

SILVERTOWN TUNNEL

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8.2 Document Explaining DCO Amendments

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Forms and Procedure) Regulations 2009

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SILVERTOWN TUNNEL

EXPLANATION OF AMENDMENTS MADE TO THE DRAFT DCO (REV 1)

1. INTRODUCTION

- 1.1 This document provides a commentary on changes made to the draft Development Consent Order ("dDCO") in the version submitted at Deadline 1 (15 November 2016) (DCO Revision 1), compared with the version of the draft DCO submitted alongside the application for the DCO in May 2016. The Applicant's revised draft DCO (Revision 1) is document 3.1 (Revision 1), and an electronic comparison between the two versions has also been submitted.
- 1.2 In broad terms the changes to the latest dDCO compared to that submitted with the application have been made for the following reasons:
- 1.2.1 changes arising from continued discussions with the host boroughs and other local authorities, statutory undertakers and landowners;
 - 1.2.2 changes arising from points raised at the first ISH on the dDCO on 12 October 2016 ("the ISH");
 - 1.2.3 changes suggested by the ExA in its FWQs published on 18 October 2016 or arising from the Applicant's consideration of the FWQs; and
 - 1.2.4 other points which the Applicant has identified as requiring amendment since the initial version of the dDCO was submitted with the application.
- 1.3 This document also responds to points raised at the ISH which were not subsequently raised in the ExA's FWQs and have not necessitated a change to the dDCO.

2. TABLE OF CHANGES TO THE DRAFT DCO

Provision in revised draft DCO and/or issue	Brief description and explanation
Overall	There are a number of stylistic or minor changes to the drafting in various definitions in article 2(1), as well as in the rest of the dDCO, to reflect suggestions made by the ExA in its FWQs or identified by the Applicant as being required following a further review of the dDCO.
Preamble	This has been amended in light of the ExA's suggestion in their FWQs to reflect the fact that it is a panel of three.
Article 2(1) – definition of "business day"	This has been added to reflect new wording added to article 58.
Article 2(1) – definition of "the charging policy"	This definition has been amended to reflect a typographical error identified in the ExA's FWQs – it now refers to the Mayor of London rather than the Secretary of State to make it consistent with article 52 of the dDCO. It also has been updated to reflect the new title of the document.
Article 2(1) – definition of	Following comments made at the first ISH on the dDCO and in the FWQs, the Applicant has reviewed this definition and reduced the scope

Provision in revised draft DCO and/or issue	Brief description and explanation
“commencement”	of the ‘carve outs’ accordingly. It is considered that the ‘carve outs’ remaining would not give rise to any significant environmental impacts and are not governed by the CoCP and thus are not required to be controlled by the requirements and other controls contained in the protective provisions.
Article 2(1) – definition of “the operator”	Following a further review of the dDCO, the Applicant considers this definition is no longer required and has made consequential amendments to the dDCO as a result. This is due to the operation of article 58, where any transferee would be read as being included within the term 'TfL' in the dDCO, meaning the concept of an 'operator' is redundant.
Article 2(1) – definition of “relevant planning authority”	The London Borough of Tower Hamlets ("LBTH") raised at the ISH that it considered it should be included within this definition. However, subsequent discussions between the Applicant and LBTH have resulted in changes to Part 2 of Schedule 2 to the DCO, which LBTH are content with in place of being added to this definition. Further explanation of these changes is set out below.
Article 2(1) – definition of “the river area”	The scope of this definition has been amended such that it only extends to the limits of deviation of Work No. 20 – this amendment has been made following discussions with the Port of London Authority (“PLA”).
Article 2(1) – definition of “STIG”	This definition has been added as a result of the term being used beyond article 65 due to amendments made to the dDCO following the FWQs.
Article 5	It was raised at the ISH that certain mitigation to be secured outside of the Order limits should be the subject of a Grampian requirement in the dDCO. The Applicant does not consider this to be appropriate. All necessary mitigation is secured within the Order limits, with certain other enhancements being discussed between the Applicant and other parties – the precise mechanism for enabling delivery of these enhancements is the subject of on-going discussions, but it is not appropriate for inclusion within the dDCO because they are not a necessary part of the Scheme.
Article 5(1)(b)	The table in this article has been amended, such that it makes clear that the upwards vertical limit of deviation is restricted to 1.5 metres in any works authorised under the River Thames. This is also subject to ensuring the navigable channel in the River Thames remains to a sufficient depth. This amendment is as a result of discussions with the PLA.
Article 5(2)	Amendments have been made in order to address concerns raised in at the ISH and in the FWQs.
Article 9(7) and 10(5)	AnSCO Arena Ltd at the ISH raised the point that it, as a private street authority, should be entitled to compensation - it was contended that this was not the case as the compensation provisions only relate to private rights of way. The Applicant does not consider that any amendments to these articles are required – the drafting is entirely standard and is consistent with the Model Provisions. However, discussions between the Applicant and AnSCO on this point, amongst others, are continuing.

