

# City Plan 2040 Regulation 19 Consultation - Representations on Behalf of Freshwater

Anna Harryy [REDACTED]

Mon 6/17/2024 2:27 PM

To: Planning Policy Consultations <PlanningPolicyConsultations@cityoflondon.gov.uk>; Environment - Local Plan <LocalPlan@cityoflondon.gov.uk>

Cc: [REDACTED]

📎 2 attachments (417 KB)

Model Representation Form for City Plan 2040 Freshwater.pdf; 24.06.17 Freshwater City Plan Representation.pdf;

THIS IS AN EXTERNAL EMAIL

Good afternoon,

Please find enclosed representations submitted on behalf of our client, The Freshwater Group of Companies, in response to the Regulation 19 consultation on the draft City Plan 2040.

I would be grateful if you could please confirm receipt by return email.

Kind regards,

Anna

*Please note – I will be on annual leave Wednesday 26<sup>th</sup> June – Tuesday 2<sup>nd</sup> July*

**ANNA HARRYH**  
**SENIOR PLANNER**

Montagu Evans LLP, 70 St Mary Axe, London, EC3A 8BE  
[REDACTED]




🗨️ **THINK BEFORE YOU PRINT OR POST. PLEASE CONSIDER THE ENVIRONMENT.**

This e-mail is intended solely for the person to whom it is addressed. It may contain confidential or privileged information. If you have received it in error, please notify the sender immediately and destroy the transmission. You must not copy, distribute or take any action in reliance on it.

**BEWARE OF CYBER-CRIME:** Our banking details will not change during the course of a transaction. Should you receive a notification which advises a change in our bank account details, it may be fraudulent and you should notify Montagu Evans who will advise you accordingly.

Montagu Evans LLP is a limited liability partnership registered in England and Wales. Registered number OC312072. A list of members' names is available for inspection at the registered office 70 St Mary Axe, London EC3A 8BE.

## Model Representation Form for Local Plans

 <p><b>CITY OF LONDON</b></p>	<h3>Local Plan</h3> <p>Publication Stage Representation Form</p>	<p><b>Ref: Reg 19</b></p> <p><b>(For official use only)</b></p>
--	--	---

**Name of the Local Plan to which this representation relates:**

City Plan 2040

**Please return to City of London Corporation BY 11:00PM 31 May 2024**

emailing to: [planningpolicyconsultations@cityoflondon.gov.uk](mailto:planningpolicyconsultations@cityoflondon.gov.uk)

Please note that all representations will be made public on our website in line with the Town and Country Planning (Local Planning)(England) Regulations 2012. This will include the name of the person and, where relevant, the organisation making the representation. All other personal information will remain confidential and managed in line with the City Corporation's privacy notice.

For more information on how we collect and process personal information, and your rights in relation to that information, please refer to the Environment Department's privacy notice available at [Environment Department Privacy Notice \(cityoflondon.gov.uk\)](http://cityoflondon.gov.uk) and the City Corporation's privacy notice available at [www.cityoflondon.gov.uk/privacy](http://www.cityoflondon.gov.uk/privacy)). Please also see our Statement of Representations Procedure available at: [City Plan 2040 - City of London](http://City Plan 2040 - City of London).

---

This form has two parts –

Part A – Personal Details: need only be completed once.

Part B – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

---

### Part A

---

#### 1. Personal Details\*

*\*If an agent is appointed, please complete only the Title, Name and Organisation (if applicable) boxes below but complete the full contact details of the agent in 2.*

Title

First Name

Last Name

Job Title  
(where relevant)

#### 2. Agent's Details (if applicable)

---

Organisation (where relevant)	The Freshwater Group of Companies	Montagu Evans LLP
Address Line 1		70 St Mary Axe
Line 2		London
Line 3		
Line 4		
Post Code		EC3A 8BE
Telephone Number		
E-mail Address (where relevant)		

## Part B – Please use a separate sheet for each representation

Name or Organisation:

3. To which part of the Local Plan does this representation relate?

Paragraph	Please refer to letter	Policy	Please refer to letter	Policies Map	Please refer to letter
-----------	------------------------	--------	------------------------	--------------	------------------------

4. Do you consider the Local Plan is:

4.(1) Legally compliant	Yes		No	X
4.(2) Sound	Yes		No	X
4 (3) Complies with the Duty to co-operate	Yes		No	X

Please tick as appropriate

5. Please give details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the duty to co-operate, please also use this box to set out your comments.

