Finance Committee

Date: **22 June 2022**

Item: **Update on Income from Developers Through Planning Obligations and Other Funding Mechanisms to Deliver TfL Transport Priorities**

This paper will be considered in public

1 Summary

1.1 This paper provides an update on the Mayoral Community Infrastructure Levy (MCIL) income, which supports the delivery of the Elizabeth line (Crossrail), for the year ending 2021/22. It also gives an overview of other developer contributions, as well as several other third-party funding sources (for example, the Housing Infrastructure Fund (HIF) and Levelling Up Fund (LUF)) that have been secured to contribute towards the delivery of the Mayor's Transport Strategy (MTS).

1.2 In summary, this year we have secured: £143m in MCIL, £66m in Section 106 (S106) agreements, £26m in Section 278 (S278) agreements, and the boroughs have reported on £187m in Borough Community Infrastructure Levy (BCIL), much of which is expected to be spent on transport and public realm.

1.3 Income from developers in 2021/22 has shown some positive signs of recovery, with MCIL receipts being the highest since collecting began. BCIL income has fallen during the pandemic, albeit expenditure by the boroughs has been steady for two years running, with sixty per cent of income spent, a positive trend given historical problems with establishing governance and having shovel-ready projects to spend income on.We have also leveraged third-party funding through our work, including via the Growth Fund (£100m), the Levelling Up Fund (£66m), the Housing Infrastructure Fund (£361m), and the Royal Docks Enterprise Zone (£35m). Lastly, we have secured funding for feasibility studies for both the DLR extension to Thamesmead and the West London Orbital.

1.4 Given the financial situation TfL has found itself in since 2020, we are more reliant on these sources of income to continue to develop much-needed transport schemes that mitigate and drive growth and enable us to deliver the MTS and London Plan.

2 Recommendation

2.1 **The Committee is asked to note the paper.**

3 Background

3.1 TfL City Planning appraises the transport impacts of proposed developments and negotiates appropriate transport mitigations with developers and boroughs to ensure ‘good growth’. The team is responsible for:

(a) advising the Mayor on the transport issues related to planning applications of potential strategic importance referred to him. The team attends weekly Mayoral and Deputy Mayoral Planning meetings to ensure that TfL’s requirements and priorities are understood; and

(b) responding to consultations carried out by local planning authorities in London on the transport implications of planning applications which are not referable to the Mayor.

3.2 The amount of developer income secured is intrinsically linked to the level of development activity and implementation of planning permissions. Development activity tends to be cyclical, and it is strongly influenced by local, national, and international factors including the impact of the pandemic, the UK’s departure from the EU, and the impact of fuel and construction material prices, exacerbated by inflation and the war in Ukraine. More than 800 applications were referred to the Mayor in 2021/22, many involving significant TfL input.

3.3 This paper provides information for the 2021/22 financial year on:

(a) contributions for Crossrail through the MCIL and the Crossrail Supplementary Planning Guidance (SPG);

(b) income from BCIL;

(c) S106 and other developer contributions for transport projects; and

(d) other funding mechanisms contributing to transport.

