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ADDRESSING NEW YORK CITY'S INFRASTRUCTURE CRISIS

Lessons from the London Mayoral Community Infrastructure Levy and its Funding of Crossrail

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SUMMARY:

As New York City and London continue to experience significant population growth, politicians, planners, businesses, and residents question how these cities can absorb growth while maintaining the daily functioning of aging and — at times — poorly maintained infrastructure systems. Coming out of the Great Recession, many localities are being asked to do more with less funding at all levels of government, yet at the same time these cities are asked to innovate. In the fall of 2014, I travelled to London as an Urban and Regional Policy Fellow with The German Marshall Fund of the United States to explore the creation and implementation of a new infrastructure funding mechanism called the Community Infrastructure Levy (CIL). Through my research, I met with numerous stakeholders with varying opinions of CIL, including representatives from the London government, the development community, and transportation, infrastructure, and housing planners.

An analysis of the evidence gleaned from this case study suggests that CIL has proven to be a vital infrastructure funding mechanism at various levels of government in London. However, its success has been undermined by yearly changes and adjustments to the regulations since the law was implemented. Ultimately, this report concludes that while CIL is not directly transferrable to New York City, largely due to differing political landscapes and governance structures between each city, there are key lessons learned from CIL that can be applied to the New York City context. City governments should seek to take advantage of land value, and both public and private sectors should share in the burden of paying for critical infrastructure. As the City of New York prepares to welcome half a million more residents by 2040, it is vital to invest in critical infrastructure to maintain a vibrant and dynamic city that can readily accommodate current residents while planning for a significant influx of new residents and businesses.

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Intoduction

Infrastructure is the lifeline that makes a city run. It includes critical urban components such as transportation, electricity, water, and communication. The health of a city's infrastructure is integral to its long-term sustainability and resiliency. Today, U.S. and European cities face major infrastructure funding shortfalls, as infrastructure spending has typically lagged behind the rate of population growth and/or failed to account for increased maintenance costs. Decades of disinvestment, especially since the mid-1970s, has left New York City playing catch-up to bring its aging infrastructure up to a state of good repair. However, in an era of financial cutbacks and austerity policies that affect all levels of government, there is an increasingly pressing need to identify new tools and mechanisms to fund vital infrastructure — a social asset that is critical not only to the daily functioning of cities but also their long-term viability. Urban policymakers in New York City and across the United States are asking how they will fund the infrastructure gap. Indeed, they are searching for new approaches to effectively address this challenge.

Recently, New York City's Mayor Bill de Blasio and Oklahoma City's Mayor Mick Cornett testified in Washington, DC on behalf of the increasing federal contribution to transportation infrastructure in municipalities across the country. In an op-ed for *The New York Times*, both Mayors highlighted the dire consequences of inaction when the country's aging roads, bridges, and other transportation infrastructure are ignored. In New York alone, more than 160 bridges were built over a century ago, while large portions of the subway's signal system are more than 50 years old.[1] The drastic under-funding of infrastructure in the United States is underscored by a statistic comparing the U.S. investment in infrastructure as a percent of gross domestic product at a measly 1.7 percent compared to 5 percent and 9 percent for Europe and China respectively.[2]

With these thoughts in mind, I traveled to London in the fall of 2014 to study London's Community Infrastructure Levy (CIL) and analyze its potential application to New York City as a 2014-2015 Urban and Regional Policy Fellow with The German Marshall Fund of the United States. The United Kingdom introduced CIL — an infrastructure financing mechanism — into legislation in 2010. Through this research, I aimed to evaluate CIL and investigate whether it could be adopted as a method to help fill New York City's growing infrastructure funding gap. Over three weeks in London, I met with representatives of government at the mayoral and London borough levels, transportation and urban planners, real estate developers, and economic consultants who worked on the evaluation and analysis of CIL and Crossrail.

As vice president for development at the New York City Economic Development Corporation (NYCEDC), I collaborate with communities, city agencies, developers, and other stakeholders to create and implement neighborhood-based master plans and large scale mixed-use development projects across New York City. Throughout NYCEDC's work to advance these projects, both the public and private sectors highlight the potential for infrastructure challenges and deficiencies to threaten large development projects.

New York's Infrastructure Deficit

New York City's infrastructure needs are great and varied. Though some of these deficiencies are related to deferred maintenance, they also stem from the investment needed to accommodate an ever-growing population. As detailed in a recent report by the Center for an Urban Future, "much of the city's roads, bridges, subways, water mains, sewer systems, school buildings, and other public buildings are more than 50 years old, and many critical components are past their useful life and highly susceptible to breaks and malfunctions."[3] The need and cost to repair and maintain the city's aging infrastructure simply cannot be sustained by current investment, and despite the city's efforts to improve on targets, such as building the first new water tunnel in over a century, many agencies face an insurmountable need with insufficient resources.