Please refer to the accompanying letter.

(Continue on a separate sheet /expand box if necessary)

6. Please set out the modification(s) you consider necessary to make the Local Plan legally compliant and sound, in respect of any legal compliance or soundness matters you have identified at 5 above. (Please note that non-compliance with the duty to co-operate is incapable of modification at examination). You will need to say why each modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

Please refer to the accompanying letter.

(Continue on a separate sheet /expand box if necessary)

**Please note** In your representation you should provide succinctly all the evidence and supporting information necessary to support your representation and your suggested modification(s). You should not assume that you will have a further opportunity to make submissions.

**After this stage, further submissions may only be made if invited by the Inspector, based on the matters and issues he or she identifies for examination.**

7. If your representation is seeking a modification to the plan, do you consider it necessary to participate in examination hearing session(s)?

**No**, I do not wish to participate in hearing session(s)

**Yes**, I wish to participate in hearing session(s)

Please note that while this will provide an initial indication of your wish to participate in hearing session(s), you may be asked at a later point to confirm your request to participate.

8. If you wish to participate in the hearing session(s), please outline why you consider this to be necessary:

---



**Please note** the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate in hearing session(s). You may be asked to confirm your wish to participate when the Inspector has identified the matters and issues for examination.

Planning Policy  
City of London  
Guildhall  
London  
EC2V 5DZ

17 June 2024

Dear Sir / Madam,

**The Corporation of London  
City Plan 2040: Regulation 19 Consultation  
Representations on behalf of The Freshwater Group of Companies**

We write on behalf of our client, The Freshwater Group of Companies ('Freshwater'), to submit representations on its behalf to The Corporation of London ('The City' or 'The Corporation') Draft City Plan 2040 Regulation 19 Consultation. The Regulation 19 draft City Plan 2040 ('the Plan') was published for consultation on 18<sup>th</sup> April 2024 and sets out The Corporation's strategic priorities and planning policy for shaping development in the Square Mile over the plan period.

Freshwater is a large family-owned property investment and development group with holdings throughout Great Britain and the US, having a total asset value of circa £3.5 billion. It has a track record of new build and refurbishments in central London and elsewhere, including Tenter House in the City.

Freshwater welcomes the opportunity to comment on the draft City Plan 2040 ('the Plan') policies and supports the City of London Corporation's ambitions to continue to drive the growth of the Square Mile. The aims of the Corporation's economic, environmental and social objectives are supported in principle, however suggested amendments as outlined within this letter are considered necessary to ensure the Plan remains sufficiently flexible to foster the growth and adaptability of the City throughout the plan period.

Tests of Soundness and Conformity with the London plan

Paragraph 35 of the NPPF states that *"Local plans and spatial development strategies are examined to assess whether they have been prepared in accordance with legal and procedural requirements, and whether they are sound. Plans are 'sound' if they are:*

- a) Positively prepared – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- b) Justified – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- c) Effective – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and

- d) Consistent with national policy – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant”.

Paragraph 36 of the NPPF is clear that the tests of soundness will be applied to non-strategic policies where these are contained within a Local Plan in a proportionate way, taking into account the extent to which they are consistent with relevant strategic policies for the area.

The Greater London Authority Act 1999 established the obligation for the Mayor to prepare a strategic spatial development strategy; the London Plan. Section 24 of the Planning and Compulsory Purchase Act 2004 requires that local development documents are in general conformity with this strategy. Section 19 of the 2004 Act specifies further requirements for local development documents. The London Plan is also a component of the Statutory Development Plan for development within London.

The following representations comment on the relevant chapters of the draft City Plan 2040, including recommended amendments to draft Plan policies where considered necessary to meet the aforementioned tests of soundness. Deletions are identified through ~~red strikethrough~~ and additional text is identified in **blue emboldened text**.

In preparing these representations we have had full regard to paragraph 35 of the NPPF and the conformity of draft policies with the London Plan.

