

London Legacy Development Corporation

Community Infrastructure Levy Charging Schedule Examination

Key Issues Discussion Paper

Issue 1 – Is the charging schedule supported by appropriate and up-to-date evidence?

(i) Infrastructure planning evidence

- (a) *Is the Charging Schedule justified by **appropriate evidence**, having regard to the relevant criteria, including Regulations 12 to 17 of the CIL 2010 Regulations (as amended), CIL Guidance (2014), NPPF (the Framework), national Planning Practice Guidance (PPG), Part 11 of the Planning Act 2008 (as amended), the local economic context and infrastructure needs, the emerging LLDC Revised Local Plan, the LLDC Infrastructure Delivery Plan Review, and the Harman Report?*

LLDC response: The Draft Charging Schedule is justified by appropriate evidence as set out in Community Infrastructure Levy Regulations 2010 (as amended) ("CIL Regulations"). This evidence includes (i) the [Draft Revised Local Plan \(CIL12\)](#) which has a range of supporting evidence relating to infrastructure and infrastructure need, (ii) the LLDC [Infrastructure Delivery Plan Review \(CIL07\)](#) which demonstrates the infrastructure needs within the Legacy Corporation area and (iii) a [Viability Study \(VS\) \(CIL06\)](#) which provides a robust viability evidence base.

- (b) *Should the list of **infrastructure needs** that the LLDC I intends to fund through the Levy in the Regulation 123 List be lengthened in response to representations, eg from the Environment Agency, LB Tower Hamlets and Quod/Stratford City Business District Ltd?*

LLDC response: The projects highlighted within the consultation have been included within the [Infrastructure Delivery Plan Long List of Projects \(Annex 1 of CIL07\)](#) which makes them eligible for either Section 106 or CIL funding. The government has published the draft Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019 ("Draft Amendment Regulations") which will see the omission of Regulation 123 and the introduction of a replacement definition of "infrastructure list" which from 31st December 2020 will take the form of an infrastructure list published as part of an annual infrastructure funding statement. Therefore, the Legacy Corporation believes the Infrastructure Delivery Plan Long List of Projects is the best place for any potential projects and funding opportunities to be identified.

- (c) *What is the estimated size of the LLDC **funding gap** in relation to the cost estimates for capital projects over the remainder of the Local Plan period (to 2030)? Would the proposed CIL charge make a significant contribution towards filling the likely funding gap, and how would it compare with the impact of the existing CIL? Are **other anticipated funding sources** expected to make good or at least significantly reduce this funding gap, for example New Homes Bonus, remaining Section 106 receipts, and other considerations?*

LLDC response: The estimated funding gap is demonstrated within the [Infrastructure Delivery Plan Review \(CIL07\)](#). This document analyses the infrastructure requirements for the Legacy Corporation area across a range of different areas of infrastructure and identifies specific projects. The long list of projects included at Appendix 1 of this document sets out the specific projects against funding required and identified funding, whether this be through Section 106 agreements or other sources. The funding required to deliver the projects on the long list of projects, where costings have been identified, is £303,132,000. The identified and committed funding for projects on the list totals £26,888,000, made up from a range of sources, including Section 106 agreement, commitments from the boroughs as well as other stakeholders and funding providers. This means that there is a gap of £276,244,000 needed to fund required the infrastructure within the Legacy Corporation area for which costings have been identified. Therefore, there is a need for CIL to be collected within the Legacy Corporation area in addition to other funding sources including requirements set out in Section 106 agreements and through working with the boroughs and other stakeholders to continue to identify other sources of funding, whilst these sources will contribute, it is unlikely that they will significantly reduce the gap.

- (d) *Would the proposed CIL rates result in a significantly higher **overall charge for each new house**, than is the case with the existing CIL, once account is taken of the revised approach to S106 (and S278 highways) agreements that will apply once CIL is adopted?*

LLDC response: It is important to note that CIL has been in place in the LLDC area since 6 April 2015 and the Legacy Corporation has been operating a revised approach to S106 obligations since that point in time.

LLDC is not proposing to change the CIL rates on housing units. The rate of £73.90 per sq m set out in the Draft Charging Schedule is the current CIL rate charged on new housing developments. The increases applied reflect changes in the RICS 'Building Cost Information Service' ('BCIS') All-in-tender-price-index, as required by the CIL Regulations. The CIL rates for housing developments in the Draft Charging Schedule reflect the CIL a developer would need to pay in 2019, irrespective of whether LLDC introduces a revised charging schedule or not.

LLDC's residential charge does however now propose to include Co-Living and Shared Living uses, which are new forms of purpose-built residential accommodation being delivered in London for which a scheme proposal has already come forward in the LLDC's area. Proposals for such forms of development only started to come forward after the current charging schedule came into effect. As a consequence, the current charging schedule does not include these forms of housing. These forms of housing are classified as Sui Generis and under the current charging schedule they are nil rated. However, like all housing development, these developments will require infrastructure to support them, particularly given the residential densities associated with such accommodation.

