

Subject: Allocation of S106 and CIL Funds
Agenda item: Public item 10
Report No: 7
Meeting date: 25 June 2013
Report to: Board
Report of: Director of Planning Policy and Decisions

FOR DECISION

This report will be considered in public

1. SUMMARY

- 1.1. This report follows on from the report on this agenda on the development of the Community Infrastructure Levy and consultation on the Preliminary Draft Charging Schedule and Infrastructure Delivery Plan.
- 1.2. This report proposes a process for the allocation of funds to projects, which have been paid to the Legacy Corporation in its capacity as local planning authority as a result of financial obligations within S106 agreements relating to developments within the Legacy Corporation's area.
- 1.3. It is proposed to establish a 'Project Proposals Group' made up of senior officers of the Legacy Corporation to review projects to assess their suitability for funding, and allocate such funding. This group would be chaired by the Director of Planning Policy and Decisions. Projects would be reviewed against the Infrastructure Delivery Plan (IDP). The IDP identifies projects both within and beyond the Legacy Corporation's boundary, which are required to support proposed development within the Legacy Corporation area. The IDP will be reviewed and updated on an annual basis to ensure it is up to date and reflects current priorities. Stakeholders, including the 4 Growth Boroughs will continue to be involved in reviewing and updating the IDP, and the Legacy Corporation Board would be asked to agree the updated IDP on an annual basis.
- 1.4. It is also intended, should the Board agree, that this process will also be used for the allocation of funds collected through the implementation of the Legacy Corporation's Community Infrastructure Levy (CIL).
- 1.5. The proposals within this report were considered by the Planning Decisions Committee at its meeting of 28 May 2013 and no formal comments on the proposed process were made.

2. RECOMMENDATIONS

- 2.1 Board members are invited to:
- 2.2 **NOTE** the current position with regard to S106 funds received and expected to be received within the next 12 months as set out in Appendix 1.

- 2.3 **AGREE** the establishment of a CIL and Section 106 Project Proposals Group, comprised of senior officers of the Legacy Corporation and chaired by the Director of Planning Policy and Decisions
- 2.4 **AGREE** to delegate to the Director of Planning Policy and Decisions the establishment of, the terms and reference of and governance of the group.
- 2.5 **AGREE** the process for the allocation of funds to projects as set out in the report at section 4.3.
- 2.6 **AGREE** that the Project Proposals Group is authorised to allocate funds having followed the agreed process.
- 2.7 **AGREE** the proposed monitoring and reporting of S106 and CIL spending as set out at section 4.5.

3. TIMING

- 3.1. It is considered that the establishment of a process for the allocation of S106 funds to projects is pressing, as whilst there is a relatively small amount of S106 funding currently held by Legacy Corporation following the transfer from LTGDC on 1st October 2012, there is a significant amount of funding likely to be received in the next 12 months which can contribute to the implementation of projects by Legacy Corporation and its partner organisations to further the regeneration of the area, and which should be spent in a timely manner and in accordance with the agreements.

4. BACKGROUND

4.1. The need for a process for allocation of funds arising from S106 agreements transferred to Legacy Corporation

- 4.1.1. On 1st October 2012 the Legacy Corporation became the Local Planning Authority (LPA) for its area, in place of the ODA, London Thames Gateway Development Corporation (LTGDC) and the London Boroughs of Hackney, Newham, Tower Hamlets and Waltham Forest.
- 4.1.2. On that date several S106 agreements were transferred from the Legacy Corporation's predecessor authorities, which the Legacy Corporation is now responsible for monitoring and enforcing, and which will mean that the Legacy Corporation receives financial contributions secured through these agreements for provision of and improvements to infrastructure in the area. These financial contributions must be spent in accordance with the terms of the relevant S106 agreement.
- 4.1.3. The S106 contributions secured through the S106 agreements transferred from LTGDC are either "ring-fenced funds" i.e. for a specified purpose, e.g. affordable housing or public realm improvements, but often not specifying a specific project or they are "pooled funds" which can be spent on any infrastructure project identified in the LTGDC's Lower Lea Valley Public Sector Investment Plan (PSIP). In both cases a mechanism to allocate the funds to appropriate projects is required.
- 4.1.4. On 1st October a sum of approximately £290,000 was transferred from LTGDC which is to be allocated to projects (the majority of the funds from LTGDC were allocated to projects before the transfer took place).
- 4.1.5. Since 1st October £1.12 million in funds have been received, £845,000 of which is ring fenced for affordable housing and £275,000 of which is "pooled fund".

