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| <b>Item No.</b><br>5.2                 | <b>Classification:</b><br>Open | <b>Date:</b><br>6 April 2011   | <b>Meeting Name:</b><br>Council Assembly |
| <b>Report title:</b>                   |                                | Canada Water Area Action Plan -<br>Publication/Submission Summary Report (Policy<br>Framework) |  |
| <b>Ward(s) or groups<br/>affected:</b> |                                | Rotherhithe, Surrey Docks  |  |
| <b>From:</b>                           |                                | Cabinet  |  |

## RECOMMENDATIONS

That the council assembly considers the recommendations of the Cabinet to:

1. Note the comments of the planning committee on the Further Changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) (appendix A).
2. Agree the further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) (appendix A) including any/the amendment(s) proposed by Cabinet, the arrangement for publicising these changes (appendix B), sustainability appraisal (appendix C) and equality impact assessment (appendix D).
3. Approve the further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) for publication and submission to the Secretary of State for Communities and Local Government provided no substantive changes are necessary following publication.
4. Delegate the approval of any minor non-substantive amendments resulting from its meeting or receiving representations on the further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) to the Strategic Director for Regeneration and Neighbourhoods in consultation with the Cabinet Member for Regeneration and Corporate Strategy before submission to Secretary of State.
5. That Council Assembly note the update on two further factual changes in circumstances at Canada Water which may necessitate further revisions to the Canada Water AAP:
  - i. The recent announcement by Daily Mail & General Trust that it is consulting on a proposal to relocate its printworks from Harmsworth Quays to a site in Thurrock;
  - ii. The Department for Education (DfE) formally wrote to the council in November 2010 informing us that a new secondary school in Rotherhithe would no longer receive funding support through Building Schools for the Future. Recently the council received further information from the DfE suggesting the government had still allocated the full £19.6m to the Rotherhithe school project. The council has written to the DfE seeking urgent confirmation about whether it is being given the funds to move forward with a new secondary school for Rotherhithe.

## BACKGROUND INFORMATION

6. The council is preparing an area action plan (AAP) for Canada Water and the Rotherhithe area. The AAP comprises localised policies which help shape the regeneration of Canada Water. Like the core strategy it is a spatial plan and concentrates on how change will be managed and achieved. It will be a development plan in the council's local development framework (LDF) and will be used as the basis for determining planning applications. Together with the core strategy and other local development framework documents, it will replace the Southwark Plan.
7. The draft AAP was approved at council assembly on 27 January 2010 for publication and submission to the Secretary of State for examination in public in March 2010. This followed several stages of consultation. During the first stage, completed in February 2009, the council consulted on issues and options for the future growth of the area. At the second stage, completed in November 2009, the council consulted on the preferred options for the AAP. At the final stage, the council published the AAP and invited the public to make representations on its soundness. This took place between January and March 2010. The document was then submitted to the Secretary of State for independent examination on 26 March 2010.
8. The council is now proposing to put forward focused revisions to the AAP for consideration by the Inspector. These arise from the inspector's binding report on the core strategy, which was received on 28 January 2011.
9. The core strategy proposed minimum dwelling sizes. However, these were deleted by the inspector on the grounds that they would be more appropriate in lower tier documents such as AAPs. He also suggested that the format in which the council had presented the minimum dwelling sizes was too inflexible and was not justified by the evidence base.
10. The core strategy also sought to designate new sites of importance for nature conservation (SINCs). The inspector did not accept the proposed SINCs, as in the case of dwelling sizes, stating that it would be more appropriate to do this in lower tier documents such as AAPs.
11. These recommended changes in the inspector's report, have resulted in the need to make several focused changes to the AAP. These changes relate to:
  - Incorporating minimum dwelling sizes in the AAP in a revised format;
  - Designating new sites of importance for nature conservation (SINCs) through the AAP and providing a more detailed strategy for Open Spaces.
12. These changes, while limited in scope, are nevertheless considered to be significant changes to the plan. As a result and in accordance with Regulations 26 and 27, the council will publish these revisions and invite representations on their soundness and / or give participants the opportunity to confirm whether they maintain their existing representations, would change their representations or make new representations.
13. The January 2010 publication/submission draft AAP was accompanied by a sustainability appraisal and an equalities impact assessment. These have been updated to reflect the impacts of the further changes proposed. The council

also published a consultation report. This will be updated to incorporate the representations received on the soundness of the changes and prior to submission to the secretary of state.