## **Chapter 5 - Offices**

### Strategic Office Policy

Draft policy S4(1) seeks to increase the City's office floorspace stock by a minimum of 1.2 million sqm net during the plan period. Freshwater supports the Corporation's aspiration to increase its office stock to maintain its status as a world leading financial and professional services centre. We would urge the Corporation to consider whether it is more appropriate to adopt a higher target taking account of:

- Identified undersupply presently and in the development pipeline;
- Increasing demand for new, high-quality Cat A, highly sustainable offices;
- Higher office attendance and occupancy rates; and
- Increasing employment projections.

The City should consider the latest available data in this regard to inform the target figure.

### Office Development

Our client supports the principles of draft Policy OF1 1.a. However, they consider that this should be amended to state “**promoting** the retrofitting of existing office buildings” in order to be consistent with S4, rather than ‘prioritise’. The City will still require a mixture of approaches and there is no need to prioritise one over the other, rather ensuring that a process is followed to arrive at the most appropriate solution for the site.

Our client questions whether Part F of the policy is needed. It states, “*where appropriate, provide a proportion of flexible and affordable workspace suitable for micro, SMEs*”. London Plan Policy E3 ‘Affordable Workspace’ Part C, states that boroughs, in their development plans, should consider detailed affordable workspace policies in light of local evidence of need and viability.

We can find no evidence to support that proposition in the evidence base. Further, the absence of a threshold does not provide any certainty on when such a request would be made or the basis upon which such a request would be sought. We do not consider the policy to be justified or effective.

#### Protection of Offices

In principle, the protection of office stock is supported under Policy OF2 to ensure the City maintains its status as a world leading financial and professional services centre. However, our client does have some concerns in relation to the consistency of these policies with the retail chapter. Retail Policy RE1 directs large scale retail to Primary Shopping Centres ('PSCs'), while Retail Policy RE2 encourages active frontages throughout the City at ground floor, while Policy OF1 supports the retention of buildings. These policies point towards the acceptability of alternative uses in principle at ground floor subject to a scale threshold.

Flexibility of alternative uses at ground floor outside the PSCs plays an important part of a sustainable strategy for retained and refurbished buildings. It therefore seems more appropriate, having regard to the aims of RE1 and RE2 to set a threshold or exception for the loss of ground floor office space rather than requiring applications which involved the loss of any amount of office floorspace to demonstrate compliance with points 1a – 1c of the draft policy before an alternative use would be considered. In particular, our client considers 12 months of marketing under 1c to be particularly onerous for applications which propose the loss of a small amount of office space. For these reasons our client does not consider the policy to be effective.

#### Meanwhile Uses

Freshwater is supportive of a policy which recognises the need for meanwhile uses. However, they consider the period should be longer, given:

1. A lease may not be signed until Permission is granted.
2. A fit out would take a proportion of the temporary period.
3. A greater period would likely be required from a temporary tenant to justify the expenditure.

On this basis we would suggest that the policy is amended to state: "*Where temporary permission is granted, it will be for a period ~~not exceeding 36 months~~ up to five years and the site will revert to its prior lawful use thereafter. In exceptional circumstances a longer period may be considered.*"

## **Chapter 6 - Retail**

#### Strategic Policy

Freshwater is supportive of the strategic approach set out in draft Policy S4, which seeks to deliver a greater mix of retail, leisure, entertainment, culture and other appropriate uses. In its opinion, this would provide a varied retail environment and activation of the streetscape across the city.

#### Active Frontages

Freshwater supports draft Policy RE2. 2. The complete flexibility to change from one active frontage use to another in policy terms is needed to minimise void periods and provide certainty. It also provides a consistent approach with the Use



Classes Order under which a number of buildings would benefit from such flexibility through Class E. We do consider the policy would benefit from being more explicit that this is supported to provide certainty for applicants and be effective.

In respect of draft policy RE3, we don't think this adds to RE2, given existing 'active frontage' uses are protected under this Policy, no matter where they are located in the City. Furthermore, the definition and extent of a 'retail cluster' is not defined.

As such the implications of the policy for a development site within an area considered to be a 'cluster of retail uses' is not clear from the policy wording as currently drafted. Furthermore, the focus on 'retail' as opposed to 'active frontages' is not supported.

## **Chapter 7 - Culture & Visitors**

### Strategic Policy S6: Culture and Visitors

Reference is made to a Culture Planning Framework ('CPF') in draft policy S6, with the policy requiring cultural, leisure and recreational facilities to be in line with the "*Culture Planning Framework*".

