

CED017

# Local Plan Partial Review – Examination Matters Issues and Questions Hearing Statement

Matter 3: Delivery Strategy  
Issue 3c: Respecting Environmental Limits (Policies  
CE1-CE5)

February 2018



THE ROYAL BOROUGH OF  
KENSINGTON  
AND CHELSEA



## Matter 3 – Delivery Strategy

### Issue 3c: Respecting Environmental Limits (Policies CE1-CE5)

#### Climate Change (Policy CE1)

1. **Are the changes to Policy CE1 in the RBKCLPPR justified and is the policy as revised consistent with national policy and in general conformity with the London Plan?**
  - 1.1 For a plan to be justified it should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence.
  - 1.2 The Policy Formulation Report for Climate Change, May 2017 (SUB60) sets out the details of the evidence and justification including alternative options for Policy CE1. Paragraphs 2.3.1 to 2.3.3 of SUB60 refer to the evidence base and explain that the key changes to the policy are to delete references to the withdrawn Code for Sustainable Homes standard and the BREEAM standard for domestic refurbishment. These changes are to bring the policy in-line with national policy as set out in the Written Ministerial Statement (WMS) of March 2015<sup>1</sup>. One of the outcomes of the housing standards review was to withdraw the Code for Sustainable Homes and streamline housing standards.
  - 1.3 The WMS states that *“From the date the [Deregulation Bill 2015](#) is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans **should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the [Code for Sustainable Homes](#) to be achieved by new development; the government has now withdrawn the code, aside from the management of legacy cases.**”* (emphasis added)
  - 1.4 The London Plan was amended to be in-line with the Government’s housing standards review through the Minor Alterations to the London Plan (MALP), March 2016. The amended LPPR Policy CE1 text is referring to London Plan policy on energy which is already part of the Council’s development plan. Paragraphs 2.2.18 to 2.2.22 of the SUB60 explain that the GLA commissioned a viability assessment<sup>2</sup> to establish the impact of the adoption of the Government’s new national housing standards within London Plan policy on the viability of development in London. The findings of the study concluded that the introduction of the new Housing Standards, and the move to zero carbon homes in 2016, do not represent a significant determinant in the viability and the deliverability of housing development in

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<sup>1</sup> [www.gov.uk/government/speeches/planning-update-march-2015](http://www.gov.uk/government/speeches/planning-update-march-2015)

<sup>2</sup> [www.london.gov.uk/file/22676/download?token=uj59uXd1](http://www.london.gov.uk/file/22676/download?token=uj59uXd1)

London.

- 1.5 The Policy Formulation Report for Climate Change, May 2017 (SUB60) concludes in paragraph 2.3.2 that there is no further evidence required to make the changes to Policy CE1 as it is referring to London Plan policy on energy which has been found sound and is part of the Council's development plan. The changes to Policy CE1 have been made to make it consistent with national policy and in conformity with the London Plan.
- 1.6 Changes made to Policy CE1 are also considered as the most appropriate when considered against reasonable alternatives. This is shown both in the Policy Formulation Report for Climate Change, May 2017 (SUB60) (paragraphs 2.4.1 to 2.4.4) and the IIA Report - Submission (SUB72).
- 1.7 The Mayor's letters of general conformity (SUB9 and CED004) confirm that the LPPR is in general conformity with the London Plan. In the letter of general conformity (SUB9), the GLA confirm that the amendments to the reasoned justification are in line with the suite of Climate Change related policies of the London Plan Chapter 5.
- 1.8 The IIA (SUB 72) (section 9.5, page 67) has the following policy recommendations for climate change: *"Policy CE1 should remove reference to the Code for Sustainable Homes, in accordance with the March 2015 Ministerial Statement. The policy can make reference to the management of legacy cases, but in accordance with the energy policy, planning applications can no longer be judged against the Code. CE1 should therefore consider the Government's statement that "from then [late 2016], the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the government's intention into account in applying existing policies and not set conditions with requirements above a Code level 4 equivalent."* This recommendation has been taken forward in the publication policies. It is worth noting that the IIA has undergone several rounds of consultation as part of the LPPR consultations.
- 1.9 Finally, the Council has submitted the following documents which demonstrate that the policies in the LPPR are legally compliant and sound: (the pages in which policy CE1 is specifically referred to are shown in brackets).
- SUB10, Legal Compliance Checklist - May 2017 (page 19, activity 9).
  - SUB10.1, Legal Compliance Checklist - October 2017 (page 19, activity 9).
  - SUB11, Soundness Self-Assessment Checklist - May 2017 (pages 32 and 33, soundness test Delivering sustainable development, Key requirement 10).
  - SUB11.1, Soundness Self-Assessment Checklist- October 2017 (pages 33 and 34, soundness test Delivering sustainable development, Key requirement 10).

- 1.10 The Council believes that a thorough analysis has been provided to confirm that the changes to Policy CE1 in the LPPR are justified and that the policy as revised is consistent with national policy and in general conformity with the London Plan. No further changes are needed to make the Plan sound or legally compliant.
2. **Does the proposed modification MINOR/069 to the reasoned justification adequately address the need for further guidance on water efficiency and other aspects of sustainable design to address climate change? Should it be considered as a ‘main modification’ which is necessary for soundness?**
- 2.1 Firstly, it should be noted that the scope of revisions to Policy CE1: Climate Change are limited to residential elements as a result of the Government’s housing standards review in 2015. There has been no change in Government policy in relation to non-residential standards since the adoption of Policy CE1 in late 2014 and so these elements are not part of the LPPR.
- 2.2 The proposed modification MINOR/069 to the reasoned justification aims to include a new paragraph (36.3.12a) to assist applicants in relation to non-residential developments by clarifying that BREEAM assessment (which is already an adopted policy requirement) includes a wide range of elements including water efficiency. It also clarifies that such assessments should be submitted with the planning application. The proposed modification is in response to a consultation response by the Environment Agency (EA) asking for water efficiency measures to be specified in planning policy. The modification is clarifying that water efficiency measures are inherent in BREEAM policy requirement.
- 2.3 The EA consultation response from where the proposed modification stems from is set out on page 569 of the core document Submission Consultation Statement, May 2017 (SUB7). The Council does not consider that the proposed modification is a ‘main’ modification as it is simply clarifying the various elements within BREEAM. Even without this addition, to meet the BREEAM standards specified in policy, the applicant would need to demonstrate that all its elements have been assessed. It is also stating that the assessments should be submitted at the application stage which is helpful for applicants to know. Without this statement the Council can add these requirements to the local planning application validation list. Therefore, the proposed modification is a ‘minor’ not a ‘main’ modification.
- 2.4 The Policy Formulation Report Climate Change, May 2017 (SUB60) (section 3, page 15 onwards) addresses water issues. It gives information about the legislation, policy and guidance context and analyses alternatives.
- 2.5 The reference to the MALP Policy 5.15 is incorporated in the reasoned

