

GREATER LONDON AUTHORITY

REQUEST FOR MAYORAL DECISION – MD1268

Title: Publication of the Revised Early Minor Alterations to the London Plan (REMA)

Executive Summary:

This Mayoral Decision form seeks the Mayor's approval to formally publish the Revised Early Minor Alterations to the London Plan (REMA) as his spatial development strategy.

Decision:

That the Mayor:

1. considers the response of 13 August 2013 of the Secretary of State CLG to his submission of the Revised Early Minor Alterations to the London Plan as intended for publication (as set out in Annex C6 to this form), in accordance with sections 337 and 341 of the Greater London Authority Act 1999 ("GLA Act", as amended) and regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000
2. considers the outcome of the Extraordinary Plenary meeting of the London Assembly held on 3 September 2013 at which the Revised Early Minor Alterations to the London Plan were considered (as set out in Annex D3 to this form), in accordance with section 42B of the Greater London Authority Act 1999 (as amended), and approves his reply to the letter of 10 September from the Chair of the London Assembly (as set out in Annex D2 to this form)
3. considers representations made after the publication of the EiP Inspector's report to the Mayor on 14 August (as set out in Annex D to this form), in accordance with section 337 of the Greater London Authority Act 1999 (as amended)
4. takes account of the Sustainability Statement on the preparation of the Revised Early Minor Alterations to the London Plan which will be published together with the Revised Early Minor Alterations (Annex E to this form)
5. approves publication of the Revised Early Minor Alterations to the London Plan (REMA) as his spatial development strategy, in accordance with sections 337 and 341 of the Greater London Authority Act 1999 (as amended) and regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 (as set out in Annex F to this form), on 11th October 2013 and that REMA is operative from that date
6. authorises expenditure of up to £7,000 from the Planning Unit's budget on placing the statutory notices of publication
7. approves publication of his reasons for not accepting the EiP Inspector's recommendations (Annex C5 to this form), the statutory notices of publication, the giving of the required notice to local authorities and others and the arrangements for making the REMA and associated documentation available for public inspection, in accordance with regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:

Date:

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

1.1 This section of the form summarises the main steps taken in preparing the Revised Early Minor Alterations to the London Plan.

1.2 Issues and matters which the Mayor must consider and/or take account of before a decision to publish is taken are dealt with in detail in the following sections.

Preliminary consultation with the Assembly and GLA Functional Bodies November 2011

1.3 On 26 October 2011 the Mayor approved for preliminary consultation with the London Assembly and the functional bodies draft early minor alterations (EMA) to the London Plan to deal with affordable housing, revised cycle parking standards and minor clarifications to bring the Plan into line with the Government's draft National Planning Policy Framework (the NPPF). The 'Assembly draft' EMA were issued for consultation between 7 November and 20 December 2011. These draft alterations and the associated Integrated Impact Assessment Scoping Report can be found at <http://www.london.gov.uk/priorities/planning/publications/early-minor-alterations-to-the-london-plan-initial-consultation>.

Public consultation on the draft Early Minor Alterations February 2012

1.4 On 1 February 2012, the Mayor agreed his response to comments which were raised in the first round of consultations, approved an additional minor alteration relating to planning for hazardous installations, and approved a revised draft of the EMA for public consultation. Public consultation on the draft EMA took place from 7 February to 23 March 2012. The public consultation draft EMA and associated documentation (a summary of the consultation responses to the 'Assembly draft' EMA, a Cycle Parking Standards Evidence Report, the Integrated Impact Assessment and the Equalities Impact Assessment) can be found at <http://www.london.gov.uk/priorities/planning/london-plan/early-minor-alterations> (scroll down towards the bottom of the page).

Public consultation on the draft Revised Early Minor Alterations June 2012

1.5 On 28 May 2012, the Mayor agreed revisions to the draft EMA (henceforward known as the Revised Early Minor Alterations, or REMA) to take account of the publication by Government in March 2012 of the final version of the NPPF. He approved the REMA for a further round of public consultation and instructed officers to discuss with the Planning Inspectorate the holding of an examination in public (EiP) later that year. Public consultation on REMA took place between 6 June and 31 July 2012. The public consultation draft REMA and associated documentation (a supplementary Integrated Impact Assessment and a matrix summarising a policy-by-policy assessment of consistency between the NPPF and the London Plan) can be found at <http://www.london.gov.uk/priorities/planning/london-plan/early-minor-alterations> (middle of the page).

Examination in Public November 2012

1.6 An examination in public (EiP) was held 19-23 November 2012 in City Hall before Mr Geoff Salter, the independent Inspector appointed by the Secretary of State. The inspector considered all the responses received to the draft EMA, to the draft REMA, and the further submissions received in the run up to and during the EiP. He invited six participants to discuss the issues of duty to co-operate, NPPF consistency, sustainable development, neighbourhood planning, cycle parking standards,

health inequalities, living spaces and the community infrastructure levy (Matter 1 overview and miscellaneous issues). Twenty five participants discussed affordable housing, housing for gypsies and travellers and other housing issues (Matter 2 housing choice and affordable housing). All EiP documentation can be found at <http://www.london.gov.uk/priorities/planning/london-plan/examination-in-public>.

EiP Inspector's Report and submission of REMA to the Secretary of State July 2103

- 1.7 The Mayor received the Inspector's report on 19 June 2013. At his Planning and SDS Meeting of 3 July 2013 the Mayor received a detailed report from officers, considered the Inspector's recommendations, and agreed his response to them for submission to the Secretary of State together with a version of REMA that he proposed to publish. He also agreed to publish the Inspector's report within eight weeks, and that should the Secretary of State indicate that the alterations should be published as proposed, they should be laid in front of the London Assembly.
- 1.8 As authorised by the Mayor on 3 July, the above documentation was submitted to the Secretary of State on the same day. At his Planning & SDS Meeting on 31 July, the Mayor agreed further minor amendments to REMA and to the schedule of his responses to the Inspector's recommendations, and these were sent to the Secretary of State. The reports and their annexes to both the Mayor's 3 and the 31 July 2013 Planning and SDS Meetings are attached as Annexes A1 to A10 of this form. The documents submitted to the Secretary of State are attached as Annexes B1 to B4 of this form.

Response from the Secretary of State 13 August 2013

- 1.9 Under regulation 9 (2) (b) of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 ("the SDS Regulations"), the Secretary of State has a period of six weeks to consider the REMA following submission by the Mayor. This period is to allow the Secretary of State to decide whether or not to direct the Mayor, under section 338 of the GLA Act, not to publish the Plan if it is inconsistent with national policies or planning guidance, or detrimental to the interests of an area outside Greater London. This period expired on 14 August 2013. The response from the Secretary of State was received on 13 August 2013. In this he indicated that he was content for the REMA to be published without further amendment. The Secretary of State's letter is attached as Annex C6 to this form.

Publication of the Inspector's report and submission of REMA to the London Assembly 14 August 2013

- 1.10 Following amendments to the Greater London Authority Act 1999 ("GLA Act", as amended) made by the Localism Act 2011, the REMA is subject to a new procedure for Assembly review of Mayoral strategies. Under what is now section 42B of the GLA Act, where the Mayor has prepared and is ready to publish a draft of any of his statutory strategies (including a revised version of the strategy), before he publishes the strategy he must lay a copy of the draft before the Assembly. The Mayor must not publish the strategy within the period of 21 days beginning with the day on which the copy is laid before the Assembly. The Assembly then has the power under section 42B within that period to reject the draft strategy. The Assembly may not amend or modify it. A motion to reject the draft requires agreement of at least two-thirds of the Assembly members voting (abstentions not counted) at a public meeting of the whole Assembly.
- 1.11 On 14 August the Mayor published the Inspector's report on the GLA website and sent copies of it to the London boroughs. Also on 14 August, as required under section 42B of the GLA Act, and acting on behalf of the Mayor, the Deputy Mayor for Planning submitted to the Chair of the London Assembly the REMA as intended to be published, together with (for information) a copy of the Inspector's report, the schedule of the Mayor's responses to the Inspector's recommendations and the letter from the Secretary of State. Copies of these documents are attached as Annexes C1 to C6 of this form. All these documents were published on the GLA's website on 14 August and can be found at: <http://www.london.gov.uk/priorities/planning/london-plan/early-minor-alterations>

London Assembly Extraordinary Plenary Meeting 3 September 2013

- 1.12 The London Assembly considered the REMA at an Extraordinary Plenary meeting held on 3 September 2013, at which a motion to reject REMA failed to secure the required two thirds majority. The draft minutes and transcript of the 3 September Assembly Plenary meeting can be found on the London Assembly's webpages at <http://www.london.gov.uk/moderngov/ieListDocuments.aspx?CId=0&MId=5180&Ver=4>

