



City of Westminster

Cabinet Report

Decision Maker:	Cabinet
Date:	20 February 2017
Classification:	For General Release
Title:	Governance of the Westminster Community Infrastructure Levy (CIL) and Pooled Section 106 Resources
Wards Affected:	All
Financial Summary:	Westminster's CIL is projected to raise average revenue of around £17.5 million per annum across the development cycle. The City Council is able to retain 5% of its own CIL receipts and 4% from the Mayoral CIL receipts it collects for administration, monitoring, collection and reporting purposes. The CIL governance procedures outlined in this report are, therefore, being developed and will be implemented through these existing resources.
Report of:	Director of Policy, Performance and Communications

1. Executive Summary

- 1.1. This paper sets out for approval by the Cabinet proposed governance arrangements for the Westminster Community Infrastructure Levy (CIL) and the remaining 'pooled' resources secured through section 106 agreements. In particular:
- 1) Proposed governance structures at Member and officer levels.
 - 2) Governance of CIL spend; including the process for the "neighbourhood portion" of CIL. The proposals include setting 'indicative proportions' of spend of CIL revenues for particular types of infrastructure; preparation of a policy statement on spending of CIL resources (including the approach to the 'neighbourhood CIL') and the role of ward councillors.
 - 3) Improvements to governance of resources secured through 'pooled' section 106 agreements

- 1.2. In 2016 the Government commissioned a 'review team', chaired by Liz Peace (former Chief Executive of the British Property Federation), to review the CIL. Their report - A New Approach to Developer Contributions - a Report by the CIL Review Team, was published on 7th February 2017 alongside the Housing White Paper. As expected, the review has resulted in proposals for reform of CIL rather than simply abolishing it. The recommendations are considered to allow local authorities to take advantage of the best elements of the existing CIL and section 106 regimes. The recommendations encourage a three tier system by making provisions for:
 - (i) A low level Local Infrastructure Tariff (LIT)
 - (ii) Section 106 (S106) on large/strategic sites (in addition to LIT)
 - (iii) A Strategic Infrastructure Tariff (SIT) – for combined authorities (and, presumably, the Mayor of London) - and in addition to LIT and, where applicable, S106.
- 1.3. The Report recommends that sufficient transitional arrangements are put in place and that this should be completed by 2020. This would require new legislation. However, there is a suggestion that amendments to the CIL regulations could be made as an interim measure to address the most immediate issues. The Government are to consider options for reforming both the CIL and s106 agreements and are to make a further announcement in the Autumn Budget.
- 1.4. Officers will be considering the detailed recommendations of the Review Team's report and will make comments to Government. In general, simplification of the system would be welcomed, as would the arbitrary restriction preventing both CIL and s106 being used for the same infrastructure. However, it will be important to ensure that one set of complexities are not simply replaced with new ones. This report, therefore, deals with the position before any changes are made to the CIL and s106 and it is likely that revised proposals have to be brought forward to reflect changes to the CIL and s106 in due course.

2. Recommendations

- 2.1. Cabinet is asked to agree that:
 - a) The Leader appoint a Cabinet CIL Committee, to be chaired by the Cabinet Member for Planning and Public Realm and with a membership to be appointed by the Leader with the following terms of reference, to provide member oversight of implementation and collection of CIL, to take decisions on spend proposals submitted by the officer working group or to refer decisions to Cabinet as appropriate.
 - b) An officer working group is established to oversee administration and governance of the CIL, to give initial consideration to proposals for spending CIL revenue and to make recommendations to the Cabinet CIL Committee.

- c) The initial indicative CIL allocation set out in Table 2 in this report is adopted, subject to revision by the Cabinet CIL Committee (if this proves necessary to deliver the council's policy priorities).
- d) That the officer working group should draw up a Policy Statement on the administration and allocation of CIL (including the "neighbourhood portion") for approval by the Cabinet CIL Committee dealing with the matters outlined in paragraphs 6.8-7.10 of this report.
- e) The arrangements for governance of the neighbourhood portion of CIL outlined in section 7 of the report be approved.