justification to the policy (SUB5) (paragraph 36.3.7). The 'optional' standard is already adopted in the London Plan and is part of the Council's development plan. The Council is merely cross referencing to the policy to aid clarity for applicants.

- 2.6 The Council considers that the water efficiency measures in relation to residential development are justified and consistent with national policy. Following the housing standards review, the Council only has two options either to 'opt in' to more onerous water efficiency standards set out in Building Regulations or not. The Council through the London Plan has 'opted in'. This is in-line with the comments made by the EA regarding the Borough being in a water stressed area.
- 2.7 The Mayor's letters of general conformity (SUB9 and CED004) confirm that the LPPR is in general conformity with the London Plan. In the letter of general conformity (SUB9), the GLA commented that the amendments to the reasoned justification are in line with the suite of Climate Change related policies of the London Plan Chapter 5.
- 2.8 For the reasons given above the Council considers that the proposed modification MINOR/069 to the reasoned justification is not a 'main modification' and that water efficiency measures are adequately covered in-line with Government policy.

## Flooding (Policy CE2)

3. **Are the changes to Policy CE2 in the RBKCLPPR justified and is the policy as revised consistent with national policy and in general conformity with the London Plan in respect of flood risk from tidal and surface water?**
- 3.1 Yes, the Council considers that the changes to Policy CE2 in the LPPR are justified and that the policy as revised is consistent with national policy and in general conformity with the London Plan.
- 3.2 As explain in the Council response to Matter 3, Issue 3c Q1 (Climate Change – Policy CE1; paragraph 1.1) for a plan to be justified it should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence.
- 3.3 The Policy Formulation Report Flooding and Drainage, May 2017 (SUB 61) (section 2.3, page 12) explains that the wealth of documents used as the evidence base gives information on flood risk in the Borough (including updated information since 2010) and how the Council and other partners are addressing flood risk. Information goes from site specific (Sequential Test) to Borough wide (Strategic Flood Risk Assessment, Surface Water Management Plan, Air Quality and Climate Change Action Plan). Three Critical Drainage Areas (CDAs) have been identified in the Borough (North Kensington CDA Holland Park CDA, Kensington CDA and Sloane Square CDA) which triggered the requirement of Policy CE2b (to provide Flood Risk Assessments) compulsory to support development proposals in these

areas. The evidence base also includes work done within different Council departments and external bodies (Local Flood Risk Management Strategy) and what to do in emergency situations (Multiagency flood plan and Thames breach flood plan). The evidence base regarding basement development, which is particularly vulnerable to flooding (Residential Basement Study Report) was also taken into consideration. The evidence base table shown on page 13 of the Policy Formulation report Flooding and Drainage, May 2017 (document SUB 61) summarises the key evidence base documents used to inform the review of the policy.

- 3.4 Apart from the evidence base, new legislation and regulations came into force as explained in section 2.2 of the Policy Formulation Report Flooding and Drainage, May 2017 (SUB61) (pages 2 to 10). The key issue for the Borough was that it became a Lead Local Flood Authority with statutory duties under the Flood and Water Management Act 2010 and the Flood Risk Regulations 2009. As a Lead Local Flood Authority (LLFA), the Council has a responsibility for leading the co-ordination of local flood risk management within the Borough. This includes ensuring that flood risks from local sources, including surface water runoff, groundwater and ordinary watercourses and their interactions, are identified and managed. The Council has a duty, under Section 9 of the Flood and Water Management Act 2010, to put in place a Local Flood Risk Management Strategy (LFRMS) to manage all sources of flood risks consistent with a risk management approach. The Council adopted the LFRMS in July 2015. The review of the current flooding policy needs to consider the Council's responsibilities as an LLFA and the objectives of the LFRMS.
- 3.5 Furthermore, the LLFAs became statutory consultees regarding the management of surface water in major applications. The Written Ministerial Statement<sup>3</sup> published by the Government on 18 December 2014 explains the changes to the planning system which took effect on 6 April 2015. Since then, local planning policies and decisions on planning applications relating to major development should ensure that sustainable drainage systems (SuDS) for the management of run-off are put in place, unless demonstrated to be inappropriate. The written statement represents Government planning policy and so is capable of being a significant material consideration in determining planning applications.
- 3.6 The Housing and Planning Act 2016 explains that the Secretary of State must carry out a review of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England (section 171). This is reinforced in the National Flood Resilience Review as it commits the Department for Communities and Local Government, the Department for Environment, Food and Rural Affairs, the Environment Agency and key stakeholders to carry out the review. This will make a constructive contribution to the work of the Adaptation Sub-Committee of the Committee on Climate Change and has informed their 2017 progress update on the National Adaptation Plan.