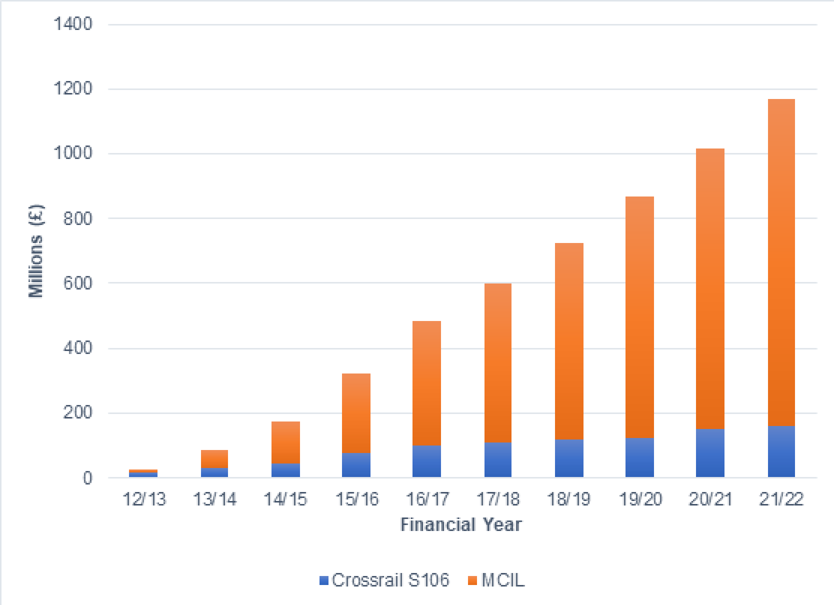
4 Developer contributions for Crossrail

4.1 The Crossrail funding agreement between Government and TfL required us to raise £600m by 31 March 2019 from developer contributions. This would be through a combination of Crossrail S106 planning obligations (as set out the in Crossrail SPG) and MCIL. By the deadline, £726m had been collected, however, due to an increase in cost, a funding package including a £1.3bn loan between the Department for Transport and the GLA was agreed between Government, the GLA and TfL. This loan is due to be repaid using Business Rate Supplement (BRS) and MCIL. This requires MCIL to support Crossrail beyond the original, agreed amount.

4.2 In 2020, a revised funding package was agreed due to further cost increases. For this, the GLA borrowed £825m, which is to be repaid through BRS and MCIL. This required an amendment to the CIL Regulations 2010, which allows the GLA to use MCIL to fund Crossrail until 31 March 2043. Given trends in MCIL income, we currently anticipate paying off the debt before 2043.

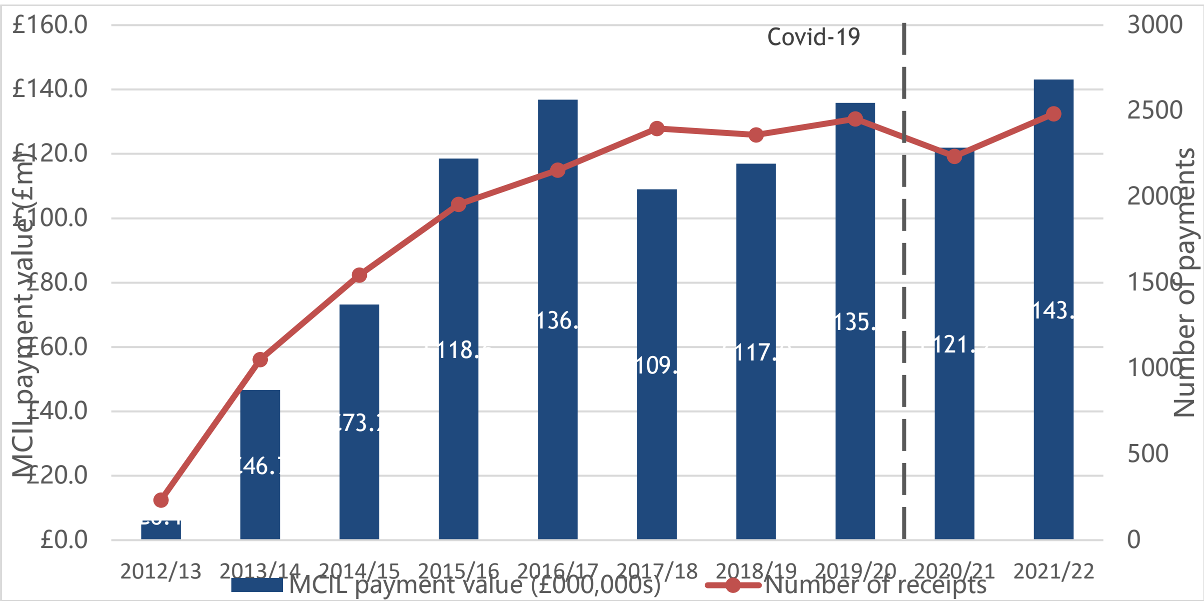
4.3 In 2019 a revised MCIL charging schedule (MCIL2) superseded both MCIL1 and the Crossrail SPG. MCIL2 charges apply to development granted planning permission from 1 April 2019. Developer contributions (MCIL1, MCIL2 and Crossrail SPG receipts) are a vital funding stream for the project. The cumulative value of combined MCIL and Crossrail SPG receipts since 2012 (shown in Figure 1) has now reached almost £1.2bn.