BNP Paribas Real estate ('BNPPRE') has undertaken robust viability testing which demonstrates that these forms of housing development can viably support a CIL contribution of £73.90 per sq m. This level of CIL charge equates to circa 1.1% of development costs and as a

consequence will not have a significant impact on the delivery of such schemes (see paragraph 1.14 of the [VS \(CIL06\)](#)). However, the charge will make an important contribution to essential infrastructure to support such developments, thereby meeting the balance required to be considered by CIL Regulation 14.

- (e) *Do the figures demonstrate the **need to levy CIL**? Do the relevant stakeholders agree?*

LLDC response: The Legacy Corporation has an adopted CIL Charging Schedule in place, and has demonstrated previously at examination the need to levy CIL. The evidence base demonstrates a significant infrastructure funding gap and the viability of the Draft Charging Schedule. There were no objections received to the Legacy Corporation continuing to levy CIL in its area during the regulation 15 and 16 consultations.

(ii) **Economic viability evidence**

*Is the **CIL Viability Study** (VS) and the **methodology** it uses, robust and suitable for the purpose of setting an effective CIL charging rate for the LLDC area? In particular:*

- (a) *Is the standard **residual valuation approach** used in the VS appropriate?*

LLDC response: The standard residual valuation approach used in the [VS \(CIL06\)](#) is appropriate. We note that this methodology has been accepted in numerous CIL and Local Plan Examinations as being an appropriate and robust methodology upon which to base a charging authority's evidence base to support its CIL charging schedule, including the LLDC's currently adopted CIL Charging Schedule.

In addition, the Residual Land Value approach is advocated by both the Harman Group Guidance as well as the Viability section of the Planning Practice Guidance ('PPG'). Paragraph 010 of the PPG notes that, "*This National Planning Guidance sets out the government's recommended approach to viability assessment for planning*". It also notes that, "*Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it*", which reflects the residual land value approach adopted for the LLDC's study.

- (b) *Are the **assumptions used** for the range of factors included in the VS, such as benchmark land values, construction, fees, finance, sustainability requirements, section 106 requirements, CIL and profit levels, and where appropriate, the percentage of affordable housing (AH) provision, reasonable?*

LLDC response: The assumptions used for the range of factors included in the [VS \(CIL06\)](#) are reasonable. BNPPRE have set out the inputs to their appraisals in the [VS \(CIL06\)](#), which are based on a combination of market information; their professional experience of such costs in schemes across London; and from their assessments of site specific viability assessments in LLDC's area. BNPPRE are LLDC's retained viability consultants for both site specific and policy testing and in this regard, have an excellent understanding of viability in LLDC's area. They have been advising CIL viability for LLDC since its formation in 2012. Prior to that, they covered the area through advice for the London Boroughs of Newham, Tower Hamlets and

Hackney.

- (c) *How effectively has the VS methodology adapted itself to 'real world' conditions in the LLDC area? [For example, how effectively does it pick up on relevant local data on existing land values; likely sales prices based on a range of sites across the area; housing densities; and gross to net ratios?]*

LLDC response: The development typologies tested in the VS were derived by LLDC and BNPPRE from an assessment of live developments that have come forward or are about to come forward in the LLDC area. We have also considered the forms of development that we expect to come forward over the life of the Draft Revised Local Plan. These development typologies therefore appropriately reflect the actual/'real world' conditions/developments that will come forward in the future, in terms of the type of development, density, gross to net ratios etc.

BNPPRE have undertaken research into sales values, rents and yields using databases such as Costar Suite and EGi and through speaking to active local agents. They have also drawn upon their understanding and experience of such inputs from their assessment of site specific viability for planning applications in LLDC's area, as supported by the PPG.

The build costs adopted in the assessment were advised on by WT Partnership, who are specialist cost consultants working regularly with LLDC on the assessment of site-specific viability for planning applications. WT Partnership consequently have an excellent understanding and experience of dealing with the assessment of build costs for schemes in LLDC's area and the costs adopted in the assessment of the CIL charges are informed by 'real world' conditions in the LLDC area.

BNPPRE have derived the benchmark land values by considering market evidence of rents and yields achievable for existing use values of sites coming forward for development in the LLDC's area. Moreover, in line with the requirements of the PPG, BNPPRE also considered benchmark land values that have been adopted in site specific viability assessments for schemes coming forward in the LLDC area. These benchmark land values support the assumptions BNPPRE have adopted in the [VS \(CIL06\)](#).

- (d) *Is the **sampling**, both in its size and range, sufficient to ensure a robust VS? Does the VS reflect the advice of the PPG (last updated 15 March 2019) to sample an appropriate range of sites reflecting a selection of the different types of site included in the Local Plan?*

LLDC response: The sampling is sufficient to ensure a robust VS and reflects the advice of the PPG, sampling an appropriate range of sites reflecting a selection of different types of site included within the [Draft Revised Local Plan \(CIL12\)](#). As identified above, LLDC and BNPPRE derived the development typologies tested in the [VS \(CIL06\)](#) based on an assessment of actual schemes that have come forward or are expected to forward over the Local Plan period.

