

Protocol for transfer of LLDC CIL and S106 monies

Background

One aspect of the transfer of its planning powers from LLDC to the four boroughs in December 2024 is the need to transfer the monies that it holds at that point that have been received in payment for CIL liabilities and in respect of S106 financial contributions. The broad principles of an approach to doing this was discussed at the Planning Policy Forum meeting of 7th November 2022. This paper builds on this discussion and seeks agreement to the approach being proposed.

Agreement is being sought at this point as this is a matter that will need to be addressed in the Mayor's Statutory Transfer Scheme that forms a part of the transfer of planning powers and that, taken together, boroughs will need an agreed position on by July 2023 to ensure that this is reflected in their Cabinet Reports seeking agreement to the approach to the Statutory Transfer Scheme (STS). See STS programme at Appendix 1.

Currently, decisions to provide CIL and S106 funding to specific projects are made by the LLDC's Project Proposals Group, which boroughs attend. Once funding is agreed, a Grant Funding Agreement is put in place between the LLDC as LPA and the party receiving the funding. It is anticipated that the final decision-making meeting of the Project Proposals Group will take place in either June or July 2024, allowing time for Grant Funding Agreements to be completed prior to transfer of planning powers. This paper addresses the approach to monies that have been allocated through this process and remain 'live' and also those funds which have not been allocated.

Proposed approach to CIL monies:

Monies associated with a project Grant Funding Agreement

Where any CIL monies held at 30th November 2024 and are associated with a finalised Grant Funding Agreement, the money specified in the Agreement will be passed to the borough in which that project is based or most closely associated with. Where some but not all of the money specified in the Grant Funding Agreement has been drawn down before the transfer date, the remaining money will be passed to that borough so that it can administer the remaining draw down of funds.

Grant Funding Agreements include a need for monitoring of project progress until that project has been completed. The Grant Funding Agreements set out the requirements for provision of project monitoring information. The borough to which the grant funding agreement is passed will become responsible for the monitoring, including the receipt of the required project monitoring reports. This will include those Agreements where all monies have been drawn down but there is a requirement for the project to provide subsequent monitoring reports. The Grant Funding Agreements transferred to each borough will be accompanied by a schedule of those agreements and the sums of money remaining to be drawn down and/or any remaining monitoring reports required.

Monies left unallocated at the final Project Proposals Group meeting.

Where, at the date of the final Project Proposals Group meeting (anticipated in Summer 2024) there is CIL money remaining unallocated after the decisions of the final meeting have been made, that money will be split between the Four Boroughs proportionally. The proportion of that unallocated

money passed to each borough will be determined by the percentage of the LLDC land area that each borough occupies. These percentages are as follows:

- LB Hackney – 16%
- LB Newham – 63%
- LB Tower Hamlets – 16%
- LB Waltham Forest – 5%

Other methodologies been considered but discounted as not providing a sound basis for proportioning the monies. For example, using the total value of infrastructure on the LLDC Infrastructure List by borough presents practical issues with many items either not having costs identified or, where they are, being broad estimates. Infrastructure provision and need is also difficult to disaggregate from the LLDC wide approach down to a borough level, risking a skewed outcome. The geographical area apportionment approach is considered to provide a reasonably robust methodology that ensures each borough benefits in a reasonably proportionate way. As CIL money is pooled from across the LLDC area and then spent in that context, it would also not be possible to relate the relatively small amount of unallocated CIL money envisaged in this proposal to the specific schemes that have paid CIL and therefore the boroughs within which the schemes that have paid this are located.

Monies received after the date of the final Project Proposals Group meeting.

Any CIL monies received after the date of the final Project Proposals Group meeting will be recorded in a schedule against the relevant planning permission number and the sum held against that reference. The sum will then be transferred in full to the borough in which the relevant development sits on 30th November 2024.

Where a significant CIL payment is received before the final Project Proposals Group meeting but has not been allocated to a project at that final meeting.

Where sums of £500,000 or more are received before the final Project Proposals Group meeting but there is insufficient time for a funding allocation application to be made to that meeting, it is proposed that this sum is treated in the same way as any CIL sum received after the meeting date, that is the money is held against the planning application number for the development that has paid it and the money is transferred in full to the borough that development site is within on 30th November 2024.

Neighbourhood Portion of CIL

The final allocations of LLDC Neighbourhood Portion of CIL, through the Neighbourhood Priorities Fund took place in December 2022. The LLDC Neighbourhood Proportion is 15% of LLDC CIL monies received across its entire area. It is proposed that the sum held at 30 November 2024 will be distributed between the four boroughs proportionally on the percentage basis shown above, to be used in accordance with that boroughs own governance arrangements for the Neighbourhood Proportion of CIL.

The LLDC approach to Neighbourhood CIL collected within its area has been a whole LLDC area one for the benefit of all communities living within the LLDC area. The approach ensures that all borough areas will benefit from the apportionment of unallocated Neighbourhood CIL monies. Linking unallocated Neighbourhood CIL monies to the schemes that paid the original amount, for example, would be both complex and likely to skew the proportion of money provided to each borough away from some of the communities that it has been intended would benefit and, in the case of LB Waltham Forest would likely result in no money being made available.

