


Cabinet Decision	
4 October 2016	
Report of: Aman Dalvi, Corporate Director of Development and Renewal	Classification: Unrestricted
The Infrastructure Delivery Framework: Governance Proposals	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	Owen Whalley
Wards affected	All
Key Decision?	Yes
Community Plan Theme	A great place to live

1. EXECUTIVE SUMMARY

1.1 This document has been prepared in order to seek approval from the Mayor in Cabinet to adopt a number of initiatives relating to the implementation of a new Infrastructure Delivery Framework (IDF). More specifically, this report seeks the approval/consideration for a number of matters including:

1. The approach to reporting Community Infrastructure levy (CIL) and Section 106 (S106) income, allocation and expenditure information;
2. The IDF officer level group to be able to consider and recommend allocations of CIL and S106 funding of up to £250,000 which can then be signed-off by the Corporate Director as per the process in 3. below;
3. A proposal to integrate the process for completing 'Records of Corporate Director's Actions Forms' into the IDF process (Appendix E);
4. A proposal to integrate approval for the allocation of Capital budgets through the IDF process;
5. The proposed approach to approving the funding and delivery of infrastructure projects;
6. The proposed approach to enabling the identification of new infrastructure projects (Appendix F);
7. The proposed approach to engaging Commissioners in the IDF process in respect of grants (Appendix D);
8. The Terms of Reference for the board level and officer level groups (Appendices G and H).

1.2 The IDF was approved in Cabinet on the 5th January 2016 for implementation from the 1st April 2016. The IDF is a governance structure and supporting evidence base proposed to ensure that funding allocation relating to infrastructure delivery is standardised, evidence based and well informed. In

addition, this proposal will help ensure the allocation of funding to infrastructure projects complies with the requirements of the Mayor's Transparency Protocol.

- 1.3 The IDF will subsume the functions of the Planning Contributions Overview Panel (PCOP), which is the body that currently decides how S106 monies are allocated, and will seek to make recommendations in respect of the allocation of the local CIL and also S106 income.
- 1.4 The new approval structures will involve the formation of a new officer-led working group (the 'Infrastructure Delivery Steering Group' (**IDSG**)) which will be chaired by the Corporate Director for Development and Renewal (or equivalent). The officer-led group will feed into a board level group (the 'Infrastructure Delivery Board' (**IDB**)) which will be chaired by the Mayor and will be attended by the membership of Cabinet. The IDB will make recommendations to and decisions will be made by the Mayor in Cabinet.
- 1.5 Proposals for how the Neighbourhood Proportion of CIL, as well as how the Infrastructure Delivery Framework process can be effectively articulated to the residents are being formed and will be referred for approval at a later meeting.

2. RECOMMENDATIONS

- 2.1 The Mayor in Cabinet is recommended to:
 1. Approve the proposed timetable for reporting CIL and S106 income, allocation and expenditure information. It is proposed that quarterly reports will be provided on to Cabinet. Reporting to the Overview and Scrutiny Committee will be undertaken on an annual basis.
 2. Note the latest positions regarding the Council's CIL and S106 income and expenditure information.
 3. Agree that the Infrastructure Delivery Steering Group can recommend to the Corporate Director of Development and Renewal (or equivalent) the sign off of a 'Record of Corporate Director's Actions' form authorising the allocation of CIL and S106 as in I. and II. below:
 - I. The allocation of CIL and S106 funding of up to £250,000 to infrastructure projects ;
 - II. The allocation of S106 income where contributions are due to expire imminently;
 4. For all approvals granted in accordance with recommendation 3 above, to approve the implementation of a process to allow the Mayor to review the decision made.
 5. Approve the proposed approach to engaging with the Commissioners where decisions sought involve the provision of grants.
 6. Approve the proposal to integrate the process for completing 'Records of

Corporate Director's Actions' forms into the IDF approval process.

