



Tower Hamlets Community Infrastructure Levy: Revised Draft Charging Schedule

**Summary of Consultation Responses to the Draft
Charging Schedule [October] 2013**

1. Consultation on the Draft Charging Schedule

- 1.1 On 22nd April 2013, the Council published the CIL Draft Charging Schedule for Tower Hamlets, in accordance with Regulation 16 of the CIL Regulations 2010 (as amended), for consultation between the 22nd April and 5th June 2013. The following supporting documents were also published:
- Infrastructure Planning and Funding Gap Report, April 2013
 - CIL Viability Study, April 2013
 - Revised Planning Obligations Supplementary Planning Document, April 2013
 - Draft Regulation 123 List, April 2013 (included as an appendix to the Draft Charging Schedule)
- 1.2 The Council received 38 consultation responses of which five were received after the close of the formal consultation period. The Council has carefully considered all representations received and produced a detailed summary of the main issues raised. The Council's response to these is set out below. [Appendix 1 includes a summary of individual representations received and the Council's response].
- 1.3 The Council has undertaken further viability testing in line with representations made as part of the consultation on the Draft Charging Schedule. This additional work is set out in the BNP Paribas Real Estate Viability Study, October 2013. This has led the Council to revise three of the commercial rates proposed:
- **The rate for office development in City Fringe has been reduced from £215 to £120 per square metre**
 - **The rate for office development in North Docklands has been reduced from £100 to £60 per square metre**
 - **The rate for Convenience Supermarkets, Superstores and Retail Warehousing rate has been reduced from £195 to £135 per square metre**
- 1.4 In light of these changes, the Council is publishing a Revised Draft Charging Schedule for a further stage of consultation. This is to provide an opportunity for comment on these updates to ensure that these changes are sufficiently consulted on prior to submission to the Planning Inspectorate and to address the requirements in the Government's CIL Guidance, 2013.

2. The Main Issues

A. Impacts on the delivery of the development plan

1. **Nature of Representation(s): It is suggested that the Council has failed to show how the Development Plan - which includes the London Plan - has informed rates or to assess the impacts of the rates on plan delivery and associated targets.**
- 2.1. The CIL Regulations 2010 as amended and associated guidance acknowledge that it is for the charging authority to aim to strike an appropriate balance between infrastructure provision and viability when setting its charging rates. The Council has

to take a holistic and balanced view to meeting all of their plan requirements; this includes meeting their anticipated growth targets, providing affordable housing, delivering sustainability objectives and providing supporting infrastructure. These targets are set across the life of the development plan and it is acknowledged that not all the targets will be achieved on all the sites, as is currently being experienced on sites at the current point in the economic cycle.

2.2. Provision of infrastructure to support growth is a key component of the development plan for Tower Hamlets. Failure to provide this infrastructure will prejudice the delivery of the plan and sustainable development - a key message of the National Planning Policy Framework. Notwithstanding these pressing infrastructure concerns, the Council has proposed a CIL charge that amounts to less than 5% of the development costs of residential schemes - a modest proportion - and it is noted that 35% affordable housing has been assumed in the appraisals. The Council has also proposed CIL rates in the Revised Draft Charging Schedule which include a minimum reduction of 25% of the maximum CIL chargeable. It is highly unlikely therefore that CIL would be the determining factor that would make developments unviable and compromise delivery of growth in accordance with Plan objectives.. In addition, the Council's policy for affordable housing and other policy requirements have been factored into the viability appraisals undertaken to arrive the CIL rates proposed, thereby ensuring delivery of plan aspirations. Accordingly, the Council is of the view that it has fully considered the potential impacts of the development plan when setting CIL rates.

2. Nature of Representation(s): It is suggested that impacts of the charge on affordable housing delivery has not been properly considered and that the extent of testing of different levels of affordable housing is inadequate.