3. Reasons for Decision

- 3.1. Clear and transparent CIL and 'pooled' Section 106 governance mechanisms will ensure robust and effective expenditure and reporting in line with the Community Infrastructure Levy Regulations 2010 (as amended) and in accordance with the Council's framework for resource allocation and management.

4. Westminster Community Infrastructure Levy

- 4.1. Westminster's Community Infrastructure Levy (CIL) came into effect on 1st May 2016. It operates on the basis that liability to pay arises as planning permission is granted; at that stage the council issues a "liability notice". The requirement to pay arises when development commences, at which point a "demand notice" is issued. At the time of writing this report the council has issued 101 liability notices for a total amount of £23,298,273 and 18 demand notices for a total amount of £7,283,030. Of this sum, a total of £451,598 has been paid and there is, therefore, currently an outstanding sum of £6,831,432 payable by mid-March 2018.
- 4.2. Revenue projections suggest that the CIL could raise an annual average of around £17.5 million (how much is raised in a particular year depends on the level of development – in the eight year period modelled the sums paid in individual years varied between £5-£30 million). As CIL is not paid until development starts it will take some time for significant resources to be accrued – particularly in light of uncertainty about the commercial real estate sector in light of last June's European Union referendum result, which does appear to have had an effect on how quickly developments are being commenced after planning permission is granted.
- 4.3. The governance of Westminster's CIL (its collection, spend, monitoring and reporting) has been of increasing interest to landowners, developers, neighbourhood forums, infrastructure providers and other agencies and stakeholders. As there will not be significant receipts in the first twelve months, governance arrangements are likely to be *ad hoc* to start with; this allows a little time to bed them in.

- 4.4. For governance purposes, Westminster CIL receipts can be broken down into three distinctive portions: the 'City CIL', the 'Neighbourhood CIL' and the 'CIL Administration', as shown in Table 1 below:

Table 1: 'Portions' of Westminster CIL Receipts

Portion	Percentage of receipts	Process
City CIL Strategic Portion	70 - 80%	Spend decided by Council according to its strategic infrastructure priorities Spend can be anywhere within Westminster - or outside – providing the infrastructure funded is required to support development in Westminster.
Neighbourhood CIL Portion	Currently 15% of CIL collected in respect of development in each neighbourhood capped at £100 per council tax dwelling. This increases to 25% (uncapped) in places <u>where a neighbourhood plan is in place.</u>	<u>Queen's Park:</u> neighbourhood portion passed to the Community Council who spend it. <u>Elsewhere:</u> funding retained by the Council and spent by it in consultation with the neighbourhood communities in which development paying a CIL has taken place.
CIL Administrative Expenses Portion	5% of CIL collected	Spend applied to costs of administrative expenses for collection and enforcement in line with legal restrictions on the use of this funding. (NB 4% of the Mayoral CIL collected by the council can also be retained for this purpose).

- 4.5. This Cabinet report draws on experience of other CIL charging authorities and CIPFA/SOLACE guidance on the principles of CIL and financial governance. The governance proposals are intended to ensure transparency and effective identification and management of risk.

5. Proposed CIL Governance Structures

Cabinet CIL Committee

- 5.1. It will be important to ensure there is a clear process for taking decisions on CIL spend, particularly to ensure they are taken in ways that meet the Council's strategic priorities and in line with its wider resource allocation processes - while also ensuring sufficient flexibility to address changing priorities and programmes. However, requiring all CIL decisions to be taken by the whole Cabinet would be an unduly cumbersome mechanism to deal with what are likely to be in the main largely routine matters.
- 5.2. It is, therefore, recommended that a Cabinet CIL Committee should be established. Under the Council's Constitution, the Cabinet Member for Planning and Public Realm has responsibility for any matters relating to the administration of the Community Infrastructure Levy as a collecting authority on behalf of the Mayor and implementation of Westminster CIL. This includes administering the

distribution of appropriate funds to parish councils/neighbourhood forums. Given this it is suggested that, subject to the agreement of Cabinet and subsequent formal appointment by the Leader, the Cabinet CIL Committee should be chaired by the Cabinet Member for Planning and Public Realm. If a Cabinet CIL Committee is approved, the Leader is asked to decide on the full membership of the Committee. Meetings of the Committee will be held in public as required including notification in accordance with the Council's Consultation and Statutory requirements.