7. Approve the proposal to integrate the adoption of Capital budgets of up to £1 million by the Mayor in Cabinet into the IDF approval process.
8. To approve the proposal to integrate the adoption of Capital budgets of over £1 million by Full Council into the IDF approval process. This does not apply in the case of the adoption of Capital budgets through the Council's annual budget-setting process.
9. To note and approve the proposed approach to approving the funding and delivery of infrastructure projects through the IDF approval process.
10. Approve the proposals for enabling the identification of new infrastructure projects by the Mayor and Councillors who attend the Infrastructure Delivery Board. Approve the process proposed that will enable officers to seek initial views on infrastructure projects from the Infrastructure Delivery Board.
11. Approve the Terms of Reference, along with any proposed amendments, for the Infrastructure Delivery Steering Group; and the Terms of reference for the Infrastructure Delivery Board. These documents will reflect the decisions made in respect of this report.
12. To note that proposals for the Local Infrastructure Fund are currently proposed to follow to the next Cabinet meeting. The Local infrastructure fund will enable localities to more directly inform spending decisions in respect of a proportion of CIL income collected.

3. REASONS FOR THE DECISIONS

3.1 There are several reasons for the decisions sought in this report:

1. To ensure that the IDF process is adopted in an effective manner, in compliance with the decision made by the Mayor in Cabinet in January 2016. This decision was to approve the implementation of the IDF to help secure the funding and delivery of infrastructure projects using CIL and S106.
2. To ensure that the process for approving the allocation of CIL and S106 funding is transparent and in compliance with the Mayor's Transparency protocol.
3. To ensure that relevant decisions are appropriately informed.
4. To ensure that the delivery of infrastructure in the borough accords with the Council's Best Value objectives as set out in the LBTH Best Value Strategy and Action Plan.

4. ALTERNATIVE OPTIONS

- 4.1 There are a number of alternative options to the recommendations set out in this report:
1. To approve the reporting of CIL and S106 income and expenditure information in a manner different to the approach proposed, such as by prescribing different reporting timescales and methodology.
 2. To delegate authority to the IDSG through the Corporate Director of Development and Renewal (or equivalent) to be able to allocate a different levels of CIL and S106 funding to infrastructure projects, or to not delegate any authority to allocate or spend at all. In addition, the powers to grant delegated authority to the IDSG in terms of the allocation and expenditure of S106 amounts where these amounts are imminently expiring, could be removed or amended in some way.
 3. To not approve the integration of the RCDA process into the IDF approval process.
 4. To not approve the adoption of Capital budgets of up to £1m by the Mayor in Cabinet via the IDF approval process.
 5. To not approve the proposed approach to approving the funding and delivery of infrastructure projects through the IDF.
 6. To not approve the proposed processes for identifying new projects by the Mayor and Councillors who attend the IDB. To not approve the process proposed to enable officers to seek initial views of projects from the Mayor and Councillors.
- 4.2 It should be noted that Planning and Building Control consider that the approval of any of the alternative options will lead to a less robust IDF approval process.

5. BACKGROUND

- 5.1 Approval to implement a new IDF was granted by the Mayor in Cabinet on the 5th January 2016. The IDF is a new governance structure and supporting evidence base relating to the approval for the funding and delivery of infrastructure projects. It will mainly focus on the allocation and expenditure of CIL and S106.
- 5.2 The approval granted was for the formation of a new officer-led working group, the 'Infrastructure Delivery Steering Group' (IDSG) which will feed into a board level group, the 'Infrastructure Delivery Board' (IDB). This Board will be chaired by the Mayor, attended by the membership of Cabinet and be broadly similar to the Mayor's Advisory Board meeting although will specifically consider infrastructure matters including the allocation of CIL and S106 funding.

- 5.3 The IDB will make recommendations for decisions to be made by the Mayor in Cabinet. Please refer to Appendix A which provides a flow chart that demonstrates the proposed approval structure approved although it includes proposed interaction with Commissioners (see paragraphs 6.10 to 6.12 of this document.)

