

Ansco Arena Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rule 2010

Application by Transport for London (the “Applicant”) for an Order granting Development Consent for the Proposed Silvertown Tunnel

Planning Inspectorate Reference: TR010021

Ansco Arena Limited (“Ansco”) (Interested Party reference: 310)

Responses to the Examining Authority's first written questions

1. INTRODUCTION

- 1.1 These responses to the Examining Authority's first written questions are prepared on behalf of AnSCO Arena Limited (previously known as AEG London Arena Limited) ("AnSCO"), which is the owner of The O2.
- 1.2 In considering the responses given by the Applicant, interested parties, local authorities and statutory bodies to the Examining Authority's first written questions, the Examining Authority should take AnSCO's written representations dated 26 August 2016 (the "**Relevant Representation**") into account. These written responses are supplementary to and should be read in conjunction with the Relevant Representation.

RESPONSES TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS

2. AnSCO's response to GA2 (Applicability of the NPSNN)

The Applicant in their Planning Policy Compliance Statement (APP-094) states that the scheme should be considered in accordance with the NPSNN. Please give your view as to whether this dDCO should be determined under the provisions of section (s)104 or s105 of the Planning Act 2008 (PA2008), having regard to the fact that the National Networks NPS (NPSNN) should either be regarded as designated for the purposes of s104 or alternatively should be considered as 'important and relevant' for the purposes of s105.' Any response should consider the scope and definitions within the NPSNN. In commenting on this issue regard should also be had to the nature of the Strategic Environmental Assessment (SEA) that was undertaken on the NPSNN and whether there have been any matters that have arisen since the publication of the NPSNN that may cause any of s104(4)-(8) to be applicable.

- 2.1 Section 104(3) of the Planning Act 2008 (the "Act") states that "*the Secretary of State must decide [an] application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies*". (Emphasis added.)
- 2.2 This Scheme would not, except by virtue of the Secretary of State's direction under section 35 of the Act, be considered a nationally significant infrastructure project. It is therefore unclear whether the provisions of the NPSNN apply to the Scheme. For example, paragraph 1.3 of the NPSNN merely states that applications for development consent brought within the Act by a section 35 direction "*would need to be considered in accordance with*" the NPSNN. (Emphasis added.). This does not go so far as to require the application to be decided in accordance with the NPSNN as set out in section 104 of the Act. Therefore, this suggests that the NPSNN is only one consideration in determining an application which is subject to a direction under section 35 of the Act. This is emphasised by the following sentence, which refers to development plans as also being relevant to such considerations.
- 2.3 In any event, AnSCO submits that the exceptions under sections 104(4) to (7) of the Act apply. Therefore, the application for the Scheme should not be approved under section 104 for the reasons set out below. At best, the application for the Scheme should be decided in accordance with section 105, in particular subsection 105(2)(c).¹

¹ This requires the Secretary of State to have regard to "*any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision*".

- 2.4 AnSCO considers the following exceptions under subsection 104 (6) and (7) apply in this case:
- 2.4.1 deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment;² and
 - 2.4.2 the adverse impact of the proposed development would outweigh its benefits.³
- 2.5 Subsection 104 (6) applies because the Applicant has not shown that the Scheme has been properly assessed (particularly in relation to traffic, highway junctions/road network and parking on the Greenwich Peninsula). The impacts of the Scheme are therefore unknown and cannot be properly mitigated. This failure to assess the Scheme properly (in particular, the deficiencies in the transport assessment) means that the Applicant has not complied fully with the requirements of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. For this reason, to approve the application would be unlawful and section 104(6) applies.
- 2.6 Subsection 104(7) applies because, if the Scheme were to go ahead in its current form, either (a) the adverse impacts to AnSCO's business at The O2 and the rest of the Greenwich Peninsula would be so severe that they would outweigh the benefits that the Scheme could provide, and/or (b) as a result of the Applicant's incomplete assessment of the construction phase of the Scheme (including identifying any acceptable mitigation proposals for replacement parking or traffic impacts), it would not even be possible to be certain that the effects would not be so severe. These adverse impacts include:
- 2.6.1 potentially unmanageable increases in traffic congestion in the area, on a day-to-day basis and on event nights at The O2;
 - 2.6.2 delays in the area of up to two hours or more in journey times, adversely affecting Greenwich Peninsula customers, businesses and residents; and
 - 2.6.3 possible decreases in footfall to The O2, which could have adverse effects on the economic development of the Greenwich Peninsula.

