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| <p><b>Cabinet</b></p> <p>4 October 2016</p>  | <br><b>TOWER HAMLETS</b> |
| <p><b>Report of: Corporate Services</b></p> <p>This report has been formed by Development and Renewal to seek approval of recommendations related to five Project Initiation Documents submitted by the Communities, Localities and Culture Directorate and Adult Services Directorate.</p>  | <p><b>Classification:</b><br/>Unrestricted</p>  |
| <p><b>Approval of the allocation of S106 and Community Infrastructure Levy (CIL) Funding to projects:</b></p> <ul style="list-style-type: none"> <li>a) Idea Store Interactive Learning Project</li> <li>b) Mile End Pavilion Air Conditioning</li> <li>c) Idea Stores Technology Refresh</li> <li>d) Pocket Parks Programme</li> <li>e) Wellington Way Health Centre</li> </ul> |   |

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| <p><b>Lead Member</b></p> <p><u>Project Initiation Documents</u><br/> Councillor Asma Begum, Cabinet Member for Culture<br/> Councillor Amy Whitelock Gibbs, Cabinet Member for Health and Adult Services<br/> <u>Covering Cabinet Report</u><br/> Councillor Rachel Blake, Cabinet Member for Strategic Development</p>  |  |
| <p><b>Originating Officer(s)</b></p> <ul style="list-style-type: none"> <li>a) <u>Idea Store Interactive Learning Project Initiation Document</u>: Judith St John</li> <li>b) <u>Mile End Pavilion Air Conditioning Project Initiation Document</u>: Stephen Murray</li> <li>c) <u>Idea Stores Technology Refresh Project Initiation Document</u>:<br/>Judith St John</li> <li>d) <u>Pocket Parks Programme Project Initiation Document (Communities, Localities and Culture)</u>: Shazia Hussain</li> <li>e) <u>Wellington Way Health Centre Project Initiation Document</u>: Somen Banerjee</li> <li>f) <u>Covering Cabinet Report (Development and Renewal)</u>: Owen Whalley</li> </ul> |  |
| <p><b>Wards affected</b></p>  | <p>All wards</p>   |
| <p><b>Key Decision?</b></p>   | <p>Yes</p>   |
| <p><b>Community Plan Theme</b></p>  | <p><b>A Great Place to Live; A Safe and Cohesive Community; A Healthy and Supportive Community</b></p> |

## 1. EXECUTIVE SUMMARY

- 1.1 This document has been prepared in order to seek approval from the Mayor in Cabinet to approve the allocation for £3,830,580.42 of Section 106 (S106) and Community Infrastructure Levy (CIL) funding (£3,694,775.71 from CIL and £135,804.71 from S106) to projects set out in five Project Initiation Documents (PIDs) that are attached to this Cabinet Report.
- 1.2 Specific recommendations for the adoption of capital budgets and the referral to commissioner processes for grant sums of £30,000 and £3,119,000 (as required) are set out in the recommendations section of this report.
- 1.3 The projects can be summarised as follows:
- a) **Idea Store Interactive Learning Project** – it is proposed, in phase 1 of this project, to replace all 100 Idea Store Learning computers with modern equipment capable of running Windows 10 and Microsoft Office 2016. Phase 2 of this project is proposed to include internet enabled touch screens linked to wireless printers.
  - b) **Mile End Pavilion Air Conditioning** - new serviced air conditioning system to enable greater participation in community activities using the pavilion for longer periods of the day and to ensure higher levels of community participation.
  - c) **Idea Stores Technology Refresh** – this project will be delivered in two distinct phases. Phase 1 will see a service improvement brought about by the use of Wifi enabled mobile technology. Phase 2 will cover the replacement of legacy Radio-frequency identification (RFID) equipment. Other improvements will include self-service kiosks, shelf readers, security gates and deactivation pads.
  - d) **Pocket Parks Programme** - This programme involves the following projects:
    - A new pocket park/ open space on the A12 Green Mile;
    - A new outdoor gym in Ropewalk Gardens;
    - The delivery of the new Marnier Family Community Play Space/Gym;
    - The transformation of underused green space between Kingwood and Bloomfield House on the Chicksand East Estate.
  - e) **Wellington Way Health Centre** - development of health services at Wellington Way will provide suitable, fit for purpose, primary care premises, for the populations of the wards Bow West, Bow East, Mile End, Bromley North and Bromley South; working with St Andrews on some specialist local services.
- 1.4 Table 1 below sets out the amount request for each of the projects highlighted in 1.3, including the source of requested funding related to CIL and S106. Table 2 set out the projects and amounts that require capital budgets to be adopted.

