

*The Greater London Authority:
The Government's Final Proposals
for Additional Powers and
Responsibilities for the Mayor
and Assembly*

A Consultation Paper on changes to the
Mayor of London Order 2000

August 2006

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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DCLG Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
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Textphone: 08701 207 405
Email: communities@twoten.com
or online via the DCLG website: www.communities.gov.uk

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Introduction

1. On 13th July the Government announced its final proposals for additional powers for the Greater London Authority – the Mayor of London and the London Assembly. The proposals include strengthened Mayoral planning powers. The Policy Statement, accompanying Regulatory Impact Assessment (RIA) and Summary of the Responses to Consultation can be read on the DCLG website at www.communities.gov.uk/glapowers
2. The Government believes that the Mayor should have discretion to decide a small number of the most strategically important planning applications in London to ensure decision-making takes place at the most appropriate level and regional policies are fully taken into account. The Mayor should be able to take-over the handling of applications about which he has made no public statements of support or opposition. The Mayor's new discretionary power would be in addition to his current power to direct a borough to refuse certain applications.
3. The consultation paper sets out the Government's preferred approach on three key aspects of the new arrangements:
 - The **thresholds** which define applications as being of potential strategic importance and must be referred to the Mayor;
 - A **policy test** which the Mayor would need to apply to those applications he sees to decide whether his intervention would be justified. He would be required to give reasons when he decided to take on an application; and
 - Changes to some of the **processes and procedures** for referral of applications to the Mayor.
4. We are seeking the views of local planning authorities, developers and the public as to the effectiveness of these proposals.
5. The current thresholds are set out in a Mayoral Order¹ and have generally worked well. Boroughs and developers understand them and broadly they capture those applications that could raise issues of strategic importance. For these reasons, the Government is not proposing significant change from the current thresholds other than in relation to applications for waste facilities, where we propose more significant change to support a more strategic and sustainable approach to waste management in London.
6. We also propose amendments to the procedures by which applications are referred to the Mayor to reflect the new arrangements and to take account of the experience gained under the previous system.

¹ The Town and Country Planning (Mayor of London) Order 2000, SI 1493/2000.

Background

7. The Greater London Authority was created in 2000. It is made up of a directly elected Mayor and a separately elected Assembly. The Mayor is responsible for strategic planning in London, and in particular for producing a Spatial Development Strategy for London – the London Plan. This provides a strategic framework for the boroughs' Local Development Frameworks and sets out the spatial context for the Mayor's other policies and strategies. The Mayor is responsible for ensuring that the strategic planning interests of London as a whole 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.

The Consultation Exercise

8. In this consultation paper we ask three specific questions. You are welcome to respond on all three, on some and not others, or to write about other ways in which the Mayor's new planning powers should work that have not been covered. Responses to this consultation paper should be received no later than 2 November 2006, and should be sent to:

The GLA Review

The Department for Communities and Local Government (DCLG)

Zone A5, 1st Floor Eland House

Bressenden Place

London SW1E 5DU

or email your contribution to:

gla.review@communities.gsi.gov.uk

9. You can read this consultation paper online at the DCLG website, **www.communities.gov.uk/consultations**. Hard copies are available from: DCLG Publications, PO Box 236, Wetherby, West Yorkshire LS23 7NB. Tel: 08701 226 236. Fax: 08701 226 237. Email: communities@twoten.com

Disclosure

10. A summary of responses to this consultation will be published by 2 February 2008 on the Department for Communities and Local Government website. Paper copies will be available on request.
11. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

12. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Current procedures

13. Planning applications are submitted to the borough in the first instance. If an application meets one of the thresholds in the Order the borough must send the Mayor a copy of the application as soon as reasonably practicable after its receipt. In practice, consultation with the Mayor will normally occur at the same time as other statutory consultees.
14. The Mayor then has the same opportunity as other statutory consultees to submit representations on the application – 21 days. This is known as **stage 1**. During this time the Mayor can also do one of two things;
 - i. He can inform the borough he is happy for them to make the decision on the application without further reference to him; or
 - ii. He can inform the borough that he wants to be notified of the borough's decision on the application in order to decide whether to direct the borough to refuse the application.
15. If the Mayor wants to be notified of the borough's decision, the borough may not grant permission for a period of 14 days from the date the notification is received by the Mayor. This is known as **stage 2**. Within this 14 day period, the Mayor may direct the borough to refuse the application. Any such direction must be accompanied by a statement of reasons, and must be copied to the Secretary of State.

Revised procedures

16. Planning applications will continue to be submitted to the borough in the first instance. Building on the current system, if an application meets a threshold, defining it as being of potential strategic importance, we propose that the Mayor should choose one of three options after receiving it (**new stage 1**):
 - i. Notify the borough that he is happy for them to make the decision on the application without further reference to him (the Mayor has this power currently); *or*

- ii. Notify the borough that he wishes to be consulted again after the borough has considered their approach to the strategic issues raised by the application. This is to allow him to decide whether he should take over determination of the application by applying a policy test (this is a new power for the Mayor);
or
- iii. Notify the borough that he is content for them to make the decision on the application but that he wants to be consulted again when the Council's intention is known. This is to allow him to consider whether he should direct the borough to direct refusal of the application (the Mayor has this power currently).

