the

anticipated cumulative burden of adopted planning policies on development viability / deliverability (in particular, the strategic sites allocated in the Council's Managing Development Document) in accordance with paragraph 174 of the NPPF. How does the Draft SPD and the Council's CIL Draft Charging Schedule relate to the adopted Development Plan and required infrastructure? Chapter 4 of the Draft SPD provides an explanation of the policy and guidance context. It is brief and does not explain the relationship between the Draft SPD and the Council's infrastructure planning. This is an important omission.

4. The Council's CIL Draft Charging Schedule has been based on an assumption that the combined cost of Section 106 and Section 278 Agreements will be £1,220 per residential unit (and nil for non-residential uses). How has this assumption been derived? It ought to be a consideration of the likely costs of development complying with the typical planning obligations set out in the Draft SPD. The assumption appears unrealistically low considering the various topics and obligations addressed in the Draft SPD, especially for strategic developments. This needs to be addressed by the Council, both in responding to representations on the Draft SPD and the CIL Draft Charging Schedule.

5. Paragraphs 2.1-2.6 serve to demonstrate that, once LBTH's CIL has taken effect, there will actually be little change in the approach to – and the ability for the Council to require – Section 106 and Section 278 planning obligations for strategic development. We have highlighted this point in our representations to the Council's CIL Draft Charging Schedule. The matter needs to be addressed, and further evidence base produced, before the Council adopts the Draft SPD or submits their Draft Charging Schedule for Public Examination.

6. Paragraph 4.3 refers to Circular 05/2005. It states that the Circular "remains relevant to negotiating and administering planning obligations". Annex 3 of the NPPF provides a list of all documents that have now been deleted. At item 31, this includes Circular 05/2005. The Council appears to have misunderstood the provisions of the NPPF. The Draft SPD needs to be considered afresh and amended accordingly. We note that Circular 05/2005 is referred to a number of times through the document (see, for example, paragraphs 5.1 and 6.2).

7. The document needs to be thoroughly checked: there appear to be a number of basic errors. For example, paragraph 4.16 refers to a summary of two DPD documents, but then only lists the Council's Managing Development Document. The publication date of the National Planning Policy Framework is noted in various places as 2011. It was adopted and published in 2012. Commentary and explanation of the Council's Managing Development Document needs to be updated as the document has been adopted.

Overall, the Draft SPD needs to be re-considered by the Council in the context of the above points. This needs to happen alongside a consideration of representations submitted to the CIL Draft Charging Schedule. In our opinion a revised Draft SPD should be made available for comment through a further round of public consultation – this is especially necessary given the Council's misunderstanding of the position regarding Circular 05/2005. This further round of consultation should occur in advance of the Council submitting their CIL Draft Charging Schedule for Public Examination.

As explained in our CIL Draft Charging Schedule representations, we welcome further dialogue once the Council has had the opportunity to consider these representations. Please contact Craig Tabb of this office should you have any queries or wish to discuss the above points.

Yours faithfully,

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DP9

The Draft Charging Schedule – together with supporting documents: 'Regulation 123 List' (March 2013)', 'Infrastructure Planning and Funding Gap Report' (2013), 'CIL Viability Study' (March 2013) – has been reviewed. Significant concerns still remain, largely as set out in the January 2013 representations. Overall, CWG is concerned that the response to its representations has been minimal. It is important to note that the Council produced the Draft Charging Schedule without engagement with CWG, which is concerning given the need to do so was highlighted and emphasised in the January 2013 representations and given the Council has now prepared a site appraisal specific to Wood Wharf (this is provided at Appendix 5 of the Council's CIL Viability Study.

On the basis of the evidence put forward by the Council, it is CWG's considered opinion that:

- the Charging Authority has not complied with its legal obligation to strike an appropriate balance between helping to fund necessary infrastructure and the potential effects on the economic viability of development across its area; and

- the Charging Authority has not complied with the requirements set out at paragraph 9 of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

Attached to this letter are the following enclosures:

- Enclosure A – a summary of CWG's concerns.

- Enclosure B – comments on the strategic site appraisal for Wood Wharf.

It is recognised and appreciated that CIL setting is a complex process and arriving at a rate(s) that is balanced between infrastructure funding and development viability is challenging. However, when the concerns described in Enclosures A and B are taken together, CWG consider that the Council's Draft Charging Schedule is inappropriate and likely to pose a significant risk to development across Tower Hamlets, especially in relation to the strategic sites such as Wood Wharf. For this reason, CWG requests the Council undertakes the following: (organised according to the topics set out in Enclosure A):

Given the extent of CWG's outstanding concerns and the extent of further evidence required as per the above recommendations, it is requested that the Draft Charging Schedule is considered afresh and public consultation is re-run.

CWG welcome further dialogue once the Council has had the opportunity to consider these representations.

CWG wishes to reserve the right to be heard by the CIL Examiner at the forthcoming Examination.