14. It should also be noted that there have been two recent changes in circumstances which will impact on the AAP. These are:
  - The recent decision by Daily Mail & General Trust (DGMT) plc to consult staff on moving their printing press from Harmsworth Quays to Thurrock.
  - The Department for Education has advised the council that a new secondary school in Rotherhithe would no longer receive funding support through Building Schools for the Future.
15. These changes may necessitate further revisions to the Canada Water AAP. Officers have proposed to the Planning Inspectorate that the council consults on any revisions to the plan associated with these changes over summer 2011 and formally publishes amendments in November 2011.
16. It had been anticipated that the examination in public would take place in April 2011. However, the council has proposed to the inspector that the EIP is delayed to ensure that any amendments can be considered by the Planning Inspector. However, officers cannot at this stage confirm that the Inspector will agree to this course of action, or that it will be possible to address these issues within the period of any postponement of the examination in public of the Canada Water AAP.
17. The Inspector has scheduled an exploratory meeting with the Council on 5 April 2011 to discuss the implications of the proposed changes to the publication/submission draft AAP and the examination programme.
18. The Further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) were reported to Planning Committee for comment on 21 March 2011 and to Cabinet on 22 March 2011.

## **CONSULTATION**

### **Representations on the further changes**

19. The council will invite the public to make representations to the Inspector on the Further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) in accordance with the statement of community involvement and the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended in 2008). The further changes will be published for a period of 6 weeks commencing on Friday 22 April and closing on Thursday 2 June. The further changes will be made available on the website, in libraries and council offices. An advertisement will be put into the press and the council will write to contacts on the Planning Policy database to advise of the consultation. A plan for publicising the further changes is included in appendix B.

### **Previous consultation**

20. Consultation has been carried out at all previous stages of preparing the AAP in accordance with the Consultation Strategy for Canada Water and our

Statement of Community Involvement. The consultation report is available as a background paper to this report.

21. In response to the previous invitation to submit comments on the soundness of the publication/submission draft a total of 268 representations were received (Regulation 28 responses) from 29 organisations and individuals. These are summarised in the consultation report.

#### **Planning Committee comments**

22. Deal Porters Walk – used to be much longer and should go all the way around the bus garage.
23. Comment on recommendation 2.ii: The council has received conflicting information as to whether or not funding for a new secondary school in Rotherhithe would be funded through Building Schools for the Future. A further report is expected on the funding of the school since the writing of the committee report.

#### **KEY ISSUES FOR CONSIDERATION**

24. In this report, the Council Assembly is being asked to agree that the publication/submission version of the AAP is revised to incorporate minimum dwelling sizes and to identify three additional sites of importance for nature conservation.

#### **Dwelling sizes**

25. The Core Strategy sought to prescribe minimum flat sizes in order to drive up the quality and standard of residential development. However, the inspector deleted the minimum dwelling sizes, stating that the approach made no allowance for levels of intended occupancy within different dwelling types. The inspector also stated that floor space standards could be placed reasonably in a supporting development plan document. We are therefore proposing to add minimum dwelling sizes to the AAP making an allowance for the intended occupancy within different dwelling types. The dwelling sizes relate dwelling sizes to occupancy levels, which is consistent with the London Plan. The proposed dwelling sizes are set out in appendix A.
26. At Core Strategy preferred options stage the council consulted on how many homes with 2 or 3/more bedrooms should have larger unit sizes than the minimum (10% larger than: 60sqm for a 2 bed flat; 75sqm for a 3 bed property and 90sqm for a 4 or more bed property). The dwelling sizes proposed for the Canada Water AAP are broadly in line with this option and a further round of consultation on the option is not considered necessary.

#### **Sites of importance for nature conservation (SINCs)**

27. In his report on the core strategy, the inspector has not accepted the council's proposal to designate SINCs, as in the case of dwelling sizes, stating that it would be more appropriate to do this in lower tier documents such as AAPs. Three open spaces were proposed as SINCs in the core strategy: Durand's Wharf, Deal Porters Walk and King's Stairs Gardens. The council considers that sound evidence can be presented to the inspector to justify the designation

of these spaces as SINC's in the AAP. The proposed SINC's are set out in appendix A.