- 4.1.6. In addition it is anticipated that up to a further £14m (see appendix 1) could be received from former LTGDC S106 agreements in the next 12 months or so, from developments that are either already under construction or expected to start soon.
- 4.1.7. It is anticipated that further planning permissions for developments where S106 agreements will be used to secure funds for infrastructure will be approved by the Legacy Corporation before the introduction of the Corporation's Community Infrastructure Levy (CIL), which is expected to be operational by Spring 2014. Therefore it is likely that there could be further S106 contributions received that will require allocation to projects.
- 4.1.8. Once CIL is operational, funds for infrastructure provision will be generated through the implementation of CIL liable developments. A process will also be required to allocate these funds to appropriate infrastructure projects.

4.2. Identifying Projects

- 4.2.1 An Infrastructure Delivery Plan (IDP), has been prepared and is included as Appendix 4 to the report on the development of the Community Infrastructure Levy elsewhere on this agenda. The production of the Infrastructure Delivery Plan is a requirement of the preparation of the CIL charging schedule, as it identifies the level of need for new infrastructure to support the level of development that is proposed in the development plan, identifies projects that meet this requirement and are considered necessary and can be demonstrated as being deliverable.
- 4.2.2. The production of the Infrastructure Delivery Plan has involved extensive stakeholder engagement, particularly with the four Boroughs, who continue to have a role in delivering infrastructure within the Legacy Corporation area in their capacities as Highway Authority, Education Authority etc. The IDP identifies projects both within and beyond the Legacy Corporation's boundary, which are required to support proposed development within the Legacy Corporation area. Such projects might be delivered directly by the Legacy Corporation or by the Legacy Corporation providing grant funding to another organisation, such as the Boroughs or TfL. The IDP will be reviewed and updated on an annual basis to ensure it is up to date and reflects current priorities.
- 4.2.3. The IDP therefore provides a list of costed infrastructure projects required to support development in the area. A draft 'Regulation 123 list' will be developed from this following consultation which will specify the types of infrastructure to be funded through CIL. This list is required by Regulation 123 of the CIL Regulations which requires the CIL charging authority to publish a list of infrastructure projects or types of infrastructure that the Charging Authority intends will be, or may be, wholly or partly funded by CIL. This draft Regulation 123 list will be prepared alongside the later stage Draft CIL Charging Schedule and Board approval sought for both prior to the final stage of consultation, planned for the later part of this year. Both will then be considered at a formal Examination. Further Board approval will be sought for adoption of the CIL Charging Schedule before these come into effect.
- 4.2.4 A mechanism to allocate existing section 106 funds and future CIL Funds received to specific projects is required, and it is proposed that a Project Proposals Group is established to do this (see section 4.3 below).
- 4.2.5 On 5th November 2012 a Mayoral Decision delegated the Mayor's general powers under the Greater London Authority Act to promote

economic development and wealth creation, social development and environmental benefit, improvement or regeneration in Greater London to the London Legacy Development Corporation. This means that the Legacy Corporation is now able to support projects outside of its area should it decide to do so.

