

**Response to (revised) Panel Note 7.2 by Just Space on “Equality of Opportunity and the Integrated Impact Assessment”.****Introduction:**

1. This is Just Space’s response to the Panel Note 7.3. It should be read in light of Just Space’s detailed written responses of 25 February 2019 and its oral evidence at the EiP.
2. It is worth recapping how we got to this point and why the need for these additional representations has come about. On day 1 of the inquiry (15 January 2019) the Panel invited evidence to inform its consideration of Matter 2 which it had identified:

*“Does the Integrated Impact Assessment and Addendum Report (NLP/CD/04 & 05) indicate that the Plan will help to advance equality of opportunity between people who share a “protected characteristic” as defined in the Equality Act 2010 and those that do not share it and further the other two aims of the Act? In particular, which policies of the Plan will achieve this?”*

3. Just Space and other groups made written representations in advance of day 1 setting out why it considered the Integrated Impact Assessment (IIA) was unfit for purpose and failed to discharge the PSED and failed to inform the Panel and the public about the equalities impacts of the draft plan. The core criticism was that it was impossible to ascertain from the summary presented in the IIA what the equalities impacts of the draft Plan will be.
4. The Mayor’s team were on notice of these concerns but failed to respond to them on day 1. Its approach was to defend its IIA as being comprehensive and robust and stated that they had relied on Equality Impact Assessments, (EqIA). Just Space asked for disclosure of the EqIA on the grounds that they should have been published at the time when consultation was being carried out. In response to Just Space’s representations, the Mayor was subsequently directed by the Panel to publish the supporting data to the IIA by 21 January 2019, which the Mayor said it had gathered but had not published.
5. Just Space and others responded in writing on or by 25 February 2019 to the publication of this underlying data which gave rise to as many concerns as it answered in respect of how the Mayor had approached the consideration of equalities impacts.
6. The Panel then issued Panel Note 7.2 on 12 March asking that the Mayor,

*“Responds to the written statements with particular reference to the case law cited and legal implications, the general points of principle raised about the approach of the equalities impact assessment, and the specific policies referred to; and*

- *Provide brief separate outlines of the specific implications of the Plan (both positive and negative) for each of the 9 groups with protected characteristics. This should be submitted by midday on 18 April 2019.*
7. The Mayor's response was published on 23 April 2019. It comprised a "cover note" document and four appendices: "Mayoral Strategies", (App 1), "Legal note" (App 2), a "Summary of the Specific implications of the Plan for each of the 9 groups with protected characteristics", a report of some 81 pages, (App 3) and finally a line by line response to the representations made by Just Space and others, (App 4).
  8. It appears that the summary report (App 3) had been written in response to the Panel's 7.2 Note as it states: *"1.1.1 This report has been produced in response to Panel Note No. 7.2: Equality of Opportunity and the Integrated Impact Assessment (March 2019)."* In other words, it had not been part of the process of having due regard to the need to eliminate discrimination and so on, at the time that it was required.
  9. It is well-established that consideration of the PSED and equalities impacts cannot be a 'rearguard' action and that the time for considering these and other impacts and consulting on those impacts to gather the necessary data was at the time when the draft plan was being produced. It is hard to escape the conclusion that the Mayor's latest documents have been produced in response to the Panel's request to justify the conclusions in the original IIA and the finalised draft of the plan; at the very least the Mayor's response is tainted by that possibility.
  10. The production of the draft New London Plan, now nearing the concluding phases of its examination, needed to be informed by the rigorous consideration of equalities impacts *at the time when it was being drafted*. JS believes that this has not happened and that therefore the draft Plan is unsound.
  11. Please note that throughout this document, the phrase "protected groups" is sometimes used as short-hand for those people who share protected characteristics.

### **Response to Mayor's Cover Report:**

12. This "cover report" explains that the Mayor/GLA sets out its response to the EIP Panel Note 7.2 in 4 appendices.
13. Paragraph 3 of the cover report sets out s.149 of the EA 2010 (referred to as the PSED or public sector equality duty) and misleadingly leaves out certain parts of the section.
14. Paragraph 6 of the cover report states that, with reference to the PSED, *"Given the universal application, it must be the case that one public body can legitimately expect another public body to fulfil its obligation. Further, the law presumes persons will act and*

*will have acted lawfully. Accordingly, the Panel in considering this matter must proceed on the basis that others in a planning process (e.g. in dealing with an application for permission) will have the obligation given by section 149 cast upon them. They must also proceed on the basis that the obligation will be fulfilled.*” The Public Sector Equality Duty is non-delegable. The Mayor is under a duty to discharge the PSED and the Panel, in reporting on the plan and making its recommendation, must reach a view on whether the plan has been lawfully produced having regard to the Mayor’s and its own equalities duties. It cannot simply proceed on the basis of the Mayor’s assurances that he has and will continue to discharge his obligations in future.