ENCLOSURE A:
HEADLINE POINTS AND ISSUES

1.0 Introduction

1.1 In January 2013 CWG submitted representations to the London Borough of Tower Hamlets ('the Council' or 'the Charging Authority') in respect of the Preliminary Draft Charging Schedule. The January 2013 representations raised a number of fundamental concerns with the evidence underpinning the Preliminary Draft Charging Schedule. These concerns still remain in connection with the Draft Charging Schedule and have not been adequately addressed in the Council's 'PDCS: Summary of Consultation Responses' (April 2013). Set out below is a summary of headline key points and issues following a review of the Draft Charging Schedule and its associated evidence base. It should be read alongside the January 2013 representations.

1.2 **Having reviewed the evidence base issued by the Council to support its Draft Charging Schedule, CWG is of the considered opinion that the information provided does not meet the relevant requirements as set out in the CIL Regulations and CIL Guidance: fundamentally the information provided is inappropriate.**

1.3 CWG is of this opinion due to the reasons set out below and due to the nature of the comments provided at Enclosure B specifically in relation to Wood Wharf.

2.0 Relationship with National Planning Policy Framework

2.1 The National Planning Policy Framework ('NPPF') provides important steers in the formulation of CIL charging schedules. It explains that CIL charges should be worked up and tested alongside the Local Plan and, essentially, the CIL should support and incentivise new development. The sites and scale of development identified in Local Plans should not be subject to a scale of obligations and policy burdens that their ability to be developed viably is threatened.

2.2 Paragraphs 173 and 175 of the NPPF are especially relevant:

- Planning policy must not prevent development from being deliverable.
- The viability of sites identified / allocated in the Development Plan should not be put at risk as a result of obligations and policy burdens.

- CIL charges, where practical, should be prepared and tested alongside the Development Plan.

- CIL should support and incentivise development.

2.3 CWG is concerned that the NPPF has not been adequately considered by the Council and that the proposed Draft Charging Schedule, as a significant additional cost burden on development, runs the risk of actively discouraging development.

3.0 Compliance with Statutory Guidance

3.1 Charging Authorities are legally required under Section 221 of the Planning Act to have regard to the CLG statutory guidance document – 'Community Infrastructure Levy: Guidance' (April 2013 – consolidated version following initial publication in December 2012) – when setting their proposed CIL rates. The Guidance provides detailed guidance in relation to the CIL setting process and contains requirements for Councils and Examiners in establishing whether CIL rates are appropriate.

3.2 The Guidance in good time to allow the Council to take it on-board and be reflected in its approach to the Draft Charging Schedule. There is no evidence that the Guidance has been considered or whether the Council's CIL evidence base reviewed afresh. This is concerning. CWG ask that the Council explain how the Draft Charging Schedule, and in particular the BNPP Viability Study, has had regard to the Guidance and meets its requirements. The Council's evidence base is likely to need to be updated as a result and consulted upon.

3.3 The main components of the Guidance that CWG is concerned have not been taken into account are, as follows:

"Charging schedules should be consistent with and support implementation of up-to-date Local Plans" (para 4)

"...charging authorities should show and explain how their proposed levy rate (or rates) will contribute towards the implementation of their relevant Plan and support the development of their area. As set out in the National Planning Policy Framework in England, the ability to develop viably the sites and the scale of development identified in the Local Plan should not be threatened." (para 8)

"The independent examiner should establish that:

- *the charging authority has complied with the requirements set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations*

- *the charging authority's draft charging schedule is supported by background documents containing appropriate available evidence*

- *the proposed rate or rates are informed by and consistent with, the evidence on economic viability across the charging authority's area; and*

- *evidence has been provided that shows the proposed rate (or rates) would not threaten delivery of the relevant Plan as a whole."* (para 9)

"The charging authority should set out at examination a draft list of the projects or types of infrastructure that are to be funded in whole or in part by the levy. The charging authorities should also set out those known site-specific matters where section 106 contributions may continue to be sought. The principal purpose is to provide transparency on what the charging authority intends to fund in whole or part through the levy and those known matters where section 106 contributions may continue to be sought" (paragraph 15).

"Charging authorities should be able to show and explain how their proposed Community Infrastructure Levy rate (or rates) will contribute towards the implementation of their relevant Plan and support development across their area" (paragraph 21).

"As background evidence, the charging authority should also prepare and provide information about the amounts raised in recent years through section 106 agreements. This should include the extent to which affordable housing and other targets have been met" (paragraph 22).

"Charging authorities need to demonstrate that their proposed CIL rate or rates are informed by 'appropriate available' evidence and consistent with that evidence across their area as a whole" (paragraph 25).