28. The council consulted on a proposal to designate King's Stairs Gardens, Deal Porters Walk and Durand's Wharf during the issues and options AAP consultation and also at Core Strategy preferred options stage. A further round of consultation on the proposal is not considered necessary.
29. Planning committee queried whether Deal Porter's Walk should be extended to the south. To the south, Deal Porter's Walk adjoins Site A (27P in the Southwark Plan). The majority of the trees which bounded Site A have been removed, pending implementation of the new landscaping scheme for the site. The Canada Water AAP site designation for site A requires that provision of public open space. It also shows indicatively where the open space should be provided (which is roughly in line with the approved planning application). Given that the landscaping for site A is proposed rather than existing, it would not be possible to designate as a SINC at this point in time. Moreover, as the council has not previously consulted on this, an additional round of consultation would be required prior to publication.

#### **Factual changes in circumstances affecting Canada Water**

30. The report recommendations also ask the Council Assembly to note two recent factual changes of circumstance which may affect the AAP. The Daily Mail and General Trust plc have recently announced that they will consult staff on moving their printing press from Harmsworth Quays on Surrey Quays Road to a greenfield site in Thurrock. While a final decision has not been taken, the council would like to ensure that the AAP puts sufficient guidance in place to provide a framework for the redevelopment of Harmsworth Quays if the opportunity arises.
31. A relocation of Harmsworth Quays would also provide opportunities on neighboring sites, including the Leisure Park, Mulberry Business Park and Site E. Amendments associated with the redevelopment of Harmsworth Quays are likely to affect a number of the AAP policies, including the amount of housing to be provided in the AAP core area, the amount of business space, cycling and walking routes and transport impacts.
32. The council has proposed to the Planning Inspectorate that it consults on a redevelopment option for Harmsworth Quays during summer 2011. If the Planning Inspectorate agree to this course of action, it is anticipated that the council will publish any revisions to the plan and invite representations on their soundness in November 2011, prior to submission to the Secretary of State.
33. Since the AAP was submitted the Department for Education (DfE) formally wrote to the council in November 2010 informing us that a new secondary school in Rotherhithe would no longer receive funding support through Building Schools for the Future. Recently the council received further information from the DfE suggesting the government had still allocated the full £19.6m to the Rotherhithe school project. The council has written to the DfE seeking urgent confirmation about whether it is being given the funds to move forward with a new secondary school for Rotherhithe.
34. It is still anticipated that a new school will be required in the Rotherhithe AAP area within 10 years, subject to the progress of public and private regeneration

and the associated increased school age population. The council will explore the impact on the AAP of this issue. If significant changes to the AAP are required, the council has proposed to the Planning Inspectorate that these would be brought forward on the same timeline as changes associated with Harmsworth Quays.

### **Financial Implications**

35. This report is seeking council assembly agreement to the recommendations outlined above in relation to the Canada Water Area Action Plan.
36. There are no immediate resource implications arising from this report as any additional work required to complete the final Canada Water Area Action Plan for publication will be carried out by the relevant Policy team staff resources without a call on additional funding.
37. However, future development schemes emerging from the final approved Canada Water Area Action Plan will be subject to separate reports which will provide detailed and robust analysis of the financial implications of the individual schemes.

### **Sustainability appraisal**

38. The sustainability impacts of the further changes (Dwelling sizes and sites of importance for nature conservation) have been assessed through the sustainability appraisal. By setting out minimum room size standards, the AAP will encourage a wider mix of accommodation helping to meet the needs of different residents and ensuring more people have the opportunity to live in a decent home. The designation of sites as Sites of Importance for Nature Conservation will contribute to the Sustainability Appraisal's SDO 13 'To protect and enhance open spaces, green corridors and biodiversity' as these sites will be further protected for their biodiversity value.
39. The further changes will not impact on any EU protected habitats and therefore it will not be necessary to update the appropriate assessment of impacts on such habitats undertaken with the AAP.

### **Equalities Impact Assessment**

40. The equalities impacts of the further changes (Dwelling sizes and sites of importance for nature conservation) have been assessed through the equalities impact appraisal. The EqIA found that the minimum dwelling size standards would benefit all residents, in terms of the quality of accommodation provided, but in particular those with protected characteristics.
41. Maintaining a network of well used, high quality open spaces will benefit all residents including those with protected characteristics by ensuring everyone has access to outdoor space. The designation of sites as Sites of Importance for Nature Conservation will raise the profile of these areas in terms of their contribution to biodiversity and role as an ecological resource.