**Table 1: Source of Funding and Overall Amounts Requested for Allocation**

| Project Title                           | Amounts              |                      |                    |
|---|----------------------|----------------------|--------------------|
|   | Overall Request      | S.106                | CIL                |
| Idea Store Interactive Learning project | £232,342             | £96,537.29           | £135,804.71        |
| Mile End Pavilion Air Conditioning      | £30,000              | £30,000              |                    |
| Idea Stores Technology Refresh          | £249,238.42          | £249,238.42          |                    |
| Pocket Parks Programme                  | £150,000             | £150,000             |                    |
| Wellington Way Health Centre            | £3,119,000           | £3,119,000           |                    |
| <b>Totals</b>                           | <b>£3,780,580.42</b> | <b>£3,644,775.71</b> | <b>£135,804.71</b> |

**Table 2: Adoption of Capital Budget > Requested Amounts**

| Project Title                           | Amounts              |   |
|---|----------------------|---|
|   | Overall Request      | Adoption of Capital Budget > Request Amount                                 |
| Idea Store Interactive Learning project | £232,342             | £232,342  |
| Mile End Pavilion Air Conditioning      | £30,000              | £30,000   |
| Idea Stores Technology Refresh          | £249,238.42          | £249,238.42   |
| Pocket Parks Programme                  | £150,000             | £150,000<br>(£30,000 to be subject to commissioners grant approval process) |
| Wellington Way Health Centre            | £3,119,000           | Capital budget already adopted  |
| <b>Totals</b>                           | <b>£3,780,580.42</b> | <b>£661,580.42</b>  |

## **RECOMMENDATIONS**

2.1 The Mayor in Cabinet is recommended to:

1. Approve the capital allocation of £3,780,580.42 S106 and CIL funding to the projects set out in Table 1 and profiled in the Project Initiation Documents attached at Appendices A to E and as set out below:

- a) Idea Store Interactive Learning Project: **£232,342**
- b) Mile End Pavilion Air Conditioning: **£30,000**
- c) Idea Stores Technology Refresh: **£249,238.42**
- d) Pocket Parks Programme: **£150,000**
- e) Wellington Way Health Centre: **£3,119,000**

2. Approve the adoption of a capital budget in respect of the projects set out in four of the PIDs, equating to an amounts as follows:

- a) Idea Store Interactive Learning Project: **£232,342**
- b) Mile End Pavilion Air Conditioning: **£30,000**
- c) Idea Stores Technology Refresh: **£249,238.42**
- d) Pocket Parks Programme: **£150,000**

3. Approve the referral of a proposed grant allocation of £30,000 to Poplar HARCA for improvements to open space in the vicinity of the A12 Highway as part of the Pocket Parks Programme through the Commissioners' decision making process as required.

4. Approve the referral of a proposed grant allocation of £3,119,000 for the development of a new dedicated GP surgery facility at Wellington Way (including enabling works at Mile End Hospital to facilitate the relocation of the existing health facility at Wellington Way) to the Commissioners for formal confirmation whether Commissioners' approval is required and approve the allocation to proceed through the Commissioners' decision making process if required.

2.2 If it is not considered appropriate to approve the allocation of S106 and CIL funding to all of the projects described in the attached PIDs, then approvals can be made in respect of any of the individual projects. In addition, capital budgets can also be adopted in respect of any of the individual relevant project/ PIDs.