The adverse effects of the Scheme should be judged in light of the fact that The O2 is a critical economic interest on the Greenwich Peninsula. In addition, the presence of The O2 has had a substantial positive effect on the development and popularity of the area.

² Section 104(6).

³ Section 104(7).

3. AnSCO's response to DC2 (General - DCO format and tracking of changes)

Can the Applicant ensure that subsequent versions of the dDCO submitted after the application version will be:

- (a) supplied showing any changes from the previous version by way of tracked changes, with comments briefly outlining the reason for the change;**
- (b) accompanied by an amended Explanatory Memorandum; and**
- (c) the final dDCO should be supported by a report validating that version of the dDCO through the Publishing section of the legislation.gov.uk website.**

3.1 AnSCO requests that the Secretary of State, Examining Authority and Applicant take AnSCO's representations made at the Issue Specific Hearing on 12 October 2016 into account when amending the dDCO. A summary of the representations made at that hearing (the "**ISH Representation**") is submitted with these responses at Appendix 1.

4. AnSCO's response to DC40 (Article 11 Access to works)

This is a very wide power. Does there need to be an approval process by Local Planning Authorities (LPAs) and where appropriate Local Highway Authorities?

4.1 AnSCO agrees that there is a need for an approval process involving the Local Planning Authority or the Local Highways Authority and requests that such approval process includes a specific obligation to consult with AnSCO both in its capacity as a street authority and as a key affected party. AnSCO is particularly concerned about the creation of access points off Millennium Way, which would have a detrimental effect on event operations at The O2. Millennium Way is a critical access route in the Greenwich Peninsula and AnSCO is not satisfied that the Applicant has demonstrated sufficiently that road users in the Greenwich Peninsula would not be adversely affected by the works.

4.2 AnSCO has not been made aware of the location of the construction compound entrance(s). No access points are illustrated on the Greenwich works area worksite layout plan⁴ and the Transport Assessment only states that, for the Greenwich worksite, "*it is assumed that all construction vehicles would access the worksite via the A102, Blackwall Lane and Millennium Way*".⁵ Without these details, the potential impacts of the construction compound cannot be understood or fully assessed and so the application for the Scheme is incomplete. In addition, AnSCO has concerns regarding Heavy Goods Vehicle ("**HGV**") routing and the effect that this will have on Millennium Way, particularly the potential for delays caused by HGV vehicles turning in and out of the Greenwich worksite.

4.3 AnSCO has already questioned the validity of the Scheme's traffic assessment in paragraph 10.3 of its Relevant Representation (due to the Applicant's failure to provide details of the expected increases in HGV traffic and Annual Average Daily Traffic for Edmund Halley Way and the temporary link road) and these additional omissions continue to cast doubt on

⁴ Drawing ST150030-ATK-ZZZ-ZZ-DR-CE-3131 P01 found in the Environmental Statement Appendix 4.A (6.3.4.1) Construction Method Statement (Appendix B - Drawings).

⁵ Transport Assessment, document 6.5, paragraph 6.7.15.

legitimacy of the assessments made by the Applicant. Until proper assessments are made, development consent for the Scheme must not be granted.

5. AnSCO's response to DC106 (Requirements Generally)

A number of matters do not seem to be governed by Requirements or other provisions in the dDCO. Please consider the desirability of adding Requirements or other provisions (such as in the dDNML) that would address:

- (a) The Water Framework Directive Assessment;**
- (b) A Piling Management Plan to include piling locations, types of piling proposed at each location, duration of piling (both in terms of number of days/weeks and hours of piling) and soft start procedures for marine piling;**
- (c) Decommissioning of the temporary jetty and other temporary works needed during construction including the preparation, submission and agreement of a decommissioning environmental management plan (DEMP) which would provide for the restoration of the construction compounds and removal of the jetty;**
- (d) Construction hours of working, including details of plant and equipment that would be operated 24/7; and**
- (e) Air quality monitoring and mitigation**

5.1 AnSCO agrees that the dDCO should include requirements in respect of the piling management plan and construction hours of working. In addition, AnSCO requests that there should be obligatory consultation with key parties (including AnSCO) who may be affected by such works prior to the works being undertaken and prior to any approval by the local planning authority. AnSCO is particularly concerned about the effect that noisy works would have on evening events at The O2 and requires that such works do not take place during these times.