15. The relevant issue for the Panel is whether having due regard to the matters set out in s.149 of the Equality Act (EA) 2010 has been achieved in a rigorous and timely fashion such that it has informed the draft plan which the Panel is being asked to consider.
16. Paragraph 7 of the cover report states: *“Second, the obligation arises in a given circumstance (and not otherwise). It arises (see the opening words of section 149) in the exercise of a public authority’s functions. This means that, in considering the performance or otherwise of an obligation, one must always identify the function being performed. If this is not done, the language of section 149 is not being respected. In this matter the function being performed is given by section 334 of the Greater London Authority Act 1999. It is the preparation and publication of a Spatial Development Strategy. We are only presently concerned with the function of preparation. We should note that the Examination is concerned with matters affecting the Spatial Development Strategy (see section 338).”* It is common ground that the duty applies to the exercise of a public authority’s functions. Here the functions we are concerned with are the preparation of the plan, the consultation on it, the content of the published draft plan and, if adopted, the adoption of that plan. That is precisely the focus of Just Space’s criticism.
17. Paragraph 7 states, *“The Panel are not exercising a judicial role, i.e. it is not for the Panel to say the preparation was not done in accordance with the section 149 duty.”* It is not clear where this statement takes the Mayor. Of course, it is correct as a matter of law that the Panel is not a court. Its function is to test the soundness of the Mayor’s plan and recommend its adoption, rejection or modification in consideration of that test. But if the Panel considers the Mayor has not discharged its equalities duties and given rigorous and proper consideration to the equalities impacts of its plan it will not be able to conclude that the plan is “sound”. To progress the plan without considering whether it has been made having due regard to and having been informed by equalities considerations could result in the Panel itself acting in breach of its own PSED. The Panel examining the plan is carrying out a public function and must itself do so consistently with the PSED.

18. The Panel must therefore address the fundamental objections made by a variety of groups and those set out in Just Space’s earlier written and oral representations to the Panel, including on 25 February 2019.
19. In respect of paragraph 8, whilst it is correct that due regard to the PSED does not require there to be a specific outcome, the policies and the strategy that the Plan sets out must have rigorously considered the PSED before determining them. To put it another way, has each policy had due regard to the need to eliminate discrimination? Where is the evidence that due regard has been had – where is the data collected and considered on discrimination? Where is the evidence to show how specific proposals or policies have been suggested to mitigate the discriminatory impact of a policy for each group with protected characteristics? The fact that local authorities will have to discharge the PSED in decision-making does not obviate the need for the Mayor to approach his duties rigorously, and with the strategic perspective his role brings, at the plan-making stage.
20. Paragraph 9 of the cover note asserts that the Mayor is aware of his s.149 duty and that “*In respect of each of those various Strategies the Mayor has fulfilled the Duty.*” Just Space disagrees.
21. At paragraph 10 of the cover note, the GLA sets out what the London Plan is and states: “*The London Plan is the overall strategic plan for London, it sets out an integrated economic, environmental, transport and social framework for the development of London over 20-25 years. It brings together the geographical and locational aspects of the totality of all the applicable strategies including those relating to transport, the environment, economic development, housing, culture, health and inequalities. The function being exercised by the Mayor and therefore the aspect which gives rise to the Duty under the Equality Act, is that relating to the making of and promotion of the London Plan as the Spatial Development Strategy for London.*” It is precisely because of the far-reaching impact and effect of the plan that the Mayor must rigorously consider the PSED in relation to all aspects of the plan (including policies, strategies and the process of consultation on these), and why the Panel must also do the same if it is to fulfil its own obligations when carrying out its function of examination and when making recommendations.