## **2. REASONS FOR THE DECISIONS**

2.1 Approval is sought to deliver these projects for the following reasons:

1. They help contribute to the delivery of positive improvements to people's lives that will underpin the Community Plan themes of:

- A Great Place to Live;
- A Safe and Cohesive Community;
- A Healthy and Supportive Community

2. They will improve the health and wellbeing of residents and workers, as well as overall levels of public participation and interactive learning.

2.2 Please refer to the attached Project Initiation Documents (PIDs) for more information.

### **3. ALTERNATIVE OPTIONS**

3.1 The projects within the attached PIDs can be individually or collectively approved. The only alternative option is to not allocate the funding to some or any of these projects.

3.2 It should be noted that the use of S106 funding proposed for allocation in this report is restricted, as it must be spent in accordance with the terms and conditions of its expenditure pertaining to a specific S106 agreement related to the development from which it originates. This may restrict the spend of S106 funding for certain infrastructure types or projects and also by the geographic location of the project.

3.3 Any alternative spend of this funding would have to be on the projects that would meet the requirements of the relevant S106 agreement.

### **4. BACKGROUND**

#### S106

4.1 S106 of the Town and Country Planning Act 1990 allows a Local Planning Authority (LPA) to enter into a legally-binding agreement or planning obligation with a developer over a related issue. Planning obligations / S106 agreements are legal agreements, negotiated between a LPA and a developer, with the intention of making acceptable development which would otherwise be unacceptable in planning terms.

4.2 S106 planning obligations must be spent in accordance with the agreement to which they relate. The contributions secured in S106 agreements are usually tied to the need to provide a certain type of project in a defined location.

#### CIL

4.3 CIL is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities 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. Development may be liable for a charge under CIL.

## PIDS

- 4.4 The background to the projects is provided below. For further information on the projects described in this report it is necessary to consult the PIDs attached at Appendices A to E.

### **Idea Store Interactive Learning Project (Appendix A)**

- 4.5 This project is proposed to be delivered in two distinct phases. Phase 1 will see a service improvement brought about by the use of new computers and software. Phase 2 will cover the replacement of teaching aids, namely interactive touch screen technology and peripheral devices.

#### Phase 1 – New PCs and software

- 4.6 The equipment used by the Idea Store Learning tutors and students is no longer fit for purpose. Learners are being taught in Microsoft Office 2003. With 13 year old software and PCs of a similar age Idea Store Learning is not adequately preparing students with the skills required in the modern workplace.
- 4.7 Idea Store Learning IT sits outside the Agilisys contract. As the learning environment is outside the contract, the computers will not be upgraded by Agilisys and are still running the now obsolete Windows XP operating system. The onus to refresh learning equipment resides solely with the Idea Store service.
- 4.8 It is proposed to replace all 100 Idea Store Learning computers with modern equipment capable of running Windows 10 and Microsoft Office 2016.

#### Phase 2 – New teaching aids and peripherals

- 4.9 It is proposed that Idea Store Learning labs are fitted with the same standard equipment now being used within Tower Hamlets schools, specifically internet enabled touch screens linked to wireless printers. With this new implemented technology, tutors would be able to annotate presentations and instantly share this with the class or embed websites or video into lesson plans. The use of touch screen technology would remove the need for expensive ceiling mounted projectors and assist in how courses are delivered.
- 4.10 Without a major technology refresh Idea Store Learning would need to cut the range of courses offered. Some high fee generating courses such as web design have already been cancelled due to inadequate IT facilities. Tower Hamlets is in a unique position, with high tech jobs in both Canary Wharf and silicon roundabout demand for introductory and improver adult education courses is high but without adequate IT facilities Idea Store Learning is unable to service this demand.

- 4.11 Unless there is a radical improvement with the quality of IT hardware and software Idea Store Learning may lose its Ofsted rating of Good, making it more difficult to recruit and retain learners and potentially putting at risk income from the Skills Funding Agency (Appendix A).