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<sup>3</sup>[www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf](http://www.parliament.uk/documents/commons-vote-office/December%202014/18%20December/6.%20DCLG-sustainable-drainage-systems.pdf)

- 3.7 The NPPF explains that Councils should adopt proactive strategies to mitigate and adapt to climate change, taking full account of flood risk, coastal change and water supply and demand considerations (paragraph 94). It also states that sustainable development should not increase flood risk elsewhere and gives priority to the use of sustainable drainage systems (paragraph 103).
- 3.8 Two sewerage infrastructure projects are proposed in the Borough. The Thames Tideway Tunnel is a major infrastructure project which aims to reduce raw sewage spillages to the river by building a large tunnel underneath the River Thames which will connect the combined sewer overflows along the river. It was granted a Development Consent Order in September 2014 by the relevant Secretaries of State. A smaller project, the Counters Creek Storm Relief Sewer is proposed by Thames Water to address the lack of capacity of the sewer system in the Borough which was the main reason for the extensive flooding seen in 2007. As these projects are of a major scale, it was considered that their impacts should be addressed through a specific policy.
- 3.9 Evidence of participation of the local community and others having a stake in the area can be seen in the documents SUB7, Submission - Consultation Statement – May 2017 (which summarises the consultation undertaken for the Draft Policies (Regulation 18) stage and also includes summaries of the comments on the Publication Policies (Regulation 19) consultation) and SUB8, Publication Policies - Consultation Schedules – May 2017 (which sets out all of the consultation comments on the Publication Policies (Regulation 19) consultation and the Council's response). Reference to the responses received for Policy CE2 can be found in pages 572 to 581 of document SUB7 and page 144 of document SUB8.
- 3.10 Changes made to Policy CE2 are considered to be the most appropriate when considered against the reasonable alternatives. This is shown both in the Policy Formulation Report Flooding and Drainage, May 2017 (SUD61) and the Integrated Impact Assessment (IIA) report (SUB72, appendix F). SUB61 explains in section 2.4 (pages 15 to 24) that alternative options were consulted on as part of the Issues and Options (December 2015) and Draft Policies (October 2016) consultation documents. These options were considered in light of the 'tests of soundness' which are set out in the NPPF as positively prepared, justified, effective and consistent with national policy.
- 3.11 A wide range of alternatives was considered for the three issues covered by the policy: flood risk, surface water run-off and sustainable drainage systems and water infrastructure projects. The table below shows a summary of the policy issues covered, the alternatives and the main reasons why they were not taken forward or were only taken forward partially.

**Table 1 of Q3: Alternatives Considered**

<b>Policy</b>	<b>Alternatives</b>	<b>Reasons</b>
<p><b>Flood Risk</b> Vulnerable uses, flood risk measures and maintenance, access, egress, upstream development run-off</p>	<p>To maintain the status quo; use guidance to restrict highly vulnerable development; require specific flood risk measures; consider cumulative impacts; require standard flood risk measures; prioritise impact on CDAs; require maintenance information; include access and egress; only introduce policies if a flooding event occurs; building safety; use flood depth thresholds to set flood risk measures; acknowledging upstream development.</p>	<p>Inconsistency with national policy; lack of reflection of evidence base; the alternative was partially taken into the final policy wording to add sustainability and reflect evidence; it will become too onerous to implement and to enforce borough-wide; the alternative was unreasonable and would make the policy unsound.</p>
<p><b>Surface Water run-off and SuDS</b> Run-off rate, impermeable surfaces and sustainable SuDS, swimming pools and groundwater, SuDS standards, information and maintenance, retrofitting SuDs, permeable vs impermeable surfaces, SuDS in major and minor development.</p>	<p>To implement a more restrictive policy to reduce run-off, not to allow for any run-off to leave the site; allow for flexibility to account for site conditions; use an article 4 direction to prevent impermeable surfaces in back gardens; follow the London Plan; differentiate between minor and major development; maintain the status quo; to factor swimming pool and groundwater; require a flow control system; monitor SuDS and run-off reduction measures; refer to SuDS maintenance; use DEFRA SuDS standards or the Council's; request specific information on SuDS; retrofit SuDS; require permeable surfaces; allow for site conditions.</p>	<p>The alternative was partially taken into the final policy wording to add flexibility and add to more sustainable development and create certainty; it was not ambitious enough given the evidence or did not reflect the evidence; the alternative will become too onerous to implement; it could lead to less sustainable SuDS; it was unreasonable and would make the policy unsound.</p>
<p><b>Water Infrastructure and other issues</b> Policy for water infrastructure, water consumption policy, Thames Estuary 2100</p>	<p>To introduce a statement or a policy on drainage infrastructure or use current policies to assess this works; add a policy on water consumption or use existing regulation; add greater emphasis on the Thames 2100 Plan.</p>	<p>The alternative was reasonable but did not reflect the development consent granted; a statement will not have the same weight as a policy; it is already covered by existing regulation; it did or not reflect current guidance which could make the policy sound or not.</p>

3.12 The IIA (SUB 72) (section 9.6, pages 67 to 69) addressed flood risk from all sources. It explains that tidal flood risk is an issue in parts of the Borough but the actual risk of flooding is greatly reduced by the Thames tidal flood defences (embankment and the Thames Barrier). It should be noted that the risk management authority responsible for flooding from River Thames is the Environment Agency. In the IIA assessment (SUB 72) it was considered that without any flood risk policy as a mitigating policy, there would be surface water and sewer flood risk issues as a result of development. The assessment explained that the Council's Local Flood Risk Management Strategy<sup>4</sup> (LFRMS), Surface Water Management Plan<sup>5</sup>, and Strategic Flood Risk Assessment<sup>6</sup> (SFRA) of 2014 agree that the key issues for the Borough are sewer and surface water flooding, evidenced by a heavy rainfall event of 2007 which caused localised flooding, and future climate change predictions mean the problem could worsen. The SFRA recommends the Council continue to take an active role in future strategic surface water management plans for London in liaison with the Greater London Authority and Thames Water. It acknowledges that most of the allocations have surface water flood risk issues to tackle, and comprehensive drainage and flood risk assessments should be required which is explained in the Sequential Test. It explains that Policy CE2 sets out requirements for:

- resisting vulnerable development, including self-contained basement dwellings, in Flood Risk Zone 3.
- A site-specific Flood Risk Assessment, including an 'Exception Test' for all development in Flood Risk Zone 2 and 3, for Critical Drainage Areas and for all sites greater than 1 hectare.
- Undertaking the 'Sequential Test' for planning applications within Flood Risk Zones 2 and 3, and for Critical Drainage Areas and the provision and maintenance of suitable flood defence or flood mitigation measures.
- A considerable reduction of surface water run-off for all development.
- Resisting impermeable surfaces in front gardens and landscaped areas.
- Development adjacent to the Thames to be set back from the Thames flood defence to enable the sustainable and cost-effective upgrade of flood defences over the next 50 to 100 years.
- Support to the provision of water and sewage infrastructure which will lead to a substantial and long-term reduction of local flooding.