6. PROPOSALS FOR APPROVAL

The timetable for reporting CIL and S106 income, allocation and expenditure information

- 6.1 It is proposed that CIL and S106 income and expenditure information will, where possible, be referred through every meeting cycle, up to the IDB. It is also proposed that quarterly reports will be provided onto Cabinet and annual reports will be provided onto the Overview and Scrutiny Committee who may request additional reporting if necessary.
- 6.2 Basic information regarding S106 and CIL income and balances held by the Council has been provided in this report. See Appendix B for S106 and Appendix C for CIL. These reports show a current S106 balance circa £72m and CIL balance circa £7.3m.
- 6.3 For on-going reporting purposes to the IDB, Cabinet and the Overview & Scrutiny Committee more detailed information and analysis on income, allocation and expenditure will be provided. The proposed approach to reporting CIL and S106 will be reported to the November IDB.
- 6.4 The detailed reporting, briefing and presentation has not been included for this cycle as the agenda is full with IDF implementation matters. The reporting will be able to be considered fully at the November IDB meeting.

The delegation of authority to the Corporate Director as chair of the Infrastructure Delivery Steering Group

- 6.5 It is proposed that the Mayor in Cabinet agree that the IDSG can consider and recommend allocations of CIL and S106 funding of up to £250,000 which can then be signed-off by the Corporate Director as per the process in paragraph 2.1(3) of this report.
- 6.6 The Council's Constitution delegates power to Corporate Directors to approve expenditure generally up to £250,000 – the proposed level of this delegation has been formed to align with this provision of the Constitution, given the IDSG will be chaired by the Corporate Director of Development and Renewal.
- 6.7 The delegation to the Corporate Director of Development and Renewal (or equivalent) as Chair of the officer level group will help prevent decisions of allocating funding becoming onerously labour intensive on the Mayor and Cabinet. This is because infrastructure projects range from very small (e.g. £10,000 for some minor repairs to a Community Centre) to very large (e.g. £10m to deliver a school) and could result in many decisions being referred to

the Mayor in Cabinet, putting strain on this approval process, as well as delaying the commissioning of smaller infrastructure projects.

- 6.8 In addition to the delegation proposed in the paragraphs above, in order to prevent S106 contributions expiring, in circumstances where contributions are due to imminently expire, the IDSG should be delegated authority to recommend the expenditure of such contributions to the Corporate Director who will then sign off a 'Record of Corporate Director's Actions' form authorising the allocation.
- 6.9 All decisions made under delegated authority will be the subject of a review process where the Mayor will be able to review and overturn the decision made. Where a decision is required to be the subject of the review process, it will be made at the IDB meeting following the IDSG meeting in which the delegated decision was made. In addition, all delegated approvals will be reported for noting through the IDF process to the IDB and Cabinet.

The proposed approach to engaging Commissioners in the IDF process

- 6.10 Planning and Building Control have met with Commissioners and discussed the approval of the provision of CIL/S106 grants by them, and how this can appropriately interact with the IDF process.
- 6.11 In order to expedite the approval of projects, it is proposed that approvals for the provision of grants by the Commissioners will be sought in tandem to projects being approved through the IDF process;
- 6.12 Once projects involving grants have received approval from the IDB to be referred to Cabinet, they will also be referred through the Commissioners decision-making process, or any equivalent process that may supersede the current governance arrangements with regard to the approval of grants. It will be the responsibility of service areas referring projects to the IDB to manage the Commissioners decision-making process as appropriate. Please refer to Appendix D which provides a formal process for engaging the Commissioners through the IDF process.

The proposed approach to approving RCDAs through the IDF process

- 6.13 In an infrastructure delivery context RCDAs enable the adoption of Capital budgets of £250,000 or less by Corporate Directors. They also facilitate the waiving of Financial Regulations (including the Procurement Rules) on an item with an assessed value of up to £164,176. Corporate Directors are granted this approval by the Council's Constitution. All RCDAs above a value of £250,000 are made publicly available through the London Contract Register.
- 6.14 RCDAs are in theory a useful way of expediting the approval of Capital budgets for infrastructure projects of a cost of less than £250,000. However, the administration of the process has tended to take a long time, limiting its benefits.

6.15 Grant Thornton was appointed to review the S106 programme management processes of the Council and produced a report dated the 7th March 2016. This audit identified that the RCDA process contributed to delays.