2.3. The Council has to achieve a balance when delivering affordable housing and infrastructure to support the growth in the borough as identified in the Local Plan. In the current economic climate this is clear as individual developments in the borough are not always achieving affordable housing targets of 50% or even 35% . The average is close to these targets i.e. some sites deliver more than the targets (and some 100% affordable housing). However many do not deliver the targets. Even if no CIL were to be charged on the certain developments, they are unlikely to provide the minimum 35% affordable housing. (see also point 1 above).

2.4 The Council's Policy SO2 of the adopted Core Strategy seeks a minimum target of 35% affordable housing, subject to viability. Based on this policy position and the level of affordable housing historically achieved, the Council has undertaken testing of the CIL rates at higher and lower levels of affordable housing, but considers it appropriate to establish the CIL rate based on the results of the appraisals assuming 35% affordable housing. The viability assessments have been undertaken assuming social rented accommodation for the rented element and as such is considered to take a cautious approach to the value of affordable housing in schemes. It is clear the impact of the CIL charge on affordable housing delivery has been appropriately considered.

2.5 It is noted that similar issues related to affordable housing arose in the context of Newham Council's CIL Examination. The Examiner's Report (19 July 2013), paragraphs 15 and 16, is relevant and states:

'The Core Strategy was adopted in January 2012. Policy H2 was supported by an Affordable Housing Economic Viability Study and seeks the provision of 35 to 50% affordable housing on sites with a capacity of 10 units or more. However, the Council concede that, at present, the majority of new schemes are unable to deliver affordable

housing at the level required by Policy H2. According to the Viability Study, at 35% affordable housing, most sites are not viable regardless of CIL.

As stated in the Viability Study, if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision. Consequently, the Viability Study, sensibly in my view, did not factor in unviable schemes in recommending appropriate rates. The Viability Study is based on 35% provision of affordable housing.”

- 3. Nature of Representation(s): The Council’s approach to assuming only 30% of the Crossrail s106 ‘top up’ is criticised in some representations on the basis that it prejudices Crossrail delivery and/ or that the rationale for this is unclear.**
- 2.6 Crossrail is a priority for London Borough of Tower Hamlets but it should not outweigh the pressing need for other local infrastructure. Failure to secure local transport projects and indeed other necessary infrastructure in the future could ultimately bring into doubt the ability of the Council to sustain growth at the current and planned rate. Establishing a Tower Hamlets CIL charge for commercial development is necessary as the Council is still required to provide infrastructure – local transport and otherwise – to support development beyond just Crossrail.
- 2.7 The Mayor of London requires a ‘top up’ payment over and above the Mayor of London’s £35 per square metre CIL payment in Tower Hamlets for certain commercial development; these indicative charges are set out in the latest Crossrail SPG 2013 – Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy Supplementary Planning Guidance (April 2013).
- 2.8 In response to the representations, the Council has amended its approach from that of the Draft Charging Schedule which assumed only 30% of the Mayor of London’s Crossrail ‘top up’ in its appraisals in setting its rates. It is expected that the rates set out in the Revised Draft Charging Schedule will allow for the full indicative ‘top up’ sought under the Crossrail SPG 2013 where the viability of individual schemes allow for it in line with the approach set out in the Crossrail SPG, 2013, paragraph 3.34. However, it is acknowledged that achieving the full ‘top up’ may be more challenging for certain office schemes in the North Docklands in the current market and in light of the fact that it has the highest ‘top up’ charge in London. Accordingly, a lower Crossrail SPG top is assumed for office floorspace (Paragraph 4.54 of the Viability Study). The Council has proposed a lower CIL rate for offices in North Docklands relative to the City Fringe area and in comparison to the rate originally proposed in the Draft Charging Schedule. This approach reflects the Crossrail funding requirements arising from office development in this part of the borough while recognising the need to fund local infrastructure to enable sustainable development.
- 2.9 The Council would also highlight that the ‘North Docklands’ area identified in the Revised Draft Charging Schedule is smaller than the more expansive Isle of Dogs area identified in the Mayor of London’s Crossrail SPG in which the Crossrail ‘top up’ is sought. The effect is that there will be developments within Isles of Dogs area defined in the Crossrail SPG which will not be subject to a Tower Hamlets CIL Charge but to which the Crossrail SPG ‘top up’ will apply. It is also worth noting that the Crossrail SPG 2013 allows the Mayor of London’s CIL payment for all land uses (not just commercial uses) to discount the value of the ‘top up’ (paragraph 4.21 of the Crossrail SPG) and that the existing use of the site can also have an impacts on the contribution sought (paragraph 4.21 of the Crossrail SPG). In such cases calculating Crossrail S106 ‘top up’ charges is not straight forward as the charge *will* vary in mixed use schemes.