CIL Administration Expenses As per Regulation 61, a CIL charging authority may apply CIL to administrative expenses that it incurs up to a value of five percent of the CIL collected each year. The budget for CIL administration is set annually by LLDC's Finance and Corporate Services Directorate, in collaboration with the Planning Policy and Decisions Directorate. The budget for the financial year 2024/2025 is yet to be agreed so it is not possible at this point to specify the exact amount of this element of CIL receipts that the LLDC will look to retain to meet the costs of running an effective CIL service in its final year.

Once the budget for 2024/25 has been agreed, the LLDC will apply 5% of all LLDC CIL receipts to administration, up to the value of the agreed budget. As per Regulation 61, the LLDC will also retain 4% of all Mayoral CIL receipts, and credit these, in their entirety, to the agreed annual budget for 2024/25. The remaining amount of the LLDC administrative portion, exceeding the annual budget, which is collected in that final financial year (April-November 2024) will be split proportionally between the four boroughs, again using the land area percentage approach outlined above. This will ensure that LLDC is able to retain sufficient funding to operate its CIL related services while providing an element of funding to each borough towards initial administration costs of CIL collection cases and grant funding related activities for cases transferred to each borough. The unallocated amount to be proportioned will remain uncertain until close to the transition date, as there is no certainty for which schemes will become liable to pay CIL in the period of time to end of November 2024.

S106 Monies:

S106 Monies associated with a project Grant Funding Agreement

Where S106 money held by LLDC has been allocated to a project through completion of a Grant Funding Agreement but that money has not been drawn down by 30 November 2024, that money will be transferred alongside the relevant Grant Funding Agreement, to the borough in which the development that has paid that S106 contribution sits. That borough would then administer the draw down of the funds and any monitoring requirements written into the Grant Funding Agreement.

S106 monies left unallocated at the final Project Proposals Group meeting.

Where a S106 financial contribution has not been allocated to a project at or prior to the final Project Proposals Group meeting, that money will be transferred to the borough in which the development that paid the contribution sits, alongside the S106 Agreement that specifies how that money can be spent. Any spending of that money would then simply be subject to the boroughs own governance processes for spend and the terms of the S106 Agreement.

Any S106 financial contribution received prior to the final Project Proposals Group meeting but for which it has not been possible to allocate that sum to a project, that sum will be treated in the same

way and passed to the borough in which the relevant development sits, along with other financial sums, on 30th November 2024.

Where an S106 contribution derives from a cross-borough development, it is expected that the borough which contains the proportionally greatest share of the development will assume responsibility for the contribution, and will be transferred the monies accordingly.

S106 monies received after the date of the final Project Proposals Group meeting.

Where any S106 financial contributions are received after the date for the final Project Proposals Group meeting, that money will be transferred to the borough in which the development paying the contribution sits, along with the relevant S106 Agreement.

Monitoring contributions

In certain instances, the LLDC secures monitoring contributions by way of Section 106 obligation. Where such a contribution remains wholly or partly unspent on 30th November 2024, it will be transferred to the borough in which the relevant development sits.

From the date of this Protocol, LLDC's Planning Policy and Decisions team will take into account monitoring contribution rates published or advised on by the Boroughs, alongside those set out in the LLDC's Planning Obligations SPD, in negotiating and agreeing monitoring contributions in all Section 106 legal agreements.

Carbon Offset Fund

Carbon Offset Fund monies are secured through a S106 Agreement and, when paid, are held in the Carbon Offset Fund. Unlike other S106 financial monies, this money is pooled as a single fund. A final formal bidding round is currently being run by the LLDC. It is expected that the decisions allocation meeting of the Project Proposals Group will take place in the early autumn of 2023 with grant funding agreements completed by the end of the year. Given the timescales for running the bidding round through to completion of grant funding agreements, it is not considered practical to run a bidding round in 2024. Any Carbon Offset Funds paid to the LLDC after the final funding decisions have been made on the applications made to the 2023 Funding Round, would be listed against their relevant planning application reference and passed to the borough which that scheme sits on 30 November 2024. Should there be any remaining unallocated monies in the fund at the point of final funding decisions being made, these will be apportioned between the boroughs using the land area methodology outline elsewhere in this Protocol.

It is assumed that the carbon offset monies unallocated by LLDC will be administered in accordance with the individual borough governance arrangements for carbon offset funds.

Transfer of Funds to boroughs

It is assumed that all funds addressed in this paper will be transferred to individual boroughs on 30 November/1 December 2024. Schedules of the amounts relating to each category described above will be provided along with the relevant grant funding agreements. The practical arrangements for transferring those funds will be discussed and agreed in due course. The approach specified in this paper and the practical payment arrangements would be captured within schedules to the Statutory Transfer Scheme and/or a separate MoU.