2. Conditions for publishing REMA

- 2.1 Section 341 (1) (b) of the GLA Act permits the Mayor at any time to prepare and publish alterations to the spatial development strategy (in this case, REMA). Section 341(3) (a) explains that the provisions for preparing and publishing an alteration to the strategy are the same as for strategy itself. Under section 337 of the Act, the Mayor may publish the spatial development strategy if:
- it is in the same form as the draft strategy published for public consultation, either as originally proposed or changed to take account of comments raised during consultation, in response to recommendations from the panel that conducted the examination in public or to a ministerial direction
 - the Mayor has considered any representations made during the consultation and engagement process required by the Act and Regulations, and has received the report of the examination in public inspector
 - the Secretary of State has not made a direction or, if he has made such a direction, the Mayor has complied with it.
- 2.2 The new section 42B of the GLA Act introduces a further step in the publication process – that the Mayor may not publish the strategy/alterations before the expiry of a 21 day period following their 'laying before' the London Assembly. During this period the Assembly may reject the strategy/alterations if a two thirds majority of those voting is secured.
- 2.3 Section 337 (2) (d) of the GLA Act requires the Mayor to take into account 'any other material considerations' before publishing the strategy/alterations. Any correspondence relating to REMA that has been received by the Mayor since he last considered the alterations – at his 31 July 2013 Planning & SDS Meeting – fall into this category, so it is important that these too are considered in this decision form.
- 2.4 In preparing his strategies, the Mayor has legal duties to consider and have due regard to the following:
- Economic development and wealth creation (GLA Act 1999, as amended);
 - Social development (GLA Act 1999, as amended);
 - Protection and improvement of the environment (European Directive 201/42/EC on Strategic Environmental Assessment, The Environmental Assessment of Plans and Programmes Regulations 2004, GLA Act 1999, as amended);
 - Health inequality and promoting Londoners' health (GLA Act 1999, as amended);
 - Community safety (Crime and Disorder Act 1998, Police and Justice Act 2006); and
 - Equality of opportunity, elimination of discrimination and the promotion of good community relations (GLA Act 1999, as amended, Equality Act 2010).

The GLA adopts an integrated approach to demonstrate how these duties have been considered in preparing or altering the London Plan, and this is addressed through an Integrated Impact Assessment (IIA).

2.5 To demonstrate compliance with all these requirements, this decision form addresses the following:

- Consultation responses
- EiP Inspector's recommendations
- Response from the Secretary of State
- London Assembly motions
- Further representations
- Impact assessment

3. Consultation responses

3.1 In October 2011 the Mayor approved the draft EMA for preliminary consultation with the London Assembly and the GLA Functional Bodies, and consultation took place between 7 November and 20 December 2011. Responses were received from Transport for London and 13 other respondents. The London Assembly did not respond.

3.2 The officer report to the Mayor's Planning & SDS Meeting of 1 February 2012 noted that the approach to affordable housing and the Government's new affordable rent product attracted the most comments, with opposition from several boroughs but support from the National Housing Federation. The report draws out two aspects of this issue:

- The Government's definition of affordable rent requires it to be available at rents up to 80 per cent of market ones. Some boroughs responding would like the scope to set lower rent level caps. Not only would this approach be contrary to national policy, but it would also be likely to result in delivery of less than the maximum amount of affordable housing, and would therefore be incompatible with the thrust of London Plan policy. It would not make sense to set target rents in planning policy – these are likely to have to change for each affordable housing round and it would be unduly cumbersome for boroughs to go through the formal alteration process each time this is needed.
- Several respondents question whether there is sufficient evidence to underpin the alterations, and in particular to the proposal that affordable and social rent should be addressed together. Given that Government policy is that these two products are intended to meet the same segment of housing need, it is not unreasonable to treat them together, or to use the evidence accepted at the London Plan examination in public (the Strategic Housing Market Assessment (SHMA)) about the size of that segment.

3.3 The report noted that other aspects of the alterations received less comment – on cycle parking standards there were calls for standards for parking at stations and for higher standards for particular uses, and all of those commenting on the proposed deletion of the Glossary definition of "air quality neutral" welcomed the proposal.

3.4 In response to consultation comments on the 'Assembly draft', and to reflect other ongoing policy work, a number of amendments to the alterations for the next stage of EMA were proposed:

- reference to the Mayor setting indicative rent guidelines for the new affordable housing product through the London Housing Strategy
- a new minor alteration to London Plan Policy 5.22, which deals with hazardous installations such as gas holders, to state that the Mayor will consider publishing supplementary guidance to support policy application

- minor changes to the policies on cycle parking to refer to developers paying for off-site cycle parking, where this is appropriate, and to refer to the importance of parking provision being secure and sheltered from the weather

The Mayor considered the consultation responses and agreed an amended version of the EMA for public consultation in February 2012. This took place between 7 February and 23 March 2012.

3.5 On 28 May 2012 the Mayor considered a report at his Planning & SDS Meeting proposing further revisions to the minor alterations to take account of the publication of the final version of the NPPF. Most of the additional alterations proposed were simple updates (replacing references to guidance replaced by the NPPF with ones to the Framework) or minor technical changes, with some more substantive minor alterations to affordable housing policies. These were:

- changes to Policy 3.8 and/or its supporting text dealing with housing choice, to refer to the Government's recently-published policy document on Planning Policy for Traveller Sites, to the NPPF on housing needs of service families and to people wishing to build their own homes
- changes to Policy 3.10 so it reflects the NPPF glossary definition
- changes to the text supporting Policy 3.10, and policies 3.11-3.12 and their supporting text, to clarify the Mayor's approach to the new affordable rent product and the affordable housing investment decisions he has made (responding to points raised during public consultation on EMA)
- a change to the justification in paragraph 3.74 for the strengthening of policy regarding cash contributions in lieu of on/offsite affordable housing provision (responding to points raised during public consultation and to reflect the NPPF).

The Mayor approved the Revised EMA (REMA) for a further round of public consultation. This took place between 6 June and 31 July 2012.

3.6 Consultation responses were received from a total of 84 respondents through both rounds of consultation (EMA and REMA). These were passed to the independent Inspector, and from these responses he selected the matters for discussion at the EiP, and the participants.

3.7 Officers reviewed each of the consultation responses on behalf of the Mayor and, where it was possible to respond positively to changes put forward by respondents, proposed sixteen further changes to accommodate them. These 'Early Suggested Changes' (as they were called) were agreed on the Mayor's behalf by the Deputy Mayor for Planning and submitted to the EiP Secretary on 18 September 2012. These were posted on the EiP website as document ED06 and can be found at <http://www.london.gov.uk/priorities/planning/london-plan/examination-in-public/document-library>.

3.8 **It is therefore considered that the Mayor has fulfilled his duties under sections 337 (2) (a) of the GLA Act that the alterations proposed to be published must take account of any representations made in accordance with the SDS Regulations, and under section 337 (4) (a) of the GLA Act not to publish the alterations until after he has considered any representations made in accordance with the regulations.**

4. EiP Inspector's recommendations

4.1 The Inspector sent his report to the Mayor on 19 June 2013. The Inspector's recommendations were considered in detail by the Mayor at his Planning & SDS Meetings on 3 and 31 July 2013. Officer reports to these meetings are reproduced in full in Annex A to this form.