Outcomes

- If i. happens, the Mayor will have no further involvement in the planning application.
- If ii. happens, the Mayor would decide whether or not to take over the application by applying the policy test (see paragraph 27) **This is new stage 2.**
- If iii. happens, in keeping with the current arrangements, the borough will consider the application in the normal way and, if they intend to grant planning permission, they must give the Mayor the opportunity to decide whether to direct them to refuse the application.

Consultation and enforcement

17. We propose that boroughs will be responsible for undertaking consultation on planning applications taken over by the Mayor. We also propose they should be responsible for enforcing planning obligations and conditions that are attached to planning permissions issued by the Mayor. This is because boroughs already have established consultation mechanisms and standards in place and enforcement teams.

Fees

18. We will be considering the issue of planning application fees over the summer in light of the new arrangements in conjunction with boroughs and the Mayor.

Reserved matters applications and listed building consent applications

19. If a planning application that the Mayor takes over is in outline, we propose the Mayor will also be responsible for subsequently deciding the reserved matters application(s). Similarly, if a planning application is accompanied by a listed building consent application, this should also fall to the Mayor to determine, subject to the normal procedures involving English Heritage.

POTENTIAL AMENDMENTS TO THE TOWN AND COUNTRY PLANNING (MAYOR OF LONDON) ORDER 2000

20. The Government proposes that the thresholds set out in the Mayor of London Order 2000 should remain as currently set out other than in the following respects. The existing Order is attached at Annex A.

Part II, Category 2A

Waste facilities

21. We propose three main thresholds triggering referral to the Mayor. **Applications for waste facilities for:**
- **hazardous waste at 5,000 tonnes throughput per year**
 - **non-hazardous waste at the current 50,000 tonnes per year**
 - **sites for hazardous or non-hazardous waste over 1 hectare**
22. We propose to provide for the Mayor to see applications for waste facilities that do not accord with the development plan (departures). This is because the acceptability in principle of a waste use in that location has not been established. **We propose lower thresholds to trigger referral to the Mayor for these matters:**
- **hazardous waste at 2,000 tonnes throughput per year**
 - **non-hazardous waste at 20,000 tonnes per year**
 - **sites for hazardous or non-hazardous waste over 0.5 hectare**
23. These thresholds will also be used to refer applications that seek to change existing or allocated waste sites to non-waste uses and depart from the development plan.
24. We also propose these thresholds should be used to refer applications for residential or mixed use development which do not accord with the development plan and which abut existing or allocated waste facilities. This is necessary to ensure that non-waste uses that could prejudice the waste use are fully considered against strategic policies.

Part II, Category 2C

25. **Tram stations** – We propose that **planning applications for tram stations are referred to the Mayor by being included in category 2C of part II.**

Part III, Category 3D

26. **Metropolitan Open Land** – Metropolitan Open Land (MOL) is a London Plan policy rather than a national policy. Therefore, it is principally the responsibility of the Mayor to see it enforced. Currently, the Mayor only sees planning applications for development on MOL if, amongst other things, they are departures and involve construction of a building over 1000 square metres. Given the strategic importance of MOL, we propose that the Mayor should see **all departure applications for construction of a building or buildings on MOL or for a material change of use in such existing buildings.**

Question One

Do you agree with the Government's proposals on thresholds for referral of planning applications to the Mayor?

POLICY TEST

27. The Government expects that decisions on planning applications should normally be made by boroughs. London boroughs will continue to be responsible for deciding the vast majority of planning applications in the capital, including most applications of strategic importance. The Mayor should take over no more than a limited number of strategic planning applications in any given year that raise issues of London-wide or sub-regional importance.
28. The Mayor will be required to apply criteria to decide whether he would be justified in taking over the decision making on an application referred to him. We want the criteria to be as robust and clear-cut as possible, so as to minimise disputes between the Mayor and the boroughs. We propose the following two criteria that could be set out in a circular or in a Ministerial Statement.

The Criteria

29. In the Mayor's view:
- Does the planning application raise issues of a nature and scale that would significantly impact on the implementation of specific London Plan policies?; and
 - Do the issues raised by the application have significant effects that go wider than a single borough?
30. To justify taking over an application to secure implementation of the relevant London Plan policies, the Mayor would need to clearly demonstrate that both criteria are satisfied and that in making his decision he has taken into account:
- The borough's analysis of the Development Plan policies relevant to the application and how it intends to apply relevant London Plan policies;

- The borough's record in dealing with previous applications which have raised strategic planning issues; and
- Any precedent an application is likely to establish for implementing London Plan policies.

The Mayor would have to publish the reasons for his decision.

31. The Government expects that any disagreements between boroughs and the Mayor, or applicants and Mayor, about the application of the policy test should be resolved through discussion. However, the option of legal challenge would be available in the event that agreement could not be reached. We do not propose a role for the Secretary of State in arbitrating on any dispute.

Question Two

Do you consider this test provides a clear basis for the Mayor to decide whether he should take over a planning application?