Indeed, the same Center for an Urban Future report found that $47.3 billion is needed over the next five years just to bring New York City's infrastructure to a

1 Bill de Blasio and Mick Cornett, "Let Our Cities Move," *The New York Times*, May 13, 2015.

2 Ibid.

3 Center for an Urban Future. *Caution Ahead: Overdue Investments for New York's Aging Infrastructure*, March 2014.

state of good repair, resulting in a $34.2 billion[4] capital funding gap. There is no question that additional funding from the State and Federal Government will be needed to make a dent in the city's current funding deficit. A number of other policy solutions have also been suggested over the years to generate more revenue for the city, including congestion pricing below Midtown Manhattan, new tolls on the East River bridges, and other financing mechanisms such as tax increment financing that captures the value of the infrastructure investment. These proposals have largely fallen flat due to their direct impact on New Yorkers; few politicians are willing to propose new taxes or tolls that target outer borough residents given that these same residents comprise a large portion of their constituency.

NYCEDC, serving as the main economic arm for the City of New York, also recognizes the important role infrastructure can spur the private market to act in lower-income communities that have often experienced decades of disinvestment by the city. In Coney Island, Brooklyn, NYCEDC is investing over $180M in critical water and sewer infrastructure across a 24-acre area to help further the creation of a vibrant, mixed-use district with approximately 4,500 units of mixed-income housing and 500,000 square feet of retail and community services. This investment was funded with city capital dollars, which are scarce and difficult to secure, and often susceptible to politics. It is therefore crucial to identify other funding sources that could be used to invest in vital infrastructure in neighborhoods across New York City.

This research looks to the example of London for inspiration, exploring how this global city is funding their equally urgent infrastructure needs. London serves as a prime case study for New York City, as both cities have populations that are roughly equal in size; are global business, culture, and immigration hubs; play a preeminent role in their respective metropolitan areas, and have extensive, yet aging infrastructure systems that must meet the demands created by growing populations. There is also an established competition between the two cities as centers of global commerce and one is often compared to the other as leaders of innovation. Both cities currently find themselves in a period of significant population growth, and are actively preparing for such growth by investing in new infrastructure in order to accommodate an influx of residents.[5] London is projected to grow to 11 million people by 2050 from 8.6 million people today, while New York is projected to grow to 9 million people by 2040 from 8.5 million people today. In anticipation of a nearly one-third increase in population growth by 2050, the Greater London Authority was commissioned by the mayor of London to analyze and create a long-term infrastructure plan to identify and quantify London's infrastructure needs to 2050. On housing and transportation needs alone, London projects a £135 billion (approximately $195 billion USD) infrastructure funding gap from 2016-2050.[6]

Table 1. London and New York City by the Numbers:

	New York City	London
Population	8.55 million (2015)[1]	8.63 million (2015)[2]
Expected Population Growth	9 million (by 2040)	11 million (by 2050)
Total Projected Infrastructure Funding Gap	$34.2 billion for the City's core infrastructure (2014-2019)[3]	£135 billion for housing and transportation by 2050[4]

Sources:

[1] New York City Department of Planning

[2] Greater London Authority

[3] Center for an Urban Future, inclusive of education, recreation, health and hospitals, transportation, and housing

[4] Greater London Authority, *The cost of London's long-term infrastructure*, 2014.

4 It is difficult to identify the actual infrastructure funding deficit, as the city's infrastructure is provided by a collection of city and state agencies, public authorities, and private utilities. Inclusive of Department of Education, Department of Transportation, Department of Parks and Recreation, Health and Hospitals Corporation, City University of New York, Metropolitan Transit Authority, New York City Housing Authority, Port Authority of New York and New Jersey, excludes Department of Environmental Protection. Center for an Urban Future. *Caution Ahead: Overdue Investments for New York's Aging Infrastructure*, March 2014.

5 In London, there is a general fear that Brexit will lead to a slowdown of the economy and potential reduction of foreign investment in London real estate. As a result, real estate projects might not be able to bear the cost of the levy, due to these reduced profit margins. If planning authorities are unable to raise the forecasted levy, they will be unable to fully fund future infrastructure projects paid for by the levy. Though considerable uncertainty remains, the potential downturn and resulting domino effect for London's real estate and infrastructure needs is likely to be significant. For more information: Simmons & Simmons elexica, *The impact of Brexit on U.K. planning system*, June 29, 2016, http://www.elexica.com/en/legal-topics/real-estate/29-the-impact-of-brexit-on-the-uk-planning-system.

6 Greater London Authority, *The cost of London's long-term infrastructure*, July 2014, file:///C:/Users/mgilliland/Downloads/The%20cost%20of%20London's%20long-term%20infrastructure%20by%20Arup.pdf.