- (e) *How realistic is the **sensitivity testing** in the VS, for example in relation to alternative AH targets and tenure splits, and higher and lower sales values and build costs?*

LLDC response: The base build costs and sales values BNPPRE used in the [VS \(CIL06\)](#) to determine new rates for office and co-living/shared-living schemes reflect the present position. Sensitivity analyses which vary both costs and sales values provide an indication of the impact of changes on scheme viability. As noted in BNPPRE's report, the housing and commercial property markets are inherently cyclical and the LLDC is testing the viability of potential development sites at a time when the market has experienced a period of sustained growth since the current charging schedule was adopted. Forecasts for future house price growth point to continuing growth in mainstream London housing markets, although there is a degree of uncertainty following the referendum on the UK's membership of the European Union. BNPPRE have identified at Table 2.26.1 of the VS house price forecasts for prime and mainstream London markets and the UK market as a whole from a number of leading property consultancies. The forecasts for cumulative residential growth in mainstream London markets from 2018 to 2022 range between 13.1% and 7.1%, which equates to an average of 10.53%. In this context the sales value growth of 10% tested in BNPPRE's sensitivity testing is considered to be a reasonable reflection of short term value growth. However, BNPPRE reiterate that they have not relied on these figures for identifying the maximum CIL charges which inform the proposed rates in the [Draft Charging Schedule \(CIL01\)](#). At set out at paragraph 1.5 of the [VS \(CIL06\)](#) this analysis was undertaken for indicative purposes only, and was intended to assist the LLDC in understanding the ability of developments to absorb its requirements both in today's terms but also in the future should the market change.

BNPPRE has tested the policy compliant position of 35% affordable housing for Co-living/Shared-living schemes in the [VS \(CIL06\)](#) at a discount of 50% from the market rent. This is identified as having challenging viability outcomes. BNPPRE undertook further sensitivity testing of the quantum of affordable housing delivered in such schemes at 30%, 25% and 20%. This is a reasonable approach given that the LLDC's planning policies allow for the consideration of scheme-specific viability when determining planning applications and therefore this is a key consideration in area wide testing. It is important to clearly distinguish between two scenarios; namely (1) schemes that are unviable regardless of the LLDC's policy requirements, including the level of CIL (including a nil rate) and (2) schemes that are viable prior to the imposition of policy requirements. If a scheme is unviable before policy requirements and CIL are levied, it is unlikely to come forward and policy requirements and CIL would not be a factor that comes into play in the developer's/landowner's decision making. The unviable schemes will only become viable following an increase in values and sites would remain in their existing use.

BNPPRE and LLDC note that this position has been accepted at CIL Examinations, and in particular the LB Newham CIL Examiner set out at para 16 of his report that, *"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 LLDC has adopted significant buffers from the maximum CIL rates identified, which LLDC and BNPPRE consider balances the risk of changes to the market.

- (f) *In the **changed economic circumstances** since the existing CIL was adopted in April 2015, are the updates in the Charging Schedule and the categories of development which are subject to CIL appropriate, for example introducing a charge for 'all other uses except education, healthcare and affordable workspace'?*

LLDC response: The updates in the [Draft Charging Schedule \(CIL01\)](#) and the categories of development which are subject to CIL are appropriate considering the changed economic circumstances since the current [CIL Charging Schedule \(CIL08\)](#) was adopted in April 2015. LLDC is responsible for delivering one of the most important Olympic legacy promises made in the original London 2012 Games bid. This pledge concerns the physical legacy of the Games – the long-term planning, development, management and maintenance of the Park and its impact on the surrounding area after the London 2012 Games. The LLDC area has seen significant change since its formation in 2012 and the adoption of its first [CIL Charging Schedule \(CIL08\)](#) in 2015, for which the evidence was gathered in 2012. There is a range of uses being delivered in the LLDC's area which the existing charging schedule does not include, resulting in a significant loss of contributions to support such development.

The rates for office and co-living/shared-living are based on viability testing, which demonstrates that such schemes can viably support the proposed rates and allow for buffers from the maximum CIL charges identified. The proposed CIL charges amount to no more than 2% of development costs for offices in the Stratford area and 1.1% of development costs on co-living/shared-living schemes in the LLDC area (see paragraphs 1.11 and 1.14 of the [VS \(CIL06\)](#)).

The LLDC has seen a significant quantum of one off developments come forward that require infrastructure to support them (e.g. the proposed large cultural development including accommodation for the Sadler's Wells, BBC Music Studios, London College of Fashion (UAL) and the V&A). Given that each and every development will be different and that such developments are difficult to viability test, the LLDC has taken a pragmatic approach of balancing the delivery of such development against seeking contributions from such development towards the funding of infrastructure by proposing the "all other uses" CIL charge at a rate of £20 per sq m. At this level, the proposed CIL charge is nominal and will account for significantly less than 1% of development costs. The LLDC has sought to exclude uses that are considered to be infrastructure or planning contributions e.g. in line with the Mayoral CIL educational and healthcare are excluded.

The CIL charges proposed are unlikely to have a significant impact on the delivery of such developments. We note that developers frequently build in allowances for 5% contingency of build costs. Furthermore, developers are typically able to absorb build cost inflation running at around 2.5% annually, in comparison to a one-off CIL charge typically at a lower percentage.

The proposed rates represent a reasonable balance between seeking to raise some CIL income from these types of development and any negative effect on viability.