We are not yet aware of the Framework having been published for consultation, rather it is a document which has formed part of the evidence base for the plan. Therefore, we don't consider development proposals with a cultural element can accord with a Framework document that does not form part of the development plan or carry any weight in planning terms.

It is considered that policy S6 should not reference the Framework and the requirement for applicants or others to have regard to the content of the document is considered unjustified. A separate SPD document should be prepared in the proper way and subject to consultation.

### Policy CV2 provision of Arts, Culture and Leisure Facilities

Freshwater supports, under part 3 of the policy, the principle of the threshold approach to when the submission of a cultural plan should accompany development proposals. However, the policy should be clear that the 10,000 sq m threshold relates to the net uplift in floorspace. This will ensure a consistent and proportionate approach, and that retrofit / refurbishment schemes are not burdened by the requirement to provide cultural facilities either on site or off site.

Further we are concerned with part 3 of the policy, which requires major developments below 10,000 sqm to make provision for arts, culture or leisure facilities. The provision of such facilities should relate to floorspace uplift. Without such a threshold approach there would be no consistency in the application of policy and schemes including those involving Change Of Use, retrofit and refurbishment, and extension would be burdened by the requirement to make such provision. There is also suggestion of, and limited details about, a financial contribution. We don't think this is justified following robust review and scrutiny. This is not supported by Freshwater.

Paragraph 7.3.4 of the draft plan sets out that the City will expect applicants to "*provide robust management plans for operational and management arrangements at the pre-application stage*". The approach to the management of a space will be dependent on the eventual cultural operator and nature of the cultural space being offered. The offer and operator is presently developed through a 'cultural implementation strategy', which is secured through the s.106. The management strategy could be secured by condition to co-ordinate with this. This is an appropriate point in the life of the project to produce such a document, as there is certainty around the design and the nature of the cultural offer and occupier. Such a management plan would be more appropriate as a post-consent requirement in order to be effective.

## Chapter 9 – Design

### Strategic Objective

The strategic ambition of The Corporation in respect of design, as set out in Strategic Policy S8, is to promote and deliver high-quality innovative, inclusive and sustainable buildings, public spaces and streets. This is supported by Freshwater.

### Sustainable Design

Draft Policy DE1 (Sustainable Design) promotes a ‘retrofit first’ approach and seeks all new development to optimise sustainable principles, including circular economy and carbon optioneering. To ensure the draft Plan is effective and consistent with national and regional planning policy, Policy DE1 should make clear that environmental sustainability comprises only one of the three pillars of sustainability as set out in paragraph 8 of the NPPF, and therefore a holistic approach to sustainability is necessary across the environmental, economic and social objectives.

As currently drafted, the policy does not acknowledge that to optimise sites in accordance with Policy GG2 (Making Best Use of Land) of the London Plan 2021, the wider economic and social dimensions of sustainable development must be considered. Without that balance, the policy could be interpreted and applied as one that invariably favours the least carbon-intensive development option without due consideration that such options may not reflect the most sustainable development within the round. In particular, paragraph 2 of draft Policy DE1 stipulates that The Corporation’s Carbon Options Guidance Planning Advice Note is required to be used as the process for establishing the “*most sustainable and suitable approach*” for the site. Clearly, the focus of the Carbon Options Guidance Planning Advice Note is on environmental sustainability only, and therefore is not suitable to be used to define the most sustainable development option.

In addition, Paragraph 2 of Policy DE1 as currently drafted requires all major development to undertake an assessment of the options for the site in accordance with the Carbon Options Guidance Planning Advice Note. “Major Development” is defined in Part 1 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as:

*“Means development involving any one or more of the following—*

- a) *the winning and working of minerals or the use of land for mineral-working deposits;*
- b) *waste development;*
- c) *the provision of dwellinghouses where —*
  - (i) *the number of dwellinghouses to be provided is 10 or more; or*
  - (ii) *The development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);*
- d) *the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or*
- e) *development carried out on a site having an area of 1 hectare or more.”*

A summary of this definition is also provided in the Glossary of the Draft City Plan 2040. It is considered that in order for the Plan to be justified and effective, Policy DE1 should be amended to specifically reference that the threshold for undertaking an assessment of the options for the site in respect of carbon optioneering, should be major developments which create new floorspace of 1,000 square metres or more. It is not appropriate or justified for all major developments to be required to undertake such assessments, for example those which include the change of use of an existing building over 1,000 square metres, or the provision of new public open space.