This analysis explores the potential application of the London's Mayoral Community Infrastructure Levy to the context of New York City. This section will first provide background context to the policy thinking behind the funding tool. The paper outlines how CIL works in practice and how CIL is being used to partially fund a major infrastructure project in London. Concluding with a description of key policy lessons based on the tool's successes as well as shortcomings and the potential policy implications New York City.

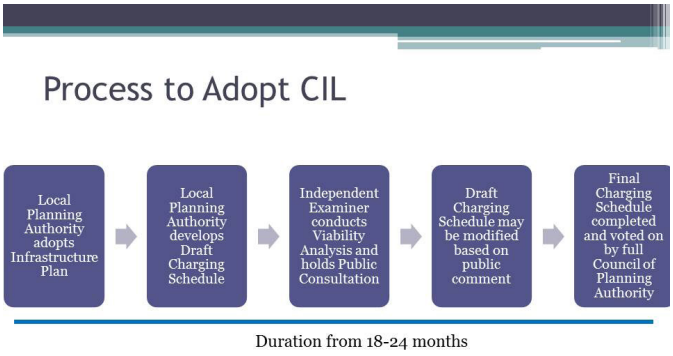
Background

The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area. From its conception to adoption, the legislation was debated in the House of Commons over the span of several years, originally conceived in the economic boom of the mid-2000s and yet ultimately implemented in 2010 in the midst of a recession. CIL enables local authorities to raise funds from new real estate developments within a local authority's jurisdiction to fund a wide range of infrastructure projects within the area. Charged on a pound sterling per square meter rate on certain new real estate developments set by the governing authority, the introduction of CIL aimed to fill the gap in infrastructure funding at the local government level across the United Kingdom. Potential funding uses of the tariff are defined as general infrastructure, including community facilities and schools, open space and recreational facilities, roads and transportation, and flood resiliency.[7] The CIL legislation has been tweaked every year since it was approved; however, it has now survived two political terms in the United Kingdom, and is arguably viewed as the best alternative to land value taxes.

Table 2. Community Infrastructure Levy Arguments – Pro and Con

PRO	CON
Creates a faster process for gaining planning permission for development projects.	Development projects still need to go through Section 106; therefore, the overall process is not expedited.
Provides developers and local councils with more certainty related to developer fees and infrastructure funding.	Rigidity of the levy prohibits developers from providing in-kind contributions to a site/community.
The public and private sectors share in the burden of infrastructure funding.	Places an undue burden on both large and small real estate projects to pay for community infrastructure needs unrelated to the projects.
CIL takes advantage of the unearned increment on land value growth to deliver infrastructure to support planned growth.	The real estate market is volatile; thereby rendering CIL an unstable and unreliable source of funding for infrastructure.

Though CIL was enabled through national legislation, each local authority must go through a lengthy public review process that can take up to two years to complete in order to adopt CIL locally. First, the local authority must develop and finalize an area wide Infrastructure Plan, which identifies projected infrastructure funding gaps and a pipeline of potential future development projects. The local authority creates a Draft Charging Schedule, which outlines the proposed levy categorized by land use and geographic area. For example, a local authority may propose to charge new office development at a rate of £100 pounds per square metre, while new residential uses may be charged £200 pounds per square metre; these charging rates may also differ within designated subareas within the local authority's purview. The Schedule uses an evidence-based approach to strike a balance between funding infrastructure and not impacting the economic viability of future development in the area. In the above scenario, one can assume that new residential is the highest and best use, and therefore can afford to be taxed at a higher rate than new office uses. An Independent Examiner is hired to conduct a viability analysis, which investigates whether the proposed charging schedule would have any impact on new development within the area going forward. The Independent Examiner may hold a Public Consultation hearing, and the Draft Charging Schedule may be amended based on public comment. The Final Charging Schedule is completed and ultimately voted on by the full council of the local authority, by which it is then adopted into local law.



CIL was created to improve upon the previous system that local authorities used to extract value from new real estate development. Known as Section 106 of

7 United Kingdom Department for Communities and Local Government, *Community Infrastructure Levy: An overview*, May 2011.

the Town and Country Planning Act 1990 (S106), the prior planning obligations system required developers to negotiate with a local planning authority in order to secure planning permission to construct their project. S106 insures that any project-related impacts are mitigated by the developer; for example, this could include the construction of a new school if a residential project would result in overcrowding in the existing school system or the funding of local transportation, such as a new bus route, to alleviate road congestion or crowding on existing bus routes. Some of the developers who I met with in London spoke favorably of the S106 process, highlighting the opportunity to negotiate directly with the local planning authority and provide greater community benefits through the provision of in-kind donations, such as enhancements to the public realm. With the introduction of CIL, S106 was scaled back to reflect the new regulatory system; however, local planning authorities may still seek planning obligations from developers to ensure that any specific impacts created as a result of the development are mitigated through payment or in-kind contribution by the developer.[8]