"In addition, a charging authority should sample directly an appropriate range of types of sites across its area in order to supplement existing data, subject to receiving the necessary support from local developers. The focus should be in particular on strategic sites on which the relevant Plan relies and those sites (such as brownfield sites) where the impact of the levy on economic viability is likely to be most significant." (para 27)

"Charging authorities should avoid setting a charge right up to the margin of economic viability across the vast majority of sites in their area. Charging authorities should show, using appropriate available evidence, including existing published data, that their proposed charging rates will contribute positively towards and not threaten

delivery of the relevant Plan as a whole at the time of charge setting and throughout the economic cycle." (para 30)

"The Government expects charging authorities will work proactively with developers to ensure they are clear about charging authorities' infrastructure needs and what developers will be expected to pay for through which route. This is so that there is no actual or perceived 'double dipping', with developers paying twice for the same item of infrastructure." (para 85)

4.0 Relationship with the Development Plan

4.1 In applying the CIL setting tests contained within both Regulations and Guidance, an understanding of the nature of development proposed across the Charging Authority's area is vital. This must be derived from the relevant up-to-date Development Plan (including all Development Plan documents).

4.2 The Charging Authority's CIL evidence needs to be able to conclude that the proposed rates will be viable for the sufficient number and type of developments upon which the Development Plan relies over the course of the Plan period.

4.3 It is unclear, firstly, how the Development Plan in this case (the London Plan (2011), Tower Hamlets Core Strategy (2010), and Tower Hamlets Managing Development DPD (April 2013) has informed the proposed CIL rates and, secondly, how the proposed rates will impact on the deliverability of the Development Plan (including both Borough-wide and area specific policy targets as well as the Council's housing pipeline). The BNPP Viability Study briefly refers to local policy context at paragraphs 2.17 to 2.20, but this is light-touch and does not appear to have informed the method or approach associated with the Council's evidence base: a full and proper understand of the Development Plan and its cumulative burdens on development should be the starting point in accordance with the NPPF.

4.4 The main elements of the London Plan directly relevant to the Tower Hamlets CIL charge setting process are:

- A target of 46.4% growth in employment from 2007 to 2031 (Table 1.1). LBTH has the highest target compared to all other Boroughs.

- A ten year housing target of 28,850 new homes up to 2021 and an annual monitoring target of 2,885 (Table 3.1). Again, LBTH has the highest target compared to all other Boroughs.

- Sustaining and enhancing the Central Activities Zone and the Isle of Dogs as global strategic centres (Policy 2.10).

- Maximising affordable housing provision (Policy 3.11).

- Funding Crossrail and other strategically important transport infrastructure (Policy 6.5). Including the Mayor's associated SPG on 'Use of Planning Obligations in the Funding of Crossrail and the Mayoral Community Infrastructure Levy' (April 2013).

- The designation of two Opportunity Areas (Annex 1):
  - City Fringe – which has an indicative employment capacity of 70,000 new jobs and a minimum new homes target of 7,000.
  - Isle of Dogs – which has an indicative employment capacity of 110,000 new jobs and a minimum new homes target of 10,000.

4.5 LBTH has adopted a suite of planning policy and guidance documents that are directly relevant to the Tower Hamlets CIL charge setting process. These include:

- Core Strategy (2010).

- Managing Development Document (2013).

- Interim Planning Guidance and Masterplans for a number of strategic sites.

4.6 The above planning documents collectively place a cumulative burden on development. This is particularly the case in relation to strategic sites located within the City Fringe and Isle of Dogs Opportunity Areas. It is unclear how these planning documents have been taken on-board and informed the Council's approach to CIL setting. This would appear to be an important omission in the context of paragraph 174 of the NPPF and paragraphs 8 and 21 of CLG's CIL Guidance.

4.7 As explained in the January 2013 representations (paragraphs 3.12-3.24), CWG is particularly concerned about the Council's allocated sites since these underpin the vision and policies for Tower Hamlets as set out in the Core Strategy and, in respect of the City Fringe Opportunity Area and Isle of Dogs Opportunity Area, have a bearing on the deliverability of the London Plan.

4.8 It is recognised that the Draft Charging Schedule includes reference to and consideration of strategic sites (Chapter 7 and Appendix 5 of the BNPP Viability Study), which comprise a selection of sites allocated in the Managing Development DPD. This is additional information that has been provided since the Preliminary Draft Charging Schedule stage. However, CWG is of the strong and considered opinion that the approach to the strategic sites is flawed and inappropriate. Refer to paragraphs 10.1 to 10.9 below.

4.9 Overall, CWG ask the Council to clarify how the Development Plan has been accounted for in the Council's CIL evidence base. It is not possible to understand this from the information currently provided and is a significant omission and one that may well require a different methodology to be applied. The evidence base needs to take full account of the policies and requirements arising from the Development Plan.

5.0 Viability Approach/Methodology

(NB: the January 2013 representations include, at paragraphs 3.44 to 3.48, a number of important comments in relation to the reliability and appropriateness of the BNPP Viability Study. These comments are not repeated here. It is not clear from the Council's 'PDCS: Summary of Consultation Responses' (April 2013) how these comments have been taken into account. Taken as a whole the comments suggest that the Council cannot ascertain whether or not there is a sufficient margin of viability for the proposed CIL rates to be achieved without putting development at serious risk).