POTENTIAL CHANGES TO PROCEDURES

32. The flow diagram at Annex B illustrates the new processes for planning applications.

New Stage 1

33. We propose the Mayor should have 21 days from the date he receives the application and other paperwork to respond to the borough. This is **new stage 1**. This would be in keeping with current arrangements for statutory consultees under the General Development Procedure Order 1995. The Government accepts that these timescales are challenging. However, this is the case for other consultees and is necessary to ensure that decisions on applications are made in good time.
34. Where the Mayor decides that a planning application may raise issues that could warrant him taking over the decision making of it, he will notify the borough of this by the end of **new stage 1**. The borough will then be required to set out their approach to the strategic issues raised by the application in the context of the London Plan policies. We propose the borough should have a **6 week** period to make this assessment and to send their view to the Mayor. So as to minimise delay, **we propose this 6 week period would start from the date the borough receives the application**. This will mean that the strategic implications of a planning application above the thresholds, as set by the London Plan, will always be amongst the first set of issues considered by the borough irrespective of any action the Mayor may subsequently take. We consider this justified because the London Plan is part of the development plan and therefore must be taken into account even if the decision remains with the borough.

New Stage 2

35. Once the Mayor receives the borough's assessment of the strategic issues raised by an application he would decide whether he would be justified to take over jurisdiction of it (**new stage 2**). It is crucially important that the Mayor's decision at stage 2 is soundly based. We propose the Mayor should have **21 days** to make his decision and inform the borough.

Decision stages

36. There are three possible outcomes:
- If at **new stage 1** the Mayor has not intervened in a planning application, the decision to grant or refuse planning permission will be made by the borough.
 - If at **new stage 2** the Mayor can demonstrate that all parts of the policy test have been met he will take over the planning application and decide to grant or refuse planning permission.
 - If at **new stage 1** or at **new stage 2** the Mayor decides the application does not raise issues that may warrant him taking over the decision making of it, he may still ask to be notified when the borough has reached a decision on the application. This would enable the Mayor to exercise his power to direct the borough to refuse the application. As now, **we propose the Mayor should have 14 days to make this decision**. The countdown of the 14 days would start as soon as the Mayor receives the application and associated papers. Retaining the 14 day period for this stage will provide for the Secretary of State to take account of the Mayor's decision in deciding whether to exercise her power to call-in applications for her determination.

Question Three

Do you agree with the new procedures for handling planning applications in London?

Summary of questions

- 1. Do you agree with the Government's proposals on thresholds for referral of planning applications to the Mayor?**
- 2. Do you consider the policy test provides a clear basis for the Mayor to decide whether he should take over a planning application?**
- 3. Do you agree with the new procedures for handling planning applications in London?**

Annex A

Current thresholds set out in Mayor of London Order 2000

LARGE SCALE DEVELOPMENT

Category 1A

1. Development which –

- (a) comprises or includes the provision of more than 500 houses, flats, or houses and flats; or
- (b) comprises or includes the provision of flats or houses and the development occupies more than 10 hectares.

Category 1B

1. Development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings –

- (a) in the City of London and with a total floorspace of more than 30,000 square metres, or
- (b) in Central London (other than the City of London) and with a total floorspace of more than 20,000 square metres, or
- (c) outside Central London and with a total floorspace of more than 15,000 square metres.

2. In paragraph 1 “Central London” means the area bounded by the outer edge of the red line on a map entitled “Map of Central London referred to in the Town and Country Planning (Mayor of London) Order 2000” of which prints, dated 25th May 2000 and signed by a Director in the Department of the Environment, Transport and the Regions, are deposited and available for inspection at –

- (a) the principal office of Secretary of State for the Environment, Transport and the Regions;
- (b) the Government Office for London;
- (c) the principal office of the Mayor; and
- (d) the principal office of the local planning authority for each London borough.

Category 1C

1. Development which comprises or includes the erection of a building in respect of which one or more of the following conditions is met –
 - (a) the building is more than 25 metres high and is adjacent to the River Thames,
 - (b) the building is more than 75 metres high and in the City of London,
 - (c) the building is more than 30 metres high and outside the City of London.
2. A building is adjacent to the River Thames for the purposes of paragraph 1(a) –
 - (a) if the building is wholly or partly on a site which falls within an area identified as a Thames Policy Area in the development plan, or
 - (b) where no such area is so identified in respect of the relevant part of the River Thames, if the building is wholly or partly on a site which falls within the Thames Policy Area being the area bounded by the outer edge of the red line on the set of maps numbered 1 to 3 entitled “Maps of the Thames Policy Area referred to in the Town and Country Planning (Mayor of London) Order 2000” of which prints, dated 25th May 2000 and signed by a Director in the Department of the Environment, Transport and the Regions, are deposited and available for inspection at –
 - (i) the principal office of Secretary of State for the Environment, Transport and the Regions;
 - (ii) the Government Office for London;
 - (iii) the principal office of the Mayor; and
 - (iv) the principal office of the local planning authority for each London borough.
3. Any part of a building below ground level shall be ignored for the purposes of paragraph 1.

Category 1D

1. Development which comprises or includes the alteration of an existing building where –
 - (a) the development would increase the height of the building by more than 15 metres; and
 - (b) the building would, on completion of the development, be higher than a relevant threshold set out in paragraph 1 of Category 1C.

MAJOR INFRASTRUCTURE

Category 2A

1. Development which comprises or includes mining operations where the development occupies more than 10 hectares.
2. In paragraph 1 “mining operations” means the winning and working of minerals in, on or under land, whether by surface or underground working.