4.3. Proposal

- 4.3.1. When S106 financial contributions are received the projects and infrastructure listed in the IDP will be reviewed. Taking into account restrictions in the legal agreement on how the funds can be spent (particularly the Lower Lea Valley Public Sector Investment Plan for LTGDC pooled funds), a project proposal or options for suitable projects will then be put to the CIL and Section 106 Project Proposals Group. The Project Proposals Group is proposed to be a group comprising senior officers from a number of relevant Legacy Corporation departments, chaired by the Director of Planning Policy and Decisions, which reviews project proposals in order to establish their suitability for funding.
- 4.3.2. The role of the Project Proposals Group is to act as a “filter”. Where funds are not directly allocated through a planning obligation in a S106 agreement, the Project Proposals Group would aim to allocate funds in accordance with the CIL Regulation 123 List that is current at the time and in accordance with Regulation 59 of the CIL Regulations 2010 (as amended). Projects will be reviewed by a multidisciplinary group, with interests across the organisation who can ensure that prospective projects are viable, deliverable and in keeping with the organisation’s priorities.
- 4.3.3. Off site Affordable Housing section 106 monies would also be allocated by the Project Proposals Group. As the IDP does not cover affordable housing and CIL does not cover affordable housing, suitable projects would need to be proposed by the relevant boroughs, reviewed by the Project Proposals Group and approved through the normal Legacy Corporation Project Approval Process.
- 4.3.4. A mechanism will also be established to allow external organisations that have a role in delivering infrastructure which could support the planned growth within the Legacy Corporation area, to propose additional projects for the Regulation 123 list. Additional projects would be considered by the Project Proposals Group and, where new projects are agreed a revised Regulation 123 List would be recommended to the Board for approval on an annual basis. Where it is intended to revise the Regulation 123 list, consultation with relevant infrastructure providers will take place before the Board is asked to consider approving the revision. This process will provide an opportunity to keep the infrastructure project list up to date, adding relevant new projects and removing those that have either been completed or are no-longer considered necessary. The test for inclusion that the Project Proposals Group will need to use will be that:
 - The project is necessary to support the planned growth within the Legacy Corporation Area;
 - That there is sufficient evidence available to show that the project is capable of being delivered; and
 - That, where practical, and depending on the scale of the project, that the project has an element of existing funding in place to

which the pooled S106 monies or CIL funds can be applied to achieve its delivery.

- 4.3.5. Once a suitable project is identified for funding by the Project Proposals Group, the Legacy Corporation's normal project approval process commences.
- 4.3.6. Where a third party will be responsible for project delivery a minor change to the Legacy Corporation project approval process is required so that in place of the procurement element of the process a grant funding agreement is issued to the third party.
- 4.3.7. It is intended that if approved by the Board the first meeting will take place in July, with meetings taking place quarterly thereafter.

4.4. Stakeholder Engagement

- 4.4.1. The production of the IDP has required significant stakeholder engagement with input from departments within the Legacy Corporation, the four Boroughs, TfL, GLA, and other public sector infrastructure providers. This included an Infrastructure Providers Workshop on 28th February 2013 to which a wide range of infrastructure providers, boroughs and other relevant parties were invited, This engagement will continue on a regular basis in order to review and update the plan. The IDP will be updated on an annual basis as set out at paragraph 4.3.3. above.

4.5. Monitoring

- 4.5.1. An Annual Monitoring Report which includes details of all section 106 and CIL financial and in kind contributions will be produced at the end of each calendar year. This will be reported to the Planning Decisions Committee and to the Board for information. The Board will be asked to agree any revised Regulation 123 list as part of the CIL and S106 annual monitoring report process.

5. FINANCIAL IMPLICATIONS

- 5.1. When funding agreements are entered into with third parties delivering projects, then the funding agreement will set out the maximum level of CIL or s106 funding that is available. It will be for third parties to manage costs to ensure that there are no cost overruns. The Legacy Corporation would not therefore be liable for any shortfalls in funding arising from cost overruns.

6. LEGAL IMPLICATIONS

- 6.1. The process set out in section 4.3 is in accordance with the purposes of the Legacy Corporation as established in the Localism Act 2011, the London Legacy Development Corporation (Establishment) Order 2012 and the London Legacy Development Corporation (Planning Functions Order) 2012. It is also in accordance with provisions relating to S106 in the Town and Country Planning Act 1990, and the National Planning Policy Framework and with provisions relating to Community Infrastructure Levy in the CIL Regulations 2010 (as amended).