In comparison to S106, CIL has been lauded by the public and government officials for creating a more transparent, streamlined, and standardized process. It provides more certainty for both developers and local planning authorities as a project's fees are determined via a set charging rate, thereby providing upfront clarity as to how much money may be raised by the local authority and paid for by the developer for project approval. Conversely, the clear-cut nature of CIL was predominantly viewed as one of its major deterrents by the real estate developers whom I met in London, as S106 provided developers more flexibility to negotiate with the local council to provide in-kind contributions to the community instead of outright payments. The U.K. government has also praised CIL for its ability to raise critical funds for the provision of local infrastructure where S106 may have previously failed: "Under the system of planning obligations only 6 percent of all planning permissions brought any contribution to the cost of supporting infrastructure, when even small developments can create a need for new services."[9] At the same time, CIL has not significantly accelerated the process for a project to gain planning consent. Since S106 is still required by the local authority and runs in parallel to CIL, developments are not approved any more quickly than before CIL was introduced into legislation.[10]

> *"CIL has not significantly accelerated the process for a project to gain planning consent."*

Overview of Mayoral CIL and Crossrail

On April 1, 2012, the Greater London Authority (GLA) introduced the London Mayoral CIL (MCIL) to help finance Crossrail — a new, major east-west tube and rail line which has been under construction across Greater London since 2009. Crossrail is expected to greatly reduce commute times and alleviate congestion across the entire tube system. It is currently the largest infrastructure project under construction in Europe, yet many critics say that the project is long overdue and will not do enough to improve overall transit access and connectivity in London.

Crossrail was first identified in the Greater London Plan of 1944, although many believe that the concept of a direct east-west tube line has been around since Victorian times. Crossrail has been recognized by central government as integral to both London's United Kingdom's economy. And yet, perhaps most important, it alleviate existing and future crowding pressure on the comprehensive tube system. Proponents claim that "[i]t will ensure improved services for rail users by relieving crowding, ensuring faster journeys and providing a range of new direct journey options while also facilitating interchange between different public transport modes."[11] To that end, Crossrail seeks to achieve the following three major policy objectives: To support the development of London as a world city, and its role as the financial center of Europe and the United Kingdom; To support the economic growth of London and its regeneration

8 United Kingdom. Department for Communities and Local Government. Community Infrastructure Levy: An overview. London: Crown copyright, May 2011.

9 The Incidence, Value and Delivery of Planning Obligations in England in 2007-08, University of Sheffield, 2010, www.communities.gov.U.K./publications/planningandbuilding/planningobligationsreport

10 "CIL Review — can we fix it?" U.K. Planning Law Blog, Roy Pinnock. January 19, 2016.

11 Mayor of London, *Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy*, April 2013..

areas by tackling congestion and the lack of capacity on the existing rail network; and To improve rail access into and within London.[12]

Apart from improving mobility within London, Crossrail opens up underdeveloped areas to new regeneration schemes, in particular in the largely transit-underserved area of southeast London. A new Crossrail station in areas like Abbey Wood, located in the outer-ring of London, will provide a major injection of investment and development in the area. In fact, it represents the first major public transport addition to the area since the local rail network was installed in 1849. By better connecting the underdeveloped area to Central London and shaving off 20 minutes of travel time, it is expected to become a new commuter suburb, spurring regeneration as well as supporting local jobs and businesses.[13]

> *"CIL is widely recognized as creating an important new funding source for the Greater London Authority."*

Crossrail also creates new opportunities for enhanced public realm and new, higher density development in Central London, which is increasingly important as London prepares to absorb major population growth and looks to increase housing supply over the next several decades. A new Crossrail station at Bond Street in the heart of the West End — the busiest shopping district in the U.K. — will enable new and improved pedestrian flow and better access to the existing tube station in addition to public realm improvements to nearby Hanover Square. New regeneration schemes are also proposed above some of the new tube stations, allowing for the construction of new retail, office, and residential space built at a higher density above the new stations. At Bond Street, Crossrail has received approval to build a new 300,000 square foot mixed-use development above the eastern ticket hall at Hanover Square.[14] Crossrail Ltd. has already sold the air rights above the new and improved Bond Street station to a number of different development partners to build the over-site developments, resulting in another source of revenue for Crossrail.