Category 2B

1. Waste development to provide an installation with capacity for a throughput of more than 50,000 tonnes per annum of waste produced outside the land in respect of which planning permission is sought.
2. In paragraph 1 “waste development” means any operational development designed to be used wholly or mainly for the purpose of, or a material change of use to, treating, keeping, processing or disposing of refuse or waste materials.

Category 2C

1. Development to provide –
 - (a) an aircraft runway;
 - (b) a heliport (including a floating heliport or a helipad on a building);
 - (c) an air passenger terminal at an airport;
 - (d) a railway station;
 - (e) a tramway, an underground, surface or elevated railway, or a cable car;
 - (f) a bus or coach station;
 - (g) an installation for a use within Class B8 (storage or distribution) of the Schedule to the Use Classes Order where the development would occupy more than 4 hectares;
 - (h) a crossing over or under the River Thames; or
 - (i) a passenger pier on the River Thames.
2. Development to alter an air passenger terminal to increase its capacity by more than 500,000 passengers per year.

DEVELOPMENT WHICH MAY AFFECT STRATEGIC POLICIES

Interpretation

1. In this Part land shall be treated as used for a particular use if –
 - (a) it was last used for that use, or
 - (b) it is allocated for that use in –
 - (i) the development plan in force in the area in which the application site is situated,
 - (ii) proposals for such a plan, or
 - (iii) proposals for the alteration or replacement of such a plan.

Category 3A

1. Development which is likely to –
 - (a) result in the loss of more than 200 houses, flats, or houses and flats (irrespective of whether the development would entail also the provision of new houses or flats); or
 - (b) prejudice the residential use of land which exceeds 4 hectares and is used for residential use.

Category 3B

1. Development –
 - (a) which occupies more than 4 hectares of land which is used for a use within Class B1 (business), B2 (general industrial) or B8 (storage or distribution) of the Use Classes Order; and
 - (b) which is likely to prejudice the use of that land for any such use.

Category 3C

1. Development which is likely to prejudice the use as a playing field of more than 2 hectares of land which –
 - (a) is used as a playing field at the time the relevant application for planning permission is made, or
 - (b) has at any time in the five years before the making of the application been used as a playing field.
2. In paragraph 1 “playing field” has the same meaning as in article 10(2)(l) of the GDPO.

Category 3D

1. Development –

- (a) on land allocated as Green Belt or Metropolitan Open Land in the development plan, in proposals for such a plan, or in proposals for the alteration or replacement of such a plan; and
- (b) which would involve the construction of a building with a floorspace of more than 1,000 square metres or a material change in the use of such a building.

Category 3E

1. Development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated and –

- (a) comprises or includes the provision of more than 2,500 square metres of floorspace for a use falling within any of the following Classes in the Use Classes Order –

- (i) class A1 (retail);
- (ii) class A2 (financial and professional);
- (iii) class A3 (food and drink);
- (iv) class B1 (business);
- (v) class B2 (general industrial);
- (vi) class B8 (storage and distribution);
- (vii) class C1 (hotels);
- (viii) class C2 (residential institutions);
- (ix) class D1 (non-residential institutions);
- (x) class D2 (assembly and leisure);

or

- (b) comprises or includes the provision of more than 150 houses or flats or houses and flats.

Category 3F

1. Development for a use, other than residential use, which includes the provision of more than 200 car parking spaces in connection with that use.