- 4.2 The Inspector chose to focus his examination on those few subject areas (or ‘matters’) which had attracted substantial public comment and which, in his view, went to the soundness of the Plan. He considered whether the legal requirements for consultation, and for environmental and equalities appraisal had been met. He found that the REMA met the statutory tests
- 4.3 Of the policy areas altered through REMA, he identified the following as key issues for detailed examination: sustainability; affordable housing and affordable housing targets; the housing needs of gypsies and travellers; cycle standards; health inequalities; living spaces (green spaces, heritage assets and neighbourhood planning), and the Community Infrastructure Levy (CIL). From these he chose to make recommendations to the Mayor on just three issues: affordable housing, local green spaces, and the CIL.
- 4.4 The main issue the inspector focused on was the way in which the Alterations deal with the new affordable rent product. This is defined for planning purposes in the NPPF as:
- “affordable rented housing let by local authorities or private registered providers of social housing to households that are eligible for social rented housing. Affordable rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).”
- 4.5 This product was introduced by the Coalition Government in 2011 as a way of continuing to deliver a significant programme of affordable housing in a decreased funding environment. Through this product, Registered Providers (RPs) could continue to deliver large numbers of homes despite reduced grant rates by bringing in a range of additional resources to support development, including increased borrowings against higher rents on new and converted units. The REMA amendments on affordable housing were made so the plan would be in line with the National Planning Policy Framework and to ensure the delivery of London’s affordable homes programme.
- 4.6 Because the NPPF states that affordable rent is to be allocated to those eligible for social rented properties and is intended to meet the same needs, the Alterations included affordable rent with social rent in the 60/40 affordable housing split in Plan Policy 3.11 Housing Targets. The inspector agreed that this was a sensible approach and did not recommend against it.
- 4.7 In the first part of the Inspector’s Recommendation IC1 – in relation to the deciding of rent levels on a scheme-by-scheme basis where they are not funded by the Mayor – the inspector felt that it should be made clear that Boroughs have a role in agreeing rent levels in such schemes. This recommendation was accepted in part by the Mayor, with proposed amendments to the wording of paragraph 3.61 to ensure affordable housing delivery is maximised.
- 4.8 As well as adding the affordable rent product into the London Plan, the REMA also made it clear – through amendments to paragraphs 3.63 and 3.68 – that boroughs should not set rent caps in their local development plan documents of below 80% market rent for affordable rented homes. In the second and third parts of his Recommendation IC1, the inspector recommended the removal of both paragraphs in the plan that stated that boroughs should not attempt to set caps, as he felt they were overly-prescriptive.
- 4.9 The proposed response to these parts of the recommendation, as set out in full in the officer reports, was for the Mayor to reject them, on the following grounds:
- the Alterations seek to maintain flexibility on rent levels for individual developments in order to maximise the delivery of affordable housing within the parameters agreed as part of the affordable homes programme, which includes delivering family homes that meet need in the context of welfare reform and an average of 65% market rent across London in the current investment round

- if boroughs were able to set planning policy caps at less than 80% of market rent, housing providers would be unable to bring forward properties at higher rents (up to 80%) which would subsidise the provision of a greater number at lower rents, thus constraining overall affordable housing output and squeezing delivery.
 - the operation of 33 different rent policies across London would inhibit the delivery of a London wide programme where registered providers operate across borough boundaries.
 - letters from Government Ministers indicated that the Mayor's approach was in line with Government policy
- 4.10 On local green spaces, the Inspector in his recommendation IC2 accepted an early suggested change put forward by the Mayor to make it clear that Plan policy applying to these new designations should be consistent with Green Belt policy, as set out in the NPPF. Officers recommended that the Mayor accept this recommendation.
- 4.11 The Inspector's final recommendation IC3 was on the community infrastructure levy – specifically the introduction through the alterations of new clause to Policy 8.3 which called for the Mayor to work with boroughs to ensure that their local plans identify strategically important infrastructure, particularly in opportunity and intensification areas. At the EiP some boroughs expressed concerns that the Mayor would use the new clause to dictate local priorities. The Mayor argued that this was not the intention. The Inspector felt that the new clause ran counter to NPPF paragraph 175 – which deals with a proportion of local CIL funds going to neighbourhoods – and recommended the deletion of Policy 8.3 new clause D.
- 4.12 The officer reports proposed that recommendation IC3 should not be accepted by the Mayor, on the following grounds:
- that the recommendation had been overtaken by the publication of new statutory CIL guidance in December 2012 and April 2013, which makes clear that borough CIL charging schedules should be consistent with and support the implementation of up-to-date local plans and, in London, the London Plan (paragraph 4); that boroughs should be able to show how their CIL proposals will help delivery of their plans (which include the London Plan) (paragraphs 8 and 21); and that the extent to which they do so should be considered by charging authorities in proposing levy rates (paragraph 29)
 - the REMA do not counterpoise strategic and neighbourhood infrastructure and suggest that the former should take priority; rather, the Alterations say that where there are strategically important infrastructure priorities, they should be identified through the LDF process jointly by the boroughs and the Mayor.
- 4.13 Following consideration of the Inspector's recommendations and proposed responses, the Mayor at his 3 July 2013 meeting agreed the following:
- that, in accordance with regulation 8 (9) of the SDS Regulations, he would within eight weeks publish the Inspector's report, send a copy to each London borough and place a copy on the GLA's website;
 - following full consideration of the Inspector's recommendations to him, he agreed a schedule setting out his response to each of the recommendations, including his reasons for accepting, accepting in part and rejecting recommendations;
 - he agreed a version of REMA as intended for publication, which included a change to REMA paragraph 7.5 on local open space designation as recommended by the Inspector, a minor change to REMA paragraph 3.9A to reflect changes to health administration in London and a minor change to REMA paragraph 3.10A on health care facility accessibility as suggested by the Inspector;

- he agreed to send in a letter to the Secretary of State for Communities and Local Government a statement of his intention to publish the REMA, together with a copy of the REMA as intended to be published and his full response to each of the Inspector's recommendations, in accordance with regulation 9 (2) (a) of the SDS Regulations; and
- he agreed, that subject to the Secretary of State indicating his agreement that the alterations should be published as proposed, they should be laid in front of the London Assembly for the purposes of section 42B of the GLA Act.

4.14 As authorised by the Mayor on 3 July, the above documentation was submitted to the Secretary of State on the same day. A further report was considered at the 31 July Mayor's Planning and SDS Meeting, at which the Mayor agreed:

- a minor amendment to REMA paragraph 3.61 to clarify the role of boroughs in affordable housing schemes not funded by the Mayor, as recommended by the Inspector; and
- minor amendments to the schedule of the Mayor's responses to the Inspector's recommendations

4.15 On 31 July, a further version of the REMA as intended to be published, amended as agreed above, was submitted to the Secretary of State together with the revised schedule of Mayor's responses.

4.16 The reports and their annexes to both the Mayor's 3 and the 31 July 2013 Planning and SDS Meetings are attached as Annexes A1 to A10 of this form. The documents submitted to the Secretary of State are attached as Annexes B1 to B4 of this form.

4.17 **It is therefore considered that the Mayor has fulfilled the requirements under section 337 (2) (c) of the GLA Act to take account of the Inspector's report and under section 337 (4) not to publish the alterations until after the Inspector has made his report to the Mayor.**

5. Response from the Secretary of State

5.1 The REMA as intended to be published, together with the schedule giving the Mayor's responses to the Inspector's recommendations (which included his statement of reasons for those recommendations he proposed not to accept) were submitted on 3 July 2013, and as noted above, in revised form on 31 July 2013 (Annex B to this form).

5.2 The response from the Secretary of State was received on 13 August 2103, and is attached as Annex C6 to this form. In this he indicated that he was content for the REMA as proposed to him could be published without further amendment, and that the alterations' approach to the issue of affordable housing was aligned to his Department's delivery objectives. The letter stated:

"I have considered your draft revisions given my powers under the Greater London Authority Act 2009 to require changes to avoid inconsistency with national policies or any detriment to the interests of an area outside Greater London. I am content that the London Plan should be published with no further amendments.

As Grant Shapps noted in his letter to you of 2nd August 2012, the approach set out in your revisions is aligned to my Department's objective of increasing the delivery of affordable housing. Imposing rent controls through local planning policies would hinder this objective, and risk letting Londoners down by limiting the supply of affordable housing, and reducing choice for tenants."

5.3 **There being no direction from the Secretary of State to further amend the REMA, it is considered that the Mayor has fulfilled the requirements under section 337 (2) (b) of the**

GLA Act that the alterations proposed to be published must take account of any direction from the Secretary of State.

