

GOL CIRCULAR 1/2008

STRATEGIC PLANNING IN LONDON

**Greater London Authority Act 1999
Greater London Authority Act 2007**

The Secretary of State for Communities and Local Government's guidance on the arrangements for strategic planning in London

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1. INTRODUCTION

Introduction

1.1 This Circular, which is effective from 6th April 2008, provides advice and guidance on the arrangements for strategic planning in London, under the provisions of the Greater London Authority Act 1999 and the Greater London Authority Act 2007. It is directed at the Mayor and Assembly, the London boroughs and the City of London (hereafter referred to as "the boroughs"), and all those whose interests are affected by the planning system in London. It has been updated to reflect experience of the operation of the 1999 Act, the commencement of the Planning and Compulsory Purchase Act 2004 and the changes arising from the Greater London Authority Act 2007 in relation to development plans and planning applications of strategic importance. This Circular replaces GOL Circular 1/2000.

1.2 In particular, it provides guidance on:

- the strategic planning framework for London - the Spatial Development Strategy (SDS);
- the process for publication, review, alteration and replacement of the SDS;
- the relationship between the SDS and Local Development Frameworks (LDFs) and Unitary Development Plans (UDPs);
- the Mayor's role in decisions on planning applications; and
- the Mayor's role in representing London on planning matters in the wider region and generally.

1.3 It should be read in conjunction with the relevant provisions of the Greater London Authority Act 1999 ('the 1999 Act'); the Town and Country Planning (London Spatial Development Strategy) Regulations 2000 ('the Regulations'); the Planning and Compulsory Purchase Act 2004; the Greater London Authority Act 2007 ("the 2007 Act"); the Town and Country Planning (Mayor of London) Order 2008 ('the Order'); together with Planning Policy Statements and other instruments and guidance referred to in the text. In addition, the Town and Country Planning Act 1990, as amended by the above Acts, should also be used as reference.

The Mayor's role

1.4 The Greater London Authority was established in 2000 as a new form of city-wide governance, made up of a directly elected Mayor and a separately elected Assembly. The Mayor is responsible for strategic planning for London, and in particular for producing a Spatial Development Strategy for London (the SDS). The SDS provides a strategic framework for the boroughs' Local Development Frameworks and remaining Unitary Development Plans and sets out the spatial context for the Mayor's other policies and strategies (see Section 2(i) below).

1.5 The Government believes that it is important that the Mayor has the right powers to ensure his SDS is implemented. Therefore, the Mayor will have a power to direct changes to borough local development schemes¹. In addition, certain planning applications must be referred to the Mayor due to their potential strategic importance for planning in London. The 2007 Act introduced a discretionary power for the Mayor to assume jurisdiction over small numbers of planning applications that are of strategic importance to London and determine them in place of the borough. The Mayor will continue to be able to direct a Borough to refuse a planning application

¹ Note that this is being introduced by the Local Development (England) Regulations later in 2008.

where he has not taken over the application, if he considers that to grant planning permission would be contrary to the SDS or prejudice its implementation or otherwise be contrary to good strategic planning in London,

1.6 The Government is committed to the principle that the majority of planning applications are best decided at the local level wherever possible. The Secretary of State expects the number of applications that would most appropriately be decided by the Mayor in any given year to be very low.

1.7 The Mayor is also responsible for ensuring that the strategic planning interests of London are taken into account in the policies and decisions of central and local government and of other relevant bodies, both within London, and in surrounding areas where these could have a significant impact on the planning or development of the capital. This necessitates a collaborative approach to the Mayor's working relationship with the boroughs.

The boroughs' role

1.8 The boroughs are the local planning authorities for their areas. They are responsible for preparing LDFs, but these must be in general conformity with the Mayor's SDS. Boroughs are also responsible for determining all planning applications except:

- a) where the Mayor has taken jurisdiction over the application under the provisions of section 31 of the 2007 Act; or
- b) where they fall into the area of the London Thames Gateway Development Corporation or Olympic Delivery Authority; or
- c) where they are called-in by the Secretary of State for Communities and Local Government ('the Secretary of State') under the provisions of section 77 of the Town and Country Planning Act 1990

1.9 Boroughs are required to consult the Mayor on planning applications of potential strategic importance as defined in the Mayor of London Order, for the Mayor to determine whether they raise issues of strategic importance that warrant his intervention.

1.10 The boroughs should have an important role in developing and delivering strategic planning policies in London, in collaboration with the Mayor. The Government considers that good strategic planning in London can best be delivered by co-operation between the Mayor and the boroughs on strategic planning matters, and all parties should work to promote this. This will be particularly important in the consideration of planning applications of potential strategic importance, where both regional and local planning policies will be relevant, irrespective of who is making the decision on the application.

The Secretary of State's role

1.11 The Secretary of State has no role in approving the SDS. She does, however, have powers to direct changes to the SDS in certain limited circumstances, as well as to direct that the SDS be reviewed, altered or replaced (see Section 4 below). The Secretary of State's powers in relation to LDFs and planning applications remain unchanged. However, as a matter of policy the Secretary of State will look to the Mayor in the first instance to ensure that London's strategic planning interests are taken into account in borough decisions on these matters.

2. SCOPE AND FORMAT OF THE SDS

Purpose of the SDS

2.1 The first SDS was published in February 2004. The 1999 Act requires the Mayor to keep the SDS under review. The SDS offers the opportunity for an integrated approach to shaping the future pattern and direction of development in London. It should provide a common spatial framework for all the Mayor's strategies² and policies, as well as for the policies in LDFs. The SDS, along with boroughs' Development Plan Documents, or Unitary Development Plans, forms part of the Development Plan for London boroughs (see para 2.12).

2.2 The SDS must continue to include the Mayor's general policies for the development and use of land in London, but it should also incorporate the spatial - that is, geographical and locational (though not site specific) - elements of transport, economic development, environmental and other strategic policies for London, bringing them together in a single, comprehensive framework. It should adopt an integrated approach, embracing all aspects of physical planning, infrastructure development, and other policies affecting or affected by the distribution of activities. By doing so it should help to secure the effective co-ordination and targeting of activities and resources, and a consistent, holistic approach to the delivery of policy objectives. It should contribute to the achievement within London of sustainable development, a healthy economy, and a more inclusive society.

2.3 The SDS should provide guidance on the broad location of strategically important development (see paras 2.15-2.17 below). It should also contain policies and criteria for determining the acceptability of development proposals, where these raise issues of strategic importance. However, it should not incorporate detail more appropriate for borough development plans (see also paras 2.11-2.14 below).

2.4 In order to provide a suitable framework for development plans and for investment decisions, a 20 year forward planning period should be assumed.

Matters to which the Mayor must have regard

2.5 Matters to which the Mayor must have regard to in preparing alterations to the SDS or its replacement include:

- the general duties of the Mayor;
- the European context;
- the national context, in particular policies in Planning Policy Guidance notes and Planning Policy Statements; and
- the regional context.

General duties of the Mayor

2.6 A number of general requirements are set out in Part II of the 1999 Act. The principal purposes of the Authority, as set out in section 30(2) of the Act, are:

- promoting economic development and wealth creation in Greater London;
- promoting social development in Greater London; and

² The 1999 and 2007 Acts require the Mayor to produce the following strategies: spatial development, transport, London Development Agency, municipal waste management, air quality, ambient noise, biodiversity action plan, culture, health inequalities, housing, climate change mitigation and energy strategy, adaptation to climate change strategy.

- promoting the improvement of the environment in Greater London.

2.7 In preparing or revising any of his or her strategies, including the SDS, the Mayor must have regard to these principal purposes, the principle that there should be equality of opportunity for all people, as set out in section 33(1) of the 1999 Act and also, by virtue of sections 41(4) and 41(5) of the 1999 Act, and sections 24 and 41 of the 2007 Act, to:

- the need to ensure consistency with national policies and with such international obligations as notified by the Secretary of State;
- the need to ensure consistency between the strategies prepared by the Mayor;
- the resources available to implement the strategy;
- the desirability of promoting and encouraging the use of the River Thames safely, in particular for the provision of passenger transport services and the transportation of freight;
- the effect on the health and health inequality of persons in Greater London;
- the effect on climate change, and the consequences of climate change; and
- the achievement of sustainable development in the United Kingdom.

The European context

2.8 The SDS should take account of the European Spatial Development Perspective (ESDP), the Territorial Agenda (TA) or successor plans, the Community Initiative on Transnational Co-operation on Spatial Planning (INTERREG) or successor programmes and other European and transnational programmes and instruments relating to spatial planning. The Mayor must also have regard to any relevant Government guidance or statutory instruments relating to the implementation of European Community requirements, including those specified in regulation 6 of the Regulations.

The national context

2.9 Section 41 of the GLA Act requires the Mayor to have regard to the need to ensure that his or her strategies are consistent with national policies. These are defined in section 424 as being policies available in written form that have been laid, presented or announced in Parliament or published by a Government minister. For the purposes of the SDS these would include, in particular, Planning Policy Guidance notes (PPGs) and Planning Policy Statements (PPSs), relevant circulars and other qualifying statements of planning policy. Where the Mayor intends to propose a policy or proposal in the SDS which is not consistent with national policies, he or she must ensure that there are adequate reasons for doing so. Policy guidance addressed to local planning authorities, should be taken as applying also to the Mayor of London where appropriate.