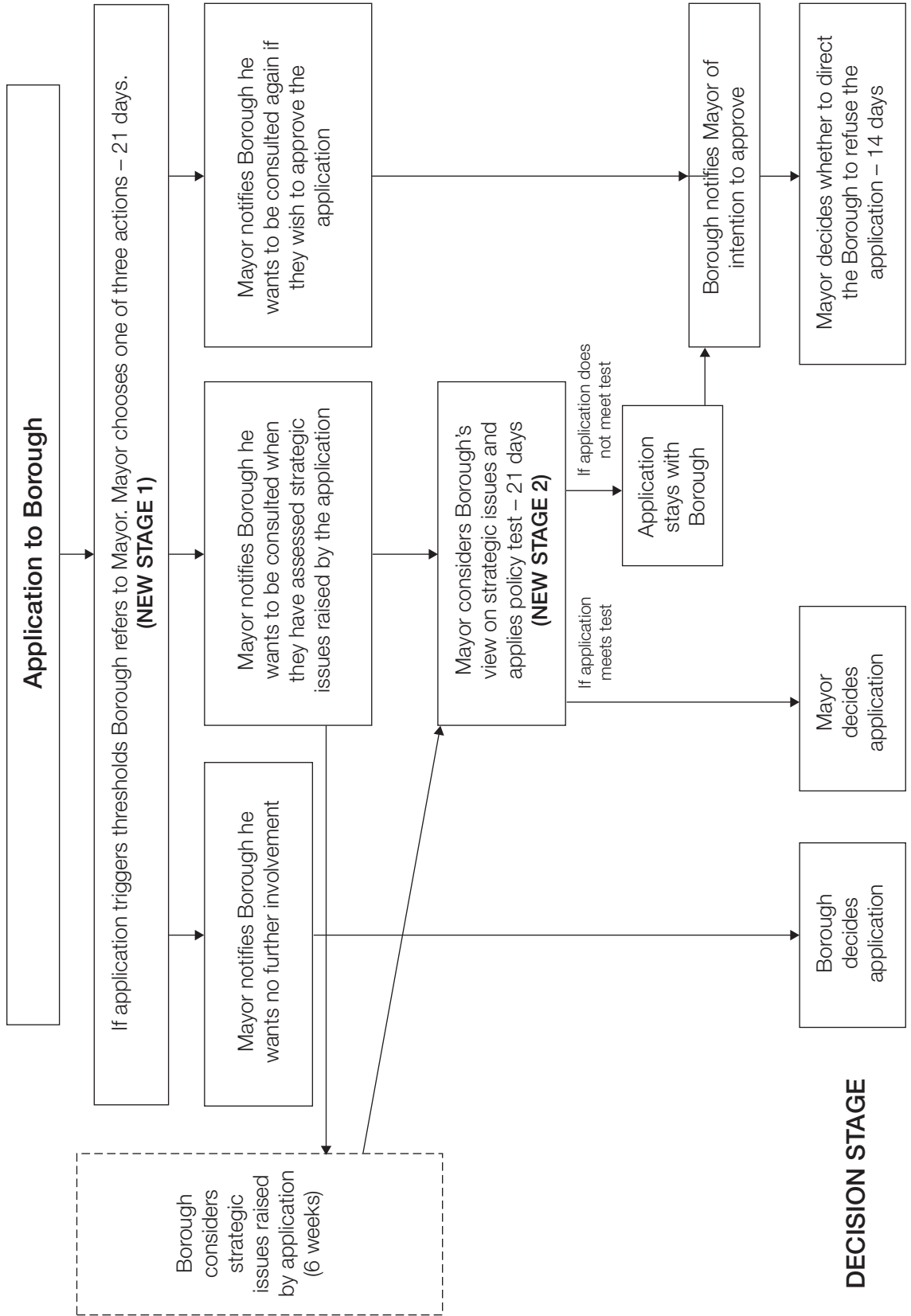
DEVELOPMENT ON WHICH THE MAYOR MUST BE CONSULTED BY VIRTUE OF A DIRECTION OF THE SECRETARY OF STATE

Category 4

1. Development in respect of which the local planning authority is required to consult the Mayor by virtue of a direction given by the Secretary of State under article 10(3) of the GDPO.

Annex B

Proposed New Process



Annex C

The Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at:

www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact Adam Bond, DCLG Consultation Co-ordinator, Room 2.19, 26 Whitehall, London, SW1A 2WH; or by e-mail to: **adam.bond@communities.gsi.gov.uk**

Annex D

Partial Regulatory Impact Assessment

1. Purpose and Intended Effect

Objective

- 1.1 The Mayor currently has powers under the GLA Act 1999 to direct refusal of applications of strategic importance as defined in the schedule to SI 2000 No 1493, The Town and Country Planning (Mayor of London) Order 2000.²
- 1.2 The Mayor's new, discretionary power to decide planning applications of strategic importance necessitates a review of the thresholds set out in the Order defining applications as strategic. The changes also require a policy test to be established which the Mayor would apply to those applications he sees to decide whether his intervention would be justified, and amendments to some of the processes and procedures for referral of applications to the Mayor.
- 1.3 The Government is consulting on each of these elements to seek views on how the Mayor's new development control power should best work in practice. Changes arising as a result will be set out in a revision to the 2000 Order. A full Regulatory Impact Assessment will accompany any revision of the Order.

Background

- 1.4 On 13 July 2006 Ministers announced the outcome of the GLA Review – the review of powers and responsibilities of the Mayor of London and the London Assembly. The final package included strengthened planning powers for the Mayor in three main areas:
 - The Mayor will be able to direct changes to London boroughs' Local Development Schemes (LDSs), subject to Secretary of State reserve powers;
 - A strengthened role for the Mayor pre-examination. His formal opinion of whether a borough's draft Development Plan Document (DPD) conforms generally to his London Plan would be the starting point for its examination in public. The Inspector's decision will be final; the Mayor's opinion would not be able to override that of the Inspector; and
 - The Mayor will have a discretionary power to determine planning applications of strategic importance in London. He will be the development control authority for those applications he decides to take on.
- 1.5 The Policy Statement, accompanying full Regulatory Impact Assessment (RIA) and Summary of the Responses to Consultation can be read on the DCLG website at www.communities.gov.uk/glapowers

² Statutory Instrument 2000 No.1493, The Town and Country Planning (Mayor of London) Order 2000. Available at www.opsi.gov.uk/si/si2000/20001493.htm

- 1.6 The proposed additional Mayoral powers on planning are intended to ensure that boroughs fully reflect London's strategic priorities in their work programmes for preparing their Local Development Frameworks, and give the Mayor the discretion to decide whether he or the local planning authority should determine strategic planning applications (including applications for waste facilities). These proposals build on the Mayor's existing planning powers – preparing the London Plan and the right to direct refusal of strategic planning applications.