It is considered by the borough that based on the sites likely to come forward the full indicative charge is unlikely to be realised on all sites.

B. Viability Appraisal Methodology

- 4. Nature of Representation(s): Several representations suggest that Market Value should be used in viability appraisals rather than Existing Use Value (EUV) plus a premium and are concerned that no sensitivity testing of the latter has been undertaken. They suggest that land value assumptions are not justified with reference to the market.**
- 2.10 Several representations refer to the RICS guidance note on Viability in Planning (2012), which is aimed at individual schemes being processed through the development management process. They either do not refer to the Local Housing Delivery Group guidance, which addresses viability and planning policies, or consider that the Guidance has been superseded by the RICS Guidance. The Local Housing Delivery Group guidance was published on 22 June 2012 and the RICS guidance was published on the 9 August 2012. These documents were developed around the same time, with the Local Housing Delivery Group guidance being produced for a particular reason i.e. for testing emerging policy, and as such the RICS guidance does not supersede it.
- 2.11 There are a number of limitations associated with adopting a market value approach:
- Transactions on other sites will inevitably relate to developments of different densities and building heights, meaning that average values and construction costs will vary substantially;
 - The quantum of commercial accommodation provided varies between developments. This makes analysis more complicated. Historic transactions will also have been completed prior to Mayoral CIL being required;
 - Transactions may not have been completed after the current Planning Obligations SPD was adopted, which is likely to have resulted in lower Planning Obligations SPD sums being required;
 - It is unknown what grant funding might have been allocated to assist with the delivery of affordable housing for these schemes;
 - It is unknown which schemes would have incurred abnormal costs e.g. expensive demolition costs, remediation, extensive basement excavation etc;
 - It is unknown what specific funding arrangements the purchasers of the sites might have in place to assist with delivery; and
 - It is unknown to what extent the developers of those schemes are making a profit.
- 2.12 It is therefore considered that actual land transactions are fundamentally misleading as a means of assessing viability of a planning policy.
- 2.13 Market transactions will always (or should be) based on current planning policy requirements to determine the price to pay for a site; the costs of complying with policies are accommodated in the valuation process. Accordingly, this does not provide a useful starting point in determining what planning requirements could be sought as the existing policy requirement is already captured. Furthermore, it is also the case that market transactions often fail to take full account of planning policy requirements. They frequently include expectations of increasing sales values, so they do not reflect the current market. Basing the assessment on current use value is an approach that both the RICS guidance note recognises as legitimate (*“For a development to be financially viable, any uplift from current use value to residual land*

value that arises when planning permission is granted should be able to meet the cost of planning obligations while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project (the NPPF refers to this as 'competitive returns' respectively). The return to the landowner will be in the form of a land value in excess of current use value...") as well as the Harman Group guidance; the latter being directly relevant to planning policy testing.