- (g) *Is the **CIL zoning map for the Stratford Retail Area** appropriately drawn, or does it result in anomalies and a perception of unfairness?*

Is the LLDC satisfied that the zoning map does not cause more problems than it solves?

LLDC response: LLDC considers the zoning map to be appropriately drawn, reflecting the market area in which such development will viably come forward.

- (h) *Should a higher CIL charge be levied in relation to any other **specific areas or Sub Areas** within the LLDC?*

LLDC response: A higher CIL charge should not be levied in relation to any other specific area or Sub Areas within the LLDC. The amended/new rates proposed by the LLDC are based on viability evidence.

- (i) *Has an allowance been made for a '**viability buffer**' within the modelling? Should this be applied across all typologies, and what should it be?*

LLDC response: Viability buffers have been allowed for from the maximum CIL charges.

For Office developments in the Stratford area the maximum LLDC CIL charge identified is £269 per sq m. The proposed CIL charge is £123.17 per sq m, which allows for a 54.21% buffer.

Shared-living/Co-living: The [VS \(CIL06\)](#) identifies a total maximum CL charge of £275 per sq m as being viable. After allowing for Mayoral CIL at £60 per sq m this reduces to £215 per sq m. The proposed CIL charge is £73.90 per sq m, which allows for a 65.63% buffer.

- (j) *Should an allowance be made for **abnormal costs**?*

LLDC response: No allowance should be made for abnormal costs. Abnormal costs will not apply to every site in LLDC's area and where there may be abnormal costs these will differ from site to site and should be reflected in the land value paid by developers, in line with PPG requirements. We note that in his Report on Bristol City Council's CIL Charging Schedule the Examiner identified at Para 26 that, "By definition, the CIL cannot make allowance for abnormal, site specific, costs. The rates have to be based on a generic analysis of a variety of size and type of schemes across the area, taking into account average local build costs, not the individual circumstances of particular sites. The fact that a few specific schemes that are already marginal may become unviable in certain locations should not have a significant impact on the delivery of new housing across the city to meet the requirements of the adopted CS".

- (k) *Are there any other relevant **viability considerations**?*

LLDC response: There are no other relevant viability considerations, LLDC and BNPPRE consider that they have taken into account all necessary viability considerations.

- (l) *Does the submitted CIL discriminate against using of **brownfield land**?*

LLDC response: The submitted CIL does not discriminate against the

use of brownfield land. The LLDC area does not accommodate any greenfield sites. All of the land in the LLDC's area that has come forward and that will come forward for development is identified as being previously developed land. The benchmarks for land value reflect this as do the development appraisal assumptions, which are reflective of development that has and is expected to come forward in LLDC's area in future.

(iii) **Conclusion**

Is the draft Charging Schedule supported by detailed evidence of community infrastructure needs? In particular:

- (a) *Is the evidence which has been used to inform the charging schedule robust, proportionate and appropriate?*

LLDC response: The evidence which has been used to inform the [Draft Charging Schedule \(CIL01\)](#) is robust, proportionate and appropriate as set out above.

- (b) *Are the charging elements appropriate when the additional Mayoral CIL 2 rate of £60 per square metre is taken into account?*

LLDC response: The charging elements are appropriate when the additional Mayoral CIL 2 rate of £60 per square metre is taken into account. Mayoral CIL 2 rate was taken into account and included within the viability testing that BNPPRE undertook as part of the evidence base for the [Draft Charging Schedule \(CIL01\)](#).

Issue 2 – Is the residential charging rate informed by and consistent with the evidence?

- (i) *Is the **rate for residential development** (C3 and C4 at £73.90 psm reasonable and realistic in relation to achieving an appropriate balance between helping to fund new infrastructure and the potential impacts on economic viability? Is the increase from £60 psm, which has been in place since April 2015, justified and effective? Is the valuation work based on a fixed density assumption or range of densities, and does this vary between the LLDC area? How does the rate relate to other neighbouring CILs, including the four constituent authorities?*

LLDC response: LLDC is not proposing to change its residential rates. The [Draft Charging Schedule \(CIL01\)](#) merely reflects the impact of indexation, thus reflecting the rates charged today.

LLDC have undertaken a partial review of their currently adopted charging schedule. This approach is identified as being acceptable by the Planning Act 2008 as amended by the Localism Act 2011, and the levy Regulations. We note that para 043 of the PPG states that:

"Charging authorities may revise their charging schedule in whole or in part. Any revisions must follow the same processes as the preparation, examination, approval and publication of a charging schedule (as specified under the Planning Act 2008, particularly sections 211 to 214 as amended by the Localism Act 2011, and the levy Regulations)."

The CIL regulations (Reg 40) require collecting authorities to apply an index of inflation to keep adopted CIL levies responsive to market

conditions. The index is the national All-In Tender Price Index of construction costs published by BCIS. Table 7.18.1 in the [VS \(CIL06\)](#) applies indexation to the adopted rates in line with Reg 40. LLDC is not proposing to change the majority of the CIL rates in the [Draft Charging Schedule \(CIL01\)](#). The only rates proposed to be changed are offices in the Stratford area, Co-living/shared living and a nominal all other uses charge.