The regional context

2.10 London exerts significant influence over a wide area in the south east of England. The capital and the surrounding area are inextricably linked economically, and on matters such as transport investment, housing provision and employment patterns. For these reasons, section 342(1) of the 1999 Act requires the Mayor to have regard to any regional spatial strategy which includes or adjoins Greater London. The Mayor should take an active role on behalf of London in working with neighbouring regional planning bodies in co-ordinating planning across the broader south east area where appropriate (see also paras 6.1 and 6.2 below). In addition to the Mayor's power in relation to planning applications made to a borough in London, the intention is also that the Mayor should be a statutory consultee on planning

applications made outside Greater London which impact on strategic planning matters in the capital. This will be taken forward through a review of the GDPO sometime later in 2008.

Issues of strategic importance

2.11 The 1999 Act requires that the SDS must deal only with matters that are of strategic importance to Greater London. There is no simple definition of "strategic importance", but the SDS should focus on matters of more than local importance and should not concern issues more appropriately dealt with by boroughs through LDFs. The Act makes clear that such matters need not affect the whole area of Greater London, but they should be of significance to the wider interests of London, having regard, in particular, to the principal purposes of the GLA.

2.12 The SDS forms part of the Development Plan³. The SDS does not need to be fully comprehensive in its approach. This should not preclude it from incorporating detailed policies where appropriate; but it is important that the SDS provides a clear framework while avoiding unnecessary or inappropriate detail. It is the policies within the SDS that will be used in the determination of planning applications. This should enable the Mayor to exert real, effective and timely influence in matters of importance to London, whilst minimising the scope for conflict and delay and the risk of interference in matters with which the boroughs can better deal.

2.13 The planning system is dynamic and needs to reflect changes on the ground. It will not always be possible to align the timing of emerging regional policy with the timetables for local plan policy production. This should not be used as a reason for inaction or to argue that it would be premature to produce policy. The government expects that emerging regional policy will inform local policy development and vice versa. Boroughs will be permitted to assume that emerging regional policy, as it moves through the consultation and examination process, will gain weight and can be used as the starting point for their own policy development.

2.14 The 1999 Act provides that the SDS may make different provision for different cases or for different parts of London. This ensures that the Mayor can, for example, develop a range of strategic policies that apply differently in different circumstances or areas, or policies for particular parts of the capital such as regeneration corridors, central London or the River Thames.

Specifying locations

2.15 Whilst the SDS should establish the broad locations for specific types of development of strategic importance, it should not be site-specific.

2.16 Given the constraints on land supply in the capital, the SDS may well need to identify broad areas that are of particular strategic importance as development opportunities by virtue of their size, location, accessibility or other factors. It may also need to identify broad locations that may be suitable for particular types of use, such as major transport, housing or business development. Having defined the broad locations, it may then be helpful to set out criteria to assist in the identification of suitable sites through borough LDFs. Examples might include the location of waste facilities, freight transshipment facilities and business parks.

³ In Greater London the development plan is a) the spatial development strategy, and b) the development plan documents (taken as a whole) which have been adopted or approved in relation to that area. Section 38(2) Planning and Compulsory Purchase Act 2004.

2.17 However, site-specific proposals themselves should be avoided in the SDS, given its strategic nature. Consideration of specific sites could otherwise dominate and delay its production. Site-specific proposals can more appropriately be dealt with in LDFs and through planning applications and other statutory approval procedures, which incorporate formal rights for interested parties to make representations along with any necessary formal environmental assessments. The Mayor should also be aware of the risk of raising issues of blight well in advance of any statutory procedures to determine whether a particular development should take place.

Format of the SDS

2.18 The SDS should be clear, concise and readily understandable. It should:

- set out a spatial strategy in the form of policies and proposals, supported by reasoned justification, distinguishing clearly between the two;
- identify clearly those policies and proposals relating to the development and use of land that are to be reflected in LDFs;
- illustrate the strategy, including relevant constraints, opportunities and proposals, in a key diagram (accompanied, where necessary, by additional inset diagrams), which may not be drawn on a map base⁴;
- where appropriate, incorporate targets and milestones or performance indicators to measure the delivery of the strategy (through annual monitoring reports at the regional and/or local level);
- be expressed in a form which facilitates monitoring and review (including partial review) of the strategy;
- include a statement of the regard that has been had to the matters covered in para 2.5 above;
- be accompanied by a Sustainability Appraisal (see Section 3 below); and
- include the words "spatial development strategy" in the title.

2.19 Further provisions on the form and content of the SDS are set out in Part 1 of the Regulations.

Other planning guidance

2.20 On 13th July 2007 the Mayor published the London Views Management Framework Supplementary Planning Guidance⁵. Annex 2 provides more details.

2.21 RPG9a The Thames Gateway Planning Framework straddles London, the South East and the East of England. This has been updated in part by the SDS and will be in future by RSS revisions in the South East and the East of England and by the Mayor's commitment to a coherent sub-regional planning framework for East London to be co-ordinated with planning for the rest of the Thames Gateway.

2.22 From time to time the Mayor may consider it helpful to produce additional guidance to supplement the policies contained in the SDS and these may be taken into account as a material consideration. Such guidance could take the form of design guides, or area frameworks, or could supplement specific policies in the SDS. The guidance must itself be consistent with national guidance, as well as policies set

⁴ This does not preclude the possibility of including map based information within the SDS, outside the Key Diagram, to illustrate factual information, such as the pattern of existing land uses or transport networks.

⁵ Note that the 2007 Directions and LVMF (available on GOL website) replace RPG3A guidance and the 2000 Strategic Views Directions.

out in the SDS. It should clearly be referenced to the relevant plan policy which it supplements. It should be issued separately from the SDS and made publicly available; consultation should be undertaken, and the status of the material should be made clear. Such material should be reviewed on a regular basis alongside reviews of the SDS.

2.23 Only the policies in the development plan can have the status that Section 38(6) of the 2004 Act provides in determining planning applications. Supplementary material, and policies in other Mayoral strategies, may be taken into account as a material consideration. The Secretary of State will give weight in making decisions that come before her to supplementary material which derives from and is consistent with the SDS and has been prepared in an appropriate manner. Such material should be prepared in consultation with the public, businesses, and other interested parties and their views should be taken into account before it is finalised. It should then be subject to Mayoral resolution to adopt it as supplementary guidance. On adoption a statement of the consultation undertaken, the representations received and the response of the Mayor to those representations should be made available on the GLA website.

2.24 Supplementary material can play a valuable role in supplementing SDS policies. However, it must not be used to avoid subjecting to examination in public, in accordance with the statutory procedures, policies and proposals which should be included in the SDS. SDS policies should not delegate the criteria for decisions on planning applications to supplementary material.

The SDS and other Mayoral Strategies

2.25 Policies contained in other statutory Mayoral Strategies will not have development plan status in the determination of planning applications unless and until they have been incorporated within and been through the relevant statutory processes associated with the SDS. Although not having development plan status, policies outside the SDS are, however, capable of being a material consideration when determining planning applications.

Content of the SDS

2.26 The detailed content of the SDS is a matter for the Mayor. However in general terms it should address all issues with a spatial development dimension that the Mayor believes to be of strategic importance to the capital. In particular, the Government considers issues of population and economic growth, delivery of housing, including affordable housing, and mitigation of and adaptation to climate change to be of strategic importance to London. The SDS must take account of the requirement for consistency with national and regional policies (see paragraph 2.5 above). In addition, some London specific matters, set out below, will also need to be addressed.

The central area: London's capital and world city roles

2.27 Many activities, institutions and facilities of national and international importance are located in the central area of London. Protecting and enhancing the economic well being, amenity and environmental quality of this core area is essential to the maintenance of London's capital and world city roles. Because of the strategic importance of this area, the SDS should:

- identify the broad extent of the central area and the national and strategic functions it serves;
- include policies for protecting and enhancing those functions; and

- identify a mechanism for co-ordinating borough LDF policies relating to those functions within this area.

The River Thames

2.28 The River Thames is of strategic importance for London as whole. As well as being a key part of the capital's urban fabric, it is a major transport artery and an important ecological, leisure and tourist resource. Taking account of the specific duty in the Act to promote and encourage use of the Thames, the SDS should therefore:

- identify the strategic functions which the River Thames serves;
- include policies for protecting and enhancing those functions; and
- identify the broad extent of a special "Thames Policy Area", and a mechanism for co-ordinating borough LDF policies within this area.

3. ARRANGEMENTS FOR THE REVIEW, ALTERATION AND REPLACEMENT OF THE SDS

3.1 The statutory procedures set out in the 1999 Act and in the Regulations are intended to specify minimum requirements for:

- ensuring that boroughs, other interested parties and Londoners generally have an opportunity to participate in the process of producing the SDS;
- securing an appropriate balance between thorough consultation and testing on the one hand, and a streamlined and efficient process on the other;
- ensuring that relevant considerations are taken into account at the appropriate time;
- ensuring that the SDS is regularly reviewed and monitored and is kept up-to-date.

3.2 Beyond these minimum requirements, it will be for the Mayor to decide what is appropriate, taking account of the further guidance below. The procedures and requirements described apply to the alteration or replacement of the SDS.

Timetable

3.3 The Government considers that the principles of project management for development plans, as set out in PPS11 and PPS12, should be applied where appropriate to the process of preparation and review of the SDS, in particular:

- establishing an indicative target timetable;
- identifying the resources required to meet that timetable; and
- publicly adopting the timetable at the outset of the project.

3.4 This will help ensure the timely publication of a strategy that is relevant and up-to-date, and it will help boroughs to plan their LDF reviews. It will also provide a framework for the measurement of performance.

Sustainability Appraisal/ Strategic Environmental Assessment /Habitats Regulations Assessment

3.5 In preparing the SDS the Mayor is required to have regard to, amongst other things, the principal purposes of the GLA: promoting economic development, social development and the improvement of the environment in Greater London and to consider its impact on the achievement of sustainable development. To help ensure these requirements are met and that the SDS reflects an appropriate balance between the principal objectives, Regulation 7(2) requires the Mayor to carry out a sustainability appraisal as part of its production.