3.13 The IIA (SUB 72) also refers to how the LFRMS is clear that the Community Infrastructure Levy (CIL) and Section 106 agreements are

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<sup>4</sup>[www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/local-flood-risk-management-strategy](http://www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/local-flood-risk-management-strategy)

<sup>5</sup>[www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/lead-flood-authority/surface-water-management](http://www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/lead-flood-authority/surface-water-management)

<sup>6</sup>[www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/strategic-flood-risk-assessment](http://www.rbkc.gov.uk/planning-and-building-control/planning-policy/flooding/strategic-flood-risk-assessment)

- possible funding mechanisms for sewer and surface water management measures in the Borough. It concludes that there are no policy recommendations for flood risk. It is worth noting that the IIA has undergone several rounds of consultation as part of the Local Plan Partial Review consultations.
- 3.14 A letter of general conformity has been received from the GLA (SUB9). This confirms that the publication policies are in general conformity with the London Plan. In the letter of conformity, the GLA states that the *“Policy CE2 Flooding and supporting text includes a number of amendments make clear that parts of the borough are at risk of flooding, notably from tidal and surface water sources. The policy sets a number of requirements for flood risk mitigation and sustainable drainage measures that are in line with the London Plan policies 5:12-5:13 in relation to water management. The policy also takes a supportive approach to water infrastructure projects such as the Thames Tideway Tunnel; again this approach is in line with London Plan policy 5:14.”*
- 3.15 Finally, the Council has submitted the following documents which demonstrate that the policies of the LPPR are legally compliant and sound: (the pages in which issues related to Policy CE2 are specifically referred to are shown in brackets):
- SUB10, Legal Compliance Checklist - May 2017 (page 19, activity 9).
  - SUB10.1, Legal Compliance Checklist - October 2017 (page 19, activity 9).
  - SUB11, Soundness Self-Assessment Checklist - May 2017 (pages 32 and 33, soundness test Delivering sustainable development, Key requirement 10).
  - SUB11.1, Soundness Self-Assessment Checklist- October 2017 (pages 33 and 34, soundness test Delivering sustainable development, Key requirement 10).
- 3.16 It is worth noting the Environment Agency support shown on page 144 of core document SUB8 (Publication Policies - Consultation Schedules, May 2017). The EA considered that the policy was sound, the only recommendation being a minor change to the reasoned justification paragraph 36.3.21 which was taken on board by the Council (please see modification MINOR/070 found in document SUB6 (Proposed modifications, May 2017).
- 3.17 The Council believes that a thorough analysis has been provided to confirm that the changes to Policy CE2 in the LPPR are justified and that the policy as revised is consistent with national policy and in general conformity with the London Plan. No further changes apart from modification MINOR/070 are needed to make the Plan sound or legally compliant.

## Waste (Policy CE3)

4. **Is Policy CE3, as revised in the RBKCLPPR, positively prepared, justified, effective, consistent with national policy and in general conformity with the London Plan in meeting the borough's waste apportionment targets and delivering an effective waste management strategy for the borough? In particular:**
  - a. **Is there a signed agreement in place to pool the London Plan waste apportionment figures within the Western Riverside Waste Authority area?**
    - 4.1 Please see this Council's response to Matter 1 Issue 1a, question d paragraphs 1.24 to 1.33 on the current state of the Memorandum of Understanding.
    - 4.2 In summary, work is ongoing to establish capacity at Powerday in the LBHF / OPDC area. The situation at present is that LBHF and OPDC have both acknowledged that there is likely to be surplus capacity at the Powerday site but have been unable to provide clarity on reaching an agreement until this work has been completed (see Matter 1 issue 1a, question d paragraphs 1.26 to 1.27 and 1.32). The Council has been reassured by OPDC that this information is being sought from the operators but it has not yet been received (See background document EX001).
    - 4.3 Paragraph 2.3.12 of the Policy Formulation Report (SUB62) and Tables 12 and 13 of the joint Waste Technical Paper (SUB64) explain that there is no existing permitted waste management capacity in the Borough which counts towards meeting the London Plan apportionment target. The available waste treatment capacity is from waste sites with exemptions (i.e. those which report their operations to the Environment Agency, but do not require a full permit). The capacity from exempt sites is 30,660 tonnes per annum.
    - 4.4 The Waste Technical Paper (SUB64) also considered safeguarded sites. Since the completion of the Waste Technical Paper, the Council has sought additional clarity from GLA (December 2017) on whether capacity from Cremorne Wharf, a safeguarded site in the Borough, could count towards apportionment. The GLA confirmed that the potential capacity could be counted. The estimated capacity from the Waste Technical Paper is set out at paragraphs 2.3.35 and 2.3.40 of the Waste Policy Formulation Report (SUB62) and paragraph 4.3.11 of the Waste Technical Paper (SUB64). 31,200 tonnes per annum is estimated based on the GLA assumption of 80,000 tonnes per annum capacity per hectare.
    - 4.5 The Council has, however, taken on board advice from the Environment Agency in respect of the assumption and applied a more conservative figure of 60,000 tonnes per annum capacity per hectare. This results in an estimated additional capacity of 23,400 tonnes per annum (tpa) from the safeguarded site Cremorne Wharf (following completion of Thames Tideway Tunnel by 2022, Paragraph 2.3.3 of the Waste Policy Formulation