6. London Assembly motions

- 6.1 The London Assembly considered the REMA at an Extraordinary Plenary meeting held on 3 September 2103. After extensive questioning of the Deputy Mayor for Planning, the Deputy Mayor for Housing Land and Property, and officers, the Assembly debated two motions.
- 6.2 The first motion from Jenny Jones AM referred to the Mayor's intention, as expressed at the EiP, to include an extended glossary definition of sustainable development in REMA. It called for the Mayor to bring forward future alterations that include his intended definition. This motion was carried by 13 votes to 9. The second motion from Nicky Gavron AM called upon the London Assembly to reject the Mayor's REMA. This motion was carried by 13 votes to 9. However, as it failed to secure the required two-thirds majority of votes cast, the Assembly did not reject the REMA as laid before it for the purposes of section 42B of the GLA Act. The draft minutes and transcript of the 3 September Assembly Plenary meeting can be found on the London Assembly's webpages at <http://www.london.gov.uk/moderngov/ieListDocuments.aspx?CId=0&MId=5180&Ver=4>
- 6.3 On 10 September 2013, Darren Johnson AM, the Chair of the London Assembly, wrote to the Mayor. The letter set out the full text of both motions agreed at the Plenary Extraordinary meeting on 3 September, and asked for the Mayor's response. This letter is attached as Annex D1 to this form.
- 6.4 The first motion debated at the 3 September Plenary, from Jenny Jones AM, refers to a note which the Mayor put into the REMA EiP after the first day of examination. This is EiP document ED16 and can be found on the EiP website at <http://www.london.gov.uk/priorities/planning/london-plan/examination-in-public/document-library>. This note proposed a minor change to the definition of sustainable development in the Glossary, so that it refers to the five 'guiding principles' as set out in the NPPF. The minor change runs as follows (the addition is in red):
- Sustainable development** This covers development that meets the needs of the present without compromising the ability of future generations to meet their own needs. **The Government has set out five 'guiding principles' of sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly. The Mayor's approach to these principles and their application in London is explained in Chapter One of the Plan.**
- 6.5 Though the Inspector did not make a recommendation on this particular matter, it is recommended that this more comprehensive definition of sustainable development is dealt with via further alterations to the London Plan, as the Assembly call for in their first motion.
- 6.6 Note ED16 also suggested a number of other minor amendments:
- to paragraph 3.95 on the accessibility of health facilities – this was ultimately dealt with via an amendment to paragraph 3.10A on accessibility to health facilities, as suggested by the Inspector and agreed by the Mayor at his 3 July Planning & SDS Meeting
 - to paragraph 3.10 on the role of transport policy in promoting improvements to air quality and wider public – this will be addressed through further alterations
 - to paragraph 7.5 on the definition of local green spaces – this was addressed via amendments to paragraph 7.5, as recommended by the Inspector (recommendation IC2) and agreed by the Mayor at his 3 July Planning & SDS Meeting

- 6.7 The second motion from Nicky Gavron AM called upon the London Assembly to reject the Mayor's REMA. It also asked the Mayor to revise REMA's affordable housing policies, citing opposition from 22 boroughs and quoting the views of Bexley, Westminster, Kingston, Croydon, Richmond, Kensington & Chelsea and Islington. The motion concluded by expressing support for a subsequent revision of REMA that incorporated the EiP Inspector's recommendations.
- 6.8 The motion reiterates the debate on affordable housing which took place at the EiP, repeats the views of certain London boroughs (it quotes from their consultation responses) and concludes by supporting the views of the Inspector as expressed in those parts of his recommendation IC1 already rejected by the Mayor. It is not considered that this motion raises any issue which has not already been considered by the Mayor.
- 6.9 The text of a proposed reply from the Mayor to the Assembly Chair's letter of 10 September 2013 from is attached for approval (Annex D2). It agrees the inclusion within further alterations of the amendment to the glossary definition of sustainable development, as specifically requested in the Assembly's first motion. It notes that the outcome of the vote of the second motion is that the Assembly did not reject REMA. **The Mayor is recommended to approve the text of this reply.**
- 6.10 **As the motion to reject REMA failed to secure the required two-thirds majority of votes cast, it is considered that the provisions of section 42B of the GLA Act have been met and the Mayor is now able to publish the alterations.**

7. Further representations

- 7.1 Section 337 (2) (d) of the GLA Act requires the Mayor to take into account 'any other material considerations' before publishing the alterations. Any correspondence relating to REMA that has been received by the Mayor since he last considered the alterations fall into this category, so it is important that these too are considered in this decision form.
- 7.2 The Mayor has received three representations on REMA since he last considered the alterations at his 31 July 2013 Planning & SDS Meeting. These are:
- a letter from Councillor Nicholas Paget-Brown, Leader of the Council of the Royal Borough of Kensington and Chelsea, dated 2 September 2013
 - the letter from Darren Johnson AM, Chair of the London Assembly, dated 10 September 2013
 - a letter from Islington Council, dated 18 September 2013
- 7.3 The letter from the Chair of the London Assembly, and a proposed response from the Mayor, is dealt with in section 6 of this report above. The Kensington & Chelsea and the Islington letters are addressed below.
- Letter from the Royal Borough of Kensington and Chelsea, 2 September 2013*
- 7.4 The letter from Councillor Nicholas Paget-Brown, Leader of the Council of the Royal Borough of Kensington and Chelsea, is attached as Annex D3 to this form. It discusses the likely impact of affordable rent in the borough and urges the Mayor to reconsider his approach to affordable housing in REMA.
- 7.5 The Chief of Staff and deputy Mayor for Policy and Planning replied on 3 September. A copy is attached as Annex D4.

7.6 The Mayor is invited to note the issues raised in Kensington and Chelsea’s letter and the points made in the Deputy Mayor’s reply and take them into account in arriving at his decision to publish REMA.

Letter from Islington Council, 18 September 2013

- 7.7 A ‘letter before claim’ was received from Islington London Borough Council (“Islington”) on 18 September, giving notice that Islington and six other boroughs (Camden, Brent, Greenwich, Lambeth, Southwark and Hackney) intend to issue a claim for judicial review/statutory challenge if the Mayor publishes the REMA in its present form. This letter is attached as Annex D5 to this form and refers to the Statement of Reasons published by the Mayor on 14 August 2013, in which the Mayor gave his reasons for not following the EIP Inspector’s recommendations.
- 7.8 It is worth commenting here on the procedures for mounting a legal challenge to the alterations, as intended by Islington and the other boroughs. REMA is covered by section 113 (1) of the Planning and Compensation Act 2004 and is a “relevant document” for the purposes of that provision. As such section 113(2) states that REMA must not be questioned in any legal proceedings except in so far as is provided by that section. Therefore REMA cannot be challenged by way of judicial review, and instead is covered by the “statutory challenge” procedure under the 2004 Act.
- 7.9 Under this procedure a “person aggrieved” by REMA may make an application to the High Court not later than the end of the period of six weeks starting with the date of REMA’s publication on either or both of only two permissible grounds that:
- the document (REMA) is not within the “appropriate power” (i.e. not within sections 334 to 343 of the GLA Act in the case of the spatial development strategy or any alteration or replacement of it), or
 - a “procedural requirement” (a requirement under the appropriate power or contained in regulations or an order made under that power which relates to REMA’s adoption, publication or approval such as the 2000 Regulations) has not been complied with.
- 7.10 The High Court may quash REMA or remit it to the Mayor (as the person with a functions relating to its preparation, publication, adoption or approval) but only if satisfied that REMA is to any extent outside the appropriate power and/ or that that the interests of the challenger have been substantially prejudiced by a failure to comply with a procedural requirement.
- 7.11 TfL Legal replied to Islington on 19 September, stating that the Mayor intended to publish the REMA in due course, and that this would happen when the Mayor approves a Mayoral Decision form formally approving REMA for the purposes of publication under section 337 and 341 of the GLA Act. The reply gave an assurance that the points raised by Islington would be taken into account in the Mayor’s decision, but noting that this assurance should not be taken as acceptance of the validity of any of the points made, or as any indication that the REMA will not be published in their present form.
- 7.12 Islington’s letter refers to the Mayor’s Statement of Reasons for not following the EIP Inspector’s recommendations and sets out their case as to why they consider the Mayor would be acting unlawfully on the basis of the following three main components:
- a) It argues that it is wrong for the Mayor to rely on Ministerial letters to interpret the NPPF, because the meaning of policy is a question of law for the courts;
 - b) It relies heavily on paragraph 47 of the NPPF to argue that the Mayor has (in relation to affordable housing) wrongly “put delivery above the provision of needs, which is not what the policy says”;

c) It says the Mayor has failed to “grapple” with the Inspector’s conclusions on a single housing market and his reasons for doing so are “wholly unclear”.