2.14 At the London Mayoral CIL examination the merits of the Market Value and the Existing Use Value plus a premium approach were considered in detail by the Examiner. It was accepted that market transactions are of limited relevance to testing a new planning requirement, as they are historic and relate to *prevailing planning policies at the time*. As such, the RICS approach was found to be an unsound basis for testing the viability of CIL. It should also be noted that this approach has been accepted in numerous other CIL Examinations both inside and out of London including Croydon, Redbridge, Bristol, Poole, Havant, Harrow, Brent, Waveney. It is submitted that this is sound and supports the Council's approach.

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

5. Nature of Representation(s): The viability appraisal inputs have been criticised for being not justified or incorrectly tested and further detail is sought on the appraisals in relation to the following matters:

2.16 **The Mayor of London's requirements for Crossrail contributions should be factored into appraisals as a development cost:** The residential appraisals test the ability of the typologies to absorb a range of CIL rates, included in which is the Mayoral CIL. The viability appraisals for commercial schemes have now also been amended to include Mayoral CIL as a development cost, so the outputs identified are the maximum viable levels of Borough CIL and any potential Crossrail top up charge liable on developments (also see point 3 above).

2.17 **Site Specific Section 106 assumptions are not justified:** The Council has included cost assumptions for Section 278 and residual Section 106 requirements in a CIL context (thereby reducing the probable CIL charge) even though there are likely to be instances in which such contributions may not be required, e.g. minor schemes, many of which would not have a S106 agreement associated with them. The residential appraisals incorporate an allowance of £1,220 per unit and the commercial appraisals have also been amended to incorporate an allowance of £5 per square foot (£53.82 per square metre). These figures are considered to be a reasonable proxy for likely sums to be sought after CIL is adopted, based on the requirements set out in the Revised Draft Planning Obligations SPD where it can be quantified, and the figures adopted are broadly in line with those adopted by many other London boroughs for

CIL testing purposes. It is noted that once CIL is adopted (and indeed prior) such planning obligations must meet legal tests for their use and remain negotiable.

2.18 **The amount of discount (or buffer) applied to the maximum CIL that can be charged is inconsistently applied:** A minimum buffer of 25% has sought to be applied for all developments from the maximum CIL rate identified by BNPPRE's appraisals, with the exception of student accommodation, where a larger buffer of 35% has been adopted (see point 10 below).

2.19 **Details of the appraisal inputs including outputs of the Argus models are sought:**

The Council invited submission of appraisal inputs/ information and has reflected specific comments - where received and appropriate - in amendments to the appraisals. All inputs into the appraisals are provided within the Viability Study. Argus Developer software was used to appraise Strategic Sites. Should developers wish to undertake a viability assessment they are able to do so. The focus should be on whether the inputs are reasonable or whether there is evidence to suggest otherwise.

2.20 **Phasing of CIL payments in appraisals does not match the Council's suggestion of adopting the Mayoral CIL's instalment policy:** For testing purposes, the Council assumed that any CIL due would be split into three equal instalments, payable at the months shown in Table 4.46.1 of the Viability Study. A sensitivity analysis of adopting the current Mayor of London's instalment policy has been undertaken and has identified only a marginal impact on viability (Paragraph 4.33 of the Viability Study). It is noted that an instalments policy can be amended at any time by a Charging Authority and is not a matter that the Examiner is required to consider. Notwithstanding this, the Council *does* intend to introduce an instalment policy. The starting position was the Mayor of London's approach; however, the comments on the impacts of instalments are noted, particularly in the context of large schemes, and the Council intends to keep this issue under review.

6. **Nature of Representation(s): Representations have suggested that the Strategic Site appraisals and theoretical appraisals are an inadequate basis for establishing a charge – and do not comply with Guidance or reflect market realities. Several representations seek justification for the strategic sites chosen.**

2.21 The Community Infrastructure Levy Guidance 2013 requires charging authorities to *'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'*.

2.22 In accordance with the CIL Guidance 2013, the Council has tested the viability of eight strategic sites across the whole borough. These are all sites which have been identified in the Council's Managing Development DPD, which represent a range of different viability scenarios.