#### **Mile End Pavilion Air Conditioning Project (Appendix B)**

- 4.12 The overall case for this work is the improvement of the visitor experience when attending the Mile End Children's Play Pavilion. The play pavilion has a busy programme of community activities 7 days a week from 10am until 5pm and hosts: early years soft play session, stay and play sessions, home education group, Somali integration project, Alhuda Play project, children's centres play sessions, East London scouts group.
- 4.13 On average the pavilion allows for between 400 to 500 users across the week. The majority of users are children, toddlers and school children with additional needs. The installation of air conditioning within the public space of the play pavilion will allow greater use of the pavilion during summer periods, allowing user groups to use the facility comfortably and without risk of any detrimental impacts to their health.
- 4.14 The contractor has been procured in line with the Council's established procedures to deliver the improvement to the park and the play facility. The project will be led by the CLC Directorate and will conform to the agreed Directorate project management and financial protocols. Signage will also be displayed signifying the use of S106 contributions in delivering the play facility.
- 4.15 Any necessary maintenance has been factored into the parks and open spaces maintenance programme. This project will see the installation of a full VRF System in the public areas of the play pavilion.
- 4.16 Items proposed to be delivered:
- Open Play Area 3no 12kw ceiling suspended units.
  - Small play area 1no 5kw wall mounted unit.
  - The installation of 1 outdoor unit to roof area on new concrete plinth.

#### **Idea Stores Technology Refresh Project (Appendix C)**

- 4.17 This project will be delivered in two distinct phases. Phase 1 will see a service improvement brought about by the use of Wifi enabled mobile technology. Phase 2 will cover the replacement of legacy Radio-frequency identification (RFID) equipment.
- 4.18 A key part of the project will see upgraded Wifi installed at all Idea Stores, thus for the first time Idea Stores will be able to use the cloud-based version of a Learning Management System (LMS). Rather than having

customers queue up at a helpdesk, the helpdesk can essentially be brought to the customer.

4.19 With customers using self-service, the need for staff to be assigned to helpdesks will reduce. Staff freed from helpdesk duty will be assigned to floor walk and thus better engage with customers. To assist customers with enquiries floor walking staff will need access to information, specifically the LMS. It is proposed that up to six tablet devices are purchased for each Idea Store so that when staff are assigned to floor walk they can pick up a tablet from the workroom and roam the building with access to all the information they need.

4.20 To access the cloud-based LMS Idea Stores need Wifi enabled mobile devices (tablet PCs), software licences and training. As the service is cloud-based it opens the possibility of bringing the LMS to outreach locations and improving the effectiveness of housebound services.

#### Phase 2 – Replacement of legacy RFID equipment

4.21 With customers using self-service, the need for staff to be assigned to helpdesks will reduce. To this end, investment will help deliver:

- Self-service kiosks - the replacement of twenty eight self-service kiosks across five Idea Stores and two libraries enabling a quicker throughput of customers who will not need to queue at a helpdesk.
- RFID shelf readers - the RFID tag contains all the information about an item. With a RFID shelf reader all a librarian needs to do is walk down each aisle touching each shelf with the reader. Stock information is then downloaded to a laptop and compared to information held on the LMS. Shelf readers can be used to lead a librarian to a specific stock item. This project proposes the purchase of seven shelf readers, one for each site.
- RFID security gates - all Idea Store stock has a programmed RFID tag that is fixed into a book or CD cover. If an item is removed from site without being correctly discharged the security alarm is activated.
- Deactivation pads - RFID deactivation pads are connected to helpdesk PCs and allow staff to discharge items. Existing deactivation pads will not read RFID tags programmed to the new ISO standard and thus all deactivation pads will need to be replaced.



## Pocket Parks Programme (Appendix D)

4.22 A number of the Council’s plans, policies and strategies seek to improve the overall quality and accessibility of current open spaces and, where possible, to form new publicly accessible open spaces. These policies include:

- The Community Plan;
- The Council’s Local Plan;
- The Open Space Strategy;
- The Green Grid Strategy.