Figure 1: Cumulative MCIL and S106 Crossrail receipts



4.4 MCIL is paid as development commences, and the number of individual payments is an indicator of developer activity. Figure 2 shows MCIL income and the number of payments. This shows that payments were static in 2017/18-2019/20 (around 2,400 per year), and that in 2020/21 the number of payments dropped only marginally during the pandemic (to 2,236). Payments have since bounced back and income from MCIL was £143.1m, the highest return since charging commenced. Factors which may have contributed to this include Government's 'Help to Buy' initiative (which ends this year) and increased activity in the Build to Rent sector, both of which have bolstered development activity.

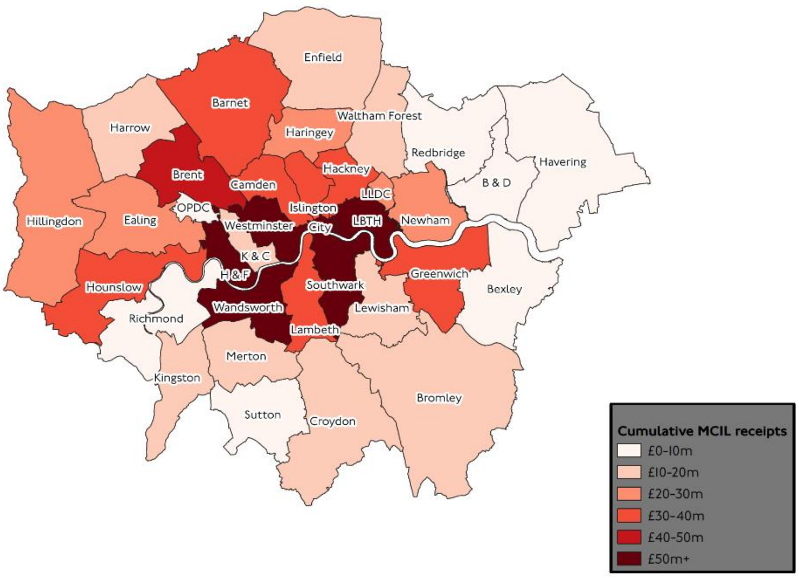
Figure 2: Annual MCIL receipts and number of payments since April 2012



4.5 Figure 3 shows the distribution of cumulative MCIL receipts in London. Tower Hamlets and Westminster have the highest returns, with total receipts of £102.7m and £98m, respectively. Authorities that have returns of more than £50m continue to be concentrated in central and inner London, either side of the river Thames, including City of London, Wandsworth, and Westminster.

4.6 A block of authorities in outer east London (Redbridge, Havering, Barking and Dagenham and Bexley), have cumulative receipts of less than £10m each. This contrasts some outer north and west London authorities, for example Barnet and Hounslow have returns of more than £30m, and Brent has a return exceeding £40m.

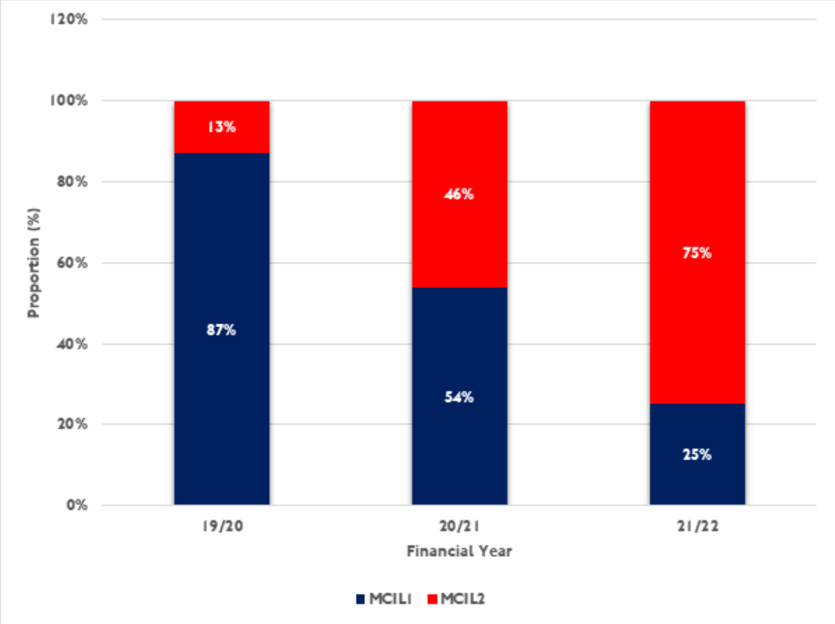
Figure 3: Total MCIL received by collecting authority