3.6 The Sustainability Appraisal, incorporating Strategic Environmental Assessment⁶, of the SDS should allow for a systematic and iterative testing of the emerging proposals. The Mayor must as a minimum publish a formal appraisal alongside the proposed SDS. But the appraisal principles should be applied at each stage in the preparation of the SDS, with the results of the appraisal informing the next version. The precise form of the appraisal is a matter for the Mayor. However, he or she should have regard to current Government guidance on good practice for

⁶ In accordance with the SEA Directive or EU Directive 2001/42/EC "on the assessment of the effects of certain plans and programmes on the environment".

sustainability appraisals, for example in PPS11, PPS12, any revisions to these ⁷and *Sustainability Appraisal of Regional Spatial Strategies and Local Development Frameworks* (ODPM 2005). The identification of appropriate indicators for monitoring the effect of the SDS should be informed by the Sustainability Appraisal process and should take account of the principles and indicators set out in the national strategy for sustainable development. The preparation of the SDS should also follow guidance on the Habitats Regulations Assessment as appropriate.

Consultation with the Assembly and functional bodies

3.7 Detailed arrangements for consulting the Assembly and functional bodies⁸ are a matter for the Mayor. However, the 1999 Act provides that the Mayor must consult them on an initial draft of his or her proposals before the publication of a draft strategy. This is to ensure that other constituent parts of the Greater London Authority have an input before the formal consultation procedures set out below (especially given the potential status of a published draft within the planning system), and to help secure consistency between the Mayor's different strategies, as the Act requires.

3.8 The Mayor must have regard to any comments submitted to him in response by the Assembly or any of the functional bodies. The Mayor must also prepare and submit, to the Chair of the Assembly, a written statement identifying which of the comments submitted by the Assembly are accepted by the Mayor for implementation in the strategy and setting out the reasons why any comments so submitted are not accepted (see section 2 of the 2007 Act).

Procedure for public consultation

3.9 Once the Mayor has consulted the Assembly and the functional bodies, he or she may publish a draft of the proposed SDS. Publication should be announced by way of a statutory notice in a newspaper with London-wide circulation. Further details are given in the Regulations, which also specify that the period prescribed by the Mayor for consultation must be no less than 12 weeks from publication of the notice (except in the case of minor alterations to the Strategy, where the period may be no less than 6 weeks). Copies of the proposed SDS must be made available by the Mayor and the boroughs at their principal offices.

3.10 A copy of the proposed SDS must be sent to those parties set out in section 335(3) of the 1999 Act and those listed in regulation 7(5) of the Regulations. These include the Secretary of State, the boroughs, various statutory bodies, and any other person or body to whom the Mayor considers it appropriate to send a copy. In deciding who is appropriate in this context, the Mayor must consider all the bodies referred to in section 32(3) of the Act. Copies must also be sent to all district or county councils for areas adjoining Greater London that may be affected by the SDS, which the Secretary of State considers should be taken to include as a minimum any planning authority for an area adjacent to London. In addition, copies should be sent to regional planning bodies for areas adjoining Greater London.

⁷ PPS11 and PPS12 are available at:

www.communities.gov.uk/planningandbuilding/planning/planningpolicyguidance/planningpolicystatements/planningpolicystatements/; and guidance on Sustainability Appraisal and SEA available at: www.communities.gov.uk/planningandbuilding/planning/sustainabilityenvironmental.

⁸ The functional bodies set up by the 1999 Act are: Transport for London, the London Development Agency, the Metropolitan Police Authority, and the London Fire and Emergency Planning Authority.

3.11 The Mayor must make a copy of all representations received available for public inspection at the end of the consultation period. Good practice would also include publishing, as a minimum, summaries of responses received and to make these available on a website as soon as practicable after the close of consultation.

Examination in Public

3.12 Unless the Secretary of State otherwise directs (see para 3.15 below), the Mayor must organise an Examination in Public (EIP) of the proposed SDS. The costs of holding the EIP will be borne by the Mayor. The main purpose of the EIP is to provide a non-adversarial opportunity for the discussion and testing, in public and before a person or persons appointed by the Secretary of State (hereafter referred to as "the Panel"), of selected matters arising from the consideration of the proposed SDS. It is not an examination of the whole of the submitted proposals, nor is it a hearing of all representations.

3.13 The Panel will, after consulting the Mayor, determine the matters to be examined at the EIP and those who may take part. It will make draft proposals on participation and the matters to be discussed publicly available for comment at least 12 weeks before the opening of the EIP. It will notify those selected to take part in the matters to be examined at least 6 weeks before the start. No party, other than the Mayor, has an automatic right to appear at the EIP. The Panel is required to consider any written submission shorter than 2000 words in length, that it receives no later than 3 weeks before the opening of the EIP

3.14 Further requirements relating to the EIP are set out in the Regulations. The Examination must be run on a transparent, rigorous and objective basis, according to a clear timetable. Detailed guidance on the procedures to be followed for holding a public examination into regional spatial strategies is given in PPS11. This should be reflected, where applicable, in arrangements for conducting the EIP into the SDS.

Circumstances when an EIP might not be required

3.15 The 1999 Act provides that an EIP of a proposed SDS will be required unless the Secretary of State directs otherwise. The Secretary of State will normally consider favourably requests from the Mayor to make such a direction only where minor or uncontentious alterations are proposed to an existing SDS. In applying for any such direction, the Mayor should provide a statement setting out the reasons why an EIP is not to be held, the results of consultation carried out on the proposed SDS, and the steps taken to publicise his or her intention to seek a direction from the Secretary of State.

The Panel's Report

3.16 The Panel's report must be in writing. It must be made publicly available by the Mayor, within 8 weeks of its receipt, at the locations where the proposed SDS was made available. The Mayor should send one copy of the Panel's report to the Secretary of State and each London borough. The Mayor must take the Panel's report into account before publishing the SDS.

The Secretary of State's role

3.17 The Secretary of State has the power to direct that the SDS may not be published without such modifications as may be indicated in the direction. Unlike the power available to the Secretary of State in relation to development plans, this power

of direction may only be exercised for specified reasons, namely, if it appears expedient to the Secretary of State for the purpose of avoiding:

- a) any inconsistency with current national policies or relevant regional spatial strategies; or
- b) any detriment to the interests of an area outside Greater London⁹.

3.18 The Secretary of State expects that this power of direction will be used sparingly and, although it may be exercised at any time, normally only as a measure of last resort. The Secretary of State is a statutory consultee when the proposed SDS is published, and will have the opportunity to make objections in the normal way, and also to make representations to the EIP if necessary. In addition, Regulation 9(2) requires that no less than 6 weeks before publishing the SDS, the Mayor must send to the Secretary of State a statement of his or her intention to publish the SDS and a copy of the SDS that it is intended to publish, together with a statement of reasons where any recommendations in the Panel's report have not been accepted. This will provide the Secretary of State with a final opportunity to make directions, or to withdraw any existing directions, in the light of the Mayor's consideration of the Panel's recommendations.

Withdrawal of proposals

3.19 The Mayor may formally withdraw a proposed SDS at any time before publication. This provision is necessary because of the potential weight that proposals may carry within the planning system even before the SDS is published. Section 336 of the 1999 Act and regulation 10 set out the procedures that must be followed on withdrawal.

Publication of the SDS

3.20 In making any modifications to his or her original proposals, the Mayor must take account of:

- any representations made in accordance with the Regulations;
- any direction made by the Secretary of State and not withdrawn;
- the report of the Panel; and
- any other material considerations.

3.21 The Mayor may publish the final SDS, or any alteration or replacement to it, only after:

- the expiry of the period prescribed for representations on the proposals;
- taking account of all representations on the proposed SDS submitted within the prescribed period and made in writing in accordance with the Regulations;
- receipt of the Panel's report;
- expiry of the period following notice of intention to adopt referred to in para 3.17 and 3.18 above; and
- compliance with, or removal of, any direction made by the Secretary of State.

3.22 On publication of the SDS the Mayor must:

- give notice by advertisement;

⁹ Section 337(6) of GLA Act 1999.

- send copies to each borough and the Secretary of State;
- notify all others formally consulted on the draft proposals; and
- make available at all the locations where the draft SDS was made available for inspection:
 - a copy of the SDS;
 - a copy of any directions issued by the Secretary of State and of any written statements by the Secretary of State confirming that those directions have been complied with; and
 - a statement of reasons where any recommendations in the Panel's report have not been accepted.

3.23 Further detailed requirements are set out in parts II and III of the Regulations. The SDS will become operative on the date it is published.

Monitoring and data collection

3.24 Section 346 of the 1999 Act requires the Mayor to monitor the implementation of the SDS. The Mayor is also required to monitor local development documents, and UDPs, and to monitor and collect information about matters relevant to the review, alteration, replacement or implementation of the SDS.

3.25 Regular monitoring is essential to enable the Mayor to evaluate progress towards the objectives of the SDS, its implementation, and achievement of its policies, targets and performance indicators. Monitoring will help ensure the SDS is kept relevant and up to date and is an essential part of the review process (see paras 3.30 – 3.34 below). To these ends, the policies and proposals in the SDS should be expressed in a form that will facilitate monitoring and review.

3.26 An annual monitoring report (AMR) should be produced on progress in relation to policies, targets and performance indicators, following the approach set out for all other regions in PPS11, Chapter 3. This will ensure the SDS AMR adopts the same timetable as other regional AMRs and includes broadly comparable contents. The AMR should include relevant national core output indicators, as set out in PPS11 and described in more detail in government guidance on monitoring¹⁰. The AMR must state the number of net additional dwellings provided. A housing trajectory should be included to illustrate historic, proposed and actual performance on housing delivery over the plan period.