- 5.3. It is recommended that the Cabinet CIL Committee be established on the basis that its Chairman would be able to recommend that strategic and/or significant cross-portfolio decisions should be referred to the full Cabinet for discussion and decision.
- 5.4. This approach would allow for a more managed approach to decision-making, with meetings arranged as and when required at various stages of the annual cycle. The Cabinet CIL Committee would take decisions on CIL spend proposals, provide member oversight of the engagement processes with neighbourhoods and others; agree the Regulation 123 list of infrastructure that might be funded through CIL (see below); receive monitoring reports on CIL collection; and steer the two-yearly reviews of the Westminster CIL already committed to.

Officer Working Group.

- 5.5. It is proposed that the Cabinet CIL Committee should be supported by a working group of senior council officers, chaired by the Head of City Policy and Strategy. This will:
 - Develop a policy approach and process for the allocation of CIL – both the City and Neighbourhood portions - including oversight of engagement with ward members, neighbourhoods, BIDS, local partnerships and other stakeholders;
 - Oversee the preparation, consultation on and publication of the statutory list of infrastructure that CIL might be used to fund (commonly known as “the Regulation 123 list”, for the relevant provision of the CIL Regulations);
 - Consider project recommendations from across all service areas (and, where appropriate, external infrastructure providers); ensure they are consistent with City for All, the Westminster City Plan, West End Partnership Delivery Plan, Greener City Action Plan etc.; and prioritise those which would be recommended for funding in line with the allocation policy. Proposals will only be considered if they are accompanied by a record of the prior approval of the relevant Cabinet Member(s);
 - Oversee the engagement and allocation processes for the Neighbourhood CIL (see Section 7 of this report);

- Make recommendations to the Cabinet CIL Committee (explained in the next section) about the allocation of Neighbourhood and City CIL; and
 - Ensure CIL allocations and expenditure are implemented and reported in line with legislative requirements.
- 5.6. The working group has been operating in shadow form since July 2016 and once formally approved will agree a regular programme of meetings to ensure it provides effective support to the Cabinet CIL Committee.
- 5.7. It is proposed that the Cabinet CIL Committee and senior officer working group will also oversee allocation of pooled Section 106 funding of a 'strategic nature', where an existing s106 'pot' (like the Paddington Social & Community Fund) has been established and specific projects have yet to be defined. This will help ensure transparent decision making - in line with Cabinet Members' and ward councillors' priorities.
- 5.8. The officer working group will be administered by the council's Policy, Performance and Communications Directorate. It will comprise senior representatives from Corporate Finance, Legal Services and "spending directorates" (i.e. Growth, Planning and Housing, City Management and Communities, Public Health, Children's and Adults' Services and Libraries). The working group will, as appropriate, call on external partners and partnerships such as City West Homes, the West End Partnership and infrastructure providers like Transport for London, as required.
- 5.9. The officer working group would work on an annual cycle for estimating likely CIL spend, overseeing the process of engagement with neighbourhoods, infrastructure providers and other external stakeholders and organising the process for collection and approval of CIL. It would report to the proposed Cabinet CIL Committee on (at least) a quarterly basis. These reports will:
- Seek the Cabinet CIL Committee's approval for spending decisions;
 - Make recommendations to the Cabinet CIL Committee for revision of the "Regulation 123" list of infrastructure that could be funded through CIL ;
 - Report on the engagement process, and;
 - Provide information about the amounts of CIL collected and prospective future income.

At the end of each financial year the officer working group will also prepare the statutory monitoring reports on amounts collected and what CIL has been spent on.

- 5.10. These arrangements will be organised to ensure decisions about CIL are linked with those on the Council's Capital Programme and are aligned with its financial

Medium-Term Planning (MTP). At the same time they will ensure sufficient flexibility to deal with priorities arising during the course of the year and to manage large, multi-phase projects where details and profiling of spend may have to change as they proceed.