MCIL2 uplift and the biennial review

4.7 Figure 4 shows the proportion of income comprised of MCIL1 and MCIL2 since the latter was introduced in 2019. The value of MCIL2 payments has continued to increase; MCIL2 receipts are now 75 per cent of the return (£106.9m). We anticipate that this will continue next year, but the value of MCIL2 payments may settle at around 90 per cent as the collection of historic MCIL1 payments continues.

Figure 4: Proportion of income comprised of MCIL1 and MCIL2 since 2019/2020



4.8 As part of the Mayor's commitment to monitoring the operation of MCIL, a biennial review was due to take place in 2021. However due to market uncertainty created by the pandemic, this was put on hold and will now commence in Autumn 2022.

Crossrail SPG

4.9 On 1 April 2019, the Crossrail SPG was superseded by the MCIL2 Charging Schedule. However, TfL continues to collect obligations that were secured prior to the implementation of MCIL2 on sites that are still under development.

4.10 Crossrail S106 payments received in 2021/22 were £11.2m (less than half of the £25.4m collected last year). Last year's receipt was an outlier, and income this year reflects the expected decline in these receipts and is comparable to previous years (£6.8m in 2019/20 and £9m in 2018/19). Payments in 2021/22 are from nine developments in City of London, Islington, and Tower Hamlets. This brings the cumulative total of Crossrail S106 payments £161.3m, which represents 16 per cent of Crossrail payments received to date.

5 Local Planning Authority CIL (BCIL)

5.1 BCIL is a charge on new development that creates more than 100m2 net additional floorspace or creates a new dwelling where it is less than this. The boroughs, City of London, and Mayoral Development Corporations (MDCs), in their role as Local Planning Authorities, can set BCIL rates and collect funds which are for infrastructure to support growth. A portion of funds collected, between 15-25 per cent, is required to be spent in consultation with the local community and is known as Neighbourhood CIL (NCIL).

5.2 BCIL receipts make a significant contribution to the delivery of a range of infrastructure projects across London. Currently, there are only two out of the 35 collecting authorities in London without an adopted BCIL charging schedule (Ealing and Old Oak and Park Royal Development Corporation).

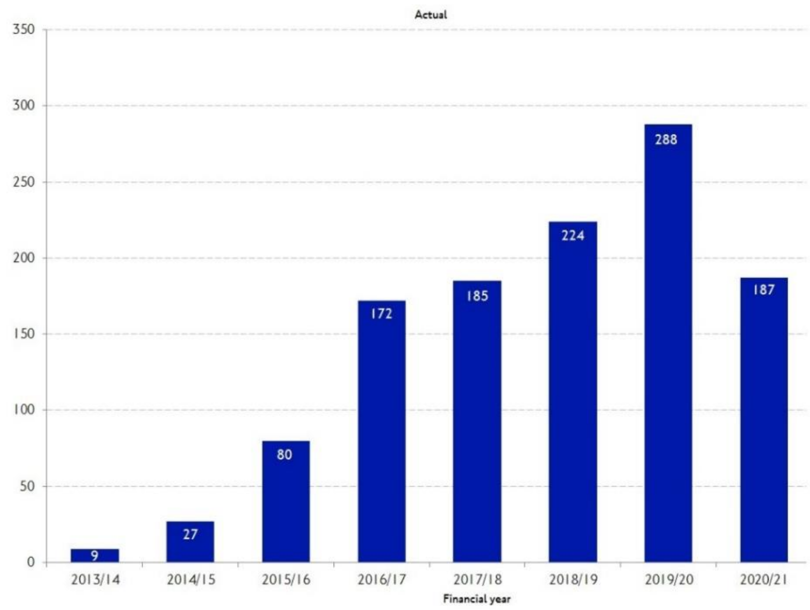
5.3 The data set out in this paper is from Infrastructure Funding Statements (IFS) that charging authorities are required to produce under the CIL Amendment Regulations 2019. The IFSs include details of CIL and S106 income and expenditure, and future committed spend. They must be published by 31 December each year, and as CIL reporting is retrospective, the BCIL figures in this paper refer to the 2020/21 financial year.