3.27 PPS11 also points to the need for close linkages between regional and local AMRs. Sections 397 to 399 of the 1999 Act provide a framework within which the Mayor can work with the boroughs to undertake monitoring and data collection. They enable the Mayor to bring forward and operate schemes for the collection of information to support and inform his or her strategic planning functions and the review process. For example, the Mayor will need to monitor and collect data on trends in land use and development and delivery of housing numbers in London.

3.28 In addition to monitoring, the Mayor will need to maintain a programme of research to inform the review process, for example, on demographic and economic trends.

Review, alteration and replacement

¹⁰ Regional Spatial Strategy Monitoring: A Good Practice Guide, ODPM, December 2005 and the current version of Core Output Indicators for Regional Planning.

3.29 The 1999 Act requires the Mayor to review the SDS from time to time. Given its role as a framework for borough LDFs and, for spatial planning in London generally, it is important that the SDS be kept relevant and up-to-date. The Secretary of State has reserve powers to direct the review, alteration or replacement of the SDS if necessary, but expects that these would be used only in exceptional circumstances.

3.30 It may not always be necessary to review the whole strategy at once. It may be more appropriate for a review to concentrate on a limited number of subject areas or themes, possibly as part of a linked programme of reviews. In reviewing the SDS the Mayor should have regard to the results of monitoring, to national or regional policy developments, to the need for consistency with the Mayor's other strategies, and any other relevant factors.

3.31 Any review, alteration or replacement of the plan must be subject to Strategic Environmental Assessment/ Sustainability Appraisal/ Habitats Regulations Assessment. The approach to these assessments should take account of relevant guidance.¹¹ Assessment should be proportionate, taking into account the scale and extent of the alterations or review proposed. It should build on previous assessments that have been undertaken.

3.32 Decisions on whether to alter or replace all or part of the strategy should be informed by the monitoring and review processes.

3.33 In deciding to make alterations to the strategy, the Mayor should consider the degree of inter-relationship between policies and the potential effects of changing one policy on others in the strategy. Selective alterations that do not consider the implications of connections between different policy areas may have damaging or unforeseen consequences for the coherence and effectiveness of the strategy as a whole. To assist readers of the alterations, the Mayor may choose, when publishing draft alterations, to identify those policies which are not being altered but which are considered to be directly linked to those that are being altered. This should assist readers in identifying the scope and inter-relationships of proposed alterations.

¹¹ See footnote 6 above.

4. RELATIONSHIP BETWEEN THE SDS AND BOROUGH PLANS

General conformity of Local Development Documents with the SDS

4.1 The Planning and Compulsory Purchase Act 2004, introduced Local Development Frameworks which, over time, will replace Unitary Development Plans. Local Development Frameworks comprise Local Development Documents (LDDs) of which there are two principal types. Firstly, Development Plan Documents (DPDs) which set the key planning policy framework for the borough area and form part of the statutory development plan along with the SDS. Secondly Supplementary Planning Documents (SPDs) which supplement the key policies in DPDs and are not part of the development plan. Where there is a conflict between the policies in a LDD (or UDP) and the SDS, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published¹².

4.2 The Act requires that LDDs in London must not be adopted unless they properly reflect the policies in the SDS. The test is one of general conformity and not conformity. In practice, this means that it is only where an inconsistency or omission in a LDD would cause significant harm to the implementation of the SDS will it be considered not to be in general conformity. The borough is required to seek the Mayor's opinion on the general conformity of a draft DPD with the SDS. The Mayor's opinion will form the starting point for the independent examination of the DPD. However, as far as possible, any issues of non-conformity should be resolved through discussion between the Mayor and the borough before the DPD reaches the examination. Further guidance on the application of the general conformity test is set out in paragraphs 4.19 to 4.22 of PPS12.

4.3 As noted in para 2.18 above, the SDS should identify clearly those policies and proposals relating to the development and use of land that are to be reflected in LDFs. The publication of reviews of the SDS should therefore be an important consideration in the timing of LDD reviews.

4.4 The Government expects the Mayor and the boroughs to work collaboratively in the development and review of LDDs to ensure that broader strategic concerns are reflected from the outset.

The status of the Spatial Development Strategy in examinations into draft Development Plan Documents

4.5 To ensure the Mayor's policies are fully considered when draft Development Plan Documents are examined, the Mayor's opinion of general conformity will be the starting point for the consideration of the DPD by the Inspector. The Inspector will be expected to recommend changes to the DPD in accordance with the Mayor's opinion unless there are sound planning reasons for not doing so.

Mayoral power to direct changes to Local Development Schemes

4.6 The Planning and Compulsory Purchase Act 2004 provides for local development schemes (LDS). The LDS is the local planning authority's work plan for the production of local development documents (LDDs). The GLA Act 2007 provides that local planning authorities in Greater London must send a copy of their

¹² Section 38(5) of the 2004 Act.

draft LDS to the Mayor at the same time as they send a copy to the Secretary of State¹³.

4.7 The Mayor may direct that changes be made to the LDS if it is necessary to ensure that key policies of the London Plan are reflected in the LDD work programme. The Mayor may also direct a local planning authority to prepare a revision to their LDS. This power is intended to ensure that local planning authorities bring forward proposals to revise their local development schemes in a timely manner to reflect changes to the policies in the SDS. The regulations will provide for the Mayor to have 28 days (running concurrently with the period for the Secretary of State to assess the draft Scheme) within which to issue a direction.

4.8 In considering whether to issue a direction and what its content should be, the Mayor must take account of:

- (a) the extent to which the LDS properly takes account of national, regional and local priorities;
- (b) whether the LDS is realistic in terms of its proposed timetable;
- (c) the resources likely to be available to the LPA to implement the LDS; and
- (d) the resources of the Planning Inspectorate to be able to deal with the workload involved in carrying out independent examinations of DPDs under section 20 of the 2004 Act.

4.9 The Secretary of State retains a power to direct a local planning authority not to implement a direction from the Mayor. The Secretary of State's power will only be exercised in exceptional cases such as where the Mayor has failed to take proper account of the matters set out above. To give the Secretary of State time to consider whether to override the Mayor's direction, the regulations will prevent the local planning authority from implementing the Mayor's direction for a period of 21 days from when the direction is made. The Government expects the Mayor to discuss the intention to make a direction with the Secretary of State and local planning authority before doing so. In addition, pre-submission discussions involving all parties are strongly encouraged.

Lea Valley Regional Park

4.10 Although the Lea Valley Regional Park Plan is not a development plan, when reviewing it the Lea Valley Regional Park Authority should seek to ensure that it is in general conformity with the SDS, insofar as its proposals and policies relate to areas within Greater London. The Authority should consult the Mayor accordingly.

Status of the SDS in decisions on planning applications

4.11 The published SDS is part of the statutory development plan under section 38(2) of the Planning and Compulsory Purchase Act 2004 alongside the adopted or approved borough DPDs or UDP. Therefore, planning applications should be determined in accordance with the policies in the SDS and borough DPDs or UDPs. Where there is a conflict between the policies in a LDD (or UDP) and the SDS, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published¹⁴.

¹³ The details of the arrangement will be set out in the *Town and Country Planning (Local Development)(England) Regulations 2008*, anticipated will come into force later in 2008. The guidance in paragraphs 4.6 to 4.8 in this Circular will not apply until that time and could be subject to change.

¹⁴ Section 38(5) of the 2004 Act.

5. THE MAYOR'S ROLE IN PLANNING APPLICATIONS

5.1 Within a plan-led system, the success or failure of strategic planning policies is ultimately determined through individual development control decisions.

5.2 Each year, London boroughs receive tens of thousands of planning applications. The Government believes that the vast majority of these applications should be decided by the boroughs. However, a small number of proposed developments will raise issues that could have a significant effect on the implementation of the Mayor's London Plan and therefore the wider development of London. Since 2000, the Mayor has had a negative power to direct a borough to refuse planning permission for development if to allow it to go ahead would prejudice implementation of the SDS or otherwise be contrary to good strategic planning. The Government wants to promote more positive Mayoral involvement in the consideration of these important development proposals, to help ensure London gets the development it needs. Therefore, the GLA Act 2007 provides for the Mayor to take over and determine small numbers of key applications in place of the borough, in addition to his existing power to direct refusal.

5.3 The provision of section 2A of the 1990 Act (inserted by section 31 of the GLAA 2007) is that 'the Mayor may direct that he is to be the local planning authority for the purposes of determining the application'. This means that he, from that point on, would be responsible for that application. The borough would still have an important role to play in terms of, for example, representing its community, enforcement and approval of some conditions and obligations.

5.4 The Government expects formal intervention by the Mayor to be necessary only in a small number of cases and only after the borough has had an opportunity to consider the application. The boroughs and the Mayor should work collaboratively on referred cases to achieve an outcome that reflects both regional and local policies and objectives.

5.5 To enable the Mayor to decide whether his involvement in an application is justified, the Mayor is to be consulted, as now, by the boroughs on a limited number of applications. On the basis of experience of the existing arrangements, we expect that approximately 300 to 350 applications a year may need to be referred to the Mayor because they may raise issues of potential strategic importance.

Definition of applications of potential strategic importance, PSI applications

5.6 The detailed definitions of the applications of potential strategic importance, PSI applications, that must be notified to the Mayor are set out in the schedule to the Order:

Part 1: large scale development;

Part 2: major infrastructure;

Part 3: development which may affect strategic policies; and

Part 4: development on which the Mayor must be consulted by virtue of a direction of the Secretary of State.