The indexed rates set out in Table 7.18.1 reflect the CIL a developer would need to pay today, *irrespective* of whether LLDC introduces a revised charging schedule or not, and consequently are not required to be assessed by the Examination. This is consistent with the approach taken and accepted in other partial CIL charging schedule review examinations. We note that the London Borough of Southwark's Revised CIL Charging Schedule Examiner identified at paras 5 and 8 of his report that,

"5. The DRCS seeks to do two things. Firstly, and the reason that it has been produced, is to revise charges for residential development operating within the Old Kent Road Opportunity Area. In the current Schedule the Old Kent Road Opportunity Area (OKR OA) falls across CIL Zones 2 and 3. The Council proposes to revise the Schedule to increase the rate paid by residential developments currently falling within Zone 3 in the southern part of the OA by amending the boundary between Zones 2 and 3 so that the whole of the OA comes within Zone 2. Secondly, the opportunity has been taken to increase all the existing rates in line with the All-in-Tender Price Index, as provided for in the CIL Regulations. These are the rates that would be charged for any chargeable development at this date in any event and so is not a real change to the rates that would be charged under the extant Schedule (in fact the rates are marginally lower than they otherwise would be due to a rounding process that has been used)."

"8. I made it clear in my questions to the Council (copied to representors and put on the CIL webpage) that, in my understanding, my examination is purely concerned with the substantive revision, and not with the changes to rates due to the inflation uprate as provided for in the Regulations."

With the exception of the proposed CIL for Shared-living/ Co-living schemes, the [Draft Charging Schedule \(CIL01\)](#) would not reflect any changes to the current CIL charges on residential uses.

- (ii) *Looking at the LLDC area as a whole, does the CIL rate for residential development enable the percentage of **affordable housing** (AH) proposed in strategic policy SP2 [35% target across the area and 50% on a habitable room basis] to be realised or would the CIL rate significantly compromise the ability of the Local Plan to effectively meet the AH needs of the area? Is the CIL rate for residential development sufficiently high to have a detrimental effect on planning obligations towards AH?*

LLDC response: As identified in the answer to the question at Issue 2 (i) above, the CIL Charge for all residential uses except Shared-living/Co-living uses is not proposed to be amended from the currently adopted rates.

BNPPRE's appraisals of Shared-living/Co-living uses has been tested including affordable housing at 35% and sensitivity tested at 30%,

25% and 20% affordable housing. Viability is identified as being challenging currently on such schemes at 35% affordable housing, however we note that it is not CIL that is making these developments unviable. As already identified in response to Issue 1 ii (e), it is important to clearly distinguish between two scenarios; namely (1) schemes that are unviable regardless of the LLDC's CIL and (2) schemes that are viable prior to the imposition of CIL. If a scheme is unviable before CIL is levied, it is unlikely to come forward and CIL would not be a factor that comes into play in the developer's/landowner's decision making. The unviable schemes would only become viable following either an increase in values or where the LLDC's planning policies are applied flexibly, allowing the consideration of scheme-specific viability when determining planning applications and therefore this is a key consideration in area wide testing. Our analysis of schemes at 30% affordable housing identify such schemes to be viable and able to accommodate a maximum CIL charge of £275 per sq m.

LLDC and BNPPRE do not consider the rate proposed will have a detrimental effect on planning obligations towards affordable housing. Sensitivity testing of co-living schemes with and without the proposed CIL charge has shown that the CIL charge equates to the equivalent of less than 1% affordable housing (0.95%) (sensitivity analysis is set out in page 37 of the [VS \(CIL06\)](#)). In normal circumstances, the cost of CIL would be passed onto the landowner in bids for sites. Where this is not possible, the sensitivity testing indicates that the impact CIL would have on the delivery of affordable housing would be minimal. In the LLDC's judgement, the impact strikes an appropriate balance between the need to raise funds for providing essential supporting infrastructure and the impact on other policy requirements. As identified at para 3.12 of BNPPRE's [VS \(CIL06\)](#) the Examiner on the Mayor of London's first CIL charging schedule identified in his concluding remark, that

*"the price paid for development land may be reduced [so that CIL may be accommodated]. As with profit levels there may be cries that this is unrealistic, but **a reduction in development land value is an inherent part of the CIL concept**. It may be argued that such a reduction may be all very well in the medium to long term but it is impossible in the short term because of the price already paid/agreed for development land. The difficulty with that argument is that if accepted the prospect of raising funds for infrastructure would be forever receding into the future. In any event in some instances it may be possible for contracts and options to be re-negotiated in the light of the changed circumstances arising from the imposition of CIL charges". (para 32 – emphasis added).*

- (iii) *Is the proposed introduction of a new CIL rate of £73.90 psm for **Co-Living/Shared Living** developments based on reasonable assumptions about development values and likely costs?*

LLDC response: The inclusion of co-living/shared living within the charge for residential development has been based on reasonable assumptions about development values and likely costs. BNPPRE have based their assumptions on research into the likely revenues and costs of such schemes and in particular their and WT Partnership's knowledge of such revenues and build costs respectively.