4.23 The projects that are the subject of the PID are summarised in Table 2 below. Detail is provided in the PID attached at Appendix D.

**Table 2: Figures for Pocket Parks Programme**

| <b>Project</b>                     | <b>Description</b>  | <b>Location</b>  | <b>Cost/<br/>Maintenance</b>  |
|------------------------------------|---|--|---|
| <b>A12 Green Mile</b>              | This a pilot that aims to test out the effectiveness and impact of various initiatives around, noise attenuation, reduction in air pollution, retro-fitted sustainable drainage techniques and environmental enhancement as a demonstration project within a compact site. The project will include a new demonstration pocket park public space protected from the A12 road by an innovative ‘green’ acoustic barrier incorporating techniques and a design to cope with the above mentioned constraint. | TfL owned land between the A12 Blackwall Tunnel and Gillender Street – close to the south of the new Bow School in Lansbury Ward. This will be maintained by TfL. Please refer to the PID for a map. | Total Project Cost: £205K<br><br>Total S106 Contribution sought: £30K<br><br>Grant funding of £30k is being provided onto Poplar HARCA.<br><br>The remaining £175,000 is to be sourced from TfL (£75,000) and the GLA (£100,000).<br><br>To be maintained by TfL. |
| <b>Ropewalk Garden Outdoor Gym</b> | An outdoor gym -with equipment options and design chosen by the local community – possibly with equipment to suit children and early teens.<br><br>This will be a provision that local people in the Whitechapel area will benefit from. It also reflects the Whitechapel Vision and its ambition to transform the public realm and create a better environment.  | Tower Hamlets Council owned land.<br><br>The location of this project is 881m from the development. Please refer to the PID for a map.   | Total Project Cost: £38K<br><br>Total S106 Contribution sought: £38K<br><br>.   |

|   |   |   |   |
|---|---|---|---|
| <b>Marner Family Community Play Spaces/ Gym</b> | This project will be designed in consultation with families and residents with the aim to create an outdoor green/social space for mixed community use, including adventure playground and gym with paths, seating, picnic tables - and a range of play resources and playful features such as a nest swing and a sunken trampoline.                | This is located to the east of the borough adjacent to the A12. Please refer to the PID for a map.  | Total Project Cost: £34K<br><br>Total S106 Contribution sought: £34K<br><br>Area maintained by Poplar HARCA and others. Gym equipment via formal 5 year maintenance plan. |
| <b>Chicksand East</b>                           | The project aims to transform the underused green space between Kingwood and Bloomfield House on the Chicksand East Estate into a welcoming, safe open space for children and adults, including, seating, quiet spaces, natural planting areas and community growing garden that will encourage residents to use, care and value their green space. | Tower Hamlets Homes land<br><br>Located near Kingwood and Bloomfield House on the Chicksand East Estate<br><br>Please refer to the PID for a map. | Total Project Cost: £48K<br><br>Total S106 Contribution sought: £48K<br><br>Area maintained by Tower Hamlets Homes  |

### **Wellington Way Health Centre (Appendix E)**

- 4.24 There is an identified need to further develop healthcare services and capacity for the growing population of the east side of Tower Hamlets. E3 is an area of high healthcare need and is projected to experience significant population increase over the next fifteen years (Appendix E/ Table 1). This is anticipated to provide significant challenges in terms of enabling local health care facilities that adequately meet the needs of residents.
- 4.25 This project will involve the conversion and fit out of the existing Wellington Way health facility into a new dedicated GP surgery facility. The existing health facility will be relocated to Mile End Hospital. The new development will allow for the integration of Merchant Street Practice and Stroudly Walk Practice into the new facility. The existing Merchant Street premises are in extremely poor condition and don't comply with modern healthcare standards. The existing Stroudley Walk building is situated within a regeneration area and is due to be demolished.
- 4.26 This project will provide a modern fit for purpose primary care facility. NHS Property Services has estimated that the project will serve a list size of 12,000 patients, which is an uplift of 2,000 patients from the current provision.