### **Community Impact Statement**

42. As is noted above, the council has updated the equalities impact assessment and sustainability appraisal to take account of the changes proposed. Both the

changes relating to sites of importance for nature conservation and the incorporation of dwelling sizes scored positively.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

43. The main report sets out the key considerations in determining to approve focused post-submission revisions to the Canada Water AAP (Publication / Submission version). The purpose of this section is to outline the relevant procedural and legal matters for members' consideration in approving the proposed further revisions to the Canada Water AAP. Having being deemed sound, the Canada Water AAP was approved by Council Assembly to be published and submitted for examination in public on 27 January 2010.
44. The Council's Core Strategy was also subject to examination in public in July 2010, following which the Inspector's binding report was issued on 28 January 2011 ("**the Report**"). The Report has consequential policy implications resulting in the current proposed further revisions to the submission version of the Canada Water AAP. Hence members are now requested to consider and approve these further consequential changes to the submitted Canada Water AAP.
45. The Council is required by Section 20(2)(b) of the Planning and Compulsory Purchase Act 2004 ("**the 2004 Act**") to submit plan documents which it deems sound. This has been reinforced by the courts in the *Blyth Valley BC v. Persimmon Homes (North East) Ltd, 2008* case. The rationale is that the plan should be informed by early extensive public participation, justified and founded on a robust evidence base (Planning Policy Statement 12, 2008, para 4.52).
46. Regulation 7 of the Regulations provides that Area Action Plans must be development plan documents (DPDs). Accordingly, the Canada Water AAP will form part of the statutory development plan once adopted. The status of the Canada Water AAP as a DPD also means that the stringent legislative processes for the preparation of DPDs must be followed. The preparation process is divided into four stages: -
  - Pre-production – survey and evidence gathering leading to decision to include the Canada Water AAP in the Local Development Scheme;
  - Production – preparation of (i) issues and options and (ii) preferred options in consultation with the community, formal public participation on these, and preparation and submission of the Canada Water AAP and accompanying sustainability appraisal in light of the representations on the preferred options;
  - Publication and submission – this entails pre-submission publication for a period of 6 weeks to allow for soundness representations which are forwarded to the Inspectorate together with the submission AAP
  - Examination in public (EiP) – the independent examination into the soundness of the AAP; and
  - Adoption – the Inspector's binding report and followed by a decision of Council Assembly as to adoption.
47. The Canada Water AAP Submission / Publication version has been through the production process and public participation in a manner that is compliant with legislative requirements and the Council's Statement of Community

Involvement. Members should bear in mind that the Council has actually made a decision to publish and submit an AAP which it deems sound. The Canada Water AAP is now with the Inspectorate pending examination in public. However further focused changes are now proposed to the AAP as a result of factual developments. Whilst members may consider and endorse the recommended further changes, whether or not they are incorporated into the AAP and deemed sound in the overall context of the AAP will be a matter for the Inspector conducting the examination in public into the AAP.

48. The Canada Water AAP Submission/Publication as proposed by this report incorporates amendments to room sizes and Sites of Importance for Nature Conservation SINCs that arise as a result of the Inspectors Core Strategy Report. The report notes two other material changes relating to potential future redevelopment of Harmsworth Quays and Secondary School provision. At this stage it is unclear whether further amendment of the AAP is possible to reflect these changes. Until the Inspector gives a view on this officers cannot commit to any further amendment of the AAP.
49. It should be noted that there are no express provisions within the 2004 Act or the Town and Country Planning (Local Development) (England) Regulations 2004 (**'the Regulations'**) (as amended) which provide a procedure for post-submission amendments to development plan documents such as this AAP. The Planning Inspectorate responsible for examination of development plan documents, recognise in their guidance document *"Examining Development Plan Documents: Learning from Experience"*, Sept 2009 that post-submission changes do occur. However, the guidance advises that post-submission changes which necessitate further evidence gathering and a consequent delay to EIP exceeding 6 months is unlikely to be acceptable and the AAP should be withdrawn.