2020/21 BCIL receipts in London

5.4 There is substantial variation in the level of BCIL receipts generated, reflecting several factors including levels of development activity and BCIL rates (which are linked to viability). In 2020/21, Tower Hamlets (£47.7m), Wandsworth (£23m) and Brent (£15.3m) had the highest receipts, while Greenwich (£1.02m) and Havering (£511k) had the lowest. Notably, Havering only adopted their CIL Charging Schedule in late 2019 and it is anticipated that their income will increase as developments subject to the new charge commence. Similarly, Bromley adopted their first charging schedule in 2021 and will report BCIL income from 2022/23.

5.5 Figure 5 shows annual BCIL receipts collected by the charging authorities with levies in place in 2020/21. BCIL receipts passed the £1bn mark in 2020/21 and amounted to £1.136bn by the end of the financial year. Figure 6 shows a year-on-year increase since 2013/14 to £288m in 2019/20. However, in 2020/21 there was a substantial decrease in annual income due to the pandemic and its impact on development activity. It is important to note that there are still three authorities which have yet to report, and these include some areas which historically have had high levels of development. Therefore, it is likely that the final figure will be above £200m. If the BCIL trend follows that of MCIL in 2021/22, BCIL income is likely to quickly rebound to pre-pandemic levels. Moreover, BCIL receipts from authorities that have either introduced BCIL for the first time or have increased their rates should bolster the BCIL total next year.

Figure 5: Annual Borough CIL receipts (excluding admin fee)



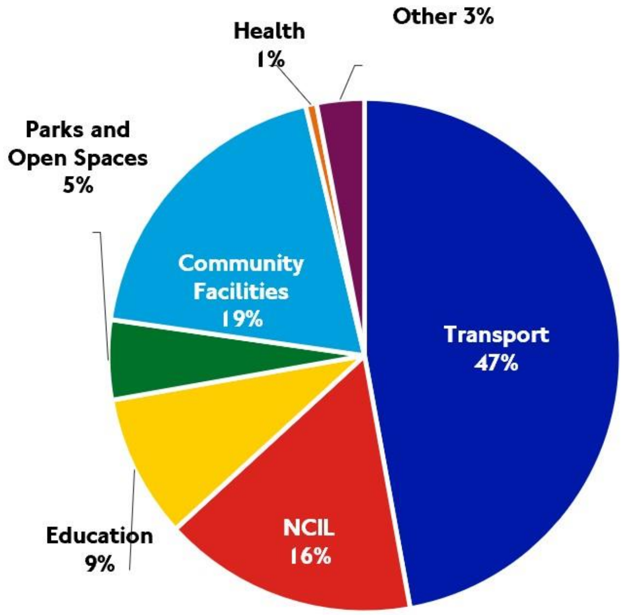
5.6 Unlike MCIL, which can only be spent on strategic transport infrastructure, BCIL can be spent on a range of infrastructure that supports growth in line with local plans.

This means that collecting authorities face competing demands for this funding, from healthcare and education to open space and transport, and these pressures are only increasing with the impacts of austerity and the pandemic.

5.7 2020/21 saw a decrease in BCIL expenditure, from £167.7m in 2019/20 to £110m, although this is around 60 per cent of all funds received, similar to the proportion spent in 2019/20. Figure 6 shows a breakdown of BCIL spend in 2020/21 by infrastructure type. Almost half of all expenditure (£51.3m) was spent on transport and public realm. It is expected that the pressures faced by local authorities may increase the competition transport projects face when applying for this funding in coming years.

5.8 BCIL continues to be spent on a wide range of transport projects both of value to TfL and the delivery of the MTS. Some headline examples include Greenwich spending £412k toward the fit-out costs for the new Woolwich Arsenal Elizabeth line station. This is part of a £15m allocation of S106 and BCIL funds towards the station fit out. Similarly, a significant amount (£7.1m) was spent by Barnet on roads and pavements and Brent spent £6.2m on public realm improvements in Wembley.