2.23 The residential development typologies reflect a range of developments across the borough and have been based on an understanding of previous and likely future development that have and will come forward in the Borough. Mixed use schemes have not been included in the generic typologies as each scheme will be different and contain varying proportions of different uses. Such schemes will not provide a useful

evidence base for setting a CIL for the different types of developments included in such schemes. All that testing mixed use schemes will reflect is that the more viable uses will have to subsidise the less viable uses. In this regard we have sought to establish the viability of individual uses so that only the uses identified as being viable and able to bear a CIL charge will be liable to pay LBTH's CIL. Notwithstanding this it is noted that the Strategic Sites – which included a mixture of uses - have been tested.

2.24 The Council's approach of using development typologies has been tested and approved at Examinations in Public for other CIL Charging Schedules (including those post-dating the CIL Guidance, 2013)

7. Nature of Representation(s): The approach to testing strategic sites is criticised as the costs assumed are too low; it is also highlighted that a number of the sites appraised are not viable.

2.25 The Council has, where appropriate, updated appraisals to address comments made during the Draft Charging Schedule consultation. The approach to assessing the largest sites has been amended to an Internal Rate of Return ('IRR') approach in response to representations. It is noted that although developers commonly identify that they are targeting an IRR of 20%, BNP Paribas Real Estate have advised that large schemes in London, particularly in the current economic climate, developers have agreed to proceed with developments identified as generating IRRs of between 11% and 13%. In addition:

- The Strategic Site inputs data has been updated to include the development programmes and we can confirm that S106 and CIL costs are included as development costs.
- The professional fees assumed for strategic sites and all schemes larger than 250 units have been increased to 12% in line with the assumptions in the typologies for consistency.
- With respect to energy/sustainability requirements on large sites, the provision of such technologies will be included as a cost to achieve Code for Sustainable Homes level 4 on such sites. A 5% contingency is also allowed for the uplift of the build costs associated with achieving Code for Sustainable Homes level 4, which should allow for any unforeseen costs relating to the provision of such elements.
- Allowances have been made for the onsite infrastructure that is sought by the Council's policies such as schools, health facilities through land in kind.
- The higher abnormal costs identified on the Bishopsgate Goodsyrd and Wood Wharf sites have been taken into account in line with comments made to the DCS consultation. These site appraisals have been updated to include commercial uses in line with the quantum identified in relevant planning policies and guidance which will inform the planning application on this site.
- Assumptions with respect to marketing have been amended and a rent free period to 24- months for the office elements included.
- The schemes have been reviewed to ensure that the correct infrastructure required by each site has been tested e.g. a secondary instead of a primary school for the Westferry site. This reduced the net developable site area and therefore the number of units decreased from 1,186 to 900 units.

2.26 Several representations highlight that three of the sites appraised are identified as being unviable. However, these are not unviable because of CIL, rather it is as a result of other factors such as build costs and sales values. Further as demonstrated in the viability report of the developments, the CIL charge would amount to less than 5% of the development costs and in this regard is such a small proportion of development costs that it would be highly unlikely that CIL would be the determining fact that would make such developments unviable. The Inspector's Report for the London Borough of Newham's charging schedule is pertinent and states: "*if a scheme is not viable before CIL is levied it is unlikely to come forward and CIL is, therefore, unlikely to be a material consideration in any development decision. Consequently, the Viability Study, sensibly in my view, did not factor in unviable schemes in recommending appropriate rate.*" (para 16).

2.27 The CIL buffer applied to Strategic Sites is the same as for the other development typologies, in that the CIL rate tested is the same - and therefore incorporates the same level of buffer. In addition, in line with the approach taken on the viability testing for the Managing Development Document, the strategic sites also include a 20% buffer allowance *on top of* the 20% premium on the EUV to allow for further for individual site constraints and unknown factors. This helps to ensure that the Strategic Sites will be viable in a CIL context.