**Response to Appendix 1:**

22. This Appendix sets out the Mayor’s strategies and we have no comment on this.

**Response to Appendix 2:**

23. The propositions set out in the Legal Note (App 2) are familiar but they do not assist the Mayor. Just Space has set out in detail both orally and in writing the legal and evidential basis on which it considers the Mayor has failed to discharge the PSED in the context of his plan-making function. The fact is that the Mayor has now been given multiple ‘bites of

the cherry' to demonstrate and satisfy the Panel that he has discharged the PSED in producing the draft London Plan. In response to the representations of Just Space and others the Mayor has now been given two further opportunities to evidence that the PSED has been discharged.

24. Our view is that the fundamental criticisms set out in earlier representations have not been addressed and it is now too late for those to be addressed given the advanced stage the plan has reached without being properly informed by equalities considerations.
25. See also the other submissions as to the law and applicable legal principles made by Just Space in written and oral representations during the EIP.

### **Response to Appendix 3:**

26. In Appendix 3, the Mayor sets out a “summary of the specific implications of the Plan for each of the 9 groups with protected characteristics” (also referred to as “protected groups” in this Just Space document). This “summary” appears to contain non-evidence based assertions, or it is not clear what evidence has been used.
27. At paragraph 1.2.1 of Appendix 3, it is stated, *“This report takes each protected characteristic in turn and highlights the key potential implications – positive and negative – of the Plan. In order to provide specific implications in a clear and logical format, the narrative is structured within each protected characteristic by the chapters contained in the Plan.”* However, it does not expressly address the PSED of eliminating discrimination and so on, which requires a public body to consider the impacts of alternative policies on each group with protected characteristics and then develop policies and strategies to mitigate them. This is an iterative process that should have been informed by consultation with relevant groups throughout the preparation of the plan.
28. The word “Positive” appears 137 times and the word “Negative” 55 times in Appendix 3, in respect of equality impacts. This shows how the PSED has not been considered in any effective way. During the course of the hearing, Just Space and others have pointed out in detail how aspects of the plan will have serious negative impacts on protected groups.
29. Our response to Appendix 3 will focus on housing because it is a key focus of the Mayor’s Plan and it is a topic on which the GLA should be able to write well because the data is relatively good.
30. This Plan is at pains to point out that considerations of viability and grant availability limit the ability of the Plan to offer as much low rent housing in new development as needed. But nowhere is it pointed out that planned housing output will disproportionately help higher income/wealth households and thus act in a discriminatory way towards lower

income/wealth groups, including those members of protected groups who typically have low incomes, such as BAME households. The backlog of unmet needs for housing (which the SHMA showed to be 78% for low rent housing) would increase, rather than reduce, in the 10 years covered by the detailed housing plans.

31. The plan is full of optimistic references about how building more homes will help tackle discrimination and inequality and benefit some of the protected groups but building more homes per se will not, for the reasons given above.
32. There is also repetition of the phrase “*While not promoted by the Plan as a source of housing supply, Policy H10 sets out the approach to the demolition and re- provision of housing.*” , (see paragraph 3.3.6), which contradicts the SHLAA which does anticipate additional housing supply from this source in council estates and through the small sites scheme.
33. Minimisation of the negative effects of Opportunity Areas and Regeneration mechanisms is described as relying on local consultation and on close attention to the demography which is an inadequate approach and should be considered at this strategic plan-making stage.
34. There is no reference to the likely losses of low rent housing in the existing stock – through Right to Buy, through ‘conversion’ of social rents to higher rents within or between tenancies or through estate “regeneration” or redevelopment or small-site redevelopments.
35. Paragraph 1.5.14 of Appendix 3 is paradigmatic of the Mayor’s flawed approach to the PSED. Paragraph 1.5.14 states, “*It is considered that seeking to deliver more homes and the delivery of the 50 per cent genuinely affordable housing target will have an overall positive impact. However, the level and tenure of affordable housing that can be delivered is constrained by viability and the availability and conditions of funding. Thus, while providing a potential positive impact on those with protected characteristics in need of affordable housing, the impact of Policies (H5-7) will be constrained as they will not meet all identified need. It should also be noted that the London Plan has no remit over how homes are allocated. The Mayor's Housing strategy sets out how the Mayor is lobbying Government for more funding for genuinely affordable housing, in particular low-cost rent, and the Plan commits to reviewing both the threshold (to determine whether the threshold affordable housing level should increase) and the minimum tenure splits (set out in Policy H7) in 2021.*”
36. The paragraph above shows the Mayor’s faulty approach: (a) it talks vaguely about a “*potential positive impact*” when in fact Sian Berry AM in her research report “No Show

Homes”, gives the true picture of what has been happening in respect of affordable homes and this clearly disproportionately has a **negative** impact on specific protected groups, (the disabled, BAME households, and so on); (b) It makes excuses about homes allocation and the Mayor lobbying Government; (c) it commits to review the threshold in 2021 – but none of these points address the need to have due regard to the need to eliminate discrimination.