- Report). Including this additional capacity, the total capacity for the Borough by 2036 is estimated to be 54,060 tpa. The Council therefore has a capacity gap of 107,340 tpa in 2016 and 143,940 tpa by 2036. Further Proposed Modifications MAIN/222 and MAIN/223 (February 2018) (CED009) updates the capacity available.
- 4.6 Paragraph 2.3.46 and 2.3.47 of the Waste Policy Formulation Report (SUB62) sets out the actual waste management arrangements in the Borough. A thirty-year waste management services agreement is in place between Cory Environmental Ltd and the Western Riverside Waste Authority to dispose of the WRWA waste. It is understood that this continues into the 2030's. This means that, in reality for duration of the RBKC plan period, waste arisings from the Borough and the other WRWA WPAs are dealt with in Bexley.
- 4.7 The Mayor published a draft new London Plan for consultation in December 2017. This includes draft new apportionment targets for the Borough which are proposed to reduce significantly (Table 9.2 of the draft London Plan (2017)). The new London Plan is expected to be adopted in 2019.
- 4.8 Taking into account the capacity in the Borough (paragraphs 4.3, 4.5 and 4.6 above) and the draft new apportionments, this Council's capacity gap (paragraph 4.6 above) will reduce. Proposed Further Modification 2 (CED009) MINOR/221 reflects that the waste apportionment target will change during the plan period with the adoption of the new London Plan and this will ensure that the RBKC Local Plan will remain flexible and not become out of date a short time after its adoption.
- b. If not what measures are proposed to manage any shortfall in waste arisings in the borough to the end of the plan period?**
- 4.9 The Borough's arisings are greater than the capacity available, therefore the Council must rely on the joint working under the Duty to Cooperate to assist. The National Planning Policy for Waste (NPPW) states that "*Waste planning authorities should have regard to the apportionments set out in the London Plan when preparing their plans*".
- 4.10 The GLA provides waste arising forecasts and sets apportionment targets for London Boroughs. The GLA recognises this Council's circumstances (see paragraph 4.25 and 4.26 below) and the Draft London Plan (December 2017) (table 9.1 and table 9.2) shows that the arisings are higher than the apportionment set for the Borough.
- 4.11 The Council is mindful that the NPPG on Waste states that (Paragraph: 007 Reference ID: 28-007-20141016) "*there is no expectation that each Local Planning authority should deal solely with its own waste to meet the requirements of the self-sufficiency and proximity*".
- 4.12 It is important to note that the majority of the Borough's waste is managed

- by private contractors, who make commercial decisions on destinations for waste collected. Similarly, the waste management sites in other WPA areas are commercial businesses. As such it is difficult to regulate where they receive waste from.
- 4.13 Paragraph 2.3.46 and 2.3.47 of the Council's Waste Policy Formulation Report (SUB62) sets out the actual waste management arrangements in the Borough.
- 4.14 Currently all of the municipal waste goes to WRWA facilities in Wandsworth for transfer and treatment (Western Riverside Transfer Station near Wandsworth Bridge and Cringle Dock Transfer Station next to Battersea Power Station). Since 2011, recyclables go to a Materials Recycling Facility at Smugglers Way in Wandsworth and residuals are barged down river to the Riverside Resource Recovery Limited (RRRL) Energy from Waste (EfW) facility at Belvedere, in the London Borough of Bexley where the waste is incinerated to generate electricity. The facility can handle 670,000 tonnes of waste per year although the WRWA supplies around 300,000 tonnes of residual waste to it. Under its contractual arrangements, WRWA has a guaranteed right to capacity at the EfW facility but it does not guarantee to supply any minimum tonnage level, or make a minimum payment.
- 4.15 A waste management services agreement is in place between WRWA and Cory Environmental Ltd (operators of the RRRL facility at Belvedere) to dispose of the WRWA waste. This is understood this continues in to the 2030's. Meaning that, in reality for duration of the RBKC plan period, waste arisings from the Borough and the other WRWA WPAs are dealt with in Bexley. The Council, with the WRWA WPAs, will engage with South East London Waste Planning Group (SELWPG) to manage any shortfall if this cannot be addressed within the WRWA area first. This is acknowledged in paragraph 36.3.36 (with Proposed Modification MINOR/071) of the LPPR.
- 4.16 Policy CE3 promotes sustainable waste behaviour and ensures waste is managed sustainably in line with the Waste Hierarchy. It states the Council "...will ensure that waste is managed in accordance with the waste hierarchy, which is to reduce, reuse or recycle waste as close as possible to where it is produced".
- 4.17 Policy CE3 a) and b) provides a commitment that the Council will continue to work with the WRWA WPAs, other London Boroughs and the GLA in respect of waste. The Council is exploring potential capacity with other WRWA WPAs as explained at paragraphs 1.22, 1.23, 1.26, 1.27 and 1.32 of this Council's response to Matter 1, Issue 1a.
- 4.18 In addition, Policy CE3 c) safeguards Cremorne Wharf for waste management purposes. The site is currently being utilised for Thames Tideway Tunnel, however, when complete the Development Consent Order requires the site to be restored. The safeguarding of the site continues for waste management use which will provide additional waste management capacity of 23,400 tonnes per annum (see also paragraphs 4.4 and 4.5 above) following completion of the infrastructure project.

- 4.19 Policy CE3 d) requires on-site waste management facilities as part of new developments in the Borough. This is also reflected in the CA1 Kensal Canalside Opportunity Area site allocation which requires the provision of on-site waste management facilities to deal with the developments arising from the new uses of the site. The policy is a strategic allocation and details of any waste management facility as part of the overall development will need to be considered as part of future Kensal Canalside Opportunity Area SPD and master-planning work.
- 4.20 Policy CE3 e) also recognises the contribution that can be made from small scale waste management facilities. Therefore, the policy seeks small scale management facilities on residential, commercial or mixed use developments where this is practicable.
- 4.21 Policy CE3 f) requires all new development to provide innovative, well designed functional and accessible refuse and recycling facilities for the storage and collection of waste. This will be secured by way of a planning condition on the planning permission. The Council also has its own waste management team who are consulted on applications for development. Planning officers work with these colleagues to ensure the design of future development for waste management is adequate and encourages sustainable waste behaviour, including recycling as much as possible. As part of this policy a Waste Management Strategy for the development is also sought.
- 4.22 Policy CE3 g) requires development proposals to make use of rail and waterway network to transport construction and other waste and Policy CE3 h) requires Site Waste Management Plans to be prepared and implemented for demolition and construction waste.
- 4.23 The Mayor's letters of general conformity (SUB9 and CED004) confirm that the LPPR is in general conformity with the London Plan. In the letter of general conformity (SUB9), the GLA confirm that Policy CE3 and reasoned justification includes a number of amendments that set out an appropriate approach to waste management for the borough that is in line with Policies 5:16 – 5:19 of the London Plan. The Council has met with GLA officers (August 2017 and December 2017) about ongoing waste related matters in the WRWA area and no concern was raised with the Council's approach.
- c. Should the Plan commit to identifying and safeguarding further sites for waste management in the borough?**
- 4.24 There are no existing operational waste sites within the Borough. A combination of a stretching housing target, the need to protect employment land, the constrained nature of the borough and competing land uses limits the Council's ability to allocate sufficient land to be able to meet its apportionment.
- 4.25 There are no strategic industrial locations or locally significant employment areas that could be used as explained under Policy 5.17 of the London Plan (2016) for the purposes of waste.