Crossrail is therefore an important transportation project with major implications for new development in the city. However, like any major infrastructure project, Crossrail is a very expensive project that requires a number of different funding sources to pay for it. The project's total price tag is £14.8B (approximately $21.5 Billion), and is paid for by direct grants from central government (£4.8 Billion, or $7 Billion) and the Mayor of London (£1.9 Billion, or $2.7 Billion), in addition to a series of new taxes that are largely borne by Londoners and London businesses (see table 3). There are also significant contributions from members of the government and private sectors, who will greatly benefit from Crossrail, including the City of London Corporation (£250 Million), Heathrow Airport (£70 Million), and Canary Wharf Group (£150 Million). Therefore, at £300 Million, MCIL, will only raise approximately 2 percent of the total project cost.[15] Nonetheless, CIL is widely recognized as creating an important new funding source for the Greater London Authority (GLA) by capturing land value through the creation of new development rather than existing sources that rely on public grants or taxes borne by Londoners.

When MCIL was implemented in 2012, it was only the fifth CIL to be adopted in all of the United Kingdom and only the second in Greater London, after the London Borough of Redbridge. Despite the extreme variation in property values and size and pace of development across Greater London, the GLA intended to create a standard CIL rate to charge all new development, excluding hospitals and educational facilities. The GLA designated three charging zones for the MCIL (£50, £35, and £20 per square metre) and assigned each borough to a zone based on average residential home prices within each Borough as compared to Greater London. The residential market was seen as the simplest and best proxy for analyzing each individual borough's real estate market. However,

12 Crossrail Environmental Statement, Volume 1, Prepared for the Department of Transport by Environment Resources Management, http://www.crossrail.co.uk/about-us/crossrail-bill-supporting-documents/environmental-statement.

13 Crossrail, Abbey Wood Station, http://www.crossrail.co.U.K./route/surface/south-east-section/abbey-wood-station.

14 Crossrail, Bond Street Station, http://www.crossrail.co.U.K./route/stations/bond-street.

15 Transport for London.

during the public consultation period for the Draft Charging Schedule, some London Boroughs, such as the Borough of Wandsworth, advocated for a lower charging rate of £35 versus the higher rate of £50 pounds per square meter. As described by a representative of the Wandsworth Planning Council, the Borough would not directly benefit from Crossrail and, despite a relatively healthy real estate market, the value of land was not as high as other Central London boroughs designated for the highest charging zone. Additionally, Transport for London and GLA considered charging the Borough of Barking and Dagenham a nil rate, reflecting the area's depressed economy and low property values. Ultimately, GLA decided against both of these decisions, instead maintaining the originally proposed three charging zones and individual borough designations.

MCIL is forecast to raise £300M by fiscal year 2018-2019 and Transport for London has underwritten this amount for Crossrail. To date, MCIL has raised £86M over 2.5 years,[16] which is ahead of schedule in reaching their £300M target. An additional £300M is forecast to be raised by S106 planning obligations from new developments located within a one kilometer radius from a new Crossrail station (see Map of London Contribution Areas). Current analysis of MCIL conducted by Transport for London and the Greater London Authority reveal that MCIL has had no adverse impact on new development across Greater London.[17] Nonetheless, the 2018-2019 target assumes a stable property market, and though London is currently experiencing a real estate boom, it is not clear how long this will be maintained and the Brexit vote will affect the long-term property market. Combined, the two financing schemes only represent approximately 5 percent of the total cost of Crossrail, so this infrastructure project is not wholly dependent on the success of CIL.

Table 3. Crossrail Funding Sources

Source	Amount (£)	Percent of Total
United Kingdom Department for Transport[1]	4.8 Billion	32 percent
Business Rate Supplement[2]	4.1 Billion	28 percent
Network Rail[3]	2.3 Billion	16 percent
Transport for London[4]	1.9 Billion	13 percent
Sale of surplus land and property	500 Million	3 percent
Community Infrastructure Levy	300 Million	2 percent
Developer Contributions[5]	300 Million	2 percent
City of London Corporation	250 Million	2 percent
Canary Wharf Group	150 Million	1 percent
London businesses[6]	100 Million	1 percent
Heathrow Airport Limited	70 Million	<1 percent
TOTAL:	**14.8 Billion**	

Notes:

[1] Direct contribution

[2] Borrowing and direct contribution

[3] Network Rail will undertake work to the existing national rail network raised through projected operating surpluses from Crossrail

[4] Direct contribution

[5] Crossrail Section106 contributions

[6] Contributions from London businesses sought and partially guaranteed by the City of London Corporation

Source: United Kingdom Audit Commission

16 United Kingdom, *Mayoral Community Infrastructure Levy 2014 Biennial Review*, December 12, 2014.

17 Greater London Authority, *Mayoral Community Infrastructure Levy 2014 Biennial Review*, December 2014, https://www.london.gov.U.K./sites/default/files/MCIL percent202014 percent20Review percent20December percent202014.pdf.