6. Governance of City CIL - the “City Portion”

- 6.1. This section deals with decisions on spend of the 70-80% of CIL revenue the Council has sole and direct control over – the “City Portion”. Under the legislation this must be spent on *“the provision, improvement, replacement, operation or maintenance of infrastructure to support the development”* of Westminster. There is, however, no need for a “hard” distinction between this and the ‘Neighbourhood Portion’ dealt with in the next section; money from both “portions” can be used for the same project if it has benefits for the neighbourhood(s) concerned. In practice it is likely that many neighbourhoods will look to the council to “top up” their neighbourhood portion to pay for larger items, particularly while the neighbourhood portion is capped before a neighbourhood plan is in place.

Indicative CIL Allocation “Pots”

- 6.2. Although there is no legal requirement to do this, it would help communicate the Council’s intentions to landowners, developers, residents and other stakeholders if the Council sets out indicative proportions of CIL spend on particular infrastructure categories. It also provides a framework for discussions with neighbourhoods.
- 6.3. If the council were to take this kind of approach indicative “pots” could be identified based on infrastructure types or policy themes, the size of projects or service areas. Whatever categorisation is chosen, there will need to be a clear link back to the Strategic Infrastructure Plan underpinning the Westminster City Plan (i.e. infrastructure that can, on the basis of a reasonable evidence base, be shown to meet the legal test of being required to support development). Within this it will also be important to relate spending decisions to strategic documents such as those mentioned above, which will explain how the objectives and policies in the City Plan are to be translated into more practical action. For example, in taking forward public realm projects that support more sustainable modes of travel and deliver wider environmental benefits such as improved air quality and noise reduction.
- 6.4. It is also important to bear in mind that the greater the disaggregation of CIL, the more difficult it becomes to deliver infrastructure– resources should not be sliced so many ways that meaningful infrastructure delivery is impossible and governance overly complicated.
- 6.5. Therefore, it is recommended that ‘pots’ should be linked to the types of projects identified through the Council’s infrastructure planning process. Of the 189 infrastructure projects identified in the current Strategic Infrastructure Plan, the

breakdown (both by number of the projects that could be funded from CIL and by the value of those projects as a percentage of the total cost) is shown in Table 2 below.

Table 2: Westminster Strategic Infrastructure Plan, Addendum 2014

Category	% of projects potentially CIL fundable	% of total cost 2012-31
Education	8%	7%
Emergency Services	2%	0%
Health	5%	4%
Community Services	8%	1%
Parks and open spaces	5%	3%
Public realm	43%	23%
Sport and Leisure	2%	3%
Transport	17%	13%
Utilities/Waste*	8%	47%

* “Utilities/Waste” projects include a number of expensive water and sewerage projects, including the Thames Tideway Tunnel, which explains why they represent such a high proportion of the total value. It is unlikely that Westminster’s CIL income will provide funding for these projects to any significant extent.

- 6.6. Table 3 below sets out a recommended allocation across potential “pots” based on this information, including a rough estimate of the cash amounts that might be involved in an “average” year (including both City and Neighbourhood CIL, but net of the 5% administrative portion).

Table 2: Recommended CIL allocation “pots” (NB these figures do not sum because of rounding)

“Pot”	Suggested allocation	Estimated cash amount in an average year
Public realm/transport	50%	£8.3m
Health and Community Services	10%	£1.7m
Education:	5%	£0.85m
Parks/Sport and Leisure	5%	£0.85m
Utilities/waste	10%	£1.7m
Members Priorities/ contingency	20%	£3.4m

- 6.7. The above figures reflect the position at the time the update to the Strategic Infrastructure Plan was prepared (2014) and can be varied to reflect changing needs and priorities as the Plan is updated. It will be important to be clear,

however, that they are entirely matters for the city council to decide and the council can change the pots or the proportion of revenue allocated to each without having to go through any formal process. It should also be stressed that:

- “Pots” have been identified in the interests of transparency, to help administer CIL and to allow project planning for relevant service areas;
- They are indicative, and the council can reserve its right to depart from them if that proves necessary (because there is a major project requiring funding in a particular year, for example);
- They are broad allocations - in practice there are likely to be overlaps between them;
- They will be kept under review and might be changed if experience suggests this would be sensible;
- Allocations between pots would be considered alongside preparation of the “Regulation 123 list” of infrastructure that CIL might be used to spend; and
- An updated Strategic Infrastructure Plan will be required to support revisions to the Westminster City Plan and priorities may need to be reviewed in light of this and changes to other strategy documents.