5.1 CIL is a form of tax and, once rates have taken effect within a particular area, it is inherently more rigid and fixed compared to the application of planning policy: it cannot be negotiated to suit particular circumstances. Therefore, coupled with the current economic climate, it is critical that Charging Authorities approach CIL setting with a great deal of caution and ensure rates are based on evidence that reflects the normal circumstances under which development viability is assessed and land is released.

5.2 It is essential that CIL rates are based on evidence that considers current market conditions. This is in-keeping with the NPPF (paragraph 173), in linking 'willing sellers' of land, 'competitive returns' and 'willing buyers'. Market testing and understanding how developers/landowners bring development land forward is clearly integral to this. Indeed, the Local Housing Delivery Group publication 'Viability Testing Local Plans' (2012) and the RICS's 'Financial Viability in Planning' Guidance Note both talk about the importance of market testing and market 'sense-checking'.

5.3 There is no one set way of assessing development viability and the extent to which Market Value as defined in the RICS's Valuation Standards, Eighth Edition is taken into account varies. The Market Value of land is clearly a central concern for landowners when considering whether or not to release land for development. However, it is not the approach used by Tower Hamlets in the formulation of planning policy where the Current Use Value approach to land has been adopted previously in the affordable housing viability study. We note that the latter study pre-dates the adoption of the NPPF.

5.4 CIL is, of course, different. As explained above, it is not planning policy. In this context, CWG consider that understanding Market Value, and the effect on the Market of land of the burden of CIL charges, is vitally important in ensuring CIL rates reflect normal circumstances and the considerations associated with bringing Development Plan sites forward.

5.5 The Council's Viability Study underpinning the CIL rates demonstrates an inconsistent and unjustified approach in terms of what price it assumes land-owners will bring land forward at. The Study mainly assumes that this will be at the equivalent of Current Use Value plus a percentage premium, but there is no justification for the percentages assumed and very little justification for the adopted current use values. This is not to say that the Current Use Value and Market Value approaches are mutually exclusive, but that in urban locations such as Tower Hamlets, often the two are not aligned and the Current Use Value 'plus' approach is too arbitrary particularly with reference to strategic sites where the Current Use Values are often negligible. Furthermore, there is no market testing or 'sense checking' between the values that have been assumed and land values evident from the market (which could be, and should have been, sourced from land agents and other data sources).

5.6 CWG is concerned that the Council cannot know what relative effect their CIL rates will or might have in the absence of market testing.

5.7 A fundamental component of market testing is thorough engagement with those developers associated with the strategic / allocated sites that underpin the Development Plan. The Draft Charging Schedule has been prepared by the Council void on any engagement with those developers involved in delivering the sites set out in the Council's Managing Development DPD.

5.8 In-keeping with the NPPF, CWG propose the need for further CIL viability studies which involve market testing and meaningful engagement with the development industry. This needs to be undertaken before anybody is able to appreciate what relative effect the proposed CIL rates may have on the market and delivery of development. Until this occurs, it is CWG's opinion that the Council's approach to viability falls short of complying with the NPPF, LHDG and RICS guidance.

5.9 Paragraphs 10.1 to 10.9 below provide a more detailed consideration in relation to strategic sites and Enclosure B provides an analysis of the BNPP's inputs into their development appraisal in respect of Wood Wharf.

6.0 Residual Section 106 and Section 278 assumptions

6.1 The BNPP Viability Study, which underpins the Council's Draft Charging Schedule, includes a number of standard assumptions in relation to development costs. A central tenet of Government's introduction of CIL is that, to a large extent, it will result in a reduction of Section 106 costs. Whether this is true is very much dependent on the circumstances on a site by site basis. However, clearly if a Charging Authority assumes a standard rate across its area then this should be approached with caution and needs to be justified – particularly if it is doing so for the strategic site allocations that underpin the Development Plan.

6.2 As set out in the January 2013 representations, CWG is concerned that the Council has assumed standard Borough-wide rates for Section 106 (and Section 278) based on no analysis or justification. This is inappropriate for such a fundamental development cost and given its critical relationship with CIL rates.

6.3 CWG ask that the Council provide justification: for assuming a Borough-wide standard rate, as opposed to a differential rate according to location (e.g. especially in relation to the strategic site allocations); for the level of assumed 'scaling-back' of Section 106 rates (pre- and post-Borough CIL taking effect); for the relationship between the standard rate and the infrastructure items the Council expects (derived from its Infrastructure Plan and other evidence e.g. recent example Section 106 Agreements) to be covered by Section 106 in the future versus CIL.

6.4 The Draft Charging Schedule – at Appendix 3 – includes the Council's Draft Regulation 123 List. This is commented on below, but fundamentally the Draft List serves to highlight the inappropriateness of using a broad-brush assumed rate for residual Section 106 and Section 278 in connection with strategic sites (see commentary at paragraphs 8.1 to 9.7 below).