### **Relevant Guidance**

50. The Planning Advisory Service in its Plan Making Manual ("PMM") offers pragmatic guidance as to the approach to such post-submission changes. If *"focused changes"* are proposed which affect a specific part of the plan and no more than two topic areas, as is the case with the proposal to make revisions to (i) dwelling sizes and (ii) SINCs in the AAP, the PMM recommends the following approach: -
  - a. prepare an addendum to the published plan setting out the proposed changes;
  - b. review the sustainability appraisal and implications of the proposed changes;
  - c. consult people and organisations on the addendum and publish the changes to allow representation to be made on the amended draft plan.
51. The PMM further advises in the case of significant changes that: -

*"...Although the plan is not required to go through another Regulation 25 consultation, it would be necessary to consult the specific consultation bodies previously notified...The new material contained within the plan would be subject to a sustainability appraisal and this would form part of the submission material. Once the local authority is satisfied with the altered development plan document (incorporating the changes) it would then resolve to publish (and submit) the altered plan under new Regulation 27 for formal representations. At*



*the time that the local authority publishes the new development plan document, it would explain to those who have already made representations what the changes are (the differences between the first version and the second version). In light of these changes, the local authority would ask people to either:*

- *confirm their representation still stands*
- *indicate any changes*
- *withdraw their representation...”*

### **Soundness Considerations**

52. The key issue for members in approving the proposed revisions is to consider whether they are sound in the overall context of the Canada Water AAP. In particular in considering the issue of soundness the key questions are whether the proposed further changes: -
- i. Have previously been subject to adequate public participation in accordance with the Statement of Community Involvement and Regulation 25;
  - ii. Have been subject to and are supported by the revised Sustainability Appraisal;
  - iii. are consistent with national policy and in general conformity with the London Plan;
  - iv. have regard to other relevant plans, policies and strategies such as other DPDs which have been adopted or are being produced by the Council;
  - v. have been subject to an Appropriate Assessment pursuant to the Habitats Directive to ensure that they are not likely to have any significant discernible impacts on European protected species;
  - vi. have regard to any sustainable community strategy for the Canada Water area; and
  - vii. are coherent, justified, consistent and effective in the overall context of the Canada Water AAP

### **Consultation / Soundness Representations**

53. As the proposed further changes to the AAP are focused, as per the PMM advice, they should not materially impact the choices made (preferred options) in the AAP so as to require fresh public participation in accordance with Regulation 25 and the Council's SCI (which requires consultation for a period of 12 weeks). Furthermore, in the main body of the report it is noted that the changes in question relating to dwelling sizes and SINC's have been subject to public consultation at Issues and Options / Preferred Options Stages. In addition SINC's also formed part of the Preferred Options consultation in respect of the Core Strategy. It is now proposed that the focused changes are subject to a revised iterative sustainability appraisal and equalities impact assessment. This will be followed by a six week representations period, pursuant to Regulation 27, during which consultation bodies and members of the public will have the opportunity to consider the changes, whether these affect their existing soundness representations or whether they raise new representations.

### **Sustainability Appraisal**

54. Section 19(5) of the Planning and Compulsory Purchase Act 2004 requires sustainability appraisal of the economic, social and environmental sustainability of plans in DPDs. Accordingly, a sustainability appraisal was prepared to

ensure the wider impacts of the Core Strategy policies are addressed. The Sustainability Appraisal provides a sound evidence base for the plan and forms an integrated part of the plan preparation process. The iterative Sustainability Appraisal has fully informed the preparation of the Canada Water AAP and has been revised appropriately in the context of this round of proposed changes.

### **General Conformity**

55. Section 24(1)(b) of the 2004 Act requires that local development documents (LDDs) issued by the Council, such as this AAP, must be in general conformity with the spatial development strategy, namely the London Plan (consolidated with alterations since 2004). On submission of the Canada Water AAP to the Secretary of State for independent examination in January 2010, the Council sought and received the Mayor's opinion in writing that the AAP was in general conformity (Reg 30, the Regulations). The purpose of the independent examination is to ensure legal compliance with the legislative framework, including consultation, soundness of the AAP and general conformity ((Section 20(5)(b) of the Act). The latter is determined as a matter of law and policy practice.
56. Members should note the term general conformity is not defined anywhere within the legislative framework. However, the Court of Appeal decision of *Persimmon Homes (Thames Valley) Ltd & Oths v Stevenage Borough Council* [2005] EWCA 1365 considered the judicial construction of the term and offers authoritative guidance. The terms allows for a 'balanced approach' favouring 'considerable room for manoeuvre within the local plan'. The word 'general' is designed to allow a degree of flexibility in meeting London Plan objectives within the local development plan. The fact that the statutory regime also makes provision for the possibility of conflict between the London Plan and local plan to be resolved in favour of the latter subject to general conformity envisages that 'general conformity' requirement allows for flexibility at local level and not strict compliance with every aspect of the London Plan (Section 46(10) of the 1990 Act as substituted by the Act). This is provided that the effectiveness of the London Plan strategic objectives on housing are not compromised and there is local justification for any departure.
57. In light of the proposed changes to the CWAAP, the issue of general conformity has been considered afresh and the changes are considered to be in general conformity. It is noted the Mayor will have the opportunity to comment further on this issue.