Draft Policy DE1 also introduces a requirement for applicants to commit to achieving a minimum NABERS UK rating of 5\*. However, this rating may be impractical or unreasonable for retrofit schemes, particularly those with retained facades, where achieving the necessary fabric efficiencies for higher NABERS ratings may not be possible. Therefore, the Policy should be amended to secure a proportional and flexible approach to the application of NABERS 5\* ratings, particularly given the scheme's recent introduction in the UK.

### Terraces and Public Spaces

Policy DE4 (Terraces and Elevated Public Spaces) as currently drafted requires all tall buildings or major developments to provide free and publicly accessible elevated open spaces. The requirement is not considered to be reasonable or justifiable in many instances, such as developments which do not exceed the 1,000 sqm major development threshold to a significant degree, or when the setting of a proposed building is not in a desirable location for a viewing gallery. In which case, public access to ground-floor facilities which encourage the use and permeability of open space would be more appropriate. The current draft policy wording also does not align with the London Plan Policy D9 (Tall Buildings) which stipulates that public access should be incorporated into tall buildings where appropriate; with access to the top of a building only encouraged for prominent tall buildings. It is also not consistent with part H of draft policy S12.

It is therefore suggested that draft Policy DE4 is amended as follows:

*“Requiring all tall buildings ~~or major developments~~ to incorporate publicly accessible open space within the building and its curtilage, which may incorporate ~~provide~~ free to enter, publicly accessible elevated spaces where appropriate, which may include roof gardens, terraces, public viewing galleries, or other retail or leisure facilities to create attractive destinations for people to enjoy the City’s spectacular skyline and views”.*

## **Chapter 10 - Transport**

### Strategic Objective

Freshwater supports the aims of Strategic Policy S9 (Transport and Servicing) to maintain and improve transport infrastructure, including the contribution of developments to the creation of inclusive and accessible streets and key routes, and the promotion of active travel.

### Cycle Parking

Freshwater is concerned about draft Policy AT3 (Cycle Parking), which requires the provision of off-street storage of cargo bikes for proposals which include ground floor retail and hot food takeaway, and requires compliance with London Plan cycle parking standards for occupiers and visitors in all instances. This is not considered to be appropriately justified, particularly with respect to retail development.

Policy RE2 requires ground floor activation as part of new development, including through the provision of retail uses, both within and outside of the principal shopping areas, as defined by draft Policy RE1. Outside of the principal shopping areas, supporting text to Policy RE2 acknowledge that retail units provide local facilities for the City’s workforce and enhance the City’s vibrancy. Due to the function retail units provide within the City and the communities they serve, primarily being City workers, it is not considered to be appropriate or necessary to require short stay cycle parking provision in accordance with London Plan standards in all circumstances where retail development is proposed; noting that the majority of customers will utilise the retail units in walking distance from their place of work or residential property.

In addition, noting the Corporation's promotion of retrofit first for development proposals, minimum off-site short stay cycle parking standards are often not achievable within the current built form and therefore are not considered to be a contributor to good sustainable design or demonstrate the most effective use of land, as per the requirements of the London Plan. Therefore, it is considered that Policy AT3 as currently drafted conflicts with other policy requirements contained within the Plan, including draft Policy RE2 and Strategic Policy S8 (Design) in respect of making effective use of limited land.

Therefore, it is suggested that to ensure the policy is positively prepared and appropriately justified, draft Policy AT3 is redrafted to enable sufficient flexibility as is necessary under certain circumstances.

## **Chapter 11 - Heritage and Tall Buildings**

### Strategic Objective

The importance of protecting and positively managing the historic environment of the City, as is sought by Strategic Policy S11 is acknowledged. It is recognised that the development framework is required to be robustly developed to prioritise the preservation and enhancement of the City's historic buildings and spaces, whilst adapting to modern challenges and sustainable development.

### Managing Change to the Historic Environment

It is considered necessary for part of draft Policy HE1 (Managing Change to the Historic Environment) to be made clearer in respect of the justification required for proposals which may result in harm, of any degree, to designated heritage assets, to accord with paragraphs 207-209 of the NPPF. Point 2 of the Policy should provide greater clarity that clear and convincing justification is required for such proposals, with any substantial harm weighted against the public benefits of the proposal, or to the satisfaction of the separate and specific provisions laid out at paragraph 207 of the NPPF.