7.0 Consideration of recent Section 106 Agreements and Affordable Housing delivery

7.1 The Council has not provided any evidence that considers proposed CIL rates against amounts raised in recent years through Section 106 Agreements and the extent to which affordable housing and other policy targets (e.g. housing supply) have been met. This is a specific requirement of CLG's 'Community Infrastructure Levy: Guidance' (April 2013).

7.2 CWG suggest it is essential that the Council undertake a thorough review of previous site specific viability appraisals, levels of affordable housing and Section 106 contributions and make clear why any difference when compared to the proposed CIL rates is justified.

7.3 Any increased costs need to be approached with serious caution given the current economic climate and that land values are unlikely to adjust in the short to medium term.

8.0 Regulation 123 List

8.1 The Council's Draft Charging Schedule includes (at Appendix 3) a Draft Regulation 123 List. This includes a list of items for which Section 106 may not be required. However, we are concerned (especially in the context of comments above in relation to Section 106 assumptions and comments below in relation to strategic sites) that the implications of the final item on the Draft Regulation 123 List have not been properly considered. The final item states:

"Unless the need for specific infrastructure contributions are identified in the Planning Obligations Supplementary Planning Document or arises from five or fewer developments, where section 106 arrangements may continue to apply if the infrastructure is required to make the development acceptable in planning terms."

8.2 Firstly, it is not clear how the Council has taken into account the typical costs associated with applying its Planning Obligations Supplementary Planning Document (this is currently the subject of public consultation alongside the Draft Charging Schedule). There is no cross-referencing between the Planning Obligations Supplementary Planning Document and the Draft Charging Schedule (including, most importantly, assumptions made for residual Section 106 and 278 Agreements in the Council's Viability Study).

8.3 CWG has prepared separate representations to the Council's Planning Obligations Supplementary Planning Document. There are a number of headline issues that these representations raise: principally these relate to how 'those known matters where section 106 contributions may continue to be sought' (CLG Guidance, para 15) has informed the underlying assumptions BNPP has used in formulating the various development appraisals in the Council's CIL Viability Study.

8.4 Secondly, the Draft Regulation 123 List allows for Section 106 obligations directly related to making development acceptable in planning terms. This is in accordance with Regulation 122 of the CIL Regulations, but the Council has not considered its implications, which are likely to be substantial. It is a particular concern in relation to strategic sites since typically significant investment in infrastructure is required to both enable and mitigate development.

8.5 The Council, in its Viability Study, has made a broad-brush assumption on residential 106 and 278 (as commented on at paragraphs 6.1 to 6.4 above): the same assumption has been made for strategic and non-strategic developments. The inference of the

Council's assumption is that future Section 106 will be scaled back significantly once the Charging Schedule comes in to effect for both strategic and non-strategic developments. The Council recognises the need to look separately at the strategic sites (see paragraphs 10.1 to 10.9 below), but worryingly has not sought to understand or consider those known matters at this stage that will be paid for through Section 106 in accordance with Regulation 122.

8.6 It is CWG's considered opinion that the Council needs to take a more cautious approach to the 'scaling back' of Section 106 for the strategic sites and look at the likely Section 106 costs for each of the strategic sites appraised in Appendix 5 of the Viability Study. This is because, especially for strategic sites:

- Section 106 (and planning conditions) are to remain the primary means of mitigating the direct impacts of development (it is worthy of note in this regard that the statutory tests for Section 106 planning obligations set in Regulation 122 are in effect the same as those that were provided in guidance in Circular 5/2005).

- Because Section 106 continues to be the means through which direct impacts are mitigated, it follows that Section 106 commitments to infrastructure do not automatically legitimise a reduction in CIL. CIL is not intended to secure the mitigation of impacts from individual developments, so that Section 106 obligations which are necessary for a development (whether by way of money or infrastructure) have little to do with CIL.

- A charging authority should not normally assume that CIL is the appropriate way to provide infrastructure which is likely to be necessary for the development of individual sites or groups of up to 4 sites. Apart from risking double charging for such infrastructure, such an approach also runs risks for the robustness of planning decisions which approve development without securing a commitment to the provision of necessary infrastructure on the assumption that it will be provided through CIL. Planning permissions would be more secure if any necessary commitments were the subject of binding Section 106 obligations i.e. no material change to current circumstances.

- The terms of Regulation 123 make it possible for authorities to continue to seek pooled payments towards a particular infrastructure project, or type of infrastructure from up to five developments. This is to cover the position, for instance, where a small number of developments collectively trigger the need e.g. for a new local school. Such payments for specific infrastructure projects remain legitimate under Section 106 – even if CIL is being charged more generally for 'education' as a type of infrastructure, provided that the specific infrastructure projects are excluded from the Regulation 123 list - and can be useful in enabling developments to come forward hand in hand with necessary infrastructure.