Figure 6: BCIL expenditure by infrastructure type 2020/21



TfL and BCIL

5.9 The London Plan reflects the fundamental importance of transport provision in enabling ‘good growth’ and unlocking sites. Future allocations of BCIL indicate that there is currently around £70m of BCIL allocated but not spent, with 64 per cent of this allocated to transport and public realm projects. Hounslow West station is an example where TfL and LB Hounslow have worked closely to allocate funding for Step Free Access (SFA). This culminated in TfL submitting a successful BCIL bid for more than £1m towards initial phases of the project. TfL will continue to work with Hounslow to identify further funding for the project.

5.10 TfL will continue to work with the BCIL charging authorities to identify opportunities to fund shared transport priorities using BCIL, with work currently ongoing to create a strategic process for this within TfL. This will enable us to be proactive in supporting authorities that are allocating BCIL towards transport.

Neighbourhood CIL (NCIL)

5.11 In 2020/21 NCIL spend was £17.9m (See Figure 6). Unlike BCIL, NCIL is spent in consultation with the local community. In some areas communities have identified transport as a priority. This is often where there are concerns about road safety. Whilst these are often smaller projects with lower values, they represent opportunities for TfL to engage with Londoners and apply for funding for improvements to transport infrastructure. In 2022, Camden allocated around £30k to two projects on the TLRN (Transport for London Road Network) through this process.

6 Ensuring appropriate transport mitigations – S106

6.1 Planning applications are often approved subject to a package of mitigation measures (including transport) which reflect negotiations by TfL and the GLA with developers and the local planning authority. TfL seeks for transport requirements to be prioritised and aims for developments to promote active travel, contribute appropriately to public transport, and minimise road network impacts.

6.2 Measures we negotiate vary in type and scale but must all be within the established legal test for S106 planning obligations (related to the development, necessary to make the development acceptable in planning terms, and fairly and related in scale and kind to the development) as defined by the Community Infrastructure Levy Regulations 2010. These obligations can cover works and projects at any scale, from minor works (for example bus stop improvements or wayfinding) up to large multimillion pound projects, such as the Barking Reach Power Station project – a package of transport mitigation that includes funding for a station and significant bus service enhancements and prioritisation.

6.3 TfL negotiated a total of £65.9m in S106 contributions in 2021/22. This is a 26 per cent increase on the previous year which secured a total of £50.2m of contributions. Most of these contributions were for bus network improvements, (£45m in 2021/22). This is more than double that secured in 2020/21 (£20.6m).

6.4 As well as securing funds, we also secure works carried out by developers on site, for instance a new entrance to King's Cross station from the Belgrove House development. It is important not to underestimate the significance of benefits derived from this; it materially contributes to the continued improvement of London's transport network despite not always being quantified in financial terms.

6.5 In 2021/22, 88 new agreements (27 per cent up on 2020/21) were added to those we actively monitor for implementation each quarter, bringing the total to 947. Of these, TfL is a signatory to 109 agreements. Notably, there is a time lag between negotiation/signing of S106 agreements and receipt of funds, with income linked to delivery of the development and triggers within the agreement being met.

6.6 TfL also negotiates S278 agreements for highway improvements on the TLRN ranging from small-scale improvements such as footway renewal to larger works. In 2021/22 £4.5m was recovered from developments to cover TfL resourcing costs and around £26m of capital improvements were delivered on critical infrastructure to support delivery of homes and jobs in London and delivering Healthy Streets and Vision Zero in developments. These schemes are funded (and often maintained) by developers at no cost to TfL. Examples of large-scale work completed this year are: Victoria Nova Development signalisation and asset renewal (£1.2m), Southall Green Quarter bridge infrastructure (£20m) and public realm/highway improvements facilitating development around Bishopsgate (£3m) and Nine Elms Battersea Power Station developments (£2.1m).

7 Other third-party funding sources

7.1 TfL continues to face a challenging financial situation following the coronavirus pandemic, so it is even more important for TfL to proactively seek new sources of funding. We are currently unable to commit to Growth Fund projects and the halting of work across programmes, combined with uncertainty, has created significant challenges for agreed schemes which assumed a TfL contribution in an overall funding package.

7.2 Nonetheless, we have continued efforts during 2021/22 to maintain and identify further third-party funding to deliver the MTS and contribute to infrastructure priorities. Updates and brief information on some key projects are provided below.