Key Policy Lessons

A Vital Infrastructure Funding Tool

The adoption of CIL by the United Kingdom in 2010 enabled local authorities, such as the 34 boroughs and development corporations across London, to plan for and adopt their own CILs in order to raise funding for the provision of local infrastructure. To date, 29 of the 34 London Boroughs and Corporations have adopted their own CIL, reflecting that it is seen as a vital source of funding and worthy of the lengthy planning process to ratify it.[18] The London Boroughs collect funds that are raised by MCIL on behalf of the GLA, and charge an approximately 4 percent administrative fee on the total MCIL-funds collected. With some Boroughs raking in several million dollars in new MCIL revenue for Transport for London per year, this provides another valuable revenue stream for the boroughs. London Boroughs are empowered with local governing and taxing authority, and are also responsible for the provision of most local and social services, such as education, housing, and waste collection, in addition to strategic and local transport planning. Therefore, it is critical that the Boroughs raise funds to help pay for infrastructure. It is expected that the remaining five London Boroughs will soon adopt their own CIL to create revenue for local infrastructure needs and to account for the newly scaled back form of S106.

> *"A governing authority may set different CIL rates for different land uses"*

CIL Influences Real Estate Develoment

London Borough CILs, more so than the London Mayoral CIL, reflect the extremes of the London real estate market. Within the Royal Borough of Kensington and Chelsea, new development is charged at a rate of £0 per square meter in one subarea of the Borough, while just one mile away in a different subarea is charged as high as £750 per square meter. Lower CIL rates can be employed to encourage development within low-market areas. For example, the Greater London Authority has designated 33 Opportunity Areas across Greater London, which are typically former brownfield sites and are identified for their capacity to develop significant new housing and commercial development (upwards of 5,000 jobs or 2,500 new homes or a combination of the two).[19] In order to incentivize development in these areas, most Boroughs have set a £0 charging rate for all new development located within a designated Opportunity Area. Conversely, higher rates reflect high property values and a strong property market, such as in Knightsbridge where the highest residential CIL charge in London has been set (£750 per square metre). During interviews with the author, town planners at the Royal Borough of Kensington and Chelsea explained that this charge reflects the high property values in the neighborhood where new residential developments on average rent for £7,000 per square meter.

Considering this variability in real estate values in close proximity, it is possible that the London Borough CILs will have a greater impact on London's real estate market and land use patterns than the MCIL. Moreover, London's lack of zoning, which would normally inform the use, scale, bulk, and design of new real estate developments, may raise the importance of CIL to influence the type and look of new development across the metropolis. Critics of CIL, such as the Home Builders Federation, have argued that "CIL will create a 'massive distortion' in what developments get built where — a problem that is further exacerbated by the piecemeal way in which CIL is being brought in. 'If I'm a housebuilder and I have a choice between going to a borough that's implemented CIL and is charging £200 per m2 and a neighboring borough that hasn't implemented CIL yet, all other things being equal, I'm going to go to the one that isn't going to charge.'"[20]

Additionally, a governing authority may set different CIL rates for different land uses, which may reflect a locality's preference for some types of real estate developments over others. For example, in some London Boroughs, CIL is being used as a disincentive for certain types of development, such

18 Greater London is comprised of 32 Boroughs and the City of London Corporation. The London Legacy Development Corporation was created to plan for the 2012 London Olympics, and although not a London Borough, was enabled with the authority to create a CIL.

19 Greater London Authority, Opportunity Areas for large-scale development, https://www.london.gov.U.K./priorities/planning/opportunity-areas.

20 Nick Jones. "The community infrastructure levy: a tax too far" Building.co.U.K. August 24, 2012.

as student housing, by setting higher charging rates for such uses. Conversely, in Greater London's historic financial center, the City of London Corporation has purposefully created a business-friendly environment by adopting a lower assessment rate for commercial/office property than market level. The City of Westminster, which abuts the City of London to the west, has adopted a higher rate for all uses. As a result, a new commercial office building would be charged at a rate of £75/square meter if it were located on the east side of Chancery Lane by the City of London Corporation versus a rate of £200/square meter by the City of Westminster if it were located just across the street.

Unintended Consequences of CIL

London, like New York, is currently facing an affordable housing crisis. Housing supply has not kept up with population demand, resulting in major house price inflation. London's population has grown by approximately one million people over the past ten years, yet only 200,000 new homes have been built during that same period.[21] As a result, the Mayor of London has established an ambitious policy goal to build an average of at least 17,000 affordable homes to be built annually across Greater London from 2015 to 2025, resulting in a minimum of 170,000 new affordable homes built by 2025.[22]

Despite CIL's proven impact to be a vital source of funding during lean times of government spending, many have questioned whether CIL is leading to the reduction of new affordable housing units in London that the private sector might otherwise have supplied. The enabling legislation of CIL specifically rules out the application of this funding source for the provision of affordable housing.[23] Instead, London Boroughs negotiate directly with developers on the provision of affordable housing under S106. Since developers are already asked to pay large amounts of money toward CIL for transportation and/or other infrastructure, this raises the question of whether it has become more difficult to extract value from private developments for the provision of affordable housing. Has the U.K. government created a political tradeoff in favor of public transportation at the expense of affordable housing?