The CIL charge proposed adopts a significant discount from the maximum CIL charge identified as being viable. As identified in the

response to Issue 2 (ii) LLDC and BNPPRE do not consider the rate proposed will have a detrimental effect on planning obligations towards AH as identified above, the proposed CIL charge of £73.90 will amount to less than the equivalent of 1% affordable housing if such costs cannot be passed back to landowners. Further, the CIL charge proposed on Shared-living/Co-living uses will amount to circa 1.1% of development costs.

- (iv) *What type of **consultation** has the Council carried out with the building industry as part of the preparation of the submitted CIL?*

LLDC response: The Legacy Corporation has carried out two rounds of consultation in line with regulations 15 and 16 of the CIL Regulations. As part of these two rounds of consultation a range of stakeholders in the building industry were consulted, and consultations were publicised in order to ensure those who wanted to respond were able to.

Issue 3 – Levy rates for other uses

- (i) *What is the rational basis for the introduction of the nominal **rate for all other uses**, of £20 psm? Should this category include **Affordable Workplace** uses?*

LLDC response: The LLDC area attracts a significant quantum of development which can be characterised as one off/unique developments such as the proposed large cultural development including accommodation for the Sadler's Wells, BBC Music Studios, London College of Fashion (UAL) and the V&A. Such development proposals have a high impact on the infrastructure capacity within the LLDC's area. Currently the LLDC does not charge CIL on any uses other than those specified in the adopted charging schedule. The LLDC has identified that there are a significant number of developments coming forward in its area in future, which will require infrastructure to support them for which the adopted Charging Schedule does not facilitate any financial contributions. For example, large entertainment uses make no contribution.

Such uses are difficult to viability test with certainty as every scheme and use will be unique. However, a nominal rate of £20 per sq m is unlikely to be a significant factor in developers' decision making, typically accounting for significantly less than 1% of development costs, and therefore could be absorbed without having a significant impact on viability across the area.

In proposing the nominal rate of CIL on all other uses of £20 per sq metre, LLDC has struck a balance between raising funds to provide the necessary infrastructure to support developments and the growth envisaged in the LLDC area, whilst not putting the delivery of the Draft Revised Local Plan at risk in line with CIL Regulation 14. The PPG on CIL identifies that charging authorities do not have to set a nil rate, they can set a low rate (paragraph 21, Reference ID: 25-021-20190315). LLDC and BNPPRE note that this has been accepted as being a reasonable approach to collecting funds towards infrastructure for such development at a number of CIL Examinations and subsequently adopted in CIL charging schedules, including; the Mayor of London, the Royal Borough of Kingston Upon Thames, the London Borough ('LB') of Hounslow, LB Bexley, LB Barking and Dagenham, LB Croydon, LB Sutton, Bristol City Council and Oxford City Council.

The LLDC considers that Affordable Workspace should be zero rated as this is usually secured as a planning obligation in commercial developments at significantly reduced rents. In LLDC and BNPPRE's experience of the viability of such space, the provision of affordable workspace reduces the value of developments, and much like affordable housing such space is cross-subsidised by market/private floorspace. On this basis, LLDC has taken a view that it is reasonable and fair that Affordable Workspace is zero rated.

- (ii) *Is there enough evidence to demonstrate that the significant increase from a zero rate in 2015 to £123.17 psm for **offices** (Use Class B1a) in the **Stratford Retail Area** is based on reasonable assumptions about development values and likely costs?*

LLDC response: There is enough evidence to demonstrate that the significant increase from a zero rate in 2015 to £123.17 per square meter for offices (Use Class B1a) in the Stratford Retail Area is based on reasonable assumptions about development values and likely costs. The office market in Stratford has matured significantly since office development was assessed in 2012. By way of example the appraisals in the [VS \(CIL06\)](#) supporting the current adopted charging schedule applied rents of £30 per sq ft, whilst rents currently achieved in Stratford are £45 per sq ft and higher. The yield has also compressed significantly from 6.5% to 5%. BNPPRE is aware having undertaken research into rents and yields and market activity in Stratford that it is successfully competing against existing office markets such as Canary Wharf. Office developments in the area have secured tenants who were either previously renting space in or looking to rent space in Canary Wharf.

The viability evidence on rents and yields identified through BNPPRE's research and build costs identified by specialist cost consultants WT Partnership identify that such uses can support a maximum CIL charge of circa £269 per sq m. The proposed CIL charge is £123.17 per sq m, which allows for a 54.21% buffer and amounts to no more than 2% of development costs.

- (iii) *The proposed CIL rate does not cover uses such as **research and development** and **light industry** (Use Classes B1b and c); **general industry** (Use Class B2); and **storage and distribution** (Use Class B8); these uses appear to be generally well represented in the LLDC area. Are their exclusions based on reasonable assumptions about development values and likely costs?*

LLDC response: Given the scale of new development of such uses (i.e. that has come forward, which is proposed to come forward, and which is anticipated to come forward) such markets are not considered to have matured as significantly as the office market. As a consequence the LLDC did not consider such uses would generate significant contributions towards CIL. Notwithstanding this, LLDC and BNPPRE note that in the adopted [CIL Charging Schedule \(CIL08\)](#) such uses are nil rated. However, the [Draft Charging Schedule \(CIL01\)](#) proposes that such uses would be included in the "all other uses" CIL charge category, for which a nominal CIL of £20 per sq m would be charged.