5.2 In addition, AnSCO notes that the mitigation measures proposed by the Applicant are not properly secured by requirement in the dDCO. AnSCO therefore supports a request to secure all mitigation measures (when agreed between the Applicant and AnSCO) by requirement in the DCO. This includes (but is not limited to) the mitigation measures set out in the Relevant Representation, in particular those in relation to:

- 5.2.1 parking (cars, coaches and cycles);
- 5.2.2 traffic (including carrying out a road safety audit, highway signage and access to taxis ranks and private hire pick up and drop off points);
- 5.2.3 working hours during construction of the scheme.

Unless and until such mitigation measures are properly secured by requirement in the DCO, development consent for the Scheme should not be approved.

6. AnSCO's response to CL1 (Construction on land)

Please provide site location, layout and elevations plans, drawn to a recognised scale, with a north point (where applicable) identifying the various structures, buildings, laboratories and storage areas that would be located in the two construction compounds.

- 6.1 These plans must be made available now, so that the Examining Authority, AnSCO, and all other stakeholders can review them and provide comments where necessary.
- 6.2 If these plans are not made available immediately, they must be subject to full consultation. There should be no grant of development consent for the Scheme until these plans are provided.

7. AnSCO's response to the Examining Authority's questions in relation to Traffic and Transport and the user charging schedule

DC71: Article 52 [Charging Policy] & Article 53 [Power to Charge for use of Tunnels]

DC72: Article 52(2) - Revision of the charging policy

TT1 - TT9: Traffic and transport

AQ19: User charging and emissions mitigation

SE2 - SE4: User charging - business traffic and HGVs

- 7.1 AnSCO comments at paragraphs 9.15, 10.3 and 13.2.2 of its Relevant Representation that the Applicant has failed to carry out a sufficiently detailed and complete traffic assessment of the Peninsula road network, particularly in relation to event days, revised road layouts and the relocation of parking necessitated by the Scheme. AnSCO maintains this position and notes that the Applicant has not provided sufficient details regarding its modelling assumptions.
- 7.2 Once open, the Silvertown Tunnel is likely to become an important route to The O2 and the rest of the Greenwich Peninsula. The O2 and other businesses on the Greenwich Peninsula could suffer substantially if time of day effects occur due to an inappropriate user charging schedule. Although the Applicant asserts that time of day effects are unlikely, this is on the basis of an incomplete traffic assessment and a proposed user charging schedule that is unclear and not fully justified (see paragraphs 7.3 to 7.5 below). The O2 has events during the day and evening, so it is important for AnSCO to understand whether any time of day effects of the Scheme could affect traffic and accessibility for customers arriving and departing The O2. AnSCO also questions whether this could also adversely impact other business and residential traffic on the Peninsula. Without more data from the Applicant, this assertion simply cannot be relied upon.
- 7.3 It is currently unclear whether user charging is proposed for traffic management, air quality control or to pay for the Scheme. In AnSCO's submissions to the Issue Specific Hearing, the Applicant was asked to clarify whether the user charge would be used to mitigate traffic impacts or whether it would be used to pay for the Scheme, but sufficient response was not received.
- 7.3.1 In particular, AnSCO has concerns regarding charging users of the tunnel outside peak traffic hours and the impact that this could have on the night time economy

of the Greenwich Peninsula. If user charging extends beyond peak traffic hours, there is a risk that this could impact on customers' decisions whether to attend events at The O2 as well as promoters' decisions to host events at The O2. As The O2 is a critical economic driver on the Greenwich Peninsula, if events move away from The O2 this could also adversely affect many other businesses in the area.

- 7.3.2 Concerns about the rationale for user charging were raised by AnSCO in its Relevant Representation. AnSCO maintains its objections on the grounds that to date there has been insufficient information from the Applicant to justify or assess such proposals. AnSCO agrees that the Applicant should provide more information in relation to the justification for and the assessment of the charging schedule. This was also raised on behalf of AnSCO at the Issue Specific Hearing.
- 7.4 AnSCO has previously requested in paragraph 11.9 of its Relevant Representation that it should be a member of Silvertown Tunnel Implementation Group (“STIG”). As such, AnSCO supports the inclusion of a condition or requirement requiring the Applicant to consider recommendations made by the STIG before revising the user charging policy. In any case, AnSCO is an “[organisation] *representative of regular users of the Blackwall Tunnel and the Silvertown Tunnel*” and therefore should be included on the list of consulted organisations in respect of charging policy revisions.
- 7.5 AnSCO also has concerns regarding the impact on local residents and businesses. At the DCO Issue Specific Hearing, AnSCO asked how local discounts would apply. The O2 is one of the largest economic interests on the Greenwich Peninsula. If user charging will negatively impact commercial traffic, the assessment will need to address how The O2 will be affected.
- 7.6 Until a proper assessment of the impacts of construction of the Scheme and the user charging proposals on Peninsula traffic and transport is carried out and submitted to the Examination, development consent for the Scheme should not be granted.