During interviews with the author in London, this was a question raised again and again by individuals on all sides of the debate, including members of the real estate industry, governmental officials, and transportation planners. The Mayoral Community Infrastructure Levy 2014 Biennial Review, a report conducted by the GLA and Transport for London on the functioning and efficacy of MCIL, claims that the levy has not adversely impacted the provision of affordable housing.[24] As London contends with rising home prices and an influx of foreign investment, only time will tell whether CIL has inhibited the production of affordable housing across Greater London.

21 London First, Home Truths: 12 Steps to Solving London's Housing Crisis, March 2014, http://londonfirst.co.U.K./wp-content/uploads/2014/03/LF_HOUSING_REPORT.pdf.

22 Greater London Authority, Further Alterations to the London Plan: The Spatial Development Strategy for Greater London, January 2014.

23 United Kingdom Department for Communities and Local Government, *Community Infrastructure Levy: An Overview*, May 2011.

24 Greater London Authority, *Mayoral Community Infrastructure Levy 2014 Biennial Review*, December 2014, https://www.london.gov.U.K./sites/default/files/MCIL percent202014 percent20Review percent20December percent202014.pdf.

Policy Recommendations

There are many lessons learned from analyzing the adoption of CIL in London at both the Mayoral level and at the local Borough level. Despite proving to be a new, vital source of funding for citywide and local planning authorities to tackle infrastructure funding gaps and help pay for new strategic infrastructure, such as Crossrail, the specific CIL model is neither readily nor easily applied to New York City. Nonetheless, several lessons from CIL's design can prove informative as New York City searches for new infrastructure funding tools. The following two policy recommendations describe how NYC could learn from London's multifaceted experiences with CIL as it searches for new funding mechanisms to meet its current and future infrastructure needs.

A New City-Wide Funding Mechanism

Similar to the Mayoral CIL that was used to raise funds for Crossrail, NYC could adopt a citywide levy on new real estate development across the five boroughs to help raise funds for new major infrastructure and transportation projects. Like with the Mayoral CIL, a charging rate could be set for new development in each of the five boroughs. One could argue that projects, like the Second Avenue Subway or the Long Island Rail Road East Side Access project, are large enough in scope and reach to positively impact the overall transportation network in NYC. In this scenario, funds would be dedicated to the Metropolitan Transportation Authority (MTA), a New York State entity that manages NYC's public transit system and part of the regional transit network via the Long Island Rail Road and Metro-North.

> *"New York could adopt a citywide levy on new real estate development across the five boroughs."*

The adoption of a citywide tool would face some challenges. For example, the MTA is widely criticized for poor fiscal management, resulting in major construction project delays and cost overruns. Despite recently completing the first subway addition in over 25 years, critics berated the MTA for falling short on project scope, reducing the number of new station stops and completing the 7-line extension 18-months behind schedule. Such a lack of public confidence in the MTA would greatly hinder efforts to create a financing mechanism that would put more funding in their control. Additionally, as evidenced by the recent turmoil surrounding the $15 billion budget deficit for the MTA's 2015-2019 Capital Plan, much of the agency's capital needs are dedicated to bringing the system up to a state of good repair. To that end, it would be difficult to justify the creation of a new tax to the general public when the newly raised funding would not necessarily lead to new transit access.

Additionally, New York City's lack of taxation authority poses the greatest challenge to adopting a CIL-like financing mechanism in New York City. This issue of governance and lack of fiscal control is one of the major impediments to New York City's creating new taxes to help pay for its infrastructure funding woes. Instead, taxation authority is enabled and controlled by New York State, and recent attempts by the Mayor of New York to institute higher taxes on its constituents – for the pursuit of universal pre-kindergarten – was rejected by New York State Governor Andrew Cuomo. Any attempts to increase taxes for infrastructure would likely meet the same fate. The adoption of CIL would require significant coordination and support from NYC State legislators to promote the strategy in the New York State Assembly and Senate.

The endeavor of creating a CIL-like structure would also require immense political will, since it would need to be enabled citywide across all five boroughs and all 50 city council districts. The process to create CIL is similar to that of creating a Business Improvement District (BID) in New York City. Despite there being over 70 BIDs in NYC alone, it is largely viewed as an arduous and lengthy endeavor even at the hyper local level. The Chinatown BID notoriously took over two decades to be formed and signed into legislation. Therefore, the process to introduce CIL in NYC could be onerous and viewed by elected officials as politically costly/dangerous. However, if the case could be made that a levy would raise sufficient funding, it might be a worthwhile cause for an elected leader to champion.