37. The Mayor ignored the evidence provided by Sian Berry in her report, “No Show Homes” published in September 2018. Her research report shows that missed planning targets have led to a shortfall of more than 33,000 affordable homes across London since January 2016. Her report finds a shocking gap between the potential for affordable homes in developments being planned, based on the existing (Johnson Mayoralty) London Plan targets, and what boroughs have secured in the past two and a half years under the current Mayor. The 153,232 homes that have gained planning permission since January 2016 could have included 61,293 homes defined as affordable under current policies, which set a London-wide target of 40 per cent. Instead, just 27,869 affordable homes have been secured by planning agreements, which means there are 33,424 missing affordable homes across London in this period.
38. The “No Show Homes” report also looked at whether the Mayor’s new 'fast track' supplementary planning policy is starting to have an effect. This de facto policy came into effect in August 2017, and offers developers who agree to provide 35 per cent affordable homes a route to planning permission that avoids viability assessments. There are signs that the Mayor may be able to strengthen the policy's threshold beyond 35 per cent in future, but he has no plans to do anything more than review this in 2021. However, given the Mayor’s duty to eliminate or mitigate race discrimination in housing, the Mayor could raise that threshold now, not review it in 2021.
39. To put it another way, there are available strategies and policies that could help eliminate discrimination in housing but the plan does not propose or adopt any of them. Instead it repeats the optimistic mantra that building more homes will benefit everyone including those in protected groups or with protected characteristics. This is wishful thinking, not evidence-based Equality Impact Assessments.
40. The erroneous approach to the PSED can be seen when considering BAME groups and Opportunity Areas, see paragraph 7.1.2: “*There is the **potential**, however, that the scale of development in these areas **could result** in displacement of existing residents and communities, local shops and services, higher rents, or development that does not take account of what is valued in an area.*” (emphasis added). In fact, evidence already in existence and available to the Mayor – and evidence presented throughout the EIP - shows this is not a potential but a reality as to what is happening and has already happened in

London; Elephant and Castle and the Heygate Estate were given as examples. This particularly impacts on BAME communities, the elderly and those with large families (which often coincides with particular faith or religious groups who tend to have larger size families).

41. Simply stating, as the Mayor does, that building more houses will somehow address the discriminatory effect of this is simply incorrect, because the new homes are, under the Mayor's current proposals, at rent levels higher than what those affected groups currently pay or can afford to pay – so the policy contributes to, instead of eliminating, the displacement of poor, BAME and elderly residents and larger families, in a policy-driven effect that some have called “social cleansing”.
42. The same points can be made – and were made during the EIP hearing - about the Mayor's regeneration policies, which have no regard for the disproportionate impact on BAME communities, - and this may constitute indirect discrimination under the EA 2010 as well as a failure to have due regard to the PSED.
43. The policies proposed currently lead to loss of homes at social rent in which disproportionately, BAME and older people and larger families currently reside, and this will increase, not eliminate, discrimination.
44. In addition, attempts to consider the variety of needs **within** each of the 9 protected groups are rather minimal: for example, age is sometimes differentiated and sometimes not, but the experience of discrimination by young and old clearly differ widely. There is no or little attention paid to differentiating mental and physical disabilities. There is very little attention to the diversity of housing experiences among different BAME groups (including non-visible differences among white EU citizens), despite the existence of data and research evidence. In fact, only Gypsies and Travelers are considered as a distinct group, and that is a long-established dimension of London Planning which does not rely on the Equality Act.