- 7.13 In terms of Islington’s point a), the Mayor is advised that he has not (as Islington argue) arrived at his view of the meaning, and intention of the NPPF, simply on the basis that this is what the Ministerial letters say. The meaning of the NPPF is indeed a matter for the courts, but in the absence of any ruling on the interpretation of the relevant passages of the NPPF (paragraph 47 principally), the Mayor has not unreasonably formed his own interpretation of the NPPF. In doing so he did not *rely* on Ministerial advice to construct his policy; the letters (from Bob Neill MP and Grant Shapps MP – as referred to in the schedule of the Mayor’s response to the Inspector’s recommendations – Annexes B2 and C5 to this form) were received *in response to* consultation on the Mayor’s approach to affordable housing policy.
- 7.14 However, in considering the consultation responses of all parties (including those made by Islington) the Mayor is advised it was not unreasonable or unlawful for him to take into account Government statements, especially when these were made as part of a consultation response directed specifically at REMA. Whilst accepting that the Ministers’ letters could not be determinative, it would be surprising if the Mayor had not given them careful consideration. This is particularly so, given that the Mayor is required to submit the REMA to the Secretary of State, who can direct that the REMA should not be published (without modifications) if he considers the REMA to be inconsistent with national policy. In those circumstances the Mayor will understandably take note of the Secretary of State’s interpretation of his own policy. The Mayor is advised that it was therefore legitimate for him to comment on the lack of weight afforded to the letters by the Inspector in his report.
- 7.15 This view has since been reinforced by the Secretary of State’s response dated 13 August 2013. Not only did the Secretary of State conclude that no further amendments (including those recommended by the Inspector) were necessary in order to avoid conflict with national policies, he confirmed in his letter to the Mayor that “as Grant Shapps noted in his letter” REMA was aligned to his department’s objective of increasing affordable housing delivery, and that imposing rent controls through planning policy (as Islington and the other boroughs wish to do) would “hinder this objective, and risk letting Londoners down by limiting the supply of affordable housing, and reducing choice for tenants” (see Annex C6 to this form). The Mayor’s understanding of national policy is therefore consistent with that of the Secretary of State.
- 7.16 In respect of Islington’s point b), the Mayor is advised that the allegation that he is putting “delivery above needs” creates a false dichotomy. Affordable housing needs can only be met if affordable housing is delivered. If affordable rents are capped at a rate which makes schemes unviable, development will clearly not take place and there will no housing available to meet needs. Moreover, NPPF paragraph 47 is not simply about meeting full, objectively assessed needs; it also has, as a recurring theme, the need to *deliver* a housing strategy. As footnote 11 to NPPF paragraph indicates, deliverability is tied in particular to the need to ensure that the development of sites is viable. Paragraph 47 also has to be read in the context of the NPPF as a whole, including, the guidance in paragraph 173 concerning viability and deliverability.
- 7.17 The Mayor is advised that there is a further, important point here. Islington’s letter creates the impression that the REMA effectively requires all affordable rent units to be brought forward with a rent of 80% of market rent, and thereby prevents any affordable rent units with the lower rents which Islington and the other boroughs regard as “genuinely” affordable. This is simply not the case. It is Government that has defined the product at up to 80% market rent. However, this figure is a maximum: the actual rent will vary depending on local market circumstances. The Mayor’s investment policy is predicated on a London-wide average of 65%, from which it is self-evident that some affordable rent is expected to come forward with a rent level that is less than 65%.

- 7.18 In this regard, it should be noted that the Mayor has accepted the Inspector's recommendation that the wording of paragraph 3.61 should be amended to make it clear that, where schemes are not funded by the Mayor, Boroughs have a role in relation to the deciding of rent levels *on a scheme-by-scheme basis*. While REMA will prevent boroughs from setting rent caps through planning policy, it does not mean that boroughs cannot work with developers and Registered Providers on a case-by-case basis to ensure that the best mix of housing is achieved on individual sites. In such negotiations, the Boroughs will be able to consider the impact of a lower rent on the viability of each scheme individually, and whether allowing a proportion of the affordable rent units in that scheme to come forward with a rent of up to 80% would assist in maximising the amount of affordable housing which is delivered while at the same time ensuring that a proportion of the units are available at rents closer to target rents.
- 7.19 The affordable rent product was introduced by Government in 2011 in order to continue to deliver affordable housing in a decreased funding environment. The London-wide 65% average is based on investment rather than planning policy. It was born out of a strategic programme that seeks to maximise delivery while ensuring that all rents remain below the local housing allowance rate, and that the programme continues to deliver a significant proportion of family sized housing. This approach is already working with nearly 16,451 homes to rent delivered between April 2011 and July 2013, of which 37% were family sized, alongside 9,546 new homes to rent started. Contrary to the implications of Islington's letter, this means that many family sized units are being delivered at rents which are the same as, or very close to those charged for social rent. Due to densities, it is not unexpected that higher proportions of larger homes are delivered in some outer London Boroughs. However, there are high levels of family sized homes in some inner London Boroughs such as Westminster (58%), Tower Hamlets (46%), Islington (37%) and Southwark (35%).
- 7.20 In the Mayor's view, this is the way in which concerns about affordability should be addressed. Achieving the London-wide average of 65% will only be possible if a proportion of affordable rent units come forward with rents which are between 65 and 80%. It will be significantly more difficult (if not impossible) to achieve this if individual Boroughs are allowed to adopt inflexible borough-wide policies which cap affordable rent at the levels proposed by Islington and others.
- 7.21 For these reasons, the Mayor's view continues to be that the approach taken in the REMA represents the most realistic and robust way of ensuring that London continues to deliver the maximum number of affordable homes for those who need them. The Mayor is advised that this approach is lawful and reflects government policy, makes the best use of available resources and will deliver a significant number of family units at lower rent levels.
- 7.22 Finally, in respect of Islington's point c), since at least the establishment of the GLA, London has always been regarded as a single market for strategic planning purposes. Both the London Plan and the Mayor's Housing Strategy are based on this accepted approach. The Inspector refers to sub-markets, but no evidence was put before the EiP or cited in the Inspector's report that these are meaningfully correlated with borough boundaries. The Mayor's case on this issue is as set out in the schedule of his responses to the Inspector's recommendations (see Annexes B2 and C5 to this form), and he is advised that his approach to this issue is lawful.
- 7.23 **The Mayor is invited to note the issues raised in Islington's letter and take them into account in arriving at his decision to publish REMA.**

8. Impact Assessment

- 8.1 The Mayor has legal duties to consider the following:
- Economic development and wealth creation (GLA Act 1999, as amended);

- Social development (GLA Act 1999, as amended);
- Protection and improvement of the environment (European Directive 201/42/EC on Strategic Environmental Assessment, The Environmental Assessment of Plans and Programmes Regulations 2004, GLA Act 1999, as amended);
- Health inequality and promoting Londoners' health (GLA Act 1999, as amended);
- Community safety (Crime and Disorder Act 1998, Police and Justice Act 2006); and
- Equality of opportunity, elimination of discrimination and the promotion of good community relations (GLA Act 1999, as amended, Equality Act 2010).

8.2 The GLA adopts an integrated approach to demonstrate how these duties have been considered in the form of an Integrated Impact Assessment (IIA). This enables any common themes to be considered together. The EMA and REMA IIAs built on the IIAs that informed the replacement London Plan 2011.

Integrated Impact Assessment

8.3 The REMA was subjected to a thorough independent IIA carried out by consultants URS. The IIA covers strategic environmental and sustainability appraisal and community safety, health impact and equalities impact assessments.

8.4 The IIA conforms to the requirements of an environmental report under the Environmental Assessment of Plans and Programmes Regulations 2004 (as amended), and is an iterative process:

- an IIA Scoping Report was published in November 2011 together with the Assembly and FB version of the Early Minor Alterations:
<http://www.london.gov.uk/priorities/planning/publications/early-minor-alterations-to-the-london-plan-initial-consultation>
- in February 2012 an IIA Scoping Report Addendum, an Equalities Impact Assessment and an IIA were published together with the public consultation version of the EMA:
<http://www.london.gov.uk/priorities/planning/london-plan/early-minor-alterations> (bottom of the page), and
- in June 2012 a Supplementary IIA was published with the REMA:
<http://www.london.gov.uk/priorities/planning/london-plan/early-minor-alterations> (middle of the page)

8.5 The IIA Scoping Report sets out the framework for the full IIA by identifying the sustainability objectives as well as providing background to and identifying trends in the policy areas being altered. It also includes the Sustainability Appraisal which appraises alternative options in addition to the preferred policy approach against the sustainability objectives. To inform the Scoping Report a workshop with key stakeholders was held on 18 November 2011. In line with the regulations, the statutory consultees were also invited to comment on the draft IIA Scoping Report. The draft IIA Scoping Report accompanied the Assembly and GLA functional bodies EMA consultation.

Equalities Impact Assessment

8.6 The IIA consultants used the assessment to produce a specific Equalities Impact Assessment. The IIA Report concludes that:

'Overall, the assessment found the alterations were likely to be broadly positive when considered against the IIA objectives'

8.7 The specific conclusions regarding each policy area can be found in the IIA, and the specific conclusions on equalities consideration in the Equalities Impact Assessment. These reports were considered by the Mayor during the progression of REMA.