8. AnSCO's response to NV10 (Noise and vibration - working hours)

- (a) **Do the LPAs consider that the proposed hours of work for all non 24/7 construction activities should be controlled through a requirement within the dDCO? If so, please indicate.**
- (b) **The CoCP [APP-092] in section 2.3 states that non tunnel construction works would be 08:00 to 18:00 Monday to Friday and 08:00 to 14:00 on Saturdays, with up to an hour either side of these times for start-up and close-down of activities. Additionally some activities may take place outside these core hours, in which case they would be subject to agreement with the local Environmental Health Officers. Are the LPAs satisfied with these timings for all non 24 hour activities?**
- 8.1 AnSCO supports the inclusion of proposed hours of works as a requirement in the dDCO. AnSCO requests that such a requirement should state that working times must be strictly adhered to, as AnSCO is concerned that works outside these limits could unduly affect customer experience at The O2. Where hours of working are varied, AnSCO must have an opportunity to be consulted.

9. AnSCO's response to HSS3 (Road safety audits)

NPSNN also requires applicants to put in place arrangements for undertaking the road safety audit process.

Please can the Applicant explain where the road safety audit process is detailed in the application documents?

- 9.1 AnSCO supports the request for further information about the road safety audit process. AnSCO considers that a road safety audit should be undertaken for both the construction phase and the final Scheme implemented by the Applicant and should be secured by requirement in the DCO, subject to consultation with AnSCO.

10. AnSCO's response to ME7 (Piling method statement)

The EA, in its RR [RR-299] identifies a discrepancy between the information provided in the CMS [APP-046] in relation to the techniques to be used in piling and those described in paragraph 10.6.69 of the ES [APP-031]. The EA also makes a request for a piling method statement to be secured through the dDCO.

- (a) Can the Applicant please confirm the techniques to be used for piling, including providing a map showing the location and duration at each piling site;**
- (b) Should this be different to that assessed in the ES, the Applicant is requested to provide a revised assessment; and**
- (c) Do other IPs consider that there should be a piling method statement secured through a Requirement in the dDCO or condition in the dDML which identifies piling methods, locations, duration (number of days and hours per day), seasonal limitations on piling and where/how soft start procedures would be implemented?**

- 10.1 AnSCO supports the Environment Agency's request for a piling method statement to be secured by requirement in the dDCO. AnSCO would need to understand any piling method statement and related timings that could have a detrimental effect on its business. AnSCO must have an opportunity to review and comment on any such statement.

11. AnSCO's response to DN2 (Impact on river users)

During the proposed dredging and jetty construction, would any other users of the river be impacted?

Please provide details and estimated timescales for each activity/river user that would be impacted.

- 11.1 The river is a key means of access to The O2 and the rest of the Greenwich Peninsula, yet the impact of construction on river users has not been properly assessed by the Applicant. The Navigational Issues and Preliminary Risk Assessment ("NIPRA") considers that there will be an effect on river users and that special attention is required for river users at the North

Greenwich Pier.⁶ The Applicant goes on to note that Thames Clippers are likely to raise the following issues as potential concerns:

- 11.1.1 the movement of vessels using the North Greenwich pier; and
 - 11.1.2 delays to services as a result of congestion, speed restrictions and traffic density.⁷
- 11.2 There must be no interference with the important TfL Licensed River Bus service that the Thames Clippers provides to London and to customers of the Greenwich Peninsula (travelling from Woolwich and Greenwich - through to Canary Wharf and central London). Although the recommendations of the NIPRA include the development of a Construction Traffic Management Plan, temporary navigational rules and works exclusions zones, details of these are yet to be provided. There must be no speed restrictions or ease downs due to the construction works and any barge movements by river must be coordinated so as not to coincide with Thames Clippers' peak movements. Until a proper assessment is undertaken and the impacts on river users (both at North Greenwich Pier and on the approach to the pier) are fully understood, development consent for the Scheme should be refused.