**Table 3: Figures for Wellington Way Health Centre**

| <b>Description of Cost Item</b>                               | <b>Amount</b>     | <b>Funding Source</b> | <b>Funding (capital/<br/>revenue)</b> |
|---|-------------------|-----------------------|---------------------------------------|
| Wellington Way Construction costs (including 10% contingency) | £1,811,700        | S106 Contribution     | capital                               |
| Core Design / Professional / Statutory Fees                   | £228,597          | S106 Contribution     | capital                               |
| Specialist Advisory Design Costs                              | £53,250           | S106 Contribution     | capital                               |
| Furniture, IT, project and legal costs                        | £314,360          | S106 Contribution     | capital                               |
| Enabling works at Mile End Hospital (estimated)               | £191,260          | S106 Contribution     | capital                               |
| VAT   | £519,833          | S106 Contribution     | capital                               |
| <b>Total including VAT</b>                                    | <b>£3,119,000</b> |                       |                                       |

## **5. COMMENTS OF THE CHIEF FINANCE OFFICER**

This report deals with a number of projects which are funded through either S106 resources of the Community Infrastructure Levy (CIL). Often S106 resources come with time constraints and, whilst it is important that these resources are not lost, the prioritisation of projects needs to be seen in the context of the Council's Capital Strategy.

It is important that a sufficiently broad planning horizon is adopted that reduces the risk of funding being lost but also avoids the crowding out of other important capital priorities due to funding imperatives; these processes need to operate not only for S106 and CIL funded schemes but across the whole of the Council's capital resources.

5.1 Following consideration under the Infrastructure Delivery Framework process, this report asks the Mayor in Cabinet to approve the allocation of £3,780,580.42 of specific section 106 resources and CIL resources to the five projects outlined in Table 1 and summarised below:

|       |   |             |
|-------|---|-------------|
| (i)   | Ideas Store Interactive Learning        | £232,342    |
| (ii)  | Mile End Play Pavilion Air Conditioning | £30,000     |
| (iii) | Ideas Store Technology refresh          | £249,238.42 |
| (iv)  | Pocket Parks Programme                  | £150,000    |
| (v)   | Wellington Way Health Centre            | £3,119,000  |

5.2 In order that spending decisions can be made during the financial year by the Infrastructure Delivery Board and the Mayor in Cabinet, an initial provision of £30 million was incorporated within the 2016-17 capital programme for Infrastructure Delivery. The approval to fund schemes from this budgetary provision can only be made following the receipt of the relevant developer contributions; in the case of the schemes proposed in this report, the resources have already been received by the council.

Ideas Store Interactive Learning - £232,342

- 5.3 Under the terms of the two specific Section 106 agreements, the Council has to utilise the funding towards community and leisure facilities within the borough, and local community facilities in Whitechapel. CIL monies must be spent on the provision, improvement, replacement, operation or maintenance of infrastructure. Further detail is set out in Appendix A.

Mile End Play Pavilion Air Conditioning - £30,000

- 5.3 Under the terms of the specific Section 106 agreement, the Council has to utilise the funding towards improvements for existing open space and recreational facilities within the borough. Further detail is set out in Appendix B.

Ideas Store Technology Refresh – £249,238.42

- 5.4 Under the terms of the specific Section 106 agreements, the Council has to utilise the funding towards the provision of additional leisure and community facilities or for useful planning purposes for the benefit in which the development is situated, and towards idea stores, libraries and archives in the borough, towards additional community facilities (idea store and leisure) in the borough. Further detail is set out in Appendix C.