6.16 The same audit report referred to in the paragraph above made the following recommendation:

When implementing the IDF the Council should review the RCDA procedure and investigate whether a more streamlined process which enables more rapid delegated funding approval will still achieve the same results without sacrificing the quality of oversight and accountability.

6.17 In order to help the Council use RCDAs to approve the funding and delivery of infrastructure projects, and to comply with the requirements of Grant Thornton's audit report, this Cabinet Report seeks approval to implement a new process that integrates the completion of RCDAs into the IDF meetings cycles. A protocol is set out in Appendix E, it provides some background to the RCDAs and sets out a process for expediting their approval via the IDF.

6.18 If approved, this position will be kept under review and if significant amendments are subsequently required, approvals for these amendments will be sought through the IDF meetings process.

The approval for the adoption of Capital Budgets through the IDF process

6.19 The Council's Constitution grants power to the Mayor in Cabinet to be able to approve the adoption of Capital budgets of up to £1 million. If a project of less than this value has funding secured, once a Capital budget has been formally approved, the project can be commissioned.

6.20 It is proposed that officers can secure the adoption of Capital budgets through the IDF process, to prevent duplicate processes and to ensure the project approvals can be received as expediently as possible. If a Capital budget of a value of less than £1m is required for a project to proceed, then relevant officers can seek the adoption of a Capital budget in Cabinet via the IDF process. If the adoption of a Capital budget of over £1 million is required, then relevant officers can do so through the IDF process, referring to Full Council following receiving Cabinet approval. This does not apply in the case of the adoption of Capital budgets through the Council's annual budget-setting process.

6.21 The processes regarding adopting Capital budgets through the IDF process will account for any changes to the Council's general approach to the adoption of Capital budgets. Corporate Finance are currently undertaking work to assess the Council's current approach to the adoption of Capital budgets.

The proposed approach to approving the funding and delivery of infrastructure projects through the IDF

- 6.22 Officers are required to prepare a Project Initiation Document (PID) regarding the relevant infrastructure project(s). This document will capture relevant information regarding the project (extent of works, costs, community benefits etc.). In addition, the views of legal services are sought in respect of the project in preparation of the PID.
- 6.23 The PID will be referred to the IDSG for approval for referral to the IDB, or if authority is delegated to the IDSG to approve the PID then it may be approved for delivery. Where one or more PIDs are to be referred to the IDB, the Infrastructure Planning Team will form a covering Cabinet report that will append the relevant PID(s).
- 6.24 A new PID template has been formed for the IDF process. This template will be kept under review to ensure it captures the information required to make decisions.
- 6.25 Decisions will be supported by an infrastructure evidence base which is being developed.

A process to enable officers to seek early views in respect of proposed projects

- 6.26 This will involve an officer submitting an 'Initial Project Proposal Form' through the IDF process to inform a discussion at the IDB. Where discussions suggest that a project referred to the IDB in this way is appropriate, officers can prepare formal proposals regarding the project and submit them through the IDF approval process. In this instance officers must also make sure that the project in question is referred to in any relevant evidence base.
- 6.27 Please see attached at Appendix F a note that sets out the process proposed in detail, as well as the relevant form. This process will be kept under review by the IDSG.

The Terms of Reference for the Infrastructure Delivery Steering Group and Infrastructure Board

- 6.28 Terms of Reference for the IDSG and the IDB have been formed. They reflect the approvals provided in respect of the IDF process to date as well as the approvals sought in this report.
- 6.29 In summary, the Terms of Reference set out:
1. The scope of the responsibilities of these forums;
 2. The membership of the forums;
 3. General governance arrangements;

6.30 The Terms of Reference for these meetings are attached at Appendix G and H and can be reviewed as and when necessary.