8.8 The EiP Inspector's report concludes:

'a Sustainability Appraisal (SA) of the REMA has been carried out as part of an Integrated Impact Assessment (IIA) and is adequate. The IIA also includes an equalities impact assessment, which examines the impact of the Alterations on equalities groups, and health and community safety impacts. This is also satisfactory and meets the requirements of the GLA Act and the Equalities Act 2010.' (Paragraph 8 of the Inspector's report (Annex A2 to this form))

8.9 Officers agree with the Inspector's conclusion at paragraph 5 of his report that none of the changes he proposes require further consultation or additional Sustainability Appraisal, and consider that the Inspector's Report does not raise any issue not addressed by the IIA.

8.10 Careful consideration was given to the effect of the EiP Inspector's recommendations and the proposed Mayoral response to them outlined in the 31 July 2013 report to the Mayor's Planning and SDS Meeting (attached at Annex A1 to this form) and embodied in the text of the intend to publish REMA approved at that meeting (Annexes A4 and A5 to this form). Officers concluded that none of these proposed changes to the final text of REMA are such as to require further assessment.

Habitats Regulation Assessment

8.11 Regulation 48(1) of the Habitats Regulations 1994, which implements Article 6(3) of the Habitats Directive (92/43/EEC) requires an appropriate assessment also known as a Habitats Regulation Assessment (HRA) to be undertaken in respect of any plan or project which:

- a. either alone or in combination with other plans or projects would be likely to have a significant effect on a European Site, and
- b. is not directly connected with the management of the site for nature conservation.

8.12 The proposed alterations were limited in scope, and only concern policies that the original HRA concluded have no mechanisms for impact on any European sites. Therefore the early minor alterations and updates to the existing HRA of the London Plan were scoped out. Natural England indicated that it was happy with this approach.

Sustainability Statement

8.13 In accordance with the requirements of European Directive 2001/42/EC1 (known as the Directive on Strategic Environmental Assessment (SEA)), and the Environmental Assessment of Plans and Programmes Regulations 2004, a Sustainability Statement, also known as a post adoption statement, has been prepared. The Sustainability Statement outlines the sustainability considerations that have been integrated into the alterations prior to their publication, the reasons for choosing the preferred policies, and measures for monitoring the REMA as part of the overall London Plan. The Sustainability Statement is also a key tool in enabling the Mayor to comply with his duties under section 149 of the Equalities Act 2010. Further information relating to the scope and importance of this duty is set out in the Legal considerations section, and in paragraphs 12.17 to 12.22 below.

8.14 The Sustainability Statement is attached as Annex E to this report. The Sustainability Statement includes Appendices to specifically highlight the environmental and equalities considerations. One of the main aims of the Sustainability Statement is to outline how the IIA and the consultation responses influenced the development of the alterations.

8.15 With regards to affordable housing, the IIA noted that the uncertainty regarding the national introduction of Affordable Rent and the complex relationship with the welfare reforms make it difficult to be certain about how households will respond to offers of Affordable Rent housing.

Therefore the extent of the benefits of maximising housing delivery, including affordable housing is uncertain.

- 8.16 The bulk of received representations concerned REMA's policies on Affordable Housing, and Affordable Rent in particular. The broad thrust of these representations argue that even at 20% below the market rate, affordable rent housing will not be affordable to many households in London requiring affordable housing given the high market rates in London and that the Mayor has no evidence to demonstrate there will be no equalities impact.
- 8.17 Affordable Rent is a national housing product and its definition is equally national, being contained in the National Planning Policy Framework, with which the London Plan and its alterations (REMA) must be in conformity. A significant proportion of funding from the Government for affordable housing between 2013 and 2015 will be for affordable rent. Therefore the Government's own EqIA in relation to the Affordable Rent product is particularly relevant and applicable to the Mayor's own discharge of the Duty in this policy area:

'Although some households are not likely to realise the same degree of benefits as would have been the case had they been allocated a social rented property (e.g. in terms of the introduction of time-limited tenure and potential for higher rents) the policy will also bring substantial advantages to the same type of households by increasing supply – i.e. in the absence of this policy limited supply could have had the effect that they would not have received any form of social tenancy and would have remained in the private rented sector.'

'Any households potentially disadvantaged by the new policy are nevertheless expected to benefit from a social housing property with rents set (and maintained) at a minimum of 20 per cent below market rate. Households who are let properties on Affordable Rents who would otherwise have been housed in the private rented sector are likely to experience beneficial impacts such as a lower rent, reduced poverty trap and improved security of tenure.'

The Government's EqIA notes the interaction with the wider changes to social benefits, and states that this will be assessed during the development of these policies.

- 8.18 For the reasons set out in Appendix 2 of Annex E (see page 29 in particular) it is unclear how occupiers with protected characteristics will respond to the cap on Universal Benefit, in addition to which the number of exemptions make it difficult to identify which households may or may not be able to afford an Affordable Rent property and therefore be positively affected by the overall housing policies to deliver more housing and affordable housing, or negatively affected by the specific alterations relating to Affordable Rent. For the Affordable Rent product, the rent is set (and therefore affordability secured) through the Mayor's housing investment rather than his planning role, ie through the London Housing Strategy and the Mayor's contracts with registered housing providers to deliver the programme.
- 8.19 The Mayor's duty on equalities under section 149 of the Equalities Act 2010 applies to his housing investment role in addition to his planning role, and the same duty applies to boroughs with regard to their tenancy strategies and housing allocation policies, which must be in general conformity with the London Housing Strategy. The assessment of impacts on equalities considerations, and compliance with their duties under section 149, will be taken forward in the development of the revised London Housing Strategy, which sets out the Mayor's investment plans and his expectations with regard to local tenancy strategies and allocations policies. Where required by policy, developers not providing affordable housing in conjunction with a registered provider that has a contract with the Mayor will still need to provide affordable housing in accordance with London Plan Policy 3.11, which includes a requirement for social rent housing and boroughs can use their own resources to provide affordable housing at lower rents.

- 8.20 As Appendix 2 states (see page 32) the proposed REMA alterations are considered, overall, to result in an increased supply in affordable housing and especially family housing. Allocation to this housing is still controlled by the boroughs and therefore will meet local need in accordance with their allocations strategies which will have been subject to equalities assessment. The impacts of REMA will be monitored through Government data and the development of the London Housing Strategy.
- 8.21 To address some of the comments received on equalities during consultation, a sentence was added to REMA paragraph 3.58 to note the close link between allocation policies, tenancy strategies and homeless strategies to ensure the policy is delivered to support mixed and balanced communities. In addition the policy alterations prioritise the provision of affordable family housing.
- 8.22 In addition, potential flexibility in the application of the policy has been implied by paragraph 3.68 but linking any flexibility to the Mayor's Housing Strategy to ensure the overall the delivery of affordable housing is still maximised.
- 8.23 For the alterations relating to hazardous substances and installations, the IIA found that the alterations would have a positive effect overall when appraised against the sustainability objectives. No further policy alterations were recommended to improve the potential impacts of this alteration.
- 8.24 For the alterations regarding cycle parking, the IIA found that the sustainability impacts particularly in relation to health, climate change and energy and quality of life would overall be positive. The IIA, as well as some respondents, recommended further improvements to the cycling standards, including provision to meet the needs of disabled people. At this stage there is no evidence to support further changes. New London Plan paragraph 6A.12 states that 'the Mayor is continuing to review these cycle parking standards to ensure they support delivery of the significant increases in cycling.' This will inform future alterations.
- 8.25 In response to the IIA recommendation that the alterations consider the provision for disabled cyclists, TfL has stated that further information relating to provision of cycle facilities for disabled people will be included within the revised version of the London Cycling Design Standards which are due for publication later this year. This document is still being developed.
- 8.26 For the alterations relating to housing for specific groups the IIA concluded that there would be minor positive effects due to these alterations as they provide a London context to a national policy.
- 8.27 The proposed policy options are being taken forward as overall they are 'sound' and have the most positive effect on the sustainability objectives including on regeneration and land use, equalities, health and wellbeing, housing, climate change and energy, employment, stable economy air quality and liveability and place.
- 8.28 The Mayor has considered the impacts on sustainability (economic, social, environmental), equalities, health and community safety throughout the development of REMA in accordance with his legal duties.
- 8.29 In summary, the Sustainability Statement attached as Annex E to this form sets out how the impact assessments were carried out, and their results used to support development of REMA during the process for its preparation. It conforms to the requirements of the SEA Regulations for a post adoption statement to be published. This statement will be published alongside REMA. **The Mayor is invited to give this statement careful consideration and take its findings into account in arriving at the decision to publish REMA.**

9 Other considerations

Key Risks and issues

- 9.1 One of the main risks associated with the final stage in the preparation of the REMA was that the Secretary of State might not have accepted the Mayor's responses to the Inspector's recommendations, and might have directed the Mayor to make further changes to the REMA. As we have seen above, the Secretary of State did not direct that the REMA be amended for publication.
- 9.2 The London Assembly's new power to reject a Mayoral strategy embodied a further risk that the Assembly might have rejected the REMA. In the event, a motion to reject the alterations was tabled, but as discussed above, the required two thirds majority vote was not secured.
- 9.3 Legal advice has been taken at every stage of the process for REMA's preparation to minimise the prospect of a statutory challenge or, if one is mounted, the chances of it being successful.
- 9.4 The London Plan has been, and will continue to be, tightly project managed to ensure that key deadlines are met and that expenditure stays within budget.