5.7 These categories are intended to represent types of development which, through their size, location or nature, are most likely to be of potential strategic importance. Not all applications falling within these categories will necessarily raise issues of strategic importance that warrant Mayoral involvement and few will raise issues that justify the Mayor taking over the application. In addition, not all

applications of potential strategic importance will be appropriate for the new power for the Mayor to take over and decide (see paragraph 5.12).

5.8 The criteria and thresholds used are intended to provide certainty as to whether the Mayor needs to be consulted. The information required for a borough to decide whether to consult the Mayor should normally be available from the planning application form.

5.9 The thresholds focus the Mayor's planning powers onto those planning applications for development of key importance for London, in particular those that can deliver housing, including affordable housing, and waste infrastructure. The thresholds will be periodically reviewed by the Secretary of State in the light of experience and of the policies set out in the SDS.

5.10 Annex 3 provides further guidance on applications covered by the Order.

Types of applications the Mayor can take over

5.11 The Mayor's power to take over and determine applications will only relate to those caught by the thresholds in parts 1 and 2 of the schedule to the Mayor of London Order, i.e large scale development and major infrastructure. The thresholds in parts 3 and 4 of the schedule identify development proposals that could undermine the strategic policies in the London Plan. Where an application is referred to the Mayor under one or more thresholds in Parts 3 or 4 only, the power for the Mayor to take over the application and determine it will not apply. However, the power to direct refusal of the application will remain. For the avoidance of doubt, if an application meets thresholds in parts 1 or 2 **and** parts 3 or 4, the Mayor will have power to take over jurisdiction for the application.

5.12 The Mayor's power to take over and determine an application will not apply to any planning applications that fall within the geographic areas under the jurisdiction of the Olympic Delivery Authority or London Thames Gateway Development Corporation. These bodies have been expressly established to deal with the strategic planning for these areas. However, the Mayor's existing power to direct refusal of appropriate applications is unaffected.

5.13 For clarity, applications for development includes both the singular and plural i.e. the thresholds in the Mayor of London Order 2008 apply to applications for a 'building' as well as 'buildings'. For example, Category 3D encompasses applications for development, or change of use, of a single as well as several buildings, that add up to a floorspace of more than 1,000 sqm¹⁵.

Processes of notification of applications and Mayoral directions

5.14 The Government wishes to ensure that processes for dealing with planning applications of potential strategic importance are as simple as possible and there is one set of procedures for applications of potential strategic importance irrespective of what intervention the Mayor might subsequently have powers to make. The diagram at annex 1 sets out the procedures.

¹⁵ The Interpretation Act 1978 Section 6 sets out that in any Act, e.g. TCPA 1990, unless the contrary intention appears words in the singular include the plural and words in the plural include the singular.

Notification of PSI applications to the Mayor

5.15 Planning applications are submitted to the borough which will assess them against the thresholds in the Order. If an application meets one or more of the thresholds it is an application of potential strategic importance and should be copied to the Mayor, along with the other information required in the Order (copies of connected applications and of plans, drawings or other documents submitted by the applicant in support of the application and connected applications), as soon as possible after the borough has received it. The Government expects boroughs to refer relevant applications as quickly as possible to ensure they are considered in a timely manner.

5.16 The Mayor will be able to do one of two things in relation to an application of potential strategic importance that is referred to him¹⁶;

- a) be consulted again once the borough has made a draft decision on the application; or
- b) if the application raises no key issues of strategic importance, have no further involvement in the consideration of the application.

5.17 Starting on the date he receives a referred application, the Mayor will have 6 weeks to consider the application and must provide the borough with a statement on whether he considers the application to be compliant with London Plan policies, or to set out where deficiencies might lie and suggest possible remedies to address these. This is the start of stage 1. The Mayor should avoid commenting on parts of the planning application that are not of more than local importance and which do not have significance to the wider interests of London. The statement should avoid definitive conclusions about whether the application should be approved or refused as this may risk being seen to prejudice any subsequent decision by the Mayor to take over the application.

5.18 The Order specifies 6 weeks to be the maximum period of time for the Mayor to provide his comments. In the majority of cases the Mayor should be able to send his statement to the borough well within this period.

5.19 The boroughs and Mayor should, where possible, engage in pre-application discussions with developers so as to assist in minimising areas of potential conflict and uncertainty.

5.20 If the Mayor considers that the application raises no issues of strategic importance, he may, at any time before the borough has taken a decision on the application, choose to have no further involvement in the application. If the Mayor takes this view he should inform the borough of this as soon as possible after receiving the application. The borough will then be left to determine the application.

Notification of the borough's decision on the application to the Mayor

5.21 The Mayor's 6 weeks is part of the borough's normal 13 week period for reaching a decision on an application of the scale caught by the thresholds. Once the borough has made a decision on the application, it must always, if the application meets the relevant thresholds in the Order, notify the Mayor of their decision according to the timescales above. This is known as stage 2. This does not apply

¹⁶ The Mayor of London Order 2008, Article 1, sets out that an application referable to the Mayor is 'an application for planning permission, or for planning permission without complying with conditions subject to which a previous planning permission was granted'. The latter is also known as s.73 applications.

where the Mayor has previously notified the borough in writing that he does not wish to be consulted on the borough's decision on the application.

5.22 The borough must notify the Mayor by sending him the following information:

- a copy of any representations made to the borough about the application;
- any officer's report on the application;
- a statement of the decision the borough proposes to make; and
- where they propose to grant permission, a statement of any conditions it proposes to impose and a draft of any planning obligation it proposes to enter into and details of any proposed planning contribution..

5.23. Once notified of the borough's draft decision, the Mayor must within 14 days, from the date he receives the notification, do one of three things. He may:

- 1) allow the borough decision to proceed unchanged; or
- 2) direct the borough to refuse the application under his current power; or
- 3) for applications referred under the relevant thresholds, apply the policy test to decide whether to take over the application and, if justified, direct that he is to determine the application.

5.24 The Mayor cannot delegate his power to decide whether to take over an application and must notify the borough of his decision and if choosing option 2 or 3 give full reasons for his decision.

Directing refusal

5.25 The Mayor's power to direct a borough to refuse a planning application applies to all applications referred under Parts 1, 2, 3, and 4 of the schedule. If the Mayor considers that to grant permission on a potentially strategic important application would be:

- a) *contrary to the spatial development strategy or prejudicial to its implementation; or*
- b) *otherwise contrary to good strategic planning in Greater London,*

he may direct the local planning authority to refuse the application.

The policy test

5.26 The Mayor's power to take over and determine applications referred under Parts 1 and 2 of the schedule is a decision about who should have jurisdiction over the application rather than whether planning permission should ultimately be granted or refused. The policy test consists of the following three parts all of which the Mayor must demonstrate an application meets (with one exception - see paragraph 5.28):

1. *significant impact on the implementation of the London Plan;*
2. *significant effects on more than one borough; and*
3. *sound planning reasons for his intervention.*

5.27 Parts 1 and 2 of the test identify the impact an application would have on the Mayor's policies and the geographical extent of the impact whilst part 3 deals with the reasons for the Mayor's intervention, taking into account the borough's draft decision on the application. These tests are intended to ensure that the Mayor can only intervene in the most important applications.

5.28 Individual housing schemes of over 150 units (Category 1A of the schedule) may not, on their own, have impacts on more than one borough. Cumulatively, however, they add up to a significant proportion of the overall housing supply in London, and in the context of the level of need in London, schemes of this size are

capable of being of strategic importance. Therefore, part 2 of the policy test (significant effects on more than one borough) will not apply to applications referred under Category 1A, irrespective of whether other thresholds are triggered. Therefore, the policy test for applications involving housing over 150 units will be whether there is a:

- *significant impact on the implementation of the SDS; and*
- *sound planning reasons for intervening.*

5.29 This is still a rigorous test and puts the onus on boroughs to demonstrate through their draft decisions that they have sought to maximise the delivery of housing and affordable housing from schemes.

Taking account of borough performance

5.30 The Mayor should only intervene where it is necessary to ensure implementation of SDS policies. To recognise boroughs who are delivering against these policies, the Mayor, in applying the relevant policy test, will be required to take account of the extent to which the borough *has achieved, and is achieving*, any relevant development plan targets. Importantly, this includes current as well as past performance to give as comprehensive a picture as possible. For applications involving housing, relevant targets will include those for the delivery of new homes and affordable housing. The requirement for the Mayor to take account of borough performance against targets will form an important part of the consideration of whether there are sound planning reasons for the Mayor to intervene in an application.

5.31 This requirement means the Mayor must fully consider how and why the borough has made the decision it has on an application, in light of the borough's wider performance, the individual circumstances of the site and other relevant factors.

5.32 If, to any extent, a policy contained in a development plan for an area conflicts with another policy in the development plan Section 38(5) of the Planning and Compulsory Purchase Act 2004 provides that the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be). Therefore, in practice, sometimes the most up to date policies will be contained in the SDS and sometimes they will be at borough level.

5.33 In practice, where an individual application meets the relevant policy test in terms of impact on the SDS but a borough is delivering against relevant development plan targets, the Mayor should not normally assume jurisdiction for that application. In the case of applications for mixed use where development plan targets exist and are being met for some of the uses but not others, the Mayor would have to reach a balanced view on whether intervention was justified.

Other applications

5.34 Where a planning application is in outline and has reserved matters or has other consents connected with it, the Mayor will be responsible for determining these where he takes over the planning application. These are so called 'connected applications'¹⁷.

¹⁷ The three types of 'connected applications' to an application for which the Mayor is the local planning authority are outlined in TCPA 1990 as amended by GLA Act 2007 Section 31(5) and (6).

5.35 There are three types of connected application: listed building consent, conservation area consent and hazardous substances consent. For the avoidance of doubt, applications for listed building consent include applications for the variation or discharge of conditions subject to which listed building consent has been granted. Similarly, applications for hazardous substances consent includes applications for such consent without a condition subject to which a previous consent was granted.