- 5.5 Pocket Parks - £150,000

The total cost of delivering the four projects within this scheme is estimated at £325,000 with section 106 funding of £150,000 being sought. The funding that will support the schemes is shown in the funding analysis below.

|   | <b>GLA</b>     | <b>TFL</b>    | <b>Section 106</b> | <b>Total Cost</b> |
|---|----------------|---------------|--------------------|-------------------|
|   | <b>£</b>       | <b>£</b>      | <b>£</b>           | <b>£</b>          |
| A12 Green Mile                          | 100,000        | 75,000        | 30,000             | 205,000           |
| Ropewalk Garden Urban Gym               |                |               | 38,000             | 38,000            |
| Marner Family Community Play Spaces/Gym |                |               | 34,000             | 34,000            |
| Chicksand East                          |                |               | 48,000             | 48,000            |
|   | <b>100,000</b> | <b>75,000</b> | <b>150,000</b>     | <b>325,000</b>    |

- 5.6 Under the terms of the specific Section 106 agreements, the Council has to utilise the funding towards public open space initiatives within the borough. Further detail is set out in Appendix D.

- 5.7 Three of the projects will be administered by the Council ('Ropewalk Garden Urban Gym', 'Marner Family Community Play Spaces/Gym', and 'Chicksand East'.) The 'A12 Green Mile' initiative will however be

undertaken by Poplar HARCA, and as alternative projects could potentially be funded, the proposed payment for this scheme should be treated as a grant, which requires Commissioner approval under the terms of the Ministerial Direction of 17th December 2014.

- 5.8 The Mayor in Cabinet is asked to approve the adoption of capital estimates for the four projects above, and set out in Table 2, for inclusion within the Council's capital programme. The Wellington Way Health Centre project (outlined below) is already included within the Council's capital programme.

Wellington Way Health Centre - £3,119,000

- 5.9 Under the terms of the specific Section 106 agreements, the Council has to utilise the funding to increase the number of patient places in GP surgeries in the local area and towards the provision of health care facilities. Further detail is set out in Appendix E. The delivery of the health centre will however be undertaken by the NHS, and as alternative projects could potentially be funded, the proposed payment for this scheme should also be treated as a grant, which requires Commissioner approval under the terms of the Ministerial Direction of 17<sup>th</sup> December 2014 unless they take the formal decision that they do not consider this payment to be a grant.

## **6. LEGAL COMMENTS**

- 6.1 Section 106 of the Town and Country Planning Act 1990 allows the Council as Local Planning Authority (LPA) to enter into an agreement to secure planning obligations which require sums to be paid to the Council. Known as s106 agreements, these are legal agreements negotiated between an LPA and a developer, normally entered into with the intention of making acceptable development which would otherwise be unacceptable in planning terms.
- 6.2 As a contract the Council are required to spend any monies received in accordance with the terms of the agreement. It is therefore important to consider the provisions of each agreement when allocating monies to a particular project. Whilst some agreements allow for a particular contribution to be spent on a type of infrastructure or project across the borough as a whole, other agreements are more specific in requiring that a contribution be linked more closely to the locality of the development. Legal comments are set out in each individual PID which note the constraints around the spending of particular contributions.
- 6.3 Regulation 59 of the Community Infrastructure Levy Regulations 2010 (as amended) provides that a charging authority must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.