- There are limited circumstances in which CIL can be paid in kind through land or infrastructure. Regulation 73 allows for the payment in kind of CIL but only through the provision of land and the Regulation specifically excludes such arrangements if the land is provided under the terms of a Section 106 obligation. It is appreciated that CLG is currently considered amendments to the Regulations in this respect.

8.7 Overall, in light of the above points, CWG consider that the Draft Charging Schedule could pose a serious risk to the viability and deliverability of development, especially the strategic sites.

9.0 Infrastructure Plan

9.1 The Council has published an 'Infrastructure Planning and Funding Gap Report' (2013). This is a collation of information simply to demonstrate a funding gap and, therefore, a need to charge CIL. What the Council has not undertaken is a proper assessment of the likely balance between CIL and other planning obligations (including Section 106 and Section 278 agreements) required to deliver the Development Plan and, importantly, the strategic sites underpinning the Plan.

10.0 Strategic Sites

10.1 Chapter 7 of the BNPP Viability Study provides an analysis of strategic sites (the inputs for an appraisal for each site is then provided at Appendix 5 of the Study albeit the appraisal summaries are not provided). The strategic sites make up a selection of those allocated in the Managing Development DPD. Paragraph 7.4 of the Study states that BNPP has run high level appraisals for eight strategic sites. The Managing Development DPD includes twenty allocated sites which are described as:

"Site allocations have been identified to plan for strategic housing developments (i.e. sites that can provide over 500 new net-additional homes) which will help the borough meet its housing targets and for key regeneration sites. They have also been identified to ensure the borough has the adequate space and capacity for physical, social and green infrastructure to meet the needs of existing and new communities" (para S11).

10.2 There is no explanation or justification for how the eight strategic sites have been selected: it appears arbitrary and there is no cross-referencing to the Development Plan targets, policies, objectives.

10.3 Table 7.4.1 provides a brief overview of the strategic sites. Nowhere is there a detailed explanation of the actual policy requirements for each of the sites. This is a significant omission as without this there is no way of understanding or testing the cumulative burden of policies on the viability of each site consistent with paragraph 174 of the NPPF.

10.4 From Table 7.4.1 it is apparent that all of the strategic sites are currently either wholly or partly owned privately. This is a key point, because in order to ensure the site appraisals are based upon appropriate available evidence and informed by market sense-checking is wholly dependent upon meaningful engagement with the relevant private owners. To CWG's knowledge the appraisals have not benefited from any engagement with site owners. This should have happened at the outset and would have helped prevent the Council consulting on untested and inappropriate evidence. The approach taken by the Council runs counter to paragraph 85 of CLG's CIL Guidance: there has been no proactive engagement by the Council with those developers relevant to the formulation of the strategic site appraisals.

10.5 Paragraph 7.6 of the Study explains, fundamentally, that the appraisal modelling has assumed: the value of the completed development less the development costs exclusive of land. It is unclear how these have been derived. As a general point, if one is to fulfil the requirements of the CIL Guidance (paragraph 27) then analysis of strategic sites, if it is to have any meaningful conclusions, cannot be based upon sweeping generic appraisal inputs / assumptions. Paragraph 7.11 is a good illustration of the problem. It explains that BNPP has estimated the existing use values of each of the strategic sites and a generic 20% premium to the value, in addition to a 20% buffer to account for individual site constraints. This is artificial insofar that, as explained above, it does not benefit from engagement with relevant site owners and has not been informed by an analysis of the cumulative policy burden for each site.

10.6 At paragraph 7.14 of the BNPP study, reference is made to the exclusion of sites that are unviable prior to the implementation of CIL. That is to say that a development site with a residual land value £1 less than the benchmark land value is unviable. It is not unusual for larger sites to be unviable on a present day basis given the often onerous enabling and exceptional costs that these sites derive. The use of more innovative modelling techniques is being used on a number of larger sites to agree S106 obligations that on a present day basis appear unviable. This approach is supported by the RICS. The imposition of CIL at the proposed rates will inhibit the ability of these sites to come forward. It is not clear as to the number of sites that have been discounted or how unviable they are considered to be.

10.7 In respect of paragraph 7.15 and CIL as a percentage of the total development costs, we would agree that on a straight percentage basis the figures appear relatively low. However the analysis doesn't take into consideration that the additional cost is an upfront liability which adds to the funding cost and increases the peak borrowing requirement. The capital amount on the larger sites runs into tens of millions of pounds alongside Crossrail requirements, Mayoral CIL, affordable housing and residual planning obligations. There is a cumulative impact which is not recognised.

10.8 As such, we would question the robustness of paragraph 7.16 noting the comments above as an appropriate level of due diligence as not been undertaken in regard the costs of bringing forward the strategic sites.

10.9 The appraisals at Appendix 5 are high level summaries. They are difficult to analyse since whilst the individual inputs have been provided the summaries showing the full capital costs and values are excluded and as such it is not possible to understand how the models have been created, albeit we have used the BNPP inputs but derived differing residual outputs. A request has been made to the Council for this information (see letters attached), but it has not been forthcoming. It would be helpful if the Council were to provide a list of all the inputs and outputs for each appraisal so that it is possible for site owners to test these assumptions against their own data and knowledge.