- 4.26 The Council has continued to safeguard Cremorne Wharf for future waste management use (Policy CE3 c). It is the only future opportunity for additional waste management capacity in the borough.
- 4.27 As detailed above in paragraphs 4.19 and 4.21, Policy CE3 d), e) and f), and site allocation policies also seek on site waste management facilities as part of new development.
- d. Do the proposed modifications (MINOR/071-073) to the reasoned justification to policy CE3, including the deletion of the apportionment capacity gap table, ensure an effective, justified and positively prepared plan in respect of waste? If so should they be considered as 'main modifications' necessary for soundness?**
- 4.28 Policy CE3 (including Proposed Modifications MINOR/071-073) of the LPPR is positively prepared as it is based on joint evidence base prepared with other WPAs and seeks to do everything possible to contribute to waste management in the Borough. Policy CE3 further reflects that there may be a need to continue to work with the other WRWA WPAs to secure spare apportionment capacity outside of the WRWA WPA grouping. The policy presents the most appropriate approach available to the Borough given its particular circumstances. It is therefore justified and deliverable over the plan period based on ongoing effective joint working.
- 4.29 Proposed Modification MINOR/071 reflects that there is a contract in place between the WRWA and Cory Environmental Ltd (operators of the RRRL facility at Belvedere) and seeks to ensure that the WRWA contract arrangement can continue to happen in the future. Further to this it also reflects that there is ongoing work to reach an agreed position within WRWA area. Therefore, it should be considered a Minor Modification.
- 4.30 Proposed Modification MINOR/072 deleted the apportionment capacity gap table as it was considered this level of detail should remain in the Waste Technical Paper, through which it could be monitored and reviewed. With or without the deleted table the apportionment that will be used is set out in the London Plan. When the new London Plan is adopted with new Borough apportionments (2019) this table would become out of date. The modification ensures flexibility and that the plan does not become out of date a short time after adoption.
- 4.31 Proposed Modification MINOR/073 reflects that the Borough and WRWA WPAs are still in the process of trying to reach an agreed position and secure pooling, as explained in this Council's response to Matter 1, Issue 1. Proposed Policy CE3 Parts a) and b) already reflect this.
- 4.32 Paragraph 2.4.1 of the Waste Policy Formulation Report (SUB62) sets out the options and alternatives that the Council has considered for Policy CE3, this explains that policy approach is positively prepared, justified, effective and consistent with national policy:

Option		Status	Reason
1	The Council should identify a site or sites within the Borough to address its apportionment shortfall entirely within the Borough.	Not a reasonable alternative	This option is not realistic as there are no sites available within the Borough to meet the Borough's waste arisings and apportionment.
2	The Council should continue to work with the other WRWA WPAs to jointly identify a site or sites within the WRWA area to address their collective apportionment shortfall entirely within the WRWA area.	Preferred option for Publication Policies with Proposed Modifications	<p><b>Positively prepared</b> This option is positively prepared as: -it based on evidence undertaken with the WRWA Waste Planning Authorities. - a joint approach to meeting the WRWA waste apportionment.</p> <p><b>Justified</b> This option is justified as it: - is based on the conclusions of the joint WRWA WPA Waste Technical Paper. - ensures that the waste apportionment of the WRWA Waste Planning Authorities is met.</p> <p><b>Effective</b> This option is effective as it is based on effective joint working on cross-boundary strategic priorities.</p> <p><b>Consistent with national policy</b> This option is consistent with regulations, national and regional policy and guidance.</p>
3	The Council should continue to work with the other WRWA WPAs and collectively secure spare apportionment	Preferred option for Publication Policies with Proposed Modifications	<p><b>Positively prepared</b> This option is positively prepared as: -it based on evidence undertaken with the WRWA Waste Planning</p>

Option	Status	Reason
<p>capacity outside of the WRWA area, but within London, to address the WRWA WPAs' collective apportionment shortfall.</p>		<p>Authorities. - a joint approach to meeting the WRWA waste apportionment.</p> <p><b>Justified</b> This option is justified as it: - is based on the conclusions of the joint WRWA WPAs Waste Technical Paper. -ensures that the waste apportionment of the WRWA Waste Planning Authorities is met.</p> <p><b>Effective</b> This option is effective as it is based on effective joint working on cross-boundary strategic priorities.</p> <p><b>Consistent with national policy</b> This option is consistent with regulations, national and regional policy and guidance.</p>
<p>4 Continue to safeguard Cremorne Wharf for waste management, water transport and cargo handling purposes</p>	<p>Preferred option for Publication Policies with Proposed Modifications</p>	<p>This approach is in accordance with London Plan policy on safeguarding wharves.</p>
<p>5 Not continue to safeguard Cremorne Wharf for waste management, water transport and cargo handling purposes</p>	<p>Reasonable alternative</p>	<p>This approach is not in accordance with London Plan policy on safeguarding wharves.</p>

4.33 The Mayor's letters of general conformity (SUB9 and CED004) confirm that the LPPR is in general conformity with the London Plan. In the letter of general conformity (SUB9), the GLA confirm that Policy CE3 and reasoned justification includes a number of amendments that set out an appropriate approach to waste management for the borough that is line with Policies 5:16 – 5:19 of the London Plan.