### **Equalities**

58. Positive equalities obligations are placed on local authorities, sometimes described as equalities duties with regard to race, disability and gender.
59. Gender equality duties were introduced by the Equality Act 2006, which amended the Sex Discrimination Act 1975. The general duties in summary require local authorities to have due regard to the need to:
  - (a) "eliminate unlawful discrimination and harassment and;
  - (b) promote the equality of opportunity between men and women."

60. Race equality duties were introduced by the Race Relations Amendment Act 2000 which amended the Race Relations Act 1976. The general duties in summary require local authorities to give due regard to the need to:
- (a) “eliminate unlawful discrimination and harassment;
  - (b) promote the equality of opportunity; and
  - (c) promote good race relations between people of different racial groups”
61. Disability equality duties were introduced by the Disability Discrimination Act 2005 which amended the Disability Act 1995. The general duties in summary require local authorities to carry out their functions with due regard to the need to:
- (a) “promote equal opportunities between disabled persons and other persons;
  - (b) eliminate discrimination that is unlawful under the Act;
  - (c) eliminate harassment of disabled persons that is related to their disabilities;
  - (d) promote a positive attitude towards disabled persons;
  - (e) encourage participation by disabled persons in public life; and
  - (f) take steps to take account of disabled person’s disabilities even where that involves treating disabled persons more favourably than other persons.”
62. Section 71 of the Race Relations Act 1976, section 49A(i) of the Disability Discrimination Act 1995 and section 76A of the Sex Discrimination Act 1975, require local authorities to act in accordance with the equalities duties and have due regard to these duties in carrying out functions, which is particularly important in producing new policies such as the Canada Water AAP. O will be important to ensure and continue to monitor that it does foster the creation of mixed communities.
63. Throughout the production process of the Canada Water AAP from Issues and Options, Preferred Options to a publication / submission, the Council has undertaken iterative Equalities Impact Assessment (EqIA) involving the Council’s Equality and Diversity Panel including assessment of borough’s demographics and the potential impacts of the plan on its diverse communities. Notably the Council’s EqIA processes extend beyond its current statutory equality duties to incorporate religion/belief, sexual orientation and age. The Council has reassessed the EqIA in the context of the proposed changes and does not consider that the proposed changes would disadvantage any group with protected characteristics. On the contrary the changes would result in improved space standards for dwellings and enhanced protection of open spaces as SINC.

## **Human Rights**

64. The decision to make submit for consideration by the Inspector further changes to the Canada Water AAP potentially engages certain human rights under the Human Rights Act 2008 (the HRA). The HRA prohibits unlawful interference by public bodies with conventions rights. The term ‘engage’ simply means that human rights may be affected or relevant. Few rights are absolute in the sense that they cannot be interfered with under any circumstances. ‘Qualified’ rights, including the Article 6, Article 8 and Protocol 1 rights, can be interfered with or limited in certain circumstances. The extent of legitimate interference is subject

to the principle of proportionality whereby a balance must be struck between the legitimate aims to be achieved by a local planning authority in making new policies providing for growth against potential interference with individual human rights. Public bodies have a wide margin of appreciation in striking a fair balance between competing rights in making these decisions.