11.0 Other

11.1 Mayor of London CIL: the assumptions for the timing of the payment of the Mayoral CIL appear to be incorrect and have not been accurately reflected in the cash-flows of the various site appraisals contained in the Council's Viability Study. Mayoral CIL has not been 'plugged-in' to the appraisals as a development cost, which it is. As a result, the appraisals do not consider the financial impact and demands of the Mayoral CIL on project financing, particularly on cashflow. Also, the appraisals do not take into account the payment structure for the Mayoral CIL as set out in the Draft SPG: 'Use of planning obligations in the funding of Crossrail and the Mayoral Community Infrastructure Levy' (November 2012).

11.2 Mayor of London Crossrail tariff: paragraphs 2.9-2.16 of the Viability Study explains that the Mayor's Crossrail tariff has been taken into account. This is not particularly clear from the various appraisals and needs to be clarified.

<u>End.</u>

ENCLOSURE B:
STRATEGIC SITE APPRAISAL FOR WOOD WHARF

Appendix 5 of the BNP Paribas 'Community Infrastructure Levy: Viability Study' (March 2013) includes a high level summary appraisal for Wood Wharf. This has not been prepared through any engagement with CWG. The appraisal relies upon a series of broad-brush generic inputs and assumptions. These do not provide appropriate evidence. The Council cannot rely upon the summary appraisal as a reflection of the actual circumstances under which the Wood Wharf site would be delivered.

Wood Wharf is an important site both in delivering the objectives of the London Plan (it is located within the Isle of Dogs Opportunity Area) and the LBTH Core Strategy / Managing Development Document (it is allocated as a strategic site and is expected to contribute substantially to housing and job targets). The site benefits from a suite of specific planning policy and guidance, particularly relevant is the allocation within LBTH Managing Development Document and the adopted Wood Wharf Masterplan (2003).

The site allocation provide in the LBTH Managing Development Document is, in summary, as follows: *"A comprehensive mixed use development opportunity required to provide a strategic housing development, an Idea Store, a health facility and a district heating facility (where possible). The development will also include a substantial amount of commercial floorspace and other compatible uses."*

The comprehensive redevelopment of Wood Wharf is dependent on overcoming a number of major constraints and requires significant upfront enabling site preparation and infrastructure costs. These need to be taken into account in any appraisal of the site.

Given the strategic nature of the site and associated policy / guidance requirements, Wood Wharf is expected to deliver substantial planning and community benefits (e.g. an Idea Store, health facility, publicly accessible open space, activated waterspace, a new canal link). The manner in which these benefits will be delivered and their associated costs needs to be taken into account by the Council at the CIL setting stage.

In the context of the above, DS2, with the assistance of CWG on a number of the major cost items, has set out below a number of detailed comments in relation to the BNP Paribas high level appraisal.

It is concerning that the strategic appraisals are consistent in terms of their inputs with the 'standard' development appraisals. There is no recognition of the differing dynamics between the two types of development. In particular, there are significant areas of concern related to development type and quantum, development efficiency, core and exceptional build costs and land value. The following table provides a review of the BNP Paribas inputs with comments provided alongside. These comments are provided on a without prejudice basis.

Viability Input	BNPP Assumption	DS2 comment
Site area	Gross 7.26 ha, net 6.46 ha	Gross figure from LBTH Development Management DPD Site Allocation. Question in regard the approach to deriving net site area. Please can this be clarified by the Council / BNP Paribas? In particular, why has site area for a health facility been removed? Land will not be transferred to the Council for this.
Density	464 u.p.ha	How has this been derived? What assumptions has BNP Paribas made to conclude this level of density?
Land use mix	Residential, commercial and health facility	Site allocation also includes an Idea Store. As above, question in regard how the provision of a health facility has been accounted for.
Development Quantum	2,960,942 sq ft GIA residential, 2,906,280 sq ft offices and 290,628 sq ft retail	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made?
Unit mix	10% 1 bed 25% 2 bed 30% 3 bed 35% 4 bed	Please can the Council / BNP Paribas clarify how this development quantum has been derived and what assumptions have been made? A different approach to unit mix appears to have been taken to each of the strategic sites.
Gross to net ratio	82%	Previous scheme sub 65% A typical mixed use scheme would be in the region of 70%.
Private sales rate	£700 psf	Reasonable
Affordable Sales rate	£171 psf	This is a reasonable assumption based on LBTH's position on Affordable Rent, GLA caps on intermediate provision affordability and zero grant