- (iv) *Is the LLDC confident that all the necessary increased **water supply** and **waste water treatment** capacity can be secured through S106 Agreements or other means?*

LLDC response: The Legacy Corporation has worked closely with stakeholders including those providing utilities in the development of the Legacy Corporation's [Infrastructure Delivery Plan Review \(2018\) \(CIL07\)](#) and has consulted stakeholders including Thames Water who are the water and waste water providers within the Legacy Corporation area. Thames Water have fed any requirements into the [Infrastructure Delivery Plan Long List of Projects \(Annex 1 of CIL07\)](#) and the LLDC is confident that any requirements will be delivered through appropriate means, including S106 Agreements where appropriate.

- (v) *In relation to **retail development**, is there evidence to justify a differential rate between £123.17 for comparison and all other retail (A1-A5) within the Stratford Retail Area and zero charge elsewhere in the area? Some CILs draw a distinction between large scale retail development, typically 100 sm plus net sales area, where a higher charge is levied, and smaller retail units (say between 25-100 sm net sales area, where a lower charge is levied, with very small-scale retail development (typically below 25 sm net sales area), having a zero charge. Is the blanket separation between the Stratford Retail Area and everywhere else and the 'one size fits all' approach to the amount of the retail levy within the Stratford Retail Area based on reasonable assumptions about development values and likely costs?*

LLDC response: As identified in the response to Section 2(i) the CIL charge proposed for retail development at £123.17 per sq m is not proposed to be changed from the rate currently charged. The current rate was tested during the examination that took place on the current [CIL Charging Schedule \(CIL08\)](#) and there has been no proposal to change this rate. The rate in the [Draft Charging Schedule \(CIL01\)](#) merely applies indexation so that it is brought into line with the amounts actually payable today.

LLDC and BNPPRE note that the charge for such development elsewhere in the LLDC area will fall within the proposed nominal CIL rate of £20 per sq m. BNPPRE identifies that such a CIL charge accounts for significantly less than 1% of development costs and therefore will not have a significant impact on the delivery of such development.

- (vi) *In relation to purpose-built **student accommodation**/halls of residence and **hotels**, is there evidence to justify a 23.17% rise since 2015, based on reasonable assumptions about development values and likely costs?*

LLDC response: As identified in the answer to the question at Issue 2 (i) above, the CIL charge proposed for purpose-built student accommodation and hotels development at £123.17 per sq m is not proposed to be changed from the rate currently charged. The rate in the [Draft Charging Schedule \(CIL01\)](#) merely applies indexation so that it is brought into line with the amounts actually payable today.

- (vii) *Are Use **Class C2 care homes** included in the residential rate of £73.90 psm? If this is the case, is the rate based on reasonable assumptions about development values and likely costs?*

LLDC response: All C2 uses except hospitals or healthcare uses are included in the residential rate of £73.90. BNPPRE has not explicitly tested this type of development as the adopted charging schedule identifies "all residential

development” as a charge and there is no proposed change to this charge within the [Draft Charging Schedule \(CIL01\)](#). The ‘all residential development’ charge was tested at examination before the current [CIL Charging Schedule \(CIL08\)](#) was adopted in 2015, please see below the related extract from the examiner’s report:

“The Charging Schedule does not distinguish between different types of residential development. However, there is no evidence that would indicate that a differential approach to rates would be justified.”

- (viii) *Is there a case for levying a CIL charge in relation to **mixed use developments**?*

LLDC response: Such developments are currently charged CIL at the relevant rates for each of the component uses. There is, however, not a case for a specific CIL rate for a scheme which contains more than one use. It would be impossible to establish an accurate evidence base to justify a “mixed use rate”, as the composition of mixed use schemes can vary significantly. It would potentially also result in perverse incentives to include certain uses which might be judged as inappropriate for a particular development so that a developer can benefit from an alternative CIL rate. We are not aware of any charging authority having adopted a “mixed use CIL rate”.

Mixed use developments will vary in every development scheme proposed. There is no standard form of mixed-use development. Accordingly, the CIL charge that would be liable on such developments would depend on the uses proposed as part of each individual development scheme as to whether or not they would be charged CIL and at what rate. The charge for each use would therefore be calculated based on the chargeable area of the use multiplied by the relevant rate for that use as set out in the charging schedule adopted at the time permission is granted.

- (ix) *Is there enough evidence to demonstrate that a **zero charge** is appropriate for all the categories thus specified in the Charging Schedule?*

LLDC response: The only use proposed uses to be zero rated are Affordable Workspace (see response above to Issue 3 (i) with regard to the nil rating of such uses) and health and educational uses. Health and educational uses are forms of community infrastructure that are largely delivered by the public sector or with the benefit of public funding (including CIL). It is widely accepted that levying CIL on such developments would be inappropriate and result in an unnecessary administrative burden, with CIL being paid and then recycled to the provider. Nil rating these uses is consistent with the approach taken by both the first Mayoral CIL Charging Schedule and the recently adopted revised schedule.