7 COMMENTS OF THE CHIEF FINANCE OFFICER

- 7.1 The Council does not yet have an approved capital strategy, although plans are in place to develop such a strategy to inform the Council's Medium Term Financial planning process. Such a strategy would give direction to the IDSG over Member's priorities for capital expenditure. Fundamentally it is important that the IDSG process does not provide a mechanism for circumventing the Council's strategic approach to its finances through the Medium Term Planning processes.
- 7.2 It will also be necessary for the financial implications of decisions made by the IDSG to be reflected in the next available budget monitoring report so that the relevant budget adjustments to the approved capital programme can be seen.
- 7.3 The Community Infrastructure Levy (CIL) system came into effect in April 2015, and replaced certain elements of the previous Section 106 planning process which still continues in a reduced capacity. The council has historically generated substantial resources via the Section 106 system, and this will continue under the CIL process.
- 7.4 Over recent years, Section 106 resources have been allocated to schemes following consideration by the officer Planning Contributions Overview Panel (PCOP). On 5th January 2016, the Mayor in Cabinet approved the proposals for the introduction of an Infrastructure Delivery Framework (IDF) with effect from April 2016. This replaced the PCOP process, and involves an officer 'Infrastructure Delivery Steering Group' providing recommendations to an 'Infrastructure Delivery Board'. This in turn will propose funding allocations for ultimate approval by the Mayor in Cabinet.
- 7.5 This report seeks approval for a number of complementary processes to be adopted to enable the IDF process to operate in an effective and transparent manner.
- 7.6 The payment of both CIL and Section 106 contributions is linked to the development build process and wider economic considerations which are outside the control of the Council. The amounts receivable are difficult to estimate, and in order that spending decisions could be made during the financial year by the Infrastructure Delivery Board and the Mayor in Cabinet, a total provision of £30 million was incorporated within the 2016-17 capital programme for Infrastructure Delivery. Although this overall sum was adopted, allocations of funding to particular projects via the IDF process will only take place on receipt of the cash payment from the developers.
- 7.7 Paragraphs 6.2 and Appendices B and C summarise the status of the various Section 106 and CIL receipts that are currently held by the council. As at the

end of July 2016 the Section 106 resources total £72.3 million, and £7.34 million* of CIL income had been received by the council.

(* Please note that this figure does not include the Mayor of London's CIL which is a separate levy collected by the council on behalf of the GLA. The council receives a fee, 'top sliced' from the receipt, for administering the scheme.)

8 LEGAL COMMENTS

- 8.1 The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 ('the 2008 Act') as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. It came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010 ('the 2010 Regulations').
- 8.2 CIL is a pounds per square metre charge on most new development and must be used to help deliver infrastructure to support the development of the area. It can be used to provide new infrastructure, increase the capacity of existing infrastructure or to repair failing existing infrastructure, if this is necessary to support development.
- 8.3 CIL is payable on the implementation of planning permissions that are permitted after the 1st April 2015. It can take many months for any development to go from permission to implementation and it can take up to three (3) years for larger developments to commence. Therefore, the amount of funding received through CIL in year one is likely to be small and it may take up to three years before a consistent level of funding is received.
- 8.4 The CIL can be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities. This definition allows the levy to be used to fund a very broad range of facilities such as play areas, parks and green spaces, cultural and sports facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives the Council the opportunity to choose what infrastructure it needs to deliver the London Plan.
- 8.5 There are limitations and to be relevant infrastructure it must be infrastructure that is listed on the Council's 123 list. The 123 List is a list published pursuant to Regulation 123 of the 2010 and it is a list of infrastructure projects or types of infrastructure that it intends will be, or may be, wholly or partly funded by CIL within Tower Hamlets.
- 8.6 The types of infrastructure (including new provision, replacement or improvements to existing infrastructure, operation and maintenance) that may be, wholly or partly funded by CIL are as follows:
 - Public education facilities;
 - Community facilities and faith buildings;

- Leisure facilities such as sports facilities, libraries and Idea Stores;
- Public open space;
- Roads and other transport facilities;
- Health facilities;
- Employment and training facilities;
- Strategic energy and sustainability infrastructure;
- Strategic flood defences;
- Electricity supplies to all Council managed markets;
- Infrastructure dedicated to public safety (for example, wider CCTV coverage); and
- Strategic public art provision that is not specific to any one site.