5.36 However, the Mayor should only take decisions that it is appropriate for him to take. Therefore, the Mayor should, unless there are exceptional circumstances, pass the decision making on these reserved matters or other consents that are related to planning applications he has determined in outline, back to the relevant borough. This provision¹⁸ relates specifically to the approval of reserved matters and the approval of details under a listed building consent.

Conditions

5.37 Where the Mayor takes over an application he will become responsible for setting any conditions to be attached to the permission. Government expects the Mayor to consult and work collaboratively with the boroughs in deciding conditions. In doing so, the Mayor should take account of any conditions that the borough has asked him to impose.

5.38 The Mayor may agree with the borough that it should deal with applications for approval of details, as prescribed by the condition attached to the permission. The wording of the condition should set out who will be responsible for making the decision on subsequent approval of details. The expectation is that, unless there are exceptional circumstances, detailed matters are more appropriately dealt with by the borough at the local level rather than by the Mayor.

5.39 It should be noted that applications for planning permission without complying with conditions subject to which a previous planning permission was granted, so called s.73 applications, are not automatically determined by the Mayor, even where he had granted the original permission. The Order outlines that such applications will have to be submitted to the borough in the first instance, and if it meets the criteria for a PSI application must then be referred to the Mayor .

Section 106 planning obligations

5.40 Where the Mayor takes over an application he will become responsible for agreeing any planning obligations. The Mayor will need to take full account of the borough's development plan policies and views on the obligations that should be attached to any planning permission. Where a borough is minded to approve an application, they have to also provide details of any obligations prepared when notifying the Mayor of their decision. Government encourages boroughs to assist the Mayor by, as far as possible and reasonable, providing details of any conditions or obligations it would like to attach to a permission, where such have been prepared by the borough.

5.41 All of the normal rules and requirements for planning obligations set out in Circular 5/05¹⁹ apply to obligations agreed by the Mayor acting as the local planning authority. Individual obligations should set out clearly the details of the mitigation to be provided, who will provide it, when it will be provided and what the level and timing of funding for the mitigation will be.

¹⁸ Section 2C Matters reserved for subsequent approval, inserted into TCPA 1990 by the GLA Act 2007 Section 31.

¹⁹ ODPM Circular 05/2005 Planning Obligations.

5.42 It is the responsibility of the local planning authority, whether the Mayor or the borough, to distribute any sums due under the obligation in accordance with the terms of the agreement. For example, if the obligation requires that the developer contributes financially to the provision of open space to be provided by the borough then, where the Mayor is acting as the local planning authority, the developer will pass the agreed sum to him in accordance with the obligation and he will pass those funds on to the borough.

Enforcement

5.43 Boroughs will be principally responsible for enforcing obligations and conditions since they already have enforcement staff. However, the Mayor will also have powers to enforce these matters if necessary.

Exercise of the Mayor's powers

5.44 The Mayor should consider cases as quickly as possible once he has assumed jurisdiction. It is possible that in some cases the Mayor would be able to rely, in large part, on the work done by the borough in terms of any draft section 106 and planning conditions and so make a decision quickly, but this will not always be the case, particularly if the borough's decision was to refuse the application or where the borough failed to determine the application. The Government expects the Mayor and applicant to agree a period of time for the Mayor to consider the application.

5.45 In determining whether to use the power of direction to refuse an application, the Mayor must in all cases have regard to the development plan so far as it is material to the application. Article [6(1)] of the Order limits the Mayor's power to cases where he considers that to grant permission on an application would be contrary to the SDS or prejudice its implementation, or otherwise be contrary to good strategic planning in London. Article [6(2)] of the Order sets out the matters the Mayor must have regard to, in so far as they are material, if he considers the application is contrary to good strategic planning in London. This list is not intended to be exhaustive.

5.46 In relation to the power to assume jurisdiction over planning applications referred under Parts 1 or 2 of the schedule of the Order, the Mayor's intervention should be a matter of last resort and all parties should work collaboratively to try to resolve differences before this point. Similarly, any disagreements between boroughs and the Mayor, or applicants and Mayor, about the application of the policy test should ideally be resolved through discussion.

5.47 The Mayor should send a copy of his decision notice on applications he takes over to the borough alongside the applicant and the Secretary of State.

Applicants' rights in cases of non-determination and refusal

5.48 In some cases a borough may not determine an application within the relevant time limit, the passing of which triggers an applicant's right of appeal to the Secretary of State. Often, because of the complex nature of the application, the applicant will agree with the borough an extended period for the borough to determine the application. These new arrangements should not be used to undermine this practice. However, where there is no such agreement and the application is referable to the Mayor under thresholds in Part 1 or Part 2 of the schedule, the applicant will have the right to invite the Mayor to apply the policy test relating to his power to take over applications and, if appropriate, assume jurisdiction

over the application. Where the Mayor decides to take over the application, the applicant still has the right of appeal against non-determination to the Secretary of State.

5.49 Where the Mayor has directed refusal on the application, the applicant will, as now, be able to appeal to the Secretary of State. The same applies where the Mayor has taken over an application under Parts 1 or 2, and decided to refuse it.

The role of the borough

5.50 The potential for the Mayor to assume jurisdiction over certain planning applications and determine them himself does not diminish the crucial role for boroughs in representing their communities and advising on the local impacts of proposed development.

5.51 Where the Mayor considers that a planning application may raise issues that could significantly impact on the SDS he will set these out in his statement to the borough. The borough should take full account of these views in considering the application and, where necessary, involve the Mayor in discussions with officers and the applicant to seek to resolve differences.

5.52 The boroughs' role and involvement does not end if the Mayor decides to take over an application. In the interest of good planning and meeting the needs of their community, the boroughs will be expected to keep all relevant information on the application on their register. This includes for example, notices of direction or decision notices from the Mayor relating to that application.

5.53 Boroughs should for their decision targets for major applications build in time related to the referral of PSI applications to the Mayor and the time allowed for the Mayor taking a decision at stage 2, i.e. 14 days. Applications over which the Mayor directs that he is to be the local planning authority will not count towards the calculation of Housing and Planning Delivery Grant.

The role of statutory consultees

5.54 The role of statutory consultees is not affected by the 2007 Act or the Order. English Heritage's role and power in relation to applications for listed building consent and conservation area consent to a local planning authority in London remain unchanged²⁰. This includes the power to direct refusal, which applies regardless of the whether the decision is taken by the borough or the Mayor.

The role of the Secretary of State

5.55 The Secretary of State's powers in relation to planning applications remain unchanged. In particular, she will retain the ability to call applications in for her own determination and will remain responsible for deciding planning appeals. However, the circumstances in which the Secretary of State would expect to exercise her powers could be more limited, such as where an application raised issues of national importance.

5.56 The Secretary of State will also continue to be notified of applications falling under national notification directions²¹. Where both the Secretary of State and the

²⁰ Sections 14 and 74(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

²¹ Currently these are:

Mayor need to be notified of a borough's intention to grant planning permission, they should be notified simultaneously. The Secretary of State has a 21-day period (or longer if a direction under Article 14 of the GDPO²² has been issued) to decide whether to call in the application.

5.57 Where the Mayor directs a borough to refuse an application the borough must follow that direction, unless the Secretary of State has issued a direction, under Article 6(8) of the Order prohibiting the local planning authority from implementing the Mayor's direction for a specified period. Where the Mayor has taken over jurisdiction of an application, the Secretary of State retains the power to call in that application in accordance with the national notification directions as outlined above. The interaction of the notification systems for the Mayor and the Secretary of State may be reviewed in the light of experience.

The Mayor's role in planning applications outside London

5.58 The Mayor has no formal powers over planning applications submitted to local planning authorities outside London. However, some large scale development proposals outside London could have impacts for proper planning in London. Therefore, the Government will amend the GDPO to require local planning authorities outside London to consult the Mayor if they consider an application to have impacts on the strategic planning of London. The Mayor will then be in a position to make representations to the local planning authority about the individual application.

Representation Hearings

5.59 The Mayor personally must make the decision as to whether to approve or refuse an application he has taken over and cannot delegate it. The Mayor should make these decisions in an open and transparent way, though this has to reflect the practical circumstances of the Mayor as a single decision maker.

5.60 Therefore, the 2007 Act requires the Mayor, before he determines an application, to give the local planning authority and the applicant an opportunity to make oral representations to him about a development proposal at a public representation hearing. The Mayor must also prepare and publish a document setting out any other persons, or organisations, he will hear oral representations from, the procedures he will follow for considering oral representations, and the arrangements for identifying the factual information that is agreed by the parties.

5.61 The Order also applies the requirements of Part 5A of the Local Government Act 1972 relating to access to, and conduct of, public meetings, and access to relevant documents, to the representation hearings the Mayor must hold. These requirements, such as ensuring that representation hearings are open to the public and that the public have access to agendas and reports, will ensure that Mayoral decision making is as open and transparent as possible.

i) the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999
ii) the Town and Country Planning (Shopping Development) (England and Wales) (No.2) Direction 1993
iii) the Town and Country Planning (Playing Fields)(England) Direction 1998
iv) Circular 11/05: The Town and Country Planning (Green Belt) Direction 2005
v) Circular 04/06 (Communities and Local Government): The Town and Country Planning (Flooding) (England) Direction 2007.

²² The Town and Country Planning (General Development Procedure) Order 1995.

Appeals and award of costs

5.62 Where the Mayor has issued a direction to refuse an application or where the Mayor takes over an application and subsequently refuses it, the applicant will have the normal right of appeal to the Secretary of State against the Mayor's refusal of planning permission.