6.8 The Full Council meeting on 25th January 2017 approved a motion dealing with health and social care in Westminster and the North West London Sustainability and Transformation Plan (STP). This included a reference to dedicating CIL and section 106 funds, particularly from health and social care development sites, to help develop the infrastructure for health and social care integration in Westminster and asked officers to report thereon to the relevant Cabinet Member. It is important to note that health and social care developments do not pay Westminster CIL (and the former do not pay Mayoral CIL either) and it will be extremely rare for section 106 contributions to be paid by developments of this kind that can be used for these purposes. Notwithstanding, it is proposed that there will be an indicative “pot” for health and social care infrastructure (see Table 2), which meets part of the motion. The Council is legally required to report annually on the projects it funds using CIL income.

CIL Spending Policy Statement

6.9. A CIL Spending Policy Statement is recommended by national guidance as a way of informing internal decision-making and engagement with neighbourhoods and other stakeholders. Such a Policy Statement would include a set of principles to underpin decision-making, thus making it clear that spend decisions will be:

- *Plan-led* - in Westminster this would involve using the principles and policies in the Westminster City Plan, the London Plan and accompanying Strategic Infrastructure Plan as the guiding framework for investment with City for All and other strategy documents providing more detailed objectives to determine spending decisions;
- *Priority driven* - striking an appropriate balance between strategic and more locally-based place-making infrastructure to support the development of Westminster and its neighbourhoods and help address the demands this will place on an area – strategic documents like the Greener City Action Plan, West End Partnership Delivery Plan and the Health & Wellbeing Strategy could provide a helpful framework for this to be done;
- *Time-focussed* - ensuring the right infrastructure is provided at the right time, ensuring that the necessary design work is undertaken and other barriers to delivery are addressed;
- *Forward-looking* - ensuring that, where necessary, funding is accumulated over time to pay for really “big ticket” items, and;
- *Cost effective* – seeking to maximise leverage, looking for opportunities to maximise the scope for using CL/s106 to lever in resources

6.10. It is recommended that a Westminster CIL Spending Policy Statement should address these points and also make it clear that decisions will be based on *additionality* (i.e. ensuring CIL does not simply become a substitute for other, existing sources of funding). Government guidance is clear in that CIL should not be used to remedy pre-existing deficiencies, unless these will be made more severe by new development.

6.11. This kind of approach, explaining the basis on which CIL funding priorities and decisions will be decided on, would support the broad allocation of CIL to the infrastructure ‘pots’ suggested in the previous section. Together, these would help support our engagement with neighbourhoods and communication with developers and other stakeholders, showing that decisions will be made based on a consistent set of principles aimed at ensuring delivery of the council’s policies and priorities and in ways that deliver the objectives behind the CIL. It would also give an opportunity to set some ground rules for administering the Neighbourhood CIL, dealt with in the next section.

7. Governance of Neighbourhood CIL

7.1. This section deals with the portion of CIL that the Council is required to identify for spending in agreement with neighbourhood interests. This can be spent on infrastructure – but also anything else concerned with addressing the demands that development places on an area. This portion is 15% of the CIL paid by development in each neighbourhood, capped at £100 per Council Tax dwelling

each year while there is no neighbourhood plan in place. When a neighbourhood plan is in place the portion increases to 25% uncapped. To date, no neighbourhood in Westminster has a neighbourhood plan in place.