12. AnSCO's response to CA2 (Compulsory Acquisition)

Please indicate whether negotiations have resulted in agreed Protective Provisions and/or withdrawal of all objections by Statutory Undertakers (SUs).

If, as a consequence of negotiations, there are amendments proposed to any Part of Schedule 13 Protective Provisions, please provide the agreed amended text as part of the submission of an amended dDCO or a clarification of what issues remain outstanding.

- 12.1 AnSCO repeats the statements made in paragraph 2.6 of its ISH Representation.
- 12.2 AnSCO continues to be involved in negotiations with the Applicant. However, these have not yet resulted in any agreement of protective provisions with the Applicant or withdrawal of objections by AnSCO.

DLA Piper UK LLP

15 November 2016

⁶ Appendix 7.A to the Environmental statement (Document 6.3.7.1), paragraphs 3.1.6 and 3.2.2.

⁷ NIPRA, paragraph 4.2 (Table 4-1: Stakeholders and likely potential concerns).

APPENDIX 1: ISH REPRESENTATION

Ansco Arena Limited

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Transport for London for an Order Granting Development Consent for the Proposed Silvertown Tunnel

Planning Inspectorate Reference: TR010021

Ansco Arena Limited (Interested Party reference: 310)

Summary of written submissions on behalf of Ansco Arena Limited following the Issue Specific Hearing held on 12 October 2016

1. **Introduction**

1.1 This submission is prepared on behalf of Ansco Arena Limited (previously known as AEG London Arena Limited) (“**Ansco**”), which is the owner of The O2. It relates to an application for a development consent order (the “**DCO**”) in connection with the proposed Silver Tunnel development (the “**Project**”).

1.2 The submission forms a written summary of the case presented orally on behalf of Ansco at the Issue Specific Hearing (“**ISH**”) held on Thursday, 12 October 2016. It generally follows the topic headings set out in DCO and the Issue Specific Hearing Agenda and should be read in light of the written representation dated 26 August 2016 submitted by Ansco.

2. **Main Order**

2.1 **Article 5 - Limits of deviation**

2.1.1 The Update Report (October 2016) published by Transport for London (the “**Applicant**”) notes at paragraph 8.9 that discussions are taking place between the Applicant and Ansco so that an agreement can be reached between the parties regarding the provision of suitable mitigation measures to address the impacts of the Project on The O2.

2.1.2 However, it was submitted that any mitigation to be secured by the Applicant concerning diminished parking facilities at The O2 are almost certain not to fall within the limits of deviation set out in the draft DCO and deposited plans. It should be borne in mind that mitigation for Ansco also represents mitigation for traffic and transport effects of the Project upon the Greenwich Peninsula. Therefore, any mitigation should properly require a Grampian style planning condition to be imposed. This should prevent the Applicant from removing any car parking spaces (including car and coach parking) benefiting The O2 unless and until replacement parking spaces were provided to the satisfaction of, and with the agreement of Ansco.

2.2 **Articles 8-11 - Street Works/Stopping up/Access**

2.2.1 The term “street” is defined in Article 2 of the DCO. It is given the same meaning as that in section 48 of the New Roads and Street Works Act 1991 set out below:

“... ‘street’ means the whole or any part of any of the following, irrespective of whether it is a thoroughfare—

(a) any highway, road, lane, footway, alley or passage,

(b) any square or court, and

(c) any land laid out as a way whether it is for the time being formed as a way or not.

Where a street passes over a bridge or through a tunnel, references in this Part to the street include that bridge or tunnel”.

2.2.2 In light of this definition, it was noted that there are a number of "ways" within The O2 parking area which were not expressly referred to as being affected (referred to in Schedule 3 of the DCO) and therefore no requirement for the Applicant to provide a substitute. Given that the draft DCO does not make provisions to address "ways" through The O2 car parking areas, it was submitted that the Applicant will not have sought, and should not be granted, the relevant powers set out in Articles 8, 9 and 10 of the DCO insofar as it relates to The O2 car parks. The O2 parking areas should be treated as a "street" for the purposes of the DCO, and should be added to Schedule 3, or AnSCO should be afforded the right of consent to any closure in order to protect its undertaking.