- 6.4 **Commissioners' Power in Relation to Grants** In this case, although the section 106 agreements limit what types of projects the monies can be used for, they do not specify any organisations to whom payment is to be made. Therefore the Council is not under a legal duty to provide the payments to Poplar HARCA in respect of the 'A12 Green Mile' initiative or to the NHS in respect of the Wellington Way Health Care Centre. As such these payments are discretionary to those organisations and are considered by Legal to be grants and therefore within the Commissioners' powers. There is some indication that the Commissioners have previously taken the view that money provided to a statutory organisation is not a grant and that this does not require a Commissioner decision, however, Legal are not aware that this has been formally recorded, and as such it is necessary to proceed on the assumption that the payment to the NHS should be subject to the approval of the Commissioners. Should the Commissioners decide that they do not consider this payment to be grant following the decision being taken by Cabinet, then the payment to the NHS can proceed without this step being necessary.
- 6.5 As a grant, then the power to approve payment rests with the Commissioners and which power arises from directions made by the Secretary of State on 17<sup>th</sup> December 2014 pursuant to powers under sections 15(5) and 15(6) of the Local Government Act 1999 (the Directions). Paragraph 4(ii) and Annex B of the Directions together provide that, until 31 March 2017, the Council's functions in relation to grants will be exercised by appointed Commissioners, acting jointly or severally. This is subject to an exception in relation to grants made under section 24 of the Housing Grants, Construction and Regeneration Act 1996, for the purposes of section 23 of that Act (disabled facilities grant).
- 6.6 To the extent that the Commissioners are exercising powers which would otherwise have been the Council's, there is a need to ensure the Council has power to make the grants in question. The Commissioners will wish to be satisfied that this is the case. It appears from the information provided in the report that the grants are capable of being supported under the Council's powers, specifically under section 1 of the Localism Act 2011 whereby the Council has the general power of competence. This means that the Council has the power to do anything that an ordinary human being could do, unless statute specifically restricts the Council from acting in the way it wishes. Therefore, in the absence of specific legislation to the contrary it would appear to be within the Council's power to issue this grant, subject always to the directions of the Secretary Of State For Communities and Local Government.
- 6.7 **Best Value Duty.** The Council has a duty under Section 3 of the Local Government Act 1999 to ensure that all agreements into which it enters satisfies the Council's Best Value duty. Therefore, the grant agreements with the providers must contain robust monitoring and performance clauses ensuring that value for money is achieved through the grant.

Information relevant to Best Value implications is contained in paragraph 8.1 of the report.

- 6.8 In making the grants, the Council must ensure that no part of the funds issued represents a profit element to any of the recipients. The inclusion of profit or the opportunity of making a profit from a grant or third parties indicates that a grant is really procurement activity and would otherwise be subject to the Council's Procurement Procedures and other appropriate domestic and European law. This would mean therefore, that the Council would have failed to abide by the appropriate internal procedures and external law applicable to such purchases.
- 6.9 The Treaty on the Functioning of the European Union (TFEU) provides that certain government activities may be prohibited because they give an advantage in a selective way to certain entities, which might affect competition within the internal market. Those advantages may amount to prohibited state aid, or may be state aid which is either expressly allowed by the Treaty, or which may be allowed, dependent on the circumstances. In this case, the individual grant for the 'A12 Green Mile' falls under the *de minimis* threshold of EUR 200 000 for the purposes of European restrictions on State aid. Providing funding to the NHS as another public body in connection with their statutory duties does not give rise to any state aid issues.
- 6.10 **Equality Duty.** 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.

## **7. ONE TOWER HAMLETS CONSIDERATIONS**

- 7.1 This report proposes to allocate funding to help deliver infrastructure at a local level. In scoping these infrastructure projects the objectives of One Tower Hamlets and those of the Community Plan have been considered.
- 7.2 It is hoped that these infrastructure projects will contribute to the reduction of inequality and will foster cohesion in the borough.

## **8. BEST VALUE (BV) IMPLICATIONS**

- 8.1 If approved, the projects referred to in this document are required to be delivered in consideration of best value implications and the Council's Best Value Strategy and Action Plan.

## **9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

9.1 This report seeks the approval of projects, including ones related to pocket parks which will enhance open spaces in the borough. These projects will contribute towards achieving a greener environment.

## **10. RISK MANAGEMENT IMPLICATIONS**

10.1 The risks relating to the delivery of these projects as well as mitigating measures are set out in detail in the attached PIDs.

## **11. CRIME AND DISORDER REDUCTION IMPLICATIONS**

11.1 It is hoped that these projects will improve places in the borough including underutilised spaces, making them less susceptible to crime or disorder and increasing natural surveillance.

## **12. SAFEGUARDING IMPLICATIONS**

12.1 Not applicable.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- None

#### **Appendices**

Appendix A: Idea Store Interactive Learning Project

Appendix B: Mile End Pavilion Air Conditioning

Appendix C: Idea Stores Technology Refresh

Appendix D: Pocket Parks Programme

Appendix E: Wellington Way Health Centre

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

- None

#### **Officer contact details for documents:**

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