Rationale for Government Intervention

- 1.7 Changes are being proposed for the 2000 Order in the wider context of the outcomes of the GLA Review. The purpose of the review has been to identify additional powers and responsibilities that would be best exercised by the GLA in order to devolve power from Whitehall to London; place powers at the most appropriate tier of governance in the capital; improve the delivery of strategic public services in the capital; and improve the quality of life for all those who live in, work in or visit London.
- 1.8 The purpose of enhanced powers for the Mayor to decide a limited number of strategic planning applications is to ensure regional planning policies are fully taken into account whenever an application of regional or sub-regional importance is decided. It is envisaged that London boroughs (including the City of London Corporation) will continue to decide the vast majority of planning applications in the capital. In deciding whether to exercise his discretionary power, the Mayor will be informed by boroughs' views on how they would apply strategic, London Plan policies to an application.
- 1.9 In order to ensure the Mayor's new planning powers are implemented fairly, it is important that Government seeks views on the thresholds that define an application as strategic; the Policy Test against which the Mayor will decide whether or not he is justified to take over an application; and the procedures and timescales governing the overall process.

2. Consultation

- 2.1 The wider GLA Review included extensive consultation, both within Government and with the wider public. The consultation responses helped inform Ministers' decisions on the final package of additional powers. Details of this consultation process are set out in the Regulatory Impact Assessment that accompanied the final proposals (see paragraph 1.5 of this assessment).
- 2.2 This consultation seeks stakeholders' views on the detailed operation of the Mayor's new planning powers. We expect London boroughs and the GLA in particular to be keen to offer their views. Ministers will take final decisions on the operation of the Mayor's new planning powers in the autumn in light of the response to consultation.

3. Options

- Option A – no change in thresholds;
- Option B – proposed change in thresholds.

3.1 The consultation exercise seeks views on the Government's proposals for thresholds defining potentially strategic applications. The Government proposes the vast majority of existing thresholds – those against which the Mayor can currently direct refusal – remain unchanged. It believes the current arrangements have worked well, supporting the continuing development of London as a world city and driver of national economic growth. However there is a case for a few limited changes in order to make better use of the Mayor's proposed new powers.

3.2 Option A would mean absolutely no change in thresholds whatsoever. The Government believes this option does not give the right balance over what applications the Mayor can decide.

3.3 Option B strikes the middle ground in proposing that most thresholds (at Annex A of the consultation paper) remain unchanged but that some specific thresholds – on waste, tram stations and Metropolitan Open Land (MOL) – are lowered. In particular, lowering the thresholds for waste applications will ensure a more co-ordinated, strategic approach to planning London's waste facilities on a city-wide basis, helping London to deliver the UK's targets for diverting waste from landfill set out in the EU Landfill Directive.

3.4 The Government is also seeking views on a Policy Test. Two options have been identified in respect of the test:

- Option C – No criteria (in effect, no policy test);
- Option D – Implement a policy test comprising criteria and other factors to be taken into account set out in paragraph 3.6 below.

3.5 Option C would not provide for a policy test. The Mayor would, in effect, be free to take over any application that met the thresholds. The Government is keen to ensure the Mayor takes over only a limited number of strategic planning applications in any given year. To justify taking over an application, he would need to demonstrate that it impacts significantly on the implementation of specific London Plan policies and has significant effects that go wider than a single borough. The Mayor would also need to demonstrate that he has taken into account three other factors, including the borough's analysis of the Development Plan policies relevant to the application and how it intends to apply relevant London Plan policies. The Government believes a policy test is essential to provide a clear and accountable basis for Mayoral intervention, and to provide a framework against which the Mayor could give reasons for his decision.

3.6 Option D would mean implementing a policy test comprising the following criteria:

The Criteria

In the Mayor's view:

- Does the planning application raise issues of a nature and scale that would significantly impact on the implementation of specific London Plan policies?; and
- Do the issues raised by the application have significant effects that go wider than a single borough?

3.7 To justify taking over an application to secure implementation of the relevant London Plan policies, the Mayor would need to clearly demonstrate that both criteria are satisfied and that in making his decision he has taken into account:

- The borough's analysis of the Development Plan policies relevant to the application and how it intends to apply relevant London Plan policies;
- The borough's record in dealing with previous applications which have raised strategic planning issues; and
- Any precedent an application is likely to establish for implementing London Plan policies.

The Mayor would have to publish reasons for his decision.

3.8 Finally, for the processes and procedures that will govern the Mayor's new role, the Government has developed a set of proposals (summarised at Annex B of the consultation paper). While a 'do nothing' option has been included below, it is clearly not feasible for Government to devolve new powers without setting out the process for determining planning applications. The options identified are:

- Option E – do nothing;
- Option F – implement new processes and procedures.

Alternative Options Considered

Significant change in thresholds.

3.9 There were two possible variants to this: change towards significantly higher thresholds than currently or significantly lower thresholds than now. The effect of thresholds being set at a much higher level is that the Mayor would see far fewer applications than now. Some applications of genuine strategic importance may therefore not be seen by the Mayor and the potential benefits of his strategic, city-wide overview would be lost.

3.10 The effect of thresholds being set at a lower level would be that the Mayor sees many more applications than he does currently. This would include applications of relatively low strategic significance, compromising both the Mayor's strategic

focus and the lead role of the boroughs in respect to development control in London. For these reasons the Government ruled out these options.

Quantitative rather than qualitative criteria for the policy test.