8. Nature of Representation(s): Residential sales values and the associated charging zone areas are either inadequately justified or incorrect.

2.28 The Council's viability consultants, BNP Paribas Real Estate, has undertaken extensive research into residential values across the borough using a number of sources, which include, Land Registry data on sub-post code areas, EGi London Residential Research data, the Moliոր database, BNPPRE information on viability assessments of proposed new developments in the borough and data from the Rightmove website (both sold and asking price) to inform our assessment on the sales values achievable in the borough.

2.29 Some representations have provided land registry data in order to identify areas of higher and lower values in the borough and in particular in the Isle of Dogs area. This is useful information and *has* been considered. However, such data has limitations; for example, the land registry data only provides details of units sold and this can change from month to month so the average values reflected will be dependent on what has transacted and a very few large expensive units or only smaller units could skew the average sales values. It is important to be able to consider the values on a per square foot basis. Furthermore, CIL relates to new development and the Land Registry data takes into consideration both new build and existing properties, the proportions of which are not identified in the data provided by the representations. These issues have weighted the evidence.

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

2.31 It is considered that the sales values used in the appraisals are considerably lower than the top end of the range and reflect an appropriate average that will be achieved. It is important to acknowledge that the intention is not to undertake specific site appraisals. The “differences” in values that will inevitably occur are accounted for by the “buffer” or “discount” below the maximum CIL rate that could have been set.

9. Nature of Representation(s): The implications of the proposed residential rates for estate regeneration schemes have not been properly considered; there should be a zero charging rates for estate renewal areas.

2.32 It is acknowledged that given the current economic climate, lack of grant funding and the requirement of Estate Renewal Schemes to ensure the replacement of the existing units and in particular social rented accommodation, many schemes incorporating private units are being developed by housing associations in order to assist in the delivery of more affordable units. However, some schemes may still benefit from grant. A wide range of factors – many of which will be unique to the individual regeneration schemes - will determine the viability of such schemes and as such a general exclusion is not considered appropriate.

2.33 New private residential units will be subject to a CIL charge as they will have an impact on the requirement for additional infrastructure to support it, particularly given the context of increasing housing units in the Estates, not just replacing the units, so it is important that where possible they contribute towards this requirement.

10. Nature of Representation(s): The Student Housing rate has been criticised for being too high – particularly when affordable housing might be sought – and inadequate justification for the single rate is provided.

2.34 The Council viability evidence suggests that the level of charge proposed can be supported in most instances. The Council has adopted a larger buffer of 35% for student housing and the viability appraisals have been updated in line with the following assumptions:

- the size of student units has been updated;
- The total floor area used in the appraisals has been updated to 161,460 sqm;
- The appraisal has been updated to reflect 30% existing floorspace to establish the existing use value;
- Term time occupancy has been reduced to 95%;
- 51 (up from 41) week term time let adopted;
- RICS BCIS build costs adopted with 5% contingency.

2.35 Research on rents for student accommodation has identified that the rents achievable for student accommodation in CIL Zone 2 start at £200 per week, whilst those in the city fringe area are able to achieve higher rents. The Council has taken the view that they wish to charge a flat rate for student accommodation across the borough to avoid an unduly complex Charging schedule, and as such has adopted the lower rent of £200 per week to establish the CIL rate.

2.36 The Council’s requirement for the provision of affordable housing is not all encompassing and applies in those instances where accommodation is not provided specifically for accredited colleges and universities. A specific threshold for affordable housing is not defined in relation to student housing – instead this is calculated ‘taking into consideration’ relevant affordable housing policies (Managing Development Document, DM3 Student Accommodation. Accordingly, affordable

housing contributions have not been factored into appraisals as unlike for general housing the requirement will not always apply. However, it is acknowledged that the rate proposed by the Council will have an impact on the ability of student accommodation schemes. Furthermore, in line with the Council's affordable housing policy approach, the level of affordable housing sought will depend on the viability of the scheme which will be assessed accommodating the CIL charge.