- 7.2. Under the CIL Regulations, the neighbourhood portion is retained by the City Council and it takes the formal spending decisions. The sole exception to this is the Queen's Park Community Council where the neighbourhood portion is paid directly to them and they take the decisions on spend. In practice the level of development in the Queen's Park area means that the sums involved are likely to be small (on the basis of modelling the last three years c£10-15,000 pa).
- 7.3. In other neighbourhoods, the CIL Regulations do not prescribe a process for agreeing *how* the neighbourhood portion should be spent. The National Planning Practice Guidance says that:

“Charging authorities should set out clearly and transparently their approach to engaging with communities... [They] should use existing community consultation and engagement processes. This should include working with any designated neighbourhood forums preparing neighbourhood plans that exist in the area, theme specific neighbourhood groups, local businesses (particularly those working on business led neighbourhood plans), and using networks that ward councillors use. Crucially this consultation should be at the neighbourhood level. It should be proportionate to the level of levy receipts and the scale of the proposed development to which the neighbourhood funding relates. In deciding what to spend the neighbourhood portion on, the charging authority and communities should consider such issues as the phasing of development, the costs of different projects, the prioritisation, delivery and phasing of projects for delivering development that the area needs. The charging authority and communities may also wish to consider appropriate linkages to the growth plans for the area and how neighbourhood levy spending might support these objectives.”

Proposed approach to neighbourhood CIL

- 7.4. Experience across London is that the boroughs have taken different approaches to neighbourhood funding. Most will have significantly lower CIL receipts and far fewer neighbourhoods than Westminster. The approach taken in Westminster will need to take account of the potentially larger sums involved, greater needs for infrastructure and the priorities of neighbourhood forums, other local partners and strategic partnerships. In view of this, it is recommended that the following principles should be applied to the neighbourhood portion:
- Given the link with neighbourhood planning the 22 currently approved neighbourhoods should be used as the spatial framework for decision-making for the neighbourhood portion. This avoids 'reinventing the wheel' as

neighbourhoods have been recognised for almost the whole of the City (other than the Aldwych/ Strand/ Covent Garden /Chinatown /Leicester Square /Whitehall /Millbank/Vincent Square areas).

- In those areas without neighbourhood forums there will still be a need to engage with local community and business interests. For example, the business improvement districts (BIDS) in the area will have a particularly important role.
- National guidance implies an inclusive rather than an exclusive approach to engagement. Therefore, the council cannot simply confine itself to engagement with neighbourhoods. There will be some stakeholders, like BIDs, whose boundaries will not coincide with those of the neighbourhoods.
- Neighbourhood spending decisions should be taken within a strategic context. Neighbourhoods are, in effect, becoming, involved in infrastructure planning, which will require engagement with infrastructure providers and the council providing contextual information and policy frameworks based on City for All, the Westminster City Plan, the London Plan and the West End Partnership (WEP) Delivery Plan, etc.
- There is no requirement to have the same neighbourhood CIL allocation process in every part of the City. It may make sense to allow different approaches reflecting the level of development which will drive the amounts of Neighbourhood CIL and spending needs. In some cases it may make sense to suggest that groups of neighbourhoods come together to engage on these issues – some neighbourhoods have already suggested that it would be sensible for those in the 'West End' to do this. This would help make the process more manageable and easier to align with the WEP Delivery Plan.

Ward Members

- 7.5. Although Westminster's almost complete coverage by designated neighbourhoods, some of which are now starting the process of preparing neighbourhood plans, means that it is likely that spending priorities will emerge from the neighbourhood planning process, ward councillors will have a vital role to play given their democratic accountability and knowledge of local needs and circumstances. As the national guidance quoted earlier points out, they will also be able to help both the council and neighbourhoods ensure that the engagement process is comprehensive, effective and timely.
- 7.6. It is recommended that ward councillors should be given the opportunity to comment on all proposals made by neighbourhoods (or by individuals/groups) covering their wards, with their views being reported to the Cabinet CIL Committee so they can be taken into account when final decisions are made. It is recommended that this would be on the basis that the support of at least two of

the three councillors from each ward affected would be required for a proposal to proceed, notwithstanding that the Cabinet Committee is the decision making body. This would help to ensure that the proposals coming forward have wide local support. Ward councillors could also be empowered to put forward proposals of their own, again on the basis that support from two of the three councillors in the relevant ward(s) would be required.