- 3.11 A test with quantitative rather than qualitative criteria would risk over-simplifying a potentially complex Mayoral decision. The Government recognises the need for as clear and sharp a set of criteria as possible so as to minimise the number of possible disputed decisions. But it believes such criteria are best provided for by clear qualitative criteria rather than quantitative criteria that risk merely replicating the thresholds.

Longer/shorter deadlines than proposed for the new processes and procedures.

- 3.12 Longer deadlines would risk drawing out the decision-making process, resulting in strategic applications taking longer to determine. This would risk slowing up the planning process in the capital more generally and would be in the interests of no-one. Shorter deadlines would risk giving both the Mayor and the boroughs insufficient time to discharge their respective actions at each stage of the process. This would result in decisions being taken, and output being produced, in a hurry, risking planning decisions being taken on the basis of unsound evidence.

4. Costs and Benefits

Sectors and Groups Affected

- 4.1 These proposals will primarily impact on London boroughs. They will also impact on London's developers and stakeholders involved in submitting large-scale planning applications.

Race Equality Assessment and Health Impact Assessment

- 4.2 The Government believes the proposals do not raise significant race equality or health issues, and therefore does not propose to carry out race equality or health assessments in relation to them.

Rural Considerations

- 4.3 It is possible that some potentially strategic applications will sit within that part of the Green Belt located on the environs of London's urban area yet within the boundary of Greater London. The Mayor would be expected to have regard to the policies set out in his London Plan in determining these applications. Policy 3.D8 of the Plan makes clear that "there is a general presumption against inappropriate development in the Green Belt, and such development should not be approved except in very special circumstances."

Breakdown of Costs and Benefits

Economic

- 4.4 The Mayor's discretionary power to decide a limited number of strategically important planning applications will ensure applications are decided at the most

appropriate level of governance. It is envisaged the boroughs will continue to decide the vast majority of applications, but for a limited number of strategic applications the Mayor will decide whether he should take the decision. In deciding whether to exercise his discretionary power, the Mayor will take into account boroughs' views on how they would apply strategic, London Plan policies to an application.

- 4.5 The change will ensure that strategic planning decisions, whilst of course having regard to local policies and issues, take full account of strategic planning policy for London as set out in the London Plan – such as in regard to density, design quality and urban renaissance principles. The Mayor, if he wished to, could assume responsibility for the planning aspects of strategically important infrastructure schemes.
- 4.6 The current arrangements allow the Mayor to consider around 300 of London's most strategic applications annually³. Continuing to apply most existing thresholds at their current levels will ensure that boroughs continue to decide the vast majority of London's planning applications. Indeed, the expectation is that the boroughs should also continue to decide most strategic applications. The Mayor would take over only those applications that fully met the criteria set out in the policy test.
- 4.7 The Government believes that, whilst most current thresholds (annex A of the consultation paper) should remain the same, there is a strong economic and environmental case for changing three specific classes:
- (i) **Waste facilities.** The Government believes there is a strong economic and environmental case for lowering thresholds for applications relating to waste facilities (for the building of such a facility; a change of use of such a facility; or for residential or mixed-use development which abut existing or allocated waste facilities). Lowering the thresholds as proposed would allow the Mayor to see a greater proportion of waste applications, enabling him to take a more strategic, city-wide approach to the siting of waste facilities supported by his London Plan and local development plans.

This will, in turn, allow the Mayor to better ensure London Plan waste policies are implemented. This more co-ordinated approach to planning for London's waste facilities should facilitate the diversion of the capital's waste from landfill, helping to meet the UK's European Landfill Directive targets⁴ (the first of which bite in 2010). The Landfill Allowance Trading Scheme provides a strong incentive for authorities to deliver improvements, and there are signs that London waste authorities are responding to this.

³ In 2004/05 the Mayor was consulted by the boroughs on 291 applications against which he could direct refusal. This figure represents 0.3% of the total number of planning applications in London for that year (86,804). The Mayor directed refusal against 4 such applications.

⁴ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste. The directive sets binding targets on the UK to reduce the amount of biodegradable municipal waste it sends to landfill: to 75% of 1995 levels by 2010; 50% of 1995 levels by 2013; and 35% of 1995 levels by 2020.

If London failed to meet its obligations under the Landfill Allowance Trading Scheme, it would face fines of £150 for every tonne of biodegradable municipal waste sent to landfill in excess of its allowance. If the UK failed to meet its targets under the EU Landfill Directive it would face infraction penalties of up to £0.5 million per day. Government has made clear it will pass on any penalties to those authorities that fail to meet their landfill obligations. Ensuring targets are met in both the short and long term is critical to ensure value for money for the taxpayer.

- (ii) **Tram Stations.** The Government believes it makes clear strategic sense for the Mayor to be able to see applications relating to tram stations, especially given that the transport elements of his London Plan highlights the need for new enhanced bus priority, tram and bus transit schemes, and that local planning policies should help make tram and bus transit schemes successful.
- (iii) **Metropolitan Open Land (MOL).** MOL is a London Plan policy rather than a national planning policy, and the Mayor is therefore responsible for ensuring it is enforced. But the Mayor currently sees applications for development on MOL if, amongst other things, they are departures and involve construction of a building of over 1,000 square metres. The Government proposes that the Mayor should see all departure applications for constructing a building or buildings on MOL, or for a material change of use in such existing buildings, given the clear importance of MOL to strategic planning.