- 8.7 Local authorities must allocate a percentage of CIL receipts to spend in areas where development is taking place. This is known as the 'Neighbourhood Portion' and the Council must consult the local community in respect of this expenditure.
- 8.8 Where no Neighbourhood Plan is in place the Neighbourhood Portion equates to 15% of CIL receipts collected from a given area, subject to a cap of £100 per Council Tax dwelling within the given area. Where a Neighbourhood Plan is in place, the Neighbourhood Portion equates to 25% of CIL receipts collected from the given area with no cap applicable in respect of Council Tax dwellings.
- 8.9 Terms of Reference for the proposed officer level Infrastructure Delivery Steering Group (IDSG) are at Appendix G and the proposed Infrastructure Delivery Board (IDB) at Appendix H.
- 8.10 For the IDSG it is recommended that this Group can make decisions up to £250,000 for the Corporate Director to sign off a 'Record of Corporate Director's Actions' form authorising the allocation and for any greater sum, the IDSG will make recommendations to the IDB and then the Mayor in Cabinet. The Mayor in Cabinet can make decision up to £1,000,000 and for any greater sum, will make recommendations to full Council.
- 8.11 Under S.101 of the Local government Act 1972, councils may arrange for the discharge of their functions by a committee, sub-committee, an officer or another council. There are no powers to arrange for the discharge of powers by officers acting collectively.
- 8.12 Under the council's Constitution, the Mayor may from time to time constitute working parties or advisory bodies such as those referred to in this report. However such bodies are not constituted as committees or sub-committees of the council and cannot make decisions on its behalf.
- 8.13 When making decisions, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector

equality duty). A proportionate level of equality analysis is required to discharge the duty and information relevant to this is contained in the One Tower Hamlets section of the report.

9 ONE TOWER HAMLETS CONSIDERATIONS

- 9.1 This report deals with the process associated with allocating planning contributions to deliver infrastructure. The process proposed allows for the objectives of One Tower Hamlets and those of the Community Plan to be accounted for in decision-making and infrastructure delivery.
- 9.2 It is intended that all of the infrastructure projects that will be funded through the process set out in this report will reduce inequality and foster cohesion in the borough.

10 BEST VALUE (BV) IMPLICATIONS

- 10.1 The proposals set out in this document align with the Council's Best Value Duty and have been formed with consideration of the Best Value Strategy and Action Plan.
- 10.2 The formation of a new decision-making structure represents an improvement in the way the Council's functions are exercised. The proposals have regard to economy, efficiency and effectiveness in that they add layers of oversight to the allocation of funding collected through planning contributions to deliver infrastructure.

11 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 11.1 The processes proposed in this document will ensure effective oversight in using planning contributions to deliver infrastructure. This will mean that matters such as achieving a sustainable environment will be appropriately accounted for when allocating funding for infrastructure.

12 RISK MANAGEMENT IMPLICATIONS

- 12.1 The proposals set out in this report seek to add levels of oversight to the allocation of planning contributions to infrastructure projects. This additional oversight will help mitigate against risks such as the misappropriation of funding.
- 12.2 The proposals in this document also seek to ensure that the allocation of planning contributions to infrastructure projects is better informed. This will help mitigate the risk of funding not being allocated to the most needed infrastructure projects.

13 CRIME AND DISORDER REDUCTION IMPLICATIONS

- 13.1 The proposals set out in this report will enable the effective delivery of infrastructure using planning contributions. This can include infrastructure

projects that will help reduce crime and disorder and decrease anti-social behaviour.

14 SAFEGUARDING IMPLICATIONS

14.1 Not applicable.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix A: Diagram of Decision-making Structure.
- Appendix B: S106 Income and Balance Report August 2016
- Appendix C: CIL Income and Balance Report August 2016
- Appendix D: Protocol of IDF Engagement of Commissioners.
- Appendix E: Protocol for Completing RCDAs through IDF Process.
- Appendix F: Protocol for the Identification of New Projects.
- Appendix G: Terms of Reference for the Infrastructure Delivery Steering Group.
- Appendix H: Terms of Reference for the Infrastructure Delivery Board.

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- None

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