65. In the case of the CWAAP, a number of rights may be engaged: -

- **The right to a fair trial (Article 6)** – giving rise to the need to ensure proper consultation and effective engagement of the public in the process. It is considered that in relation to the two key issues (i) dwelling sizes and (ii) SINC's to date there has been effective public consultation in accordance with the Council's SCI. The further changes will be subject to a further opportunity to make soundness representations for a period of six weeks following Cabinet's decision;
- **The right to respect for private and family life (Article 8)** - The proposed changes to the Canada Water AAP propose changes to dwelling sizes which impacts positively on housing provision. Other relevant considerations may include impacts on amenities or the quality of life of individuals by prospective development. These issues have been considered throughout the iterative plan making process and in the lead up to the Council's decision to submit the AAP in January 2010. The proposed further changes do not raise new matters which would amount to unlawful interference with Article 8 rights;
- **Article 1, Protocol 1 (Protection of Property)** – this right prohibits interference with individuals' right to peaceful enjoyment of existing and future property / homes. It could be engaged, for instance, if the delivery of any aspect of the plan necessitates CPOs or as a result of particular site allocations. The revisions proposed do not raise such implications and would not result in unlawful interference;
- **Part II Protocol 1 Article 2 Right to Education** – this is an absolute right enshrining the rights of parents' to ensure that their children are not denied suitable education. This is a relevant consideration in terms of strategies in the AAP which impact on education provision. However, whilst the main report provides an update in relation to provision of secondary education facilities at Canada Water, the changes proposed do not impact on education provision.

### **Functions and Responsibilities**

66. Having submitted the Canada Water AAP Submission / Publication version, members are now requested to approve further changes to the submitted plan. Members are reminded to have regard to the considerations set out in this report in coming to a decision. It should be noted that whether the changes are accepted is a matter for the Inspector tasked with the examination in public. Whilst there is no process for approving post-submission changes, members are advised to follow the same decision making processes when deciding to submit a plan for examination.

67. By virtue of Regulation 4(1), paragraph 3(d) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations") (as amended by the Local Authorities (Functions and Responsibilities) (Amendment) (No 2) (England) Regulations 2005 (Regulation 2, paragraph 4) the approval of a DPD / AAP is a shared responsibility with Council Assembly

and cannot be the sole responsibility of Cabinet. If accepted by the Inspector the proposed further changes would impact on the detailed policies in the final version of the AAP. In coming to a decision to approve the proposed changes, members of Cabinet and Council Assembly are advised to have regard to the recommendations, the relevant supporting documents and the contents of this report.

68. Under Part 3A, paragraph 10 of the Southwark Constitution agreeing Development Plan Documents which form part of the Development Plan Framework, is a matter reserved for decision to Council Assembly

**Finance Director**

69. Although there are no financial implications directly attributable to this report, any costs arising from the implementation of this report should be reported for approval by the Cabinet or appropriate delegated authority.

**BACKGROUND DOCUMENTS**

| Background Papers                         | Held At                | Contact       |
|---|------------------------|---------------|
| Canada Water publication/submission draft | Planning and Transport | Julie Seymour |
| Canada Water consultation report          | Planning and Transport | Julie Seymour |
| Canada Water AAP appropriate assessment   | Planning and Transport | Julie Seymour |
| Core Strategy April 2010                  | Planning and Transport | Julie Seymour |
| Statement of Community Involvement        | Planning and Transport | Julie Seymour |

**APPENDICES**

| No.        | Title  |
|------------|--|
| Appendix A | Further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) (available on agenda)                                |
| Appendix B | Plan for publicising the Further changes to the Canada Water AAP Publication/Submission Version (Dwelling sizes and sites of importance for nature conservation) (available on the internet) |
| Appendix C | Canada Water AAP sustainability appraisal (available on the internet)  |
| Appendix D | Canada Water AAP equalities impact assessment (available on the internet)  |

## AUDIT TRAIL

|   |   |                          |
|---|---|--------------------------|
| <b>Cabinet Member</b>   | Councillor Fiona Colley, Cabinet Member for Regeneration and Corporate Strategy |                          |
| <b>Lead Officer</b>   | Stephen Platts, (Acting) Director of Regeneration and Neighbourhoods            |                          |
| <b>Report Author</b>  | Julie Seymour, Head of Planning Policy  |                          |
| <b>Version</b>  | Final   |                          |
| <b>Dated</b>  | 24 March 2010   |                          |
| <b>Key Decision?</b>  | Yes   |                          |
| <b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b> |   |                          |
| <b>Officer Title</b>  | <b>Comments Sought</b>  | <b>Comments included</b> |
| Strategic Director of Communities, Law & Governance                     | Yes   | Yes                      |
| Finance Director / Departmental Finance Manager                         | Yes   | Yes                      |
| <b>Cabinet Member</b>   | Yes   | No                       |
| <b>Date final report sent to Constitutional Team</b>                    |   | 24 March 2011            |