Guidance for neighbourhoods

- 7.7. It will be important to be clear to our neighbourhoods and local communities about how the process for allocation of neighbourhood funding will work - its timing and the process for engagement and agreement of projects. The CIL Policy Spending Statement referred to earlier will help with this, but there are a number of general messages that will need to be communicated:
- As required by law, every CIL spending decision will be made by the council on its merits and in accordance with the legal requirements governing council decisions. There should not be an expectation that proposals made by neighbourhoods will be automatically agreed;
 - In the short to medium term, the amounts of Neighbourhood CIL are likely to be small as it will take some time for receipts to accrue. Even then, individual neighbourhood portions may not be large. This may well mean neighbourhoods working with each other and with the council to mobilise sufficient resources to fund projects, and;
 - In all cases the council will (in line with national guidance) expect there to be a link between its priorities and policies and those of the Neighbourhood Forums identified through the neighbourhood planning process as this will enable a properly structured approach taking account of both City-wide and local objectives.
- 7.8. If Cabinet is in agreement with this general approach, officers would prepare guidance as part of the statement referred to earlier in this report setting these principles out and explaining the process that should be followed by neighbourhoods to make proposals. Officers will also hold a briefing workshop to explain the process to the neighbourhoods.
- 7.9. The CIL Spending Policy Statement referred to earlier would be used to set the criteria against which neighbourhood proposals for CIL spending will be assessed (so providing a 'checklist' that neighbourhoods and others can use to identify things that it would be sensible to propose). In addition to the statutory test it is recommended that these should include:
- Is the proposal supported by at least two of the councillors from each of the ward(s) concerned?

- Does it support delivery of a specific City for All commitment or objective?
- Is it identified in the City Plan, London Plan, a relevant neighbourhood plan or other strategic document or action plan?
- Can it be shown to support the growth plans for Westminster as a whole and for the neighbourhood in particular? Has there been engagement with adjoining neighbourhoods?
- Can it be shown to have the support of local residents and businesses generally?
- Is it providing new infrastructure/facilities rather than remedying pre-existing deficiencies? (national guidance suggests CIL is intended to focus on new infrastructure)
- Are there sufficient CIL funds available for the project? Would it involve a continuing revenue cost to the City Council?
- Is it shown to be value for money? Would CIL funding help lever in resources from other sources?
- Has it been shown that there are no other sources of funding for the proposal?
- Has a feasibility study been undertaken and is there evidence that the proposal could be started within twelve months of the decision to grant funding and be completed within a reasonable period?
- Does it have the support of the relevant infrastructure provider (e.g. Transport for London)?

7.10. A minimum financial threshold for the value of a proposal could also be set. This would ensure that the Neighbourhood CIL is allocated to projects of a kind and scale that will have appreciable benefits in terms of supporting growth and meeting the demands of development. For example, both LB Wandsworth and LB Camden have set indicative thresholds of £20,000 and £5,000, respectively.

8. Improving governance of ‘pooled’ section 106

8.1. The introduction of new governance arrangements for CIL provides an opportunity to better coordinate the council’s approach to section 106 agreements and, in particular, in the way that it manages and allocates ‘pooled’ s106 income to deliver wider corporate priorities. There is also an opportunity to improve the way that section 106 ‘asks’ are coordinated so that priorities are identified at the appropriate senior officer level before being approved by the Cabinet Member for Planning and Public Realm. To this end it is recommended that the senior officer working group would coordinate and provide advice on:

- Corporate section 106 priorities (for example, contributions towards employment brokerage, social and community facilities, local public realm and carbon reduction) to help inform discussions with major developers and landowners at pre-application meetings and the formal planning application and negotiation process. This will require keeping the council’s

supplementary planning document on use of planning obligations and other planning mechanisms up-to-date;

- The links between potential section 106 ‘asks’ and the council’s emerging “Get Involved: Corporate Social Responsibility (CSR) Strategy” currently under development. It is apparent from discussions with landowners, developers, BIDS and individual businesses that corporate social responsibility is high on their agenda and they are looking to the council to provide a more strategic, joined up, approach in their engagement with us, and;
- Ensuring consistency and transparency in the way decisions about allocation and spend of section 106 resources are taken in relation to the allocation of pre-existing strategic “pots” like the Paddington Social & Community Fund. A process for identifying priorities similar to that suggested above for the Neighbourhood CIL would be applied and reported to the Cabinet CIL Committee.