## Air Quality (Policy CE5)

- 5. Are the changes to Policy CE5 in the RBKCLPPR justified and is the policy as revised consistent with national policy and in general conformity with the London Plan in respect of managing the impact of development on air quality in the borough?**
- 5.1 Yes, the changes to Policy CE5 are justified and the revised policy is both, consistent with national policy and in general conformity with the London Plan.
- 5.2 The policy was reviewed and adopted in December 2014 as part of the Miscellaneous Matters review. As explained in paragraph 1.11 of document CED001 (Council's Response to Inspector's Initial Questions, 19 June 2017), Policy CE5 Air Quality was added to the scope primarily to reference the Council's corporate Air Quality and Climate Change Action Plan (AQCCAP) 2016-2021 and the related evidence and factual updates which could be made in the reasoned justification. Changes to the actual policy are minimal relating primarily to the AQCCAP and the national policy withdrawing the Code for Sustainable Homes (as explained in response to Issue 3c, Question 1 above). The other policy changes are for clarification, to correct errors and to strengthen the existing policy. The Council considers that no further changes to Policy CE5 are necessary to meet the tests of soundness.
- 5.3 It should be noted that the Air Quality and Climate Change Action Plan has been based on robust evidence base<sup>7</sup> and was consulted in autumn 2015. The consultation responses can be seen on the Council's website<sup>8</sup>.
- 5.4 The Planning Practice Guidance (PPG) sets the role of the Local Plans with regard to air quality in paragraph 002. It explains that in plan making it is important *"to take into account air quality management areas and other areas where there could be specific requirements or limitations on new development because of air quality. Air quality is a consideration in Strategic Environmental Assessment and sustainability appraisal can be used to shape an appropriate strategy, including through establishing the 'baseline', appropriate objectives for the assessment of impact and proposed monitoring."*
- 5.5 The reasoned justification explains that the entire Borough has been designated as an Air Quality Management Area (AQMA), therefore, Policy CE5 does not refer to specific areas in the Borough but focuses on major developments and developments which could have a greater impact on air quality. Section b of the policy also addresses the introduction of sensitive receptors into an area of existing poor air quality.
- 5.6 Air quality is certainly a consideration in the Integrated Impact Assessment (IIA) report (which includes the Sustainability Appraisal and Strategic

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<sup>7</sup> [www.rbkc.gov.uk/sites/default/files/atoms/files/AQCCAP\\_Technical%20Appendices.pdf](http://www.rbkc.gov.uk/sites/default/files/atoms/files/AQCCAP_Technical%20Appendices.pdf)

<sup>8</sup> [www.rbkc.gov.uk/environment/air-quality/air-quality-and-climate-change-action-plan-2016-2021](http://www.rbkc.gov.uk/environment/air-quality/air-quality-and-climate-change-action-plan-2016-2021)

Environmental Assessment). The IIA Report – Submission, May 2017 (SUB72) shows the importance of Air Quality as it forms part of the IIA framework (paragraph 3.5.2, table 3, page 18) and it is included as one of the key sustainability issues (paragraph 4.3, table 9, page 31).

Furthermore, the IIA gives in section 9.7 (page 72) the following Policy Recommendations for Air Quality: *“It is recommended that every effort is made to dissuade car ownership at the major developments in the borough. The site assessments state a recommendation to pursue “zero parking, except for essential needs” at all sites, if at all possible, though it is recognised that there is policy resistance to such extreme measures. No change to Local Plan policy is seen as required, as it already states that “car parking provided in new residential development to be at or below the adopted car parking standards.”* (Note: Policy CT1c, which is not currently being reviewed, requires that all new additional residential development be permit-free).

- 5.7 It is worth noting that the IIA (SUB 72) has undergone several rounds of consultation as part of the LPPR consultations.
- 5.8 The PPG paragraph 002 also states that: *“Drawing on the review of air quality carried out for the local air quality management regime, the Local Plan may need to consider:*
- *the potential cumulative impact of a number of smaller developments on air quality as well as the effect of more substantial developments;*
  - *the impact of point sources of air pollution (pollution that originates from one place); and,*
  - *ways in which new development would be appropriate in locations where air quality is or likely to be a concern and not give rise to unacceptable risks from pollution. This could be through, for example, identifying measures for offsetting the impact on air quality arising from new development including supporting measures in an air quality action plan or low emissions strategy where applicable.”*
- 5.9 The current Policy CE5 considers the points raised above. It refers to controlling the impact of development on air quality in different ways, from requiring developments to be air quality neutral, requiring assessments for major developments, resisting heating technologies which may lead to an increase in emissions and seeking energy efficiency technologies, and controlling emissions both, during demolition and construction. The impact of point sources of air pollution is addressed by Policy CE5 but it has also been taken into consideration in Policy CE3b (waste) by requiring on-site waste management facilities to be fully enclosed where practicable.
- 5.10 Furthermore, page 605 of SUB7 (Submission - Consultation Statement, May 2017) explains that the Council has a detailed plan to reduce air pollution – the Air Quality and Climate Change Action Plan (AQCCAP) with 83 Actions. Infrastructure for electric vehicles is being developed and installed by the Highways and Transportation Directorate. Air quality considerations with regard to the Planning process are reflected specifically in the following actions:

- Action 27 – dust emissions from construction and demolition;
  - Action 28 - implementation of energy strategies;
  - Action 29 – decentralised energy and CHP;
  - Action 73 – developer contributions to air quality improvements;
  - Action 81 – lobbying Government for better building standards (e.g. insulation).
- 5.11 Other actions which could help improve air quality and reduce human the exposure to air quality pollutants, for example greening, are included in the AQCCAP (actions 65, 69 and 70 which seek to promote green screens for certain locations). The explicit reference in the strategic Policy CE5 to the Council supporting measures to improve air quality strengthens the existing policy and reference is now made specifically to public realm improvements which could take a variety of forms.
- 5.12 Finally, a letter of general conformity with the London Plan has been received from the GLA in March 2017 (SUB9) which confirms that the publication policies are in general conformity with the London Plan.
- 5.13 For all the reasons explained above the Council considers that the minor changes to Policy CE5 in the LPPR are justified and that the policy as revised is consistent with national policy and in general conformity with the London Plan in respect of managing the impact of development on air quality in the Borough. The Council considers that no further changes are needed to make the Plan sound or legally compliant.
- 6. Are any further changes necessary in respect of the control of NO<sub>2</sub> emissions in the light of the Government’s Air Quality Plan published in July 2017 and the London Mayor’s latest proposals for the Ultra-Low Emission Zone?**
- 6.1 The Government’s Air Quality Plan for Nitrogen Dioxide<sup>9</sup> sets out the UK’s plan for reducing roadside nitrogen dioxide concentrations. Paragraph 36 of the detailed Plan<sup>10</sup> states that: *“The Mayor of London is responsible for air quality in the capital and has reserve powers under Part IV of the Environment Act 1995 to reflect this. Under the Act the Mayor may direct the boroughs in the Greater London area on how they should assess and prioritise action in their areas”*.
- 6.2 The Mayor’s London Local Air Quality Management (LLAQM) framework<sup>11</sup> is the statutory process used by local authorities to review and improve air quality within their areas. As part of LLAQM, all London boroughs must submit Annual Status Reports (ASRs). A key part of the LLAQM system is