Just as the Mayoral CIL faced challenges from London Boroughs to settle on levy rates, it may prove difficult to identify a single rate per borough where real estate

values can greatly vary. Additionally, it could prove difficult to convince local politicians and developers in more isolated boroughs, such as Staten Island, that dedicating funding to major transportation projects like the Second Avenue Subway would have any direct benefit on their borough. Surely a great deal of planning would need to take place to identify significant transportation and infrastructure projects that benefit a majority of New Yorkers in order to convince each borough of the merits of a new citywide levy.

Smaller-Scale Financing Mechanisms

In contrast to the challenges of creating a new citywide tool, New York City has had success with the creation of special districts and the use of the tax-increment financing model. Created at a smaller scale and with a specific, defined purpose, these two financing mechanisms have proven successful in the provision of site specific infrastructure funding for maintenance and capital construction costs. New York could use these small-scale financing mechanisms to advance an overall infrastructure improvement strategy.

For example, the West Chelsea Special District, adopted in 2005 by the City of New York, created a density bonus for new developments located on certain blocks adjacent to the High Line in exchange for improvements made to the High Line. The formerly derelict elevated rail line cuts through the residential neighborhood of Chelsea and since 2009 has been operated as one of the City's premier public open spaces and tourist attractions. The City achieved significant revenue generation and in-kind improvements to the High Line from adjacent real estate developers that sought to maximize their developable footprint adjacent to the High Line in return for the provision of stair and elevator access, public restrooms and maintenance space, public plazas, and the restoration, remediation, and implementation of the High Line open space.[25] The creation of the Special District and High Line Improvement Bonus have been successful in capturing the real estate value and impact of the new open space on adjacent real estate development and redeploying it back into the High Line. In contrast to CIL, this mechanism provides developers with an incentive that is of equal or greater value to the additional cost incurred.

> *"New York could use small-scale financing mechanisms to advance an overall infrastructure improvement strategy."*

Like the construction of the Crossrail project across Greater London, New York City has used tax increment financing to capture the added value of increased transit access in the Far West Side of Manhattan and to spur additional real estate development. The extension of the 7-line west from 42nd Street and Eighth Avenue to 11th Avenue and 34th Street makes the far west side a more attractive, transit-rich neighborhood to private investors. The Hudson Yards Infrastructure Corporation (HYIC) was expressly created to float bonds to finance the 7-line extension and other improvements associated with the major Hudson Yards development. The increased property tax revenue from new residential and commercial development built in Hudson Yards and the surrounding district are used to cover the debt service on bonds issued by HYIC.[26] Redevelopment of Hudson Yards is a prime example of the City of New York investing in public transportation to spur private investment in a once relatively desolate and underdeveloped area. As a result, the Hudson Yards development, currently under construction and expected to be completed by 2019, comprises 28 acres of new development constructed on a deck over the existing MTA-LIRR rail yards, resulting in 17 million square feet of new development of office, residential, retail, cultural amenities, open space, and a new school ($20 billion total development cost).

London and New York, deficient and subgrade infrastructure is a serious challenge to sustaining quality of life and preparing for future growth. This creates a need to allocate sufficient funding to infrastructure, and in a period of increased austerity and diminished federal spending, municipal governments must work to devise creative, new funding sources. The Community Infrastructure Levy introduced into legislation in the U.K. in 2010 sought to create a new source of funding from certain

25 New York City Department of City Planning. West Chelsea Special District, http://www.nyc.gov/html/dcp/html/westchelsea/westchelsea3c.shtml.

26 City of New York, Department of City Planning, http://www.nyc.gov/html/dcp/html/hyards/financing.shtml.

new real estate developments to pay for infrastructure needs. CIL has proven successful in raising funds in London at both the Mayoral and local Borough level; however, it is not without criticism or detractors. The advent of CIL raises the question of who should pay for infrastructure and whether its costs should be solely borne by government or instead shared by both public and private interest. Although there is probably a general agreement among policymakers in both cities that private interest should help share the burden of infrastructure spending, New York City has favored the use of incentives to justify the cost on developers for the provision of infrastructure. The CIL model on its own does not rely on any "carrots" to incent private developers to pay such fees, but instead legally requires them to adhere to the new tax. Considering this major difference in approach, CIL is not readily applicable to the New York City political and real estate landscape. Until a more wholesale strategy can be employed across New York City, individual real estate projects will continue to be "taxed" at unique rates depending on the political and physical environment in which they are located.

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