11. Nature of Representation(s): The office rate in the City Fringe is higher than surrounding areas (from Preliminary Draft Charging Schedule to Draft Charging Schedule) rates in City Fringe office rate which is not justified

2.37 The Council has reduced the rates in the City Fringe areas reflecting the updates to the viability evidence outlined in point 5 of this report above. The City Fringe office location was identified at both the Preliminary Draft Charging Schedule and Draft Charging Schedule stages to be a more viable office location. However, the rate at the Preliminary Draft stage was aligned with the lower Docklands office rate to avoid undue complexity. The rates proposed in the DCS increased from those proposed in the PDCS in the City fringe area as a result of the Council's decision not to apply the same flat rate across both areas.

12. Nature of Representation(s): Inadequate testing of retail has been undertaken and it is not appropriate or justified to differentiate retail charge by scale.

2.38 The Council have reviewed appropriate available viability evidence and undertaken testing of smaller and larger schemes of 1,000 square metres and 5,000 square metres respectively. In addition, a further review of information provided on the RICS BCIS database in relation to build costs for Hypermarkets and Supermarkets of such sizes, locally adjusted to the Tower Hamlets area, has been undertaken. As a result build costs have been amended to £121 and £117 per square metre for the 1,000 square metre and 5,000 square metre units respectively. This additional analysis has led to a reduced rate for supermarkets, superstores and retail warehousing development.

2.39 The Draft Charging Schedule differentiated between the scale *and* type of retail development proposed. This was an approach recognised by the Inspectors report for Wycombe District Council's CIL Charging Schedule which concluded: "there is nothing in the CIL regulations to prevent differential rates for retail developments of different sizes, provided they are justified by the viability evidence and differing retail characteristics or zones" (para 16, 2012). However, it is acknowledged that size does not necessarily result in the higher values generated by convenience based supermarkets and superstores and retail warehousing uses. Rather, is it a combination of factors (detailed in paragraph 6.31 – 6.34 of the Viability Study, October 2013). Accordingly, the definition now refers to the use rather than the scale of use. The use and viability characteristics of these different types of retail uses are markedly different justifying the council's approach.

2.40 The high level of projected convenience supermarkets, superstores and retail warehousing identified in the Infrastructure Funding Gap Report (October 2013) was also highlighted in representations. This has been amended and the over assumption of this type of floorspace corrected.

13. Nature of Representation(s): Hotel development will be severely impacted and become unviable and a flat rate is not appropriate

2.41 The hotel appraisals have been sensitivity tested and this is referenced in the viability report (see paragraph 6.40 of the Viability Study, October 2013). We note that the second appraisal was erroneously omitted from the appendix and this has been corrected.

14. Nature of Representation(s): Evidence of historic Section 106 receipts the extent to which targets have been met should be provided.

2.42 The Council has published additional information on historic section 106 receipts as part of the Revised Charging Schedule consultation (Section 106 Receipts Background Report, October 2013). This includes affordable housing targets.

15. Nature of Representation(s): The proposed CIL charge has been highlighted as higher than current s106 charges for certain schemes

2.43 Setting the CIL rate has been undertaken in line with guidance and has been set with reference to economic viability rather than a comparison with the existing planning obligations approach.

C. Infrastructure Planning and Planning Obligations

16. Nature of Representation(s): Draft Regulation 123 list is considered too loosely defined to give certainty and TfL wish to work with the Council to refine this

2.44 In accordance with the CIL Regulations 2010 (as amended) and CIL Guidance 2013 (paragraph 15) the Council has set out for 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 list has been published alongside a revised Planning Obligations SPD 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. It is considered the draft 123 List accords with the legislative requirements and is appropriate in its format.

17. Nature of Representation(s): Clarify how the sites in the Managing Development Document relate to the infrastructure funding gap report and how on site specific infrastructure will be secured.