5.63 The procedures for handling most planning appeals in England include provisions for the Mayor of London, where an appeal has been submitted in respect of a planning application that has been formally notified to the Mayor under the provisions of the Order.

5.64 Where an appeal is submitted following a direction to refuse from the Mayor and is dealt with under the inquiries or hearings procedures, the Mayor is entitled to appear and give evidence, and in the case of inquiries, cross-examine other parties. Under these procedures, if the Mayor has been notified of an application, but has not directed refusal of planning permission, he or she will be treated as if he or she was a statutory party in a subsequent appeal.

5.65 If the appeal is dealt with by way of written representations and the Mayor has directed refusal, the Mayor is notified of any appeal, is informed of all the representations made on the appeal and given an opportunity to make representations and to comment on other parties' representations. In the event of the Mayor being notified of an application, but not directing refusal, he or she will be treated like an interested party and is notified of the appeal and given an opportunity to make representations.

5.66 Where the Mayor has taken over an application and subsequently refused it, the Mayor will be the local planning authority for the purposes of any appeal to the Secretary of State. In this case, the borough will have the right to be notified of any appeal and will be entitled to appear and give evidence, and, in the event of an inquiry, cross examine other parties. Where the borough initially intended to grant planning permission for the application, it will be treated as a statutory party in the subsequent appeal.

5.67 Section 345 of the 1999 Act provides that the Mayor may be ordered to pay the Secretary of State's costs of holding an appeal inquiry and the costs of other parties where he or she has directed refusal of planning permission. As the local planning authority for any application he takes over and determines, the Mayor will be subject to the normal provisions of the costs regime. This is intended to guard against inappropriate use of the Mayor's power of direction. An order for costs can be made whether or not the Mayor participates at an inquiry. Annex 3 to this circular modifies Circular 8/93 on the award of costs to give guidance on the circumstances in which such an order may be appropriate.

Propriety

5.68 Attention is drawn to the separate guidance on ethical standards for the Greater London Authority issued by the Secretary of State²³ and the guide for members issued by the Standards Board for England²⁴. In exercising his or her role within the planning system, the Mayor will need to be able to demonstrate that he or she has complied with all legal requirements regarding procedural fairness and

²³ Secretary of State's Guidance to the Greater London Authority: Ethical Standards 2000.

²⁴ Standards Board for England: The Code of Conduct Guide for Members May 2007.

propriety, and should ensure that decisions are properly based on planning considerations.

5.69 The Mayor will need to take particular care in relation to his public statements and behaviour regarding planning applications, particularly when one of his functional bodies has an interest in an application. Whilst the Mayor would not be precluded from assuming jurisdiction over an application where he has an interest he or she must avoid any perception of bias or pre-judging such applications, particularly in the statement he provides to the borough. The GLA Standards Committee is encouraged to draw up a code of conduct to cover the Mayor's new role in relation to planning applications.

6. THE MAYOR'S ROLE IN REPRESENTING LONDON'S PLANNING INTERESTS

6.1 The Act requires the Mayor to represent the planning interests of London in discussions about broader regional planning matters. He or she may also represent London's views externally on other matters of common interest concerning the planning and development of areas within or in the vicinity of Greater London. The Mayor is required to consult the boroughs from time to time about the exercise of this function.

6.2 When reviews of RSS are being carried out for surrounding regions, the Mayor should take an active role on behalf of London in liaising with the relevant regional planning bodies in order to secure consistency and coherence between the SDS and that RSS, and in seeking co-ordination on strategic planning matters of importance to the broader south east area.

ANDREW MELVILLE

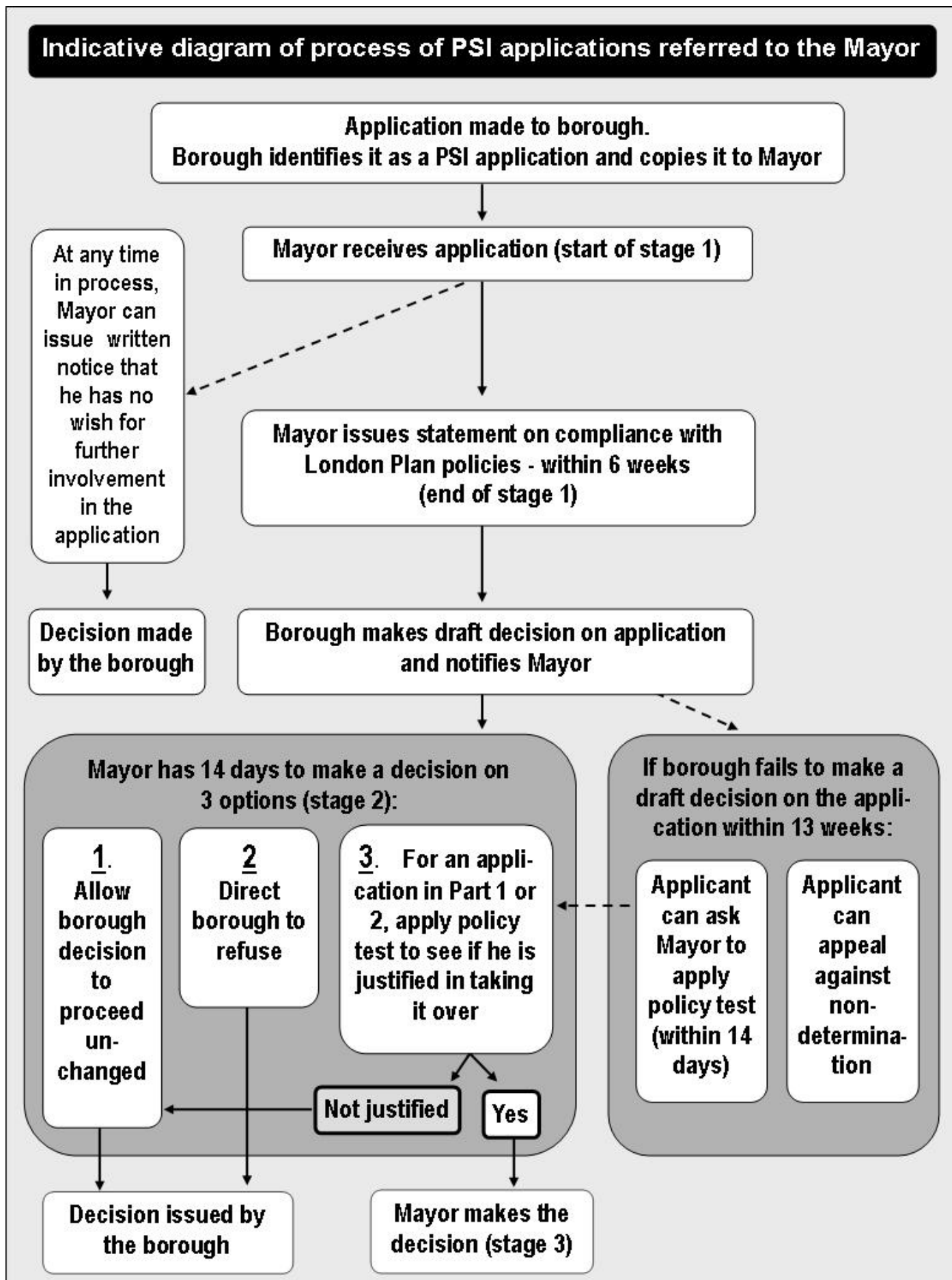
Deputy Director

Head of Paid Services, Greater London Authority

The Chief Executive, London Borough Councils

The Town Clerk, City of London

Annex 1. DIAGRAM OF PROCESS OF APPLICATIONS REFERRED TO THE MAYOR



Annex 2. THE ROAD NETWORK IN LONDON

1. Transport for London (TfL), the Mayor's transport executive, is the highway authority for a network of London's most important roads - the GLA roads. The network is defined in the GLA Roads Designation Order 2000 and the GLA Roads Designation (Amendment) Order 2000. The network is based on the red route and primary route networks with some adjustments to take account of new roads and with some additional roads in central London, Docklands, Croydon and Kingston.

2. The Secretary of State will continue to have responsibility for motorways linking to the national network (M1, M4, M11 and M25), as well as the A3113 which links Heathrow Airport to the M25. All other trunk roads in Greater London have become GLA roads.

3. The Mayor has power under section 14B of the Highways Act 1980 to make an order directing that a GLA road should become a borough road or a borough road should become a GLA road. In both cases, the borough(s) affected must give consent. Where consent is refused, then the Secretary of State will decide whether to confirm the order, with or without modification.

The London Road Hierarchy

4. The Traffic Management Act 2004 introduced the Strategic Road Network (SRN) for London. The SRN provides the Mayor with new powers over important borough roads to ensure that road works are properly co-ordinated. These powers should minimise delay and disruption to the road network.

Statutory consultation of TfL as highway authority

5. Under Article 10 of the Town and Country Planning (General Development Procedure) Order 1995 (SI 1995/419), the local planning authority should consult TfL, as a local highway authority, in the prescribed circumstances.

6. This is in addition to any requirement to consult the Mayor on applications for planning permission which are of potential strategic importance. (see Section 6 of this guidance).

Annex 3. STRATEGICALLY IMPORTANT SITES AND VIEWS

1. Section x of this circular lists the four main groups of development proposals that are covered in the Schedule to the Order. The fourth category is development which may affect strategic sites and views and is defined in the Order as "Development on which the Mayor must be consulted by virtue of a direction of the Secretary of State." The Secretary of State intends to use this power of direction primarily to designate:

- sites or areas which are considered to be of such strategic importance that the Mayor must be consulted on all (or on any specified categories of) applications within the site or area; and
- viewing corridors, settings and background areas relating to key strategic views.