Links to Mayoral strategies and priorities

- 9.5 The London Plan sets out the Mayor's policies for the development and use of land in London. It also incorporates the spatial – geographical and locational – aspects of his transport, economic development, housing, environmental and other strategic policies for London in a single, comprehensive framework. It provides the basis for implementation of these strategies and policies through the planning system, to the extent that this is appropriate.

Impact assessments

- 9.6 These matters are addressed in detail in section 8 of this form.

Consultation

- 9.7 Consultation carried out at the various stages of preparing the EMA and REMA are addressed in sections 3 and 7 of this form.
- 9.8 Now that the 21 day period for the Assembly's consideration of the intend to publish REMA text has expired without the Assembly having passed a resolution to reject it by the necessary two-thirds majority of votes cast under section 42B of the GLA Act, the Mayor may approve REMA for publication under sections 337 and 341 of the GLA Act.
- 9.9 There is no further requirement for public consultation. The GLA Act and associated regulations set out the requirements for public engagement in preparation of the London Plan. Under this legislation, the London Assembly and GLA functional bodies were consulted in November 2011 and general public consultation was undertaken in February and again in June 2012.

10. Publishing REMA

- 10.1 As set out in this form above it is considered that the Mayor has met all the conditions at the final pre-publication stage of REMA's preparation, and the alterations can now be published. A publication-ready version of REMA is set out as Annex F to this form.
- 10.2 It is proposed that REMA will be published on Friday 11 October 2013. From this date REMA will become operative as formal alterations to the London Plan (the Mayor's spatial development strategy) and will form part of the development plan for Greater London under section 38 of the Planning and Compensation Act 2004.

- 10.3 The Mayor is invited to approve recommendations 1-5 of this form, namely that he:
1. **considers the response of 13 August 2013 of the Secretary of State CLG to his submission of the Revised Early Minor Alterations to the London Plan as intended for publication (as set out in Annex C6 to this form), in accordance with sections 337 and 341 of the Greater London Authority Act 1999 (as amended) and regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000**
 2. **considers the outcome of the Extraordinary Plenary meeting of the London Assembly held on 3 September 2013 at which the Revised Early Minor Alterations to the London Plan were considered (as set out in Annex D3 to this form), in accordance with section 42B of the Greater London Authority Act 1999 (as amended), and approves his reply to the letter of 10th September from the Chair of the London Assembly (as set out in Annex D2 to this form)**
 3. **considers representations made after the publication of the EiP Inspector's report to the Mayor on 14 August (as set out in Annex D to this form), in accordance with section 337 of the Greater London Authority Act 1999 (as amended)**
 4. **takes account of the Sustainability Statement on the preparation of the Revised Early Minor Alterations to the London Plan which will be published together with the Revised Early Minor Alterations (Annex E to this form)**
 5. **approves publication of the Revised Early Minor Alterations to the London Plan (REMA) as his spatial development strategy, in accordance with sections 337 and 341 of the Greater London Authority Act 1999 (as amended) and regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 (as set out in Annex F to this form), on 11th October 2013 and that REMA is operative from that date**
- 10.4 Under the SDS Regulations, the Mayor is required to place an advertisement in the London Gazette and in the press giving notice of publication of the alterations. The wording is prescribed in the regulations. The cost of placing these advertisements should not exceed £7,000, and authority is sought to place them with the cost being met from the Examination in Public element of the 2013-14 Planning budget.
- 10.5 The Mayor is invited to approve recommendation 6 of this form, namely that he:
6. **authorises expenditure of up to £7,000 from the Planning Unit's budget on placing the statutory notices of publication**
- 10.6 The Regulations also require notice to be given in the same form as the press advertisement to London boroughs and the local authorities adjoining Greater London; that the statement of reasons why the Mayor has not accepted any recommendation contained in the report of the EiP Inspector is made available for public inspection; and that a copy of the REMA is made available for inspection during normal office hours at City Hall.
- 10.7 The Mayor must also send to the Secretary of State and to the Council for each London borough a copy of REMA, a copy of the notice published in the newspaper and any statement of reasons for not accepting a recommendation of the Panel.
- 10.8 The Mayor is invited to approve recommendation 7 of this form, namely that he:

7. **approves publication of his reasons for not accepting the EiP Inspector’s recommendations (Annex C5 to this form), the statutory notices of publication, the giving of the required notice to local authorities and others and the arrangements for making the REMA and associated documentation available for public inspection, in accordance with regulation 9 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000**

11. Financial comments

- 11.1 Approval is being sought for expenditure of up to £7,000 on publishing the required statutory notices for the publication of the Revised Early Minor Alterations to the London Plan. This will be funded from the Examination in Public element of the 2013-14 Planning budget via a budget transfer from the Planning Smoothing reserve.
- 11.2 Any changes to this proposal, including budgetary implications will be subject to further approval via the Authority’s decision-making process. All appropriate budget adjustments will be made.
- 11.3 The Planning team within the Development, Enterprise & Environment Directorate will be responsible for managing this expenditure and ensuring all associated activities relating to expenditure adhere to the Authority’s Financial Regulations and Contracts & Funding Code.

12. Legal comments

- 12.1 This section deals with legal issues not covered elsewhere in this decision form. Legal advice in relation to Islington Borough Council’s letter before claim is contained in paragraphs 7.7 to 7.23 above.
- 12.2 The Mayor is required to prepare and publish a spatial development strategy (known as the London Plan) under section 334 of the GLA Act. The Strategy must include his general policies in respect of the development and use of land in Greater London and must deal only with matters, which are of strategic importance. However, in making that determination, it is immaterial whether or not the matter affects the whole of Greater London. The current London Plan was published in July 2011 and replaced earlier versions.
- 12.3 The Mayor has a duty under Section 340 of the GLA Act to keep this strategy under review and can under section 341(1) (a) of that GLA Act at any time prepare and publish alterations of the strategy. As such in November 2011, the Mayor announced his intention to make early minor alterations to the London Plan (which became revised early minor alterations to the London Plan: REMA). The history is as set out in section 1 of this Decision Form.
- 12.4 Sections 337 and 341 of the GLA Act sets out the procedure to be followed for the preparation and publication of alterations to the London Plan and this has been rigorously followed.

Examination in Public

- 12.5 The Mayor was required under Section 338 of the GLA Act to cause an Examination in Public to be held by persons appointed by the Secretary of State for the purpose and as such this was duly held at City Hall between 19 and 23 November 2012. The EiP Inspector’s report was received on 19 June 2013. Under the SDS Regulations the Mayor must publish the EiP Inspector’s report, within eight weeks of its receipt. On 3 July 2013 the Mayor approved the report’s publication within eight weeks of receipt, and the EiP Inspector’s report was duly published on 14 August 2013.

Secretary of State Direction

- 12.6 On 3 July the Mayor approved the sending to the Secretary of State of a statement of his intention to publish alterations to the London Plan (REMA), a copy of the text of REMA in the form he intended to publish and, as he did not propose to accept all the recommendations contained in the EiP Inspector's report, a statement of his reasons for not accepting those recommendations. These documents were sent to the Secretary of State on 3 July 2013.
- 12.7 The Secretary of State has six weeks to consider REMA and, in particular, whether to give the Mayor a Direction under Section 337(7) of the GLA Act requiring him to modify the intended to publish version before it is formally published if it appears to him that it is expedient to do so for the purpose of avoiding:
- (a) any inconsistency with current national policies or relevant planning guidance, or
 - (b) any detriment to the interests of an area outside Greater London,
- 12.8 No such Direction has been given by the Secretary of State. The six week period during which the Mayor is unable to publish REMA expired on 14 August 2013.