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

2.46 The Council's Revised Draft Planning Obligations SPD, April 2013 sets out the Council's approach to securing infrastructure and clarifies the mechanism through which it will be sought; it identifies that most infrastructure will be delivered through CIL contributions (see also point 17 above).

18. Nature of Representation(s): The validity of the planning obligations policy approach is challenged on the basis it is non-compliant with regulations.

2.47 The planning obligations policy will only be finalised after the Examination in Public on the Revised Draft Charging Schedule. At the moment, the planning obligations

policy is explained in the Revised Draft Planning Obligations SPD, April 2013. The references in this draft document to the relevant policy and legislation have now been corrected and brought up to date, and it is this amended version which will be submitted as part of the supporting evidence for the CIL examination. It is acknowledged that such planning obligations must meet the legal tests for their use and that they remain negotiable.

D. CIL Implementation Issues

19. Nature of Representation(s): Inclusion of reference to in kind payments is welcome but complications and implications around land transfer are not addressed.

2.48 In accordance with CIL Guidance 2013 the Council has set out a draft Regulation 123 list of the projects or types of infrastructure that it intends to fund in whole or in part by the levy. The suggestion that the Council may accept 'in-kind' contributions is fully compliant with the CIL Regulations 2010 (as amended). The Council will work with developers to secure CIL in accordance with the current regulations, and with any amendments arising from the Government's recent proposals on this issue. Each proposed land transfer or in-kind contribution is likely to be dealt with on a case by case basis, and it would not be appropriate to deal with all the potential implications in the wider CIL document.

20. Nature of Representation(s): Inclusion of exceptional circumstances relief is supported and should be formalised.

2.49 As indicated in Appendix 2 of the Revised Draft Charging Schedule, the Council *is* minded to implement an exceptional circumstances relief policy in line with the CIL Regulations. It is noted that this is not an examination matter or a component of the Charging Schedule preparation process.

21. Nature of Representation(s): It is suggested the Council delay implementation of CIL until after outcome of CLG consultation on further reforms to the Community Infrastructure Levy Regulations (published April 2013)

2.50 There is no requirement or reason to delay the implementation of CIL. There have been annual amendments to the CIL Regulations and given the scaling back of the use of planning obligations provided for in the CIL Regulations, it would not be prudent to stall the production of Charging Schedules as a result of potential changes. Doing so may prejudice the delivery of sustainable development.

22. Nature of Representation(s): A small number of objectors suggested that there has been a lack of meaningful engagement with the development industry

2.51 On 22nd April 2013, the Council published the CIL Draft Charging Schedule for consultation until 5th June 2013. The consultation was advertised in the local press – East End Life, and on the Council's website. The advertisements stated its duration, the location of documents for inspection and advertised two developer drop-in sessions. The Developer Drop-in Sessions were held at the Council's offices, where developers were invited to drop in to discuss issues on 1st May 2013 and 3rd June 2013. This followed consultation on the Preliminary Draft Charging Schedule (between 16th November 2012 and 2nd January 2013) and a workshop was run on 6th July 2012 right at the start of the process to invite input as to the proposed methodology and assistance with inputs into the appraisals. The Council has also met

with owners of strategic sites and invited submission of appraisal information and other evidence to help inform the rate setting process. The Council has met all the regulatory and local consultation requirements, and made extra efforts to encourage proactive participation from a wide range of stakeholders.

3. Conclusions

- 3.1 The Council is introducing CIL with the aim of seeking to deliver the Core Strategy objectives. The Council has sought to strike an appropriate balance between the need to fund infrastructure and the impact of CIL on economic viability of development when taken as a whole across the borough. On that basis it is publishing a Revised Draft Charging Schedule in accordance with the Community Infrastructure Levy Regulations 2010 (as amended), Part 11 of the Planning Act 2008 and associated Government Guidance.

Appendix 1: Detailed Summary of Consultation Responses to the Draft Charging