Using the TfL Growth Fund to secure third-party contributions to schemes

7.3 The Growth Fund is focused on leveraging significant third-party funding (from developers, boroughs, and Government) to maximise the benefits of TfL's contribution. Importantly, the Growth Fund does not just enable new homes, but also delivers wider TfL Business Plan and MTS priorities, including mode shift, net zero ambitions, step-free access, Healthy Streets, and station upgrades.

7.4 The Growth Fund's current portfolio unlocks and supports over 55,000 homes and has currently secured around £100m third party funding against £93m TfL spend on projects scheduled for delivery up to 2029/30 (including Colindale, Leyton, Tottenham Hale, and Pontoon Dock).

7.5 TfL's revised budget classifies all Growth Fund schemes as fully meeting the Mayoral objectives but 'contingent on additional funding'. This means that despite Growth Fund projects having a strong commitment and significant degree of third-party funding secured, a further commitment by Government or other sources – and/or a more certain position on TfL funding and finances – is needed to progress them. Under the 'managed decline' scenario, the Growth Fund would end. Under 'Financially Constrained', the pre-pandemic programme could continue, with a small pipeline of future projects targeted at the most critical areas.

7.6 Over the last year, we have continued to review the programme, considering the recent funding agreement with Government and, where necessary, identifying other funding streams to progress the projects. Colindale station upgrade and Leyton station upgrade are two projects with particularly urgent deadlines and decision points in 2022/23. We are working closely with the GLA, Government, boroughs, and other partners to discuss these matters.

Levelling Up Fund (LUF)

7.7 Government recently announced the second round of the LUF following the first round in 2021. This £4.8bn fund supports capital investment in local infrastructure to

2024/25 (round 1) and 2025/26 (round 2) across culture, regeneration, and transport themes. All transport bids require the approval of the relevant authority responsible for delivering them, which means that TfL has a role in endorsing bids.

7.8 TfL supported borough bids for transport, and £56.2m was allocated in the first round to proposals across three boroughs:

(a) Newham: Connections to Opportunity bid (building a new bridge over the River Lea (£19.8m)) and 15 Minute Neighbourhoods bid (connecting 75,000 residents to vital infrastructure by a 15-minute walk or cycle (£19.9m));

(b) Ealing: Connecting Northolt Station to White Hart Roundabout bid (£7.2m); and

(c) Tower Hamlets: Transforming Whitechapel Road bid (£9.3m).

7.9 As well as working with boroughs to deliver their projects, we are also providing support for the second round of LUF. Bidding for this round has commenced (the deadline for submissions is 6 July). All areas in the UK, including London boroughs, are invited to submit bids of up to £20m each. The GLA/TfL is eligible to submit one transport bid of £20m, or up to £50m by exception.

Royal Docks

7.10 The Royal Docks Enterprise Zone Delivery Plan (EZ) is a programme that seeks to transform the Royal Docks and accelerate the delivery of commercial space. The GLA will forward fund the EZ delivery plan through prudential borrowing, to be repaid from business rates generated over the life of the EZ. Developer contributions will also contribute to infrastructure required.

7.11 The EZ is expected to contribute £35.7m to the DLR upgrade, with potential further monies earmarked post plan. TfL has received £3.75m for feasibility and design work on several stations. However, a review in early 2020 has (following some increases in costs and risk) led to a reprioritisation of the work, which will now focus on Pontoon Dock, Royal Victoria, Thames Wharf and Canning Town.

Housing Infrastructure Fund (HIF)

7.12 The HIF is a Government capital grant programme of up to £5.5bn which the Department for Levelling Up, Housing and Communities (DLUHC) expects to deliver hundreds of thousands of new homes across England. Grant funding has been awarded to local authorities on a competitive basis for new infrastructure that will unlock homes in the areas of greatest demand. TfL, working with the GLA, successfully bid for two packages of investment for the DLR and the East London line (ELL) to support development in Newham and Tower Hamlets, and Southwark and Lewisham, respectively. Over the past year, there has been significant ongoing work to seek to maintain the highest priority elements of these projects considering the challenges created by the pandemic and cost increases. TfL has continued working with Government to agree the terms and conditions attached to the funding.