2.2.3 Articles 9(7) and 10(5) provides for compensation in the event of loss by the suspension or extinguishment of any private “right of way”. These sections should also refer to “streets”, in order to remain consistent with the definitions within the DCO, and grant the proper level of protection to AnSCO and other interested parties.

2.2.4 AnSCO supports the oral submission made on behalf of the Royal Borough of Greenwich at the ISH in relation to Article 11 of the DCO which refers to "access to works". Article 11 should require consultation with local authorities if the works associated with the Project abut any part of the highway within the administrative area of the Royal Borough of Greenwich.

2.3 **Article 43- Closing the tunnels**

2.3.1 The ability of the Applicant to close the Silvertown Tunnel (if and when constructed) and the Blackwall Tunnel, upon giving 7 days' notice under Article 43 of the DCO, is a major concern for AnSCO (the "**Tunnels**").

2.3.2 Events at The O2 are organised many months, if not years, in advance and 7 days' notice is neither sufficient nor adequate to deal with alternative arrangements for visitors travelling to and from The O2. It was noted that this is likely to have a significant impact on visitors and the operation of The O2 on event days. Whilst Article 43 refers to "not less than 7 days' notice", it is essential that considerably greater notice is given to AnSCO in the event that any of the Tunnels are closed. The Order must provide for this expressly.

2.4 **Articles 52-56 (Part 5) - User Charging**

2.4.1 AnSCO considers that provisions relating to user charging should appear on the face of the DCO to give certainty to the consented Project, or that a definitive charging statement should be submitted that is not susceptible to change. The charging approach must be known so that its consequences can be assessed. As an alternative, it would also be acceptable if the Applicant certified both the Charging Policy (Document reference 7.11) and the Applicant's Charging Statement (Document Reference 7.5) as final, provided that both are amended so that operational effects are sufficiently certain to be known and assessed at the opening year and the design year of the Project. Effects thus far appear only to have been assessed for current conditions, as opposed to those in the years that the Project is designed to operate, such as in the design year with a design year user charge.

2.4.2 The Applicant has not made a case for the charging hours applying in order to manage traffic volumes. The night time economy of the Greenwich Peninsula is important and currently not affected by user charging. No case has been made for managing traffic flows at night times or managing effects. There is a need for the Applicant to conduct and/or repeat modelling exercises that predict average and peak traffic flows, and charging at those times. Sensitivity tests should also be undertaken before charging times can be determined as no case currently supports them.

- 2.4.3 As there are various night time amenities at The O2, there is no definitive end-time to charging that would not affect the night time economy. AnSCO believes that, subject to further modelling and sensitivity tests, the hours of charging should at longest reflect those of the congestion charge in London, which is in force between 07:00 and 18:00, Monday to Friday and is not in force on weekends. There is no justification for any longer charging period.
- 2.4.4 The current charging provisions do not set a fixed opening charge. The Applicant should, at the least, have an assessed method for setting charges contained in the Charging Policy that is based upon a fixed calculation that they cannot deviate from. All underlying assumptions for how the charge is calculated, such as when the effect of the charge outweighs convenience for road users and value to economic assets, should be made clear to the Examination and secured in a charging mechanism provided by the DCO.
- 2.4.5 The assumed levels of charge are not contained in the Charging Policy, but are addressed in the Charging Statement, a separate document to the DCO. The “Project Objectives” are set out in paragraph 3 of the Charging Statement but are not ranked. This is problematic since there is no means, objectively, to arrive at a toll and ascertain its effects. In accordance with these documents, the initial charge must also produce an environmental outcome which is not materially worse than those assessed. However, there is no hierarchy in terms of the environmental consequences and the Project Objectives, some of which clash. Considering this, as no weighting of the Project Objectives has been given, it is unclear how the Project can fulfil its objectives as well as its environmental obligations, and hence how charge levels and environmental effects can be known. No calculation can be made on this basis and there is no confidence as to economic, socio-economic and traffic-related environmental effects.
- 2.4.6 The Charging Policy has not been designed to give certainty. The arbiter of the toll level is the Mayor of London. He will exercise a subjective judgement on whether the environmental effects are materially worse than those predicted. This does not give certainty to the effects of the Project, their cumulative nature, or their effect on transport. This means that for those affected, the effects of the Project on their business or transport policies/strategies are unknown, as well as environmental effects. AnSCO would like the charge levels and mechanisms to be addressed on the face of the DCO to ensure certainty and that changes can only

take place with the consent of the Secretary of State following proper assessment. The present proposal does not secure the assessed environmental or economic outcomes.