#### **Response to Appendix 4:**

45. Some examples are provided in response to App 4. The Mayor's response to Lucy Rogers and Trust for London is that, *“The Equalities Impact Assessment, as part of the Integrated Impact Assessment, has been carried out with the intention of reducing discrimination, promoting equality of opportunity and fostering good relations. There is no legally prescribed format. Findings of the EqIA have influenced the development of policy as noted. - This is intended to be comprehensive but proportionate approach. – The IIA Report sought to simplify and reduce the length of the document by providing summary tables to convey information as effectively as possible with the narrative summary drawing out the key impacts.”*

46. This demonstrates the Mayor's erroneous approach to the s.149 duties. The reason for carrying out the EqIA is to gather the evidence and consult with the relevant groups about the evidence of the discriminatory impact of various strategies and proposals, and having done that, where the need arises, to develop policies to eliminate or mitigate discrimination, or alternatively to adopt a particular policy and state how the Mayor will mitigate the discriminatory impact of a policy on a particular protected group. What must be gathered and considered and consulted upon is the evidence or information that allows the Mayor to carry out the duty to have due regard to the need to eliminate discrimination and so on.
47. Nor can the impact on different "protected groups" be amalgamated together as the IIA did.
48. The Mayor's Response, in Appendix 4, to the Just Space point 24 states that the Mayor, when having 'due regard' takes a broad brush approach. This has led the Mayor to omit consideration of discriminatory impacts of policies in advance of decisions in the plan. Officers did not appear to show 'professional understanding' of the evidence base or see its limitations in respect of protected groups – for example BAME groups in the policies on Industrial Land and Opportunity Areas, nor have due regard to the need to eliminate discrimination.
49. The way the evidence was presented in the EIP does not demonstrate that the EqIA were used to inform policy or that policy was altered as a result of equality impact assessments or that relevant groups were informed about or consulted on the EqIA.
50. In response to Just Space points on H10, Appendix 4 doesn't address the real issue of missing assessments and omitting to have regard to the duty to eliminate discrimination. The response to point 35, regarding monitoring, is especially weak, with the monitoring of housing delivery not seen as being concerned with equality impacts, (which emphasises the way monitoring appears so often to be simply an administrative formality rather than as a way to improve policy).
51. In the Mayor's response, there is a reference to A City for All Londoners workshop in box 42. Just Space attended these workshops, but the different constituencies of person responding to the questions – be they developer, community group, resident, businesses owner – were not differentiated. Tables contained people from all constituencies, and responses from the tables were fed back as a whole. Therefore the consultation and feedback did not seek to identify how issues that impact on different protected groups needed to be differentiated. This might explain the impacts of a policy such as social infrastructure being found to be broadly positive, as there has been little detailed evidence sought from those with protected characteristics. Consultation with distinct protected

groups or those with different protected characteristics would have been possible, but was not organised by the Mayor.

52. The same shortcoming applies to the consultations with Just Space which – while valuable – cannot be treated as consultation with “equalities groups” or groups who represent those with different protected characteristics. Just Space is a largely white group and does not when speaking purport to represent the views of those with protected characteristics, nor does Just Space have a responsibility to represent or consult the groups set out in s. 32 of the GLA Act 1999 as amended, or in s. 149 of the EA 2010 – the Mayor has that duty.
53. In response to the point made regarding health impacts of tall buildings, (box 53), the Mayor’s response was that “*It could be argued that a ? for health would more reflect the consideration that has been had of this issue.*” We agree that a question mark for health impacts would be better than ‘N/A’ as it suggests that there is more work to do to assess the health impacts of tall buildings, for example the loss of sunlight and green space on those with mental disabilities or physical disabilities such as seasonal affective disorder. This highlights the fact that there are negative equality impacts which the Mayor has not considered and this is true throughout the plan. It underlines the argument that due regard has not been had to the PSED at the time when it was required.
54. Just Space also believes that the process of consultation on the PSED was inadequate; this was reflected by the failure to ask questions about the PSED during the consultation process and reflected in the fact that the previous Mayor had a dedicated team of consultants for the EqIA component of the IIA, but this time no equality expertise has been brought into the process of developing the London Plan.
55. Further, where points were made about equality issues or about discrimination by participants during consultation, their points did not find their way into the policies in the plan in any way or in any significant way, thus defeating the point of ostensibly consulting specific groups and / or having public consultation at all.

**Conclusion:**

56. Just Space argue that there has not been, in substance, due regard to the PSED and urge the Panel to conclude that the plan is not sound.