Car parking income	£15,000 per space	On the low side, £25,000 per space is reasonable
Ground rent income	£4,500 per private dwelling	Reasonable
Retail income	£30 psf, 6.25% yield and 18 months' rent free	Reasonable
Office income	£35 psf, 6.25% yield and 18 months' rent free	18 months' rent free is a little light. 24 more reasonable for a short tenure lease, or 36 for longer duration
Contingency	5%	Higher figures have been accepted elsewhere for complicated (strategic) construction projects. Please see comment on construction costs below.
Private residential profit	20% on value	On this multi phased project, with high up-front costs, a 20% unlevered IRR would be more reasonable.
Affordable profit	6% on value	See above for IRR comment for project as a whole.
Commercial property profit	Not stated	See above for IRR comment for project as a whole.
Build costs	£177 per sq ft residential; £200 psf offices; £150 psf retail	The residential costs are significantly below our current experiences of similar sized schemes across London. £220 to £250 psf on the GIA (exclusive of external works) is a more realistic figure once basement areas are considered.
Exceptionals / Abnormals	£14,987,000	This is an inadequately serviced plot, requiring significant investment in bridges, roads, flood defences, utilities, stat connections, water-frontage etc. A figure between £100m and £150m would be more reasonable (before basements).
Marketing	1.5%	2% accepted elsewhere for residential and circa £1.50 psf for retail / offices

Sales agent	1%	2% for joint agency residential instruction
Sales legal fee	0.25%	Reasonable although up to 0.5%
Letting fee	10%	Joint agency instruction (which is applicable to this scale of development) would be 15%
Professional fees	10%	12% to 14% for strategic development given the inherent complications
Finance	7%	Low for all-in finance costs once arrangement fees and commitment fees are included. However, as above, scheme should be appraised on unlevered IRR
Planning Obligations (s106 and s278)	£1,220 per unit	It requires an analysis that is site specific and an understanding of the cumulative burden of planning policies and guidance
Site Value	CUV of £112m	BNPP figure needs explanation. No reference to NPPF para 173 or requirement to sense check against market evidence

Planning Consultants

22 April 2013

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Dear Anne-Marie,

Consultation on the Community Infrastructure Levy (CIL) Draft Charging Schedule: Request for Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard

Thank you for your letter of today in relation to the Council's public consultation on its proposed CIL Draft Charging Schedule. We note that this includes an updated Viability Study (March 2013) prepared by BNP Paribas. This Study now includes viability information for Strategic Sites at Chapter 7 and Appendix 5.

DP9 is instructed – alongside development viability specialists DS2 – to undertake a review of the Draft Charging Schedule on behalf of Canary Wharf Group and Bishopsgate Goods Yard Regeneration Limited. We are, therefore, particularly interested in the viability work that BNP Paribas has undertaken for two of the Strategic Sites: Wood Wharf and Bishopsgate Goods Yard.

Appendix 5 of the updated Viability Study includes high level appraisal inputs and a residual land value for each of the Strategic Sites. We request that BNP Paribas and the Council make available copies of the Argus Summary Appraisal printouts that have been used to calculate the residual land values for each of the Strategic Sites, in the same way that they have been provided, for example, in the Viability Study undertaken by BNP Paribas in support of the London Borough of Southwark CIL Draft Charging Schedule. Given the scale and complexity of development allocated to come forward within the Strategic Sites, analysis of the appraisal inputs as currently presented in Appendix 5 of the Viability Study without reference to the cost and value capital amounts that are generated is insufficient to enable a proper analysis of the Council's evidence base.

We trust that the Argus Summary Appraisals for Wood Wharf and Bishopsgate Goods Yard are readily available. We ask that these be issued to us promptly given their importance in determining the nature and content of representations to the Draft Charging Schedule.

Should you have any queries in relation to the content of this letter please do not hesitate to contact Craig Tabb of this office.

Yours sincerely,

DP9

Development Consultants

DS2

PL/ds
13 May 2013

[redacted]

By email only

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Dear [redacted],

LONDON BOROUGH OF TOWER HAMLETS – COMMUNITY INFRASTRUCTURE LEVY (CIL) DRAFT CHARGING SCHEDULE

Thank you for providing a copy of Anne-Marie Berni's letter of 3rd May 2013 in response to DP9's request for additional information (letter of 22nd April 2013) relating to the strategic site development appraisals included as part of the BNP Paribas Viability Study (March 2013).

We have recreated the appraisals for Wood Wharf and Bishopsgate Goods Yard using the BNP Paribas inputs as suggested. However, we have not derived the same residual outputs. This is not surprising and could be for a number of reasons. We would anticipate that the variations in residual land value are likely caused by differences in timings, phasing and the inclusion in a number of the appraisals of significant tranches of commercial property income. The timing of all of these has an substantial impact on the costs of funding projects and the subsequent profitability, viability and deliverability of development.

If the appraisal summaries were provided, as has been done by BNP Paribas in the London Borough of Southwark in their equivalent CIL viability assessment, it would allow us to compare the headline costs and values and understand where the variations are in the models.

Therefore, we would be grateful if you would pass on our request for the appraisal summaries and summary cash flows so that we can interrogate the models thoroughly. Please let me know if anything is unclear.

Yours sincerely,

[redacted]