- 2.4.7 AnSCO has concerns regarding the ability to influence the Charging Policy. In its current form, if any party were to disagree with the level of charge set by the Applicant, the only avenue for redress would be by judicial review of the Mayor of London. The basis of the judicial review would be the reasons for the decision which would be difficult to bring forward. It is difficult for a person to be heard and to defend its position. As such, AnSCO believes that it should be the Secretary of State, as opposed to the Mayor of London, who should be the determining party. In this case, because the charge is designed to secure assessed environmental effects, the Secretary of State is the correct determining authority. Unless the effects can be predicted because charges are known, the current approach allows a variation of the DCO's provisions by a back door. It is a sub-delegation of the Secretary of State's power to allow tolls or charges to be imposed to the Mayor.

2.5 **Schedule 2- Requirements**

- 2.5.1 Detailed design for above ground buildings and structures (provided for in Requirement 4) are not covered by the Part 2 of Schedule 1 to the Order. The Applicant should provide highway details so that these become fixed and so that they, including temporary works, can be properly understood.
- 2.5.2 Considering Requirement 5, paragraph (2); according to the principles relating to the "Rochdale Envelope", the authority must determine whether it is satisfied that:
- "a project has 'full knowledge' of its likely significant effects on the environment. If it considers that an unnecessary degree of flexibility, and hence uncertainty as to the likely significant environmental effects, has been incorporated into the description of the development, then it can require more detail, or refuse consent."
- 2.5.3 The Project, as it stands, relies on a series of documents that are not currently available (Construction and Traffic Monitoring Plan ("CTMP"), Traffic Impacts and Monitoring Strategy ("TIMS"), etc.), which state that the Project will result

in effects no worse than assessed effects that have not been specified. Their content is unknown and the effects of the Project cannot be guaranteed without this information. The project does not have an outline model management plan and, in particular, it has no traffic management plan which provides a mechanism for discussions to take place between the parties. Measurements and interim highway plans, assessments of points of ingress and egress, etc. are all relevant and important to AnSCO in terms of the Project's effect on The O2. This information is crucial; it would be unacceptable to provide for this kind of assessment at an unspecified point in the future. A transport management plan should be required, as well as a guarantee that it will fall in line with the above points.

2.5.4 Regarding Requirement 7 (Monitoring and mitigation strategies), paragraph (b); only an outline of the TIMS has been provided by the Applicant. This outline states that the effects of the Project in operation will not be as severe as those in the assessment of potential effects. However, no party will be able to make representations with this level of information. This level of uncertainty is not compliant with the Rochdale Envelope. Specific proposals must be made by the Applicant, and these must be assessed and specified in to the DCO. The DCO should also provide that key stakeholders must be consulted when implementing provisions under the TIMS. AnSCO should be included as a key stakeholder, as The O2 is one of the largest economic interests on the Greenwich Peninsula.

2.6 **Schedule 13- Protective provisions**

2.6.1 Protective provisions are not exclusively applicable to statutory undertakers. This is most recently exemplified in the York Potash Harbour Facilities Order 2016, which included private parties in their protective provisions. In the context of the Project, if sufficient mitigation is not provided for AnSCO, then there must be a set of protective provisions in place in the DCO. AnSCO hopes to reach an agreement with the Applicant, failing which, protection on the face of the DCO will be required.

2.6.2 AnSCO cannot rely on the ordinary provisions for the protection of landowners. Landowners are normally compensated by the diminution in value of the land as a result of the consequences of compulsory acquisition or works supported by compulsory acquisition. AnSCO's interest in The O2 is not capable solely of being

compensated financially by reference to land value in such a manner (for instance because an effect relates to a material loss of revenue that would not otherwise occur) and therefore protective provisions are entirely justified.

- 2.6.3 Furthermore, treating AnSCO as such is justified on the basis that The O2 would be considered be a commercial NSIP (and hence AnSCO would be a statutory undertaker) if it were the subject of a successful application under the current rules and legislation. The O2 could suffer adverse indirect effects on both parking and events days if the works are not properly regulated. AnSCO should not be required to bear the costs associated with event days which have been disrupted by the Project. AnSCO should therefore be protected on the face of the DCO by protective provisions.

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