London Assembly power to reject

- 12.9 On 14 August 2013 the Mayor caused a copy of the 'intend to publish' text of REMA to be laid before the Assembly in accordance with section 42B of the GLA Act. The Assembly met to consider the alterations on 3 September 2013 and did not resolve to reject the alterations by the requisite majority under section 42B.

Publication

- 12.10 Accordingly, the Mayor may now proceed to publish REMA which shall become operative on the date on which it is so published. On publication, REMA will formally alter the London Plan, the Mayor's Spatial Development Strategy, and the altered Plan will form part of the development plan for Greater London.

Publication provisions

- 12.11 The Mayor is required to give notice of publication by advertisement in a newspaper and in the London Gazette and by serving a copy of the notice on those specified in Section 335 of the Act namely:-
- (a) the Assembly,
 - (b) the functional bodies,
 - (c) the Secretary of State
 - (d) each London borough Council,
 - (e) the Common Council,
 - (f) the council of any county or district whose area adjoins Greater London and is affected by the proposed Replacement London Plan,
 - (g) Natural England,
 - (h) the Environment Agency,
 - (i) the Historic Buildings and Monuments Commission for England,
 - (j) any other body or person whom the Mayor considered it appropriate to consult.

- 12.12 The Mayor must also make REMA and the statement of reasons why the Mayor did not accept any recommendation contained in the EiP Inspector's report available for public inspection. Copies of the REMA shall be made available for inspection during normal office hours at City Hall and may be purchased on payment of any reasonable fee determined by the Mayor.
- 12.13 The Mayor must also send to the Secretary of State and to the Council for each London borough a copy of REMA, a copy of the notice published in the newspaper and any statement of reasons for not accepting a recommendation of the Panel.

Matters to which the Mayor should have regard

- 12.14 Under section 342 of the GLA Act, when considering making alterations to the London Plan, the Mayor must have regard to any regional planning guidance issued by the Secretary of State so far as relating to an area which includes or adjoins Greater London and such other matters as the Secretary of State may prescribe.
- 12.15 Under section 41 of the GLA Act he must also have regard to the need to ensure that it is consistent with national policies, other statutory strategies, the resources available for the implementation of the Strategy and the desirability of promoting and encouraging the use of the River Thames safely for the provision of passenger transport services and for the transportation of freight. He has included in REMA such of the available policies and proposals as considers are best calculated to promote improvements in the health of persons in Greater London, to promote the reduction in health inequalities between such persons, to contribute towards the achievement of sustainable development in the UK and to contribute towards the mitigation of or adaptation to climate change, and the consequences of climate change in the UK.
- 12.16 In addition, under the Crime and Disorder Act 1998, the Greater London Authority has to do all it reasonably can to prevent crime and disorder.
- 12.17 The Mayor is also required to have regard to the economic development and wealth creation, social development and improvement of the environment in Greater London as well as the effect which the proposed replacement would have on the health of persons in Greater London; and the achievement of sustainable development in the United Kingdom. This can be evidenced as above.

Public Sector Equality Duty

- 12.18 The Mayor and GLA are subject to the public sector equality duty, as set out in Section 149 of the Equality Act 2010. This replaces duties under other domestic discrimination legislation, including those under section 404 of the GLA Act. The 2010 Act included a new single public sector equality duty ("the Duty") which brings together the previous race, disability and gender duties and extends coverage to include age, sexual orientation, religion or belief, pregnancy and maternity and gender reassignment. These are the grounds upon which discrimination is unlawful and are referred to as 'protected characteristics.' The Duty requires the Mayor when exercising his functions to have *due regard* to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 12.19 Having *due regard* to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is

disproportionately low. The steps involved in meeting the needs of disabled persons include, in particular, steps to take account of disabled persons' disabilities. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding. Compliance with these duties may involve treating some persons more favourably than others.

- 12.20 In light of these duties GLA officers have reviewed what is proposed in REMA and the Equalities Impact assessment included in the Integrated Impact Assessment and advise that there is nothing raised by such which has not been already addressed as part of the statutory process.
- 12.21 These duties apply to the proposed REMA and the Mayor's decision whether to publish them as alterations to the London Plan.
- 12.22 The courts have emphasised that "*due regard*" requires an active and engaged analysis of the relevant material with the specific statutory considerations in mind, but the Duty does not require that the considerations raised in the analysis are decisive in the particular case and finally, that the weight to be given to the requirement that "*due regard*" is to be had is for the decision maker to decide.

Integrated Impact Assessment (IIA) Report

- 12.23 An IIA of the REMA was undertaken as detailed above. This examined the likely impacts of the proposed policies and conformed to the legal requirements regarding Sustainability Appraisal, the Environmental Assessment of Plans and Programmes Regulations 2004 and the Habitats Regulations. It also included an Equalities Impact Assessment. The IIA report is considered by GLA officers to contain an adequate analysis of the material to which the Mayor must pay "*due regard*" to in making the decision to publish REMA. This view was endorsed by the EiP Inspector's Report. Accordingly, the Mayor is asked to give particular attention to these reports and to the matters reported in paragraphs 8.6 to 8.29 above.

Appendices and supporting papers:

Annex A: Reports to Mayor's Planning and Spatial Strategy Meetings 3 and 31 July 2013

- A1: report to Mayor's Planning and SDS Meeting 3 July 2013: Approval for next stages of the Revised Early Minor Alterations to the London Plan
- A2: Annex A to 3 July report – EiP Inspector's report
- A3: Annex B to 3 July report – Schedule of Inspector's recommendations and recommended responses including statement of reasons for not following the Inspector's recommendations.
- A4: Annex C to 3 July report – "Intend to publish" draft of the revised early minor alterations to the London Plan (version showing changes)
- A5: Annex C to 3 July report – "Intend to publish" draft of the revised early minor alterations to the London Plan ('clean' version)
- A6: Annex D to 3 July report – Integrated Impact Assessment Report
- A7: Annex E to 3 July report – Supplementary Integrated Impact Assessment report (including the Scoping Report)
- A8: report to Mayor's Planning and SDS Meeting 31 July 2013: Revised Early Minor Alterations to the London Plan – update
- A9: Annex A to 31 July report – copy of 3 July report to Mayor's Planning and SDS Meeting (in blue)
- A10: Annex B to 31 July report – Amended Schedule of Inspector's recommendations and recommended responses including statement of reasons for not following the Inspector's recommendations.

Annex B: REMA Submissions to the Secretary of State for Communities and Local Government July 2013

- B1: Text of letter from the Mayor of London to Secretary of State CLG 3 July 2013
- B2: Schedule of the Mayor of London's responses to the EiP Inspector's recommendations, including a statement of reasons for each response [amended version 31 July 2013]
- B3: "Intend to publish" draft of the revised early minor alterations to the London Plan (version showing changes) [amended 31 July 2013]
- B4: "Intend to publish" draft of the revised early minor alterations to the London Plan ('clean' version) [amended 31 July 2013]

Annex C: REMA Submissions to the London Assembly 14 August 2013

- C1: Text of letter from the Deputy Mayor for Planning to the Chair of the London Assembly 14 August 2013
- C2: "Intend to publish" draft of the revised early minor alterations to the London Plan (version showing changes)
- C3: "Intend to publish" draft of the revised early minor alterations to the London Plan ('clean' version)
- C4: EiP Inspector's report
- C5: Schedule of the Mayor of London's responses to the EiP Inspector's recommendations, including a statement of reasons for each response
- C6: Letter from the Secretary of State CLG to the Mayor of London 13 August 2103

Annex D: further representations and replies

- D1: Letter from the Chair of the London Assembly to the Mayor 10 September 2013
- D2: Proposed response from the Mayor to the Chair of the London Assembly
- D3: Letter from RB Kensington & Chelsea to the Mayor 2 September 2013
- D4: Letter from Sir Edward Lister to RB Kensington & Chelsea 3 September 2013
- D5: Letter from LB Islington to TfL Legal 18 September 2013

Annex E: Sustainability Statement for publication October 2013

Annex F: Revised early Minor Alterations to the London Plan for publication October 2013

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

If YES, for what reason:

Until what date: (a date is required if deferring)

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form? NO

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer

Richard Linton has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Stewart Murray has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

Fiona Fletcher-Smith has reviewed the request and is satisfied it is correct and consistent with the Mayor's plans and priorities.

✓

Mayoral Adviser

Edward Lister has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

Date