7. PRIORITY THEMES

- 7.1. The Legacy Corporation is continuing the priority themes set by its predecessor the Olympic Park Legacy Company. These are: Promoting convergence and community participation; Championing equalities and inclusion; Ensuring high quality design; Ensuring environmental sustainability.

7.2. The process for allocation of S106 and CIL funds set out above will contribute to the achievement of the Legacy Corporation's priority themes by ensuring all projects supported by S106 financial contributions are assessed against the themes.

8. Appendices

- **Appendix 1 – Summary of contributions received and anticipated May 2013**

List of Background Papers:

Report to Board 15th October 2012 - Local Plan, Local Development Scheme

Report to Board 27th September 2012 – Planning Functions

LTGDC Lower Lea Valley Public Sector Investment Plan

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Appendix 1: Summary of contributions received and anticipated May 2013

1. Inherited LTGDC Section 106 Funds

1.1 Pooled Funds

No unallocated pooled funds were transferred from LTGDC but the following contribution has been received since LLDC assumed planning powers and needs to be allocated:

| Site Address | Contribution Received |
|---------------------------|-----------------------|
| Unex Tower/Station Street | £275,000 |

These schemes are either on site or likely to commence soon which have LLV pooled fund contributions in their S106 agreements:

| Site Address | Contribution Due* |
|-------------------------------------|-------------------|
| 150 High Street | £2,755,366 |
| Unex Tower/Station Street | £825,000 |
| 206-214 High Street | £1,470,000 |
| 160-188 High Street | £360,000 |
| Bromley by Bow North (phase 1 only) | £1,642,500 |
| Total | £7,327,866 |

*these sums due not take into account any works in kind which may be deducted according to the terms of the agreement

N.B. These funds need to be spent on projects in the part of the LLDC area that used to be in the LTGDC planning functions area, in order to comply with the terms of the legal agreements.

1.2 Ring-fenced Funds

A total of £1,466,670 ring fenced funds were transferred £290,876 of which has yet to be allocated to projects. This is broken down as follows:

| Site Address | Purpose | Contribution Received |
|------------------------------|---------------------|-----------------------|
| Rick Roberts Way | Transport | £50,000 |
| | Health | £150,000 |
| 160-188 High Street | Public Realm | £25,000 |
| 1-4 Park Lane | Public Transport | £20,000 |
| | CPZ | £15,000 |
| | Skills Training | £30,876 |
| 1A Lett Road | Affordable Housing* | £1,175,794 |
| Total | | £1,466,670 |
| Total to be allocated | | £290,876 |

*already allocated and secured through a funding agreement for LB Newham's affordable family homes programme.

The following ringfenced contribution has been received since the LLDC took over planning powers and needs to be allocated:

| Site Address | Purpose | Contribution Received |
|---------------------------|--------------------|-----------------------|
| Unex Tower/Station Street | Affordable Housing | £825,000 |
| 1A Lett Road | Affordable Housing | £20,000 |

In addition the following ring fenced funds are expected to be received in the near future when the following schemes are implemented:

| Site Address | Purpose | Contribution Due |
|---------------------------|---------------------------|-------------------------|
| Unex Tower/Station Street | Affordable Housing | £2,475,000 |
| 206-214 High Street | CrossRail | £57,000 |
| | Loading Restrictions | £3,000 |
| | Bus Stop Provision | £20,000 |
| | Car Free Implementation | £2,000 |
| | Off-Site Affordable | £3,100,000 |
| | Parking Bays Contribution | £9,000 |
| | CPZ | £30,000 |
| | Total | £6,521,000 |

N.B. The above table excludes the proposed development at Sugar House Lane where the S106 agreements provides for all financial contributions to be paid to the Corporation for the specific benefit of another party i.e. the Borough as Local Education Authority, TfL etc. In this particular case therefore no allocation procedure is required.

2. Inherited ODA section 106 funds

The following contribution has been received and needs to be allocated:

| Site Address | Purpose | Contribution Due |
|---------------------|--------------------|-------------------------|
| 419 Wick Lane | Affordable Housing | £557,324 |