Issue 4 - Does the evidence demonstrate that the proposed charge rate would not put the overall development of the area at serious risk?

- (i) *Has the **appropriate balance** been struck in the following key areas:*
- (a) *An appropriate balance between **maximising revenue** to invest in infrastructure as against the need to minimise the impact of*

development viability, including in relation to cumulative impacts;
and

LLDC response: An appropriate balance between maximising revenue to invest in infrastructure as against the need to minimise the impact of development viability has been struck in the development of the [Draft Charging Schedule \(CIL01\)](#). The CIL rates are based on viability data taking into consideration the cumulative impact of LLDC's policies to establish the maximum reasonable viable levels of CIL that could be accommodated. From this level the LLDC have allowed for a buffer of between 54.21% and 65.63%. On this basis the rates have not been set at the margins of viability and this will minimise the impact on development viability. We would highlight that these rates equate to between 1.1 and 2% of development costs, at which level they are very unlikely to have a material impact on the delivery of development. The 'all other uses' category has been proposed at a nominal level amounting to significantly less than 1% of development costs and therefore would not have a significant impact on development viability or deliverability. LLDC and BNPPRE consider that on this basis the charges reflect the appropriate balance between raising funds to provide infrastructure and ensuring that the delivery of the development envisaged by the [Draft Revised Local Plan \(CIL12\)](#) is not put at risk.

- (b) *An appropriate balance between prioritising **infrastructure funding** and **affordable housing** provision?*

LLDC response: An appropriate balance between prioritising infrastructure funding and affordable housing provision has been struck as set out earlier within the answers to these questions. BNPPRE has undertaken sensitivity testing (set out on page 37 of the [VS \(CIL06\)](#)) which has established that the proposed CIL charge of £73.90 per sq m on Co-living/Shared-living schemes would equate to the equivalent of less than 1% affordable housing foregone if other factors (including land value) cannot adjust.

- (ii) **Key underlying principle** (as set out in the VS paragraph 2.3): *Does the proposed CIL enable an appropriate balance to be struck between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across the LLDC area?*

LLDC response: The responses set out above set out how the proposed CIL enables an appropriate balance to be struck between the desirability of funding infrastructure from the levy and the potential impact upon the economic viability of development across the LLDC area. The evidence base submitted alongside the [Draft Charging Schedule \(CIL01\)](#) demonstrates how the proposed charges strike an appropriate balance between funding infrastructure and the economic viability of development within the Legacy Corporation area.

Issue 5 – Other matters

- (i) *Does the LLDC need to commit itself to a **review of the CIL** based on appropriate triggers?*

LLDC response: The Legacy Corporation will continue to monitor changes within its area and review any adopted CIL charging schedule in line with the requirements set out within the CIL Regulations.

- (ii) *Should the LLDC specify what criteria would be used to determine whether **exceptional circumstances** are appropriate?*

LLDC response: The Legacy Corporation does not have any policies relating to discretionary or other relief. The Legacy Corporation follows the procedures set out in the CIL Regulations in relation to forms of mandatory relief and therefore would direct applicants claiming exceptional circumstances to follow the procedure and criteria set out in the CIL Regulations. The review of the adopted [CIL Charging Schedule \(CIL08\)](#) and its associated consultation has not identified any evidence that has suggested a need for policies on discretionary or other relief.

- (iii) *Is the LLDC's policy covering **instalment rates** reasonable?*

LLDC response: The Legacy Corporation's policy covering instalment rates is in line with that set out by the Mayor of London in relation to Mayoral CIL1 and 2. This gives certainty as to when instalments will be expected to be paid and provides reasonable time frames.

- (iv) *In terms of the overall costs of the scheme, broadly what would be the **impact of CIL** in percentage terms for the various land uses?*

LLDC response: For Office developments in the Stratford area the proposed CIL charge at £123.17 per square metre is identified as being no more than circa 2% of development costs.

For Shared-living/Co-living the proposed CIL charge at £73.90 per square metre is identified as being no more than circa 1.1% of development costs.

For all other uses the proposed nominal CIL charge at £20 per sq m is identified as being less than 1% of development costs.

- (v) *Is there a case for lower/zero CIL rates for **brownfield sites**?*

LLDC response: There is not a case for lower/zero CIL rates for brownfield sites within the Legacy Corporation area. All sites in the LLDC's area can be described as brownfield or previously developed sites. These sites have been tested in arriving at the amended CIL rates in the [Draft Charging Schedule \(CIL01\)](#).

- (vi) *Are the **monitoring** arrangements appropriate?*

LLDC response: The monitoring arrangements are appropriate and in line with requirements set out in legislation. A CIL 'Regulation 62' Report is published annually, and CIL monitoring (including monies collected and spent) is also published within the annual Authorities Monitoring Report. As noted above, the government has published the Draft Amendment Regulations which will see the omission of Regulation 62, and from 31st December 2020 the introduction of a new statutory duty to publish an annual infrastructure funding statement including a CIL report containing the detailed matters set out in Schedule 2 of the Draft Amendment Regulations.

- (vii) *Are there any other CIL issues which require consideration/scrutiny?*

LLDC response: There are no other CIL issues which require consideration or scrutiny.