7.13 On the DLR HIF bid, TfL entered a grant determination agreement (GDA) with the GLA and DLUHC in December 2020 to receive £281m from Government to purchase up to 14 additional DLR trains and to expand Beckton DLR depot. This agreement went “unconditional” in July 2021 when, after further analysis and discussion with Government, the number of additional trains was reduced from 14 to 11. With 11 additional trains, the updated estimated final cost is £257.5m. We have received £45m for the depot land and infrastructure works, and £74m is due for an initial payment towards the trains. The DLR HIF is one of the largest single contributions that TfL can make to delivering the New Homes and Jobs objective of the MTS by supporting or enabling the delivery of up to 12,000 homes in total, including up to 1,740 homes by TfL at Poplar.

7.14 The ELL HIF programme was awarded £80.1m from Government to increase the capacity of the core section of the line from 16 to 20 trains per hour, as well as an expansion of Surrey Quays station, improvements to Canada Water bus station and a new station at Surrey Canal Road. This will enable development at major housing sites in the area - in total unlocking 14,000 homes.

Third-party feasibility funding for major projects

7.15 Transport investment is essential for unlocking the delivery of new homes and in particular ensuring that development is not car dependent but instead supports net zero, mode shift and accessibility objectives. Over the last year we have worked closely with Homes England and DLUHC on feasibility work on the case for a DLR extension to Thamesmead via Beckton Riverside. This project unlocks 20,000-30,000 homes in East London. Homes England, RB Greenwich, LB Newham, the GLA and developers/landowners have provided £1.3m to support work towards a strategic outline case which can be submitted to Government.

7.16 The West London Alliance has commissioned feasibility work for the West London Orbital (WLO) – a new rail service on existing, underused rail lines in west London - that TfL are involved in and are working on to consider options for a specific BCIL charge that could contribute towards the scheme’s cost. TfL has been investigating the opportunities that development along the route might provide through S106 and, for example, Carbon Offset funding (which boroughs collect from development to offset the carbon impact of development). The WLO would be an extension of the London Overground between Hounslow and Hendon/West Hampstead via Old Oak Common, supporting 15,800 new homes.

8 Summary and next steps

8.1 Income from developers in 2021/22 has shown some positive signs of recovery, with MCIL receipts being the highest since collecting began and continued spending of BCIL on transport. We have negotiated significant mitigations through S106 and continue to work with partners to identify and bid for a wide range of funding opportunities, supporting the delivery of the MTS. TfL continues to focus on building and maintaining relationships and engaging effectively in all aspects of the planning system to ensure that opportunities to shape ‘good growth’ and deliver essential transport improvements are maximised.

8.2 As in previous years, third-party funding has continued to play a vital role in delivering transport infrastructure and improvements during 2021/22. It provides an opportunity to mitigate the financial pressures faced by TfL in coming years, and to add to our ability to deliver vital enhancements to the transport network (e.g. step-free access). However, there are significant and growing challenges as we have had to pause schemes due to uncertainty of our longer-term funding position.

8.3 There are clearly benefits of third-party funding multiplying TfL’s funding and enabling us to deliver more on the ground. Continued work to identify opportunities to deliver aligned priorities (with boroughs, government, developers, and others) is key to delivering mode shift, SFA and other aims set out in the London Plan and the MTS. We must continue to develop relationships with potential funding partners so that these opportunities are as effective as possible. But this is likely to require TfL having at least some match funding to leverage.

8.4 The context for developer funding could change significantly. The Queen’s speech on 10 May 2022 set out Government’s intention to proceed with an Infrastructure Levy, which will replace the CIL and S106 systems with a new levy. Proposals for this were subsequently included in the Levelling Up and Regeneration Bill published on 11 May and indicate that MCIL will be retained but BCIL will be replaced by the new levy. While S106 could remain for the largest developments, there would be new, complex arrangements which are likely to make it more difficult to secure infrastructure to make developments sustainable, workable, and acceptable to Londoners. While the detail of the proposals and wider implications for TfL are still being clarified, there is a risk that the availability of funding for transport is reduced, particularly given that affordable housing is proposed to be part of the new levy (and is likely to be a high priority for most authorities). Further detail of how the levy will operate in practice will be set out in draft regulations that will follow, likely in 2023.

List of appendices to this report:

None

List of Background Papers:

MCIL2 Charging Schedule: Mayor of London Community Infrastructure Levy 2 Charging Schedule (January 2019)

CIL Regulations 2010, as amended 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021.

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