2. This power has been used to transfer to the Mayor responsibility for monitoring development proposals covered by existing directions that require consultation with the Secretary of State. These include directions relating to development of strategic wharves along the Thames and development affecting the eleven protected vistas of St Paul's Cathedral, the Palace of Westminster and the Tower of London, part of the London View Protection Framework established by the London Plan (see below). The power may also be used to help protect potential sites or alignments for major transport infrastructure.

3. Thereafter the Secretary of State expects that the power will be used sparingly, based on proposals made by the Mayor which are related closely to his or her strategic policy objectives, and only after consultation with the boroughs concerned.

(a) Strategic Wharves along the Thames as defined on Map 4C.1 of London Plan

4. The Secretary of State has issued directions, which require a local planning authority to consult the Mayor on any planning application submitted to that authority, which wholly or partly includes development within a wharf site defined in these directions. By virtue of paragraph 1 of category 4 Part IV of the Schedule to the Order, a planning application to which one of those directions applies is an application of potential strategic importance. Consequently, the local planning authority is required to comply with articles 3 and 4 of that Order. Details of these directions are available from the GLA or the relevant borough.

(b) Protected vistas

5. When the Mayor and GLA came into being in 2000 responsibility was transferred from the Secretary of State to the Mayor of London for setting strategic policies relating to London's view protection framework. This included the ten Strategic Views of St Paul's Cathedral and the Palace of Westminster established in 1991 by RPG3A. .

6. In taking forward responsibility for strategic views, the Mayor in his London Plan published in 2004 and 2008, included policies (4B.15 to 4B.17) setting out the framework for the protection of views of strategic importance. In developing his LVMF he identified 26 views for protection within four view types: 6 London Panoramas (including 8 of the former RPG3A Strategic Views), 13 River Prospects, 4 Townscape Views and 3 Linear Views (including the other 2 former RPG3A Strategic Views). These views became operational on 13th July 2007 when the Mayor's London View Management Framework (LVMF) was published and the RPG3A Strategic Views Directions withdrawn and replaced with new Directions for the eleven protected

vistas. The Directions issued under powers contained in articles 10(3) and 27 of GDPO are statutory documents directing the circumstances when consultation must take place on proposals before planning permission is granted. They ensure that in addition to notifying the other local planning authorities involved in protecting a strategic view, English Heritage, CABE, Historic Royal Palaces (in relation to the Vista of the Tower of London) and the Mayor are directly involved in the process of considering applications for development which could affect these protected vistas. With respect to consultation with the Mayor, these directions are similar in operation to the directions which relate to strategic wharves along the Thames.

7. As explained in paragraph 6 above, where a local planning authority receives an application to which one of these directions applies, that authority is required to comply with articles 3 and 4 of the Order. The 11 Directions are reproduced in appendix G of the Mayor's LVMF supplementary planning guidance document. Copies are also available from the Government Office for London and can be downloaded from our website at www.gos.gov.uk/gol/Planning.

Definitions of "Central London" and "Thames Policy Area"

8. These areas are defined within the Order by reference to maps. The maps may be reviewed from time to time, along with the Order itself, as the policies on these strategically important areas evolve. They are electronically available at the GOL website at www.gos.gov.uk/gol/Planning.

Applications for orders under the Transport and Works Act

9. Orders made under the Transport and Works Act 1992 ("TWA") are the normal means of authorising, amongst other things, new railway, tramway and other guided transport schemes. They may also be a means of authorising works interfering with navigation rights, such as new bridges or barrages. Although relatively few TWA applications relating to London have been, or are likely to be, submitted to the Secretary of State in any one year, experience suggests that those that do arise are usually of strategic planning importance for the capital, and hence likely to be of interest to the Mayor. It has therefore been decided that the Mayor should receive copies of all TWA applications for works in Greater London, through a requirement in the relevant TWA procedure rules. Promoters will also be encouraged to consult the Mayor on such schemes before submitting a formal application. It will be open to the Mayor to raise objections to, or to make other representations on, any TWA application.

Applications for consent under the Electricity Act

10. Applications for consent and deemed planning permission to construct, extend or operate an electricity generating station, whose capacity exceeds 50 megawatts, and for the installation of electric lines above ground (exceeding 20 kilovolts), are dealt with by the Secretary of State for Business, Enterprise and Regulatory Reform under the provisions of the Electricity Act 1989. Notice of the application must be served by the applicant on the relevant local planning authority. The relevant authority should note the criteria and thresholds in the Order in deciding whether consultation with the Mayor is necessary. Circular 14/90 - Electricity Generating Stations and Overhead Lines gives advice on the procedure for obtaining the views of local planning authorities and other parties on these applications. In making representations on an application to the Secretary of State for Business, Enterprise and Regulatory Reform the relevant authority should indicate which interested parties have been consulted on the proposals, the details of any

representations received and the particulars of any representations which have been made.

Annex 4. AWARD OF COSTS

1. Section 345 of the Act inserts a new section 322B into the Town and Country Planning Act 1990 to deal with cost situations where an local planning authority has refused an application in compliance with a direction from the Mayor (see Section 6.(v) above). These provisions are designed to ensure that the Mayor is fully embraced by the costs regime. They largely replicate the existing position under the Town and Country Planning Act 1990, although they go further in one respect - they provide for the Mayor to pay costs in certain circumstances where he or she is not a party to the relevant inquiry or hearing.

The operation of Section 322B of the Town and Country Planning Act 1990

2. Section 322B applies in three separate situations-

- where a local inquiry is held under section 320(1) of the Town and Country Planning Act 1990 (see section 322B(2)),
- where a hearing is held to which section 322 of the Town and Country Planning Act 1990²⁵ applies (see section 322B(3)), and
- where arrangements are made for a local inquiry and the inquiry does not take place and section 322A of the Town and Country Planning Act 1990 applies (see section 322B(4)).

3. With respect to a local inquiry, both sections 322B(5) and (6) apply. Section 322B(5) provides that the costs incurred by the Secretary of State in relation to the inquiry shall be paid *either* by the Mayor of London if he or she is not a party to the inquiry and if the Secretary of State decides that he or she acted unreasonably in making the relevant direction, *or* otherwise by such local planning authority or party to the inquiry as the Secretary of State directs (as with other inquiries). Section 322B(6) empowers the Secretary of State to make orders as to the costs of the parties to the inquiry. The parties by whom the costs are ordered to be paid may include the Mayor of London, if he or she is not a party to the inquiry and if the Secretary of State decides that he or she acted unreasonably in making the relevant direction.

4. With respect to a hearing, only section 322B(6) applies. Thus, the Secretary of State may make orders as to the costs of the parties to the inquiry and the parties by whom the costs are ordered to be paid may include the Mayor of London if he or she is not a party to the inquiry and if the Secretary of State decides that he or she acted unreasonably in making the relevant direction.

5. Where arrangements are made for a local inquiry and the inquiry does not take place, only section 322B(6) applies.

6. Section 322B does not apply in respect of appeals that are determined by persons appointed by the Secretary of State. A development order will be made to ensure that provisions similar to sections 322B(5) and (6) will apply to the application of paragraph 6(4) of Schedule 6 to the Town and Country Planning Act 1990 and that a provision similar to section 322B(6) will apply to the application of paragraph 6(5) of that Schedule.

Policy guidance on the award of costs

²⁵ Section 322 has effect only for the purposes of awards of costs in relation to proceedings which give rise to a hearing, see S.I. 1991/2698.

7. Policy guidance on the award of costs incurred in planning and other proceedings is set out in Circular 8/93 - 'Award of costs incurred in planning and other (including compulsory purchase order) proceedings'. This Annex supplements, and where stated below amends, Circular 8/93 to give guidance on the award of costs to or against the Mayor in respect of proceedings carried out under the provisions of the Planning Acts.

(a) Status of the Mayor

8. For the purpose of an award of costs the Mayor should be treated as a "principal party" where an appeal has been made following a direction to refuse planning permission issued by the Mayor and implemented by the local planning authority, or where the Mayor has determined the application himself. In all other cases, the Mayor should be treated as a third party. Guidance on the status of other parties is set out in Circular 8/93, Annex 1, Paragraph 12.

9. Except where this Circular indicates otherwise, in those cases where the Mayor has the status of a principal party, references in Circular 8/93 to "the planning authority" should be taken to apply also to the Mayor where relevant.

10. In cases where the Mayor is a principal party, an appeal may be held "in abeyance" or the inquiry postponed without risk of an award of costs in accordance with Annex 2 of Circular 8/93 only where there is agreement between all principal parties.

(b) Unreasonable behaviour

11. The following is hereby added to the Appendix to Circular 8/93, "Unreasonable Behaviour: A Summary of the Criteria":

"Where he or she is a principal party to an appeal, the Mayor of London is at risk of an award of costs against them if, for example, he or she:

- (1) fails to comply with normal procedural requirements for inquiries or hearings, including compliance with relevant Regulations;
- (2) fails to provide evidence, on planning grounds, to substantiate any reason for refusal of planning permission arising from a direction issued by the Mayor as set out in the accompanying statement of reasons;
- (3) fails to take into account relevant policy statements in Departmental guidance or relevant judicial authority;
- (4) directs refusal of planning permission for a modified scheme where an earlier appeal decision indicated this would be acceptable, and circumstances have not materially changed;
- (5) at a late stage, introduces an additional reason for a direction, or abandons a reason for a direction."

As with the existing Appendix, this list is illustrative and not exhaustive, and needs to be read in conjunction with the relevant Annexes to Circular 8/93.

12. As regards the substantiation of reasons for refusal of permission, for the purposes of the award of costs, the Mayor, and not the local planning authority, shall be regarded as responsible for providing evidence on those matters covered in the statement of reasons accompanying his or her direction.