- 4.8 The Mayor further has to apply a policy test in order to decide whether he would be justified in taking over an application that has been referred to him. The Government has set out two criteria (see paragraph 3.6) the Mayor would need to satisfy in order to take over an application, and three factors that he would need to take into account in taking his decision. The test makes clear that the boroughs remain the normal decision making body for most strategic planning applications, and that the Mayor would be justified in taking over only a limited number of applications in any given year.
- 4.9 He would do so only when an application raises issues of regional or sub-regional importance that go to the heart of implementing his London Plan policies. Such applications are likely to include major regeneration or transport schemes that could have a significant impact on London continued economic growth, particularly as the capital gears up to host the 2012 Olympic and Paralympic Games. Such schemes may have an even greater bearing on the economy and environment of specific sub-regions within London.
- 4.10 The policy test is intended to provide a clear basis on which the Mayor can decide whether or not to take on an application of potential strategic importance. The Government believes that the principles and criteria set out in the test are essential to ensure all stakeholders – including applicants, developers, local planning authorities and the Mayor himself – are clear of the Mayor's reasons for taking on an application.

- 4.11 Finally, the Government is seeking views on the proposed new processes for handling planning applications of strategic importance. The proposals seek a balance between giving all parties sufficient time to deliver their respective stages in the process and ensuring the Mayor's new role does not lead to undue delay in deciding planning applications. The Government believes the proposals, summarised in a flow diagram at Annex B of the consultation paper, provide the right balance.
- 4.12 Costs resulting from the Mayor's enhanced role in development control are difficult to quantify at this stage, and will depend in part on the extent to which the Mayor chooses to exercise his discretionary power. The Government will be considering the issue of planning application fees over the summer in light of the new arrangements, in conjunction with the Association of London Government (ALG) and the Mayor.

Environmental and Social

- 4.13 The environmental or social impacts arising from the Mayor's additional planning powers are likely to be positive. Through his powers, the Mayor will decide strategic planning applications in accordance with London Plan principles.
- 4.14 The London Plan sets out a wide range of policies which impact on the environmental and social fabric of the capital – through changes to the built environment (such as the location of tall buildings or increasing densities in new developments) and the use and management of natural resources in London (including the efficient use of water, tackling climate change and protection of open space).
- 4.15 London Plan policies are subject to Sustainability Appraisal incorporating the requirements of the Strategic Environmental Assessment (SEA) Directive as they are prepared. Sustainability Appraisal aims to promote sustainable development through the integration of social, environmental and economic considerations into the preparation of revisions of Regional Spatial Strategies (RSS) and for new or revised Local Development Supplementary Planning Documents.
- 4.16 In addition, individual planning applications, whether determined by the Mayor or a London borough, are, if likely to have significant impacts, subject to the requirements of the Environmental Impact Assessment (EIA) regulations which require the developer to compile an Environmental Statement (ES) describing the likely significant effects of the development on the environment and proposed mitigation measures.
- 4.17 Finally, the proposals to lower the thresholds for waste planning applications are likely to have a positive environmental impact. They will allow the Mayor to take a more strategic, city-wide view of applications relating to waste, enabling a more strategic approach to be taken to locating waste facilities according to London Plan principles and facilitating delivery of the UK's European Landfill Directive targets.

5. Small Firms Impact Test (SFIT)

- 5.1 The proposals relate to the Mayor's consideration of planning applications of potential strategic importance, and as such are likely to have little disproportionate impact on London's small businesses.

6. Competition Assessment

- 6.1 We believe the proposals set out in the consultation paper will not distort competition in the property development market. The ability of the Mayor to decide key, strategic planning applications will not affect any one firm substantially more than others or change the structure of the London property market. In broad terms, it is intended that the proposal will ensure that London's key strategic developments comply with the Mayor's spatial development strategy for the capital (the London Plan).
- 6.2 The OFT's competition filter confirms this nil-impact.⁵

7. Enforcement and Sanctions

- 7.1 The new arrangements, when decided by Ministers following consultation, will be implemented by amending the Town and Country Planning (Mayor of London) Order 2000. The Mayor's exercise of his new planning powers will be highly visible, and will be subject to a great deal of public scrutiny. In addition, the Assembly is required to keep under review the exercise by the Mayor of his statutory functions – including his actions and decisions. There are a number of well established processes, including the Mayor's periodic report to the Assembly; Annual Report; annual State of London debate; and twice yearly People's Question Time, at which the Assembly can scrutinise the Mayor's decisions.
- 7.2 The Government recognises the need for openness and transparency in Mayoral decision-making on planning applications. We will work with boroughs and the Mayor during the summer to put in place a system ensuring the Mayor takes planning decisions clearly and transparently, and the reasons underpinning his decisions are open to public scrutiny.
- 7.3 The Secretary of State's existing powers to call-in applications of national importance will remain.
- 7.4 Detailed arrangements for monitoring and review of the new arrangements will be determined following consultation.

8. Monitoring and Review

- 8.1 The Government will keep a regular check on the use of any new powers. The Secretary of State retains reserve powers to intervene. Arrangements for a post-implementation review will be prepared once Ministers decide the way forward following consultation.

⁵ <http://www.offt.gov.uk/NR/rdonlyres/A7138977-6FE2-45DE-BE32-3AB6E767664A/O/oft355.pdf>