### Tall Buildings

With regard to tall buildings, draft Strategic Policy S12 defines tall buildings as those over 75m above Ordnance Datum ('AOD') and identifies through the Policies Map where tall buildings are considered to be appropriate subject to meeting other development plan requirements; including mitigation of impacts and compliance with maximum permissible building heights identified within the zones considered appropriate for tall buildings.

Our concern with the draft policy is that it does not acknowledge the need for flexibility in decision-making and the importance of optimising individual sites based on a comprehensive analysis during the application stage. As discussed above, the Plan sets a requirement for a minimum of 1.2 million sqm of net additional office floorspace in the period up to 2040, and it is considered that draft Policy S12 is not sufficiently flexible to deliver the quantum of floorspace required.

Part B of London Plan Policy D9 (Tall Buildings) encourages Boroughs to determine the locations where tall buildings may be an appropriate form of development, subject to meeting other Development Plan requirements. Point 2 of Part B states that appropriate tall building heights should be identified on maps in development plans, and Point 3 states that tall buildings should only be developed in locations that are identified as suitable in Development Plans.

In direct response to Policy D9, Part 2 of draft City Plan 2040 Policy S12 states:

*"The tall building areas identified on the Policies Map and Figure 14 are areas where tall buildings may be appropriate, subject to the requirements in this and other relevant policies"*

Two areas have been identified as suitable for tall buildings in the draft Plan; the City Cluster Tall Buildings Area and the Fleet Valley Tall Buildings Area.

The designation of these Tall Building Areas was informed by the Tall Buildings Topic Paper which forms part of the evidence base for the City Plan 2040 and was published in January 2024. The Topic Paper separates the City into a number of Character Areas, within which they are assessed in relation to their sensitivity to further tall building development and to determine areas in which further tall buildings may be appropriate. This assessment of the character areas is in relation to three main factors: Character and appearance; Strategic views, townscape and skyline; and Heritage significance.

In respect of Tenter House (ref.24/00209/FULMAJ), which is located within the Barbican and Golden Lane Character Area and therefore outside of the two tall building areas designated by draft Policy S12, the Topic Paper concludes that the Character Area is sensitive to tall buildings in character and appearance terms, however has an:

*“...established post-war tradition of tall buildings in this location, and the overall character of the area is variable and modern in terms of its built form and urban structure. Notwithstanding the limitations outlined above there may be opportunities for further or replacement tall buildings that improve the relationship with the wider context...”*

Therefore, the Topic Paper, which forms part of the evidence base of the Plan, demonstrates that there are cases in which development of tall buildings in areas outside of the identified tall building zones may be acceptable subject to meeting other criteria. As such, it is considered that the policy as drafted is overly restrictive and does not allow for flexibility should a tall building be proposed outside of the two tall building zones, which has been designed and assessed in accordance with the requirements of the other policy requirements and is justified by detailed and robust analysis. Therefore, the policy is not considered to be positively prepared or appropriately justified.

In respect of London Plan Policy D9, against which draft Policy S12 seeks to be in general conformity, with regard to the decision of *London Borough of Hillingdon, R (On the Application Of) v Mayor of London* [2021] EWHC 3387 for the former Master Brewer Motel in December 2021, it was found that there is no part of Policy D9 which indicates that Parts A (definition of tall buildings) or B (locations of tall buildings) of London Plan Policy D9 are gateways or pre-requisites to Part C (impacts of tall buildings); that is, when considering whether to grant permission for a tall building which did not comply with Part B, a decision-maker is permitted to rely on the factors set out in Part C. Therefore, it is considered that part 2 of draft Policy S12 is required to be amended to provide necessary clarity as follows:

*“2. The tall building areas identified on the Policies Map and Figure 14 are areas where tall buildings may be appropriate, subject to the requirements in this and other relevant policies. **Tall buildings may be considered appropriate outside of areas identified on the Policies Map and Figure 14 where suitably evidenced and justified in accordance with the requirements of relevant policies.**”*

Within the tall building zones themselves, particularly in respect of the City Cluster Tall Building Area, it is considered that the 'jelly mould' will prove unduly restrictive; prohibiting the development of the realistic economic and employment growth forecasts over the Plan period.