9. Financial Implications

- 9.1. The CIL governance procedures outlined in this report are intended to ensure that decisions about CIL are linked with those on the Council’s Capital Programme and are aligned with its financial Medium-Term Planning (MTP) process. It should be noted that there is an annual income target of £1m to be met from the CIL and s106 administration expenses portion. This is in addition to the standing income target of £0.377m within base budgets.
- 9.2 The City Council is able to retain 4% from the Mayoral CIL receipts it collects and 5% of its own CIL receipts for administration, monitoring, collection and reporting purposes. The CIL governance procedures outlined in this report are, therefore, being developed and will be implemented through these existing resources.

10. Legal Implications

- 10.1. The legislation governing the development, adoption and administration of a Community Infrastructure Levy (CIL) is contained within the Planning Act (2008) and the Community Infrastructure Levy Regulations 2010 (as amended). The associated Government National Planning Policy Guidance is also important in guiding this process. There are other areas of law which should be considered when assessing certain developments for CIL liability and determining the appropriate sum due. These include matters relating to social housing, procurement, charitable institutions and state aid. Further legislative reforms to the CIL regulations are expected shortly as part of a wider review of CIL by government.
- 10.2. Under the Equalities Act 2010 the council has a “public sector equality duty”. This means that in taking decisions and carrying out its functions it must have due

regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the 2010 Act; to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it; and to foster good relations between persons who share a relevant protected characteristic and those who do not share it. The council is also required to have due regard to the need to take steps to take account of disabled persons' disabilities even where that involves more favourable treatment; to promote more positive attitudes toward disabled persons; and to encourage participation by disabled persons in public life. The 2010 Act states that "having due regard" to the need to promote equality of opportunity involves in particular having regard to: the need to remove or minimise disadvantages suffered by persons sharing a protected characteristic; take steps to meet the needs of persons sharing a protected characteristic that are connected with it; take steps to meet the needs of persons who share a protected characteristic that are different from those who do not; and encourage persons with a protected characteristic to participate in public life or any other activity in which participation by such persons is disproportionately low.

- 10.3. The courts have held that "due regard" in this context requires an analysis of the issue under consideration with the specific requirements set out above in mind. It does not require that considerations raised in the analysis should be decisive; it is for the decision-maker to decide what weight should be given to the equalities implications of the decision.
- 10.4. Officers have carried out an equalities assessment of the proposals for governance of the Westminster Community Infrastructure Levy and strategic section 106 funds. In doing so, regard was had to the assessment carried out before formal approval of the council's CIL charging schedule in January 2016. The assessment has concluded that it is unlikely that approval of the governance arrangements outlined in this report will have negative impacts for any group with protected characteristics; use of revenue raised is likely to have positive impacts. All decisions on spending CIL will themselves be subject to assessment to ensure the 2010 Act duties are complied with. The council will review its CIL charging schedule on a biennial basis.
- 10.5. Cabinet Committees are appointed with associated terms of reference and membership by the Leader of the Council upon notice to the proper officer. The Cabinet Committee is then appointed with immediate effect. The Members formally appointed must all be members of the Cabinet, given that executive functions are being exercised. Other Members may attend as observers and contribute as set out in the Council's Standing Orders.
- 10.6. Cabinet Committees are formal decision making bodies and the requirements set out in the Council's Constitution and statute relating to such meetings apply.

**If you have any queries about this Report or wish to inspect any of the
Background Papers please contact:**

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BACKGROUND PAPERS

1. Westminster Community Infrastructure Levy Charging Schedule (2016)