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<sup>9</sup> [www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017](http://www.gov.uk/government/publications/air-quality-plan-for-nitrogen-dioxide-no2-in-uk-2017)

<sup>10</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633270/air-quality-plan-detail.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633270/air-quality-plan-detail.pdf)

<sup>11</sup> [www.london.gov.uk/what-we-do/environment/pollution-and-air-quality/working-london-boroughs](http://www.london.gov.uk/what-we-do/environment/pollution-and-air-quality/working-london-boroughs)

recognising local authorities that are working hard to improve air quality within their borough. Boroughs who have submitted their annual reports on time and have evidenced that they are working towards the Cleaner Air Borough (CAB) criteria are recognised with CAB status which the Borough holds. As part of the LLAQM the Council submitted an Annual Status Report<sup>12</sup> which the Mayor approved.

- 6.3 The Integrated Impact Assessment (IIA) Report – Submission, May 2017 (SUB72) refers in section 9.7 to the UK Air Quality Strategy and acknowledges (in page 70) that *“the size and complexity of the Capital’s transport networks and construction activity from unprecedented growth means the task of reducing NOx emissions, and NO2 concentrations, is the most challenging in the country.”* It explains that although a series of policies in the Local Plan (Policies CP1, CP2, CP3, CF1, CF5, CF6, CF7, CF8, CH6, CT2, CE2, CE3 and C1) have the potential to lead to new development which can lead to increases in emissions to air via construction, travel / transport and/or energy use, the Council has also in place a set of policies which could have mitigate this impact on air quality (Policies CE5, CT1, CF5, CF6 and CF8, CF7 and CF11, CT2, CE1, CR5). It explains that there remains potential for both short and long-term minor adverse effects to air quality as a result of development, as there is no feasible way to foresee at this stage an entire “zero air pollution” solution to all of the new development cumulatively, despite the efforts of policy and other measures.
- 6.4 However, the IIA (SUB72) acknowledges that the uncertainty of this assessment is “high”, given the many efforts from different angles being made to improve the future baseline for air quality, and indeed to improve it throughout Greater London. It concludes that *“the effect of the LPPR and Local Plan is likely to remain negative, but it could eventually be “negligible negative” (given a low increase with all of the mitigation) if the long-term future baseline were to be one where all relevant Air Quality Management Areas (AQMAs) (see Section 4.2), both within the borough and beyond, are de-designated. Beyond the borough, cumulatively new development is expected to lead to net increases in road traffic in Greater London. The Mayor of London and Royal Borough of Kensington and Chelsea continue to make every effort to tackle reliance on the private car and road transport as a means of transportation, and to obtain net reductions in car usage.”*
- 6.5 As explained in paragraph 5.6 above in response to of the previous question for Air Quality (Issue 3c Question 5), the IIA (SUB72) gives in section 9.7 (page 72) the following Policy Recommendations for Air Quality: *“It is recommended that every effort is made to dissuade car ownership at the major developments in the borough. The site assessments state a recommendation to pursue “zero parking, except for essential needs” at all sites, if at all possible, though it is recognised that there is policy resistance to such extreme measures. No change to Local Plan policy is seen as required, as it already states that “car parking provided in new residential development to be at or below the adopted car parking standards.”* (Note:

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<sup>12</sup> [www.rbkc.gov.uk/environment/air-quality/air-quality-reports-and-documents](http://www.rbkc.gov.uk/environment/air-quality/air-quality-reports-and-documents)

- Policy CT1c, which is not currently being reviewed, requires that all new additional residential development be permit-free).
- 6.6 Regarding the London Mayor's latest proposals for the Ultra-Low Emission Zone (ULEZ) page 605 of SUB7 (Submission - Consultation Statement, May 2017) explains that the Council broadly supports the London Mayor's ULEZ and was submitting at that time detailed responses to his three stage consultation.
- 6.7 There have been several consultations on the ULEZ. On 10 October 2016, the Mayor launched a consultation with detailed proposals for the implementation of an Emissions Surcharge (ES) and improving the ULEZ including:
- Bringing forward the introduction of the ULEZ to 2019 instead of 2020.
  - Extending the ULEZ from Central London up to the North and South Circular roads for all vehicles, potentially as early as 2019; and,
  - Introducing a London-wide ULEZ for heavy vehicles (HGVs, buses and coaches) as early as 2019.
- 6.8 The Council supported the introduction of a London-wide ULEZ for heavy vehicles and a 2019 implementation date for an expanded ULEZ, provided that residents would have full knowledge of the policy decision by mid-2017. The most current round of consultation is called 3b and is still running. The Mayor is no longer pursuing a 2019 implementation date for expansion of the ULEZ to the North/South Circulars and the London-wide ULEZ for HGVs, instead the GLA is proposing an October 2020 date for the London-wide ULEZ for heavy vehicles and an October 2021 date to expand ULEZ beyond central London to the North and South Circular roads.
- 6.9 A letter of general conformity with the London Plan has been received from the GLA (March 2017) (SUB9) which confirms that the publication policies are in general conformity with the London Plan.
- 6.10 For the reasons explained above, the Council considers that there is no need for further changes in Policy CE5 in respect of the control of NO<sub>2</sub> in the light of the Government's Air Quality Plan published in July 2017 and the London Mayor's latest proposals for the Ultra-Low Emission Zone. The Council considers that no further changes are needed to make the Plan sound and legally compliant.