As per Part 2 of draft Policy S12, there will be instances in which it may well be appropriate for sustainable development to exceed the draft contour lines within the City Cluster. As is made clear by the draft policy, individual applications for a tall building within the City requires comprehensive, site-specific analysis, including the provision of accurate three-dimensional computer models and Accurate Visual Representation. Applicants must conduct a thorough analysis that evaluates a broad array of environmental factors, including the effects of development on local and strategic views, in addition to technical considerations such as microclimate, daylight and sunlight, and solar glare. For this analysis to

enhance decision-making, it's crucial for the policy to include a level of flexibility in professional judgment, applied with the insights gained from the detailed analysis conducted.

The current wording of draft Policy S12 prescribes maximum permission heights across the tall buildings zones. Therefore, it doesn't provide space for professional judgement. As a result, the lack of flexibility afforded by the current draft policy is considered likely to prevent the optimisation of sites and is at odds with London Plan Policy GG2 which requires developments to make the most efficient use of land.

The draft Policy S12 should therefore be amended as per the following recommendation:

*"The ~~maximum-permissible~~ tall building heights within the identified tall building areas are depicted as contour rings on Policies Maps C and D and Figure 15. Tall buildings should not **generally** exceed the height of the relevant contour rings. In areas between the contour rings, tall buildings should be designed to successfully mediate between the contour ring heights ~~and should not exceed the next higher contour~~. Tall buildings should not necessarily be designed to maximise height; instead they should be thoughtfully designed to create built form that contributes positively to the skyline and townscape character, creating a coherent cluster form and a varied and animated skyline, and should have architectural integrity".*

As discussed above in respect of draft Policy DE4, Policy S12 also stipulates that tall buildings must "incorporate publicly accessible open space within the building and its curtilage, including free to enter, publicly accessible elevated spaces at upper levels." Additional flexibility should be provided within the policy to reflect that public viewing galleries are not suitable for all tall buildings on account of their surroundings (i.e. are located within the setting of taller buildings) or due to incompatibility with the proposed use. Part H of draft policy S12 should therefore be revised to:

*"H. incorporate publicly accessible open space within the building and its curtilage, **which may incorporate including** free to enter, publicly accessible elevated spaces at upper levels **where appropriate**, which may include culture, retail, leisure or education facilities, open spaces including roof gardens or public viewing galleries."*

## **Chapter 12 - Open Spaces & Green Infrastructure**

### Urban Greening

The introduction of Urban Greening Factor ('UGF') ratings within draft Policy OS2 is welcomed. However, recognition needs to be incorporated that it will not always be possible to achieve these targets in the highly urbanised character of the City. Constraints, such as availability of land, roof space, public realm and proximity of neighbouring buildings must be recognised as potential restrictions on the ability to include features that will assist in achieving urban greening on all developments. Policy OS2 is therefore required to be amended to become justified and effective in accordance with the tests of soundness by allowing flexibility to take account of site-specific circumstances.

Policy OS2 also stipulates that all major development proposals are required to demonstrate that a minimum target of 0.3 UGF can be achieved. As discussed above, the threshold should be reduced to major developments which create new floorspace of over 1,000 sqm to ensure the policy is proportionate and justified. Policy OS2 should therefore be amended as follows:

*"Major development proposals **which create 1,000 sqm or more of new floorspace** will be required to: include an Urban Greening Factor (UGF) calculation demonstrating how the development will meet the City's target UGF score of 0.3 as a minimum, **unless site specific considerations demonstrate that this is undeliverable**".*

## Chapter 13 - Climate Resilience

### Sustainable Drainage Systems

Freshwater supports the principle of attenuation. However, the Policy needs to acknowledge that what is appropriate and practical will be dependent on the scale and nature of the scheme. Therefore, the solution needs to be proportionate to the development proposed. We don't consider the draft policy to be effective or justified.

Consequently, we suggest that the part 1 of the policy is amended to be applicable to major developments.

---

If you have any queries please do not hesitate to contact Guy Bransby [REDACTED], Graham Allison [REDACTED] or Anna Harry [REDACTED]).

Yours sincerely,

*Montagu Evans LLP*

**MONTAGU EVANS LLP**