Provision in revised draft DCO and/or issue	Brief description and explanation
Article 11	As a result of issues being raised at the ISH and in the FWQs, the Applicant has now made provision for this article to be subject to approval from the street authority.
Article 12	The London Borough of Newham and Royal Borough of Greenwich raised at the ISH that article 12 should be termed as the Applicant being required to enter into agreements, rather than it being optional. As this drafting is entirely standard, it is considered by the Applicant to be inappropriate to <i>require</i> such agreements to be entered into.
Article 17	Further to the FWQs, a specific notice period has been added to this article.
Article 25	A new paragraph (8) has been added to omit a provision introduced into the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016 from applying, to ensure consistency with article 21 of the dDCO.
Articles 29(1)(d) and (e)	The amendments made to these provisions are to provide clarity of the fact that the Applicant is seeking (a) powers to construct permanent works on land temporarily possessed (this power has precedent in other made DCOs to date); and (b) powers to accommodate displaced uses on land temporarily possessed during the construction of the scheme.
Article 30(5)	This amendment has been made as a result of a query raised in the ExA's FWQs. It provides that it is a requirement of any notices of temporary possession in respect of maintenance to include the purpose of that temporary possession.
Article 30(13)	This amendment has been made as a result of the ExA's FWQs. It is recognised by the Applicant that not all parts of the authorised development will be open for public use, so wording has been added such that the maintenance period trigger is either the opening of a part of the authorised development for public use where relevant or, in all other cases, the time a part of the authorised development is first brought into operational use.
Article 34	A new plot has been added to the definition of 'special category land', following further investigations.
Article 38	This article has been amended to provide that a more restricted set of powers comes into force at the existing Blackwall Tunnel upon construction of the Silvertown Tunnel.
Article 43	This article has been amended to rationalise the drafting, such that the definition of 'the tunnels' applies rather than the definitions of both the Silvertown Tunnel and the Blackwall Tunnel - the effect of the article remains the same.
Article 43	It was raised at the ISH that there was no definition of 'emergency' in article 43(1). Having considered this further, the Applicant does not consider it appropriate to include a definition of 'emergency'. It is standard in legislative drafting to include reference to the term 'emergency' without a specific definition. It should be given its normal meaning in the circumstances prevailing, which is necessary in this

Provision in revised draft DCO and/or issue	Brief description and explanation
	<p>context as it gives the Applicant sufficient flexibility to deal with unexpected events. There is the risk that a specific dDCO definition could be too limiting.</p> <p>AnSCO Arena Ltd also raised the point in respect of the 7 day notice period for closure. The Applicant is involved in on-going discussions with both it and other interested parties on this and other points, but has not made any amendments to the dDCO as it considers the provision to be reasonable and appropriate.</p>
Article 44	<p>The Applicant has made a number of amendments to improve the drafting, but the effect of this article remains the same.</p> <p>The changes in paragraph (8)(a)(i) are intended to provide more clarity as to the required contents of the relevant notice.</p> <p>The amendments in paragraph (13) again are made to provide clarity, in this instance on the application of penalty charges.</p> <p>The amendment in paragraph (15) is simply a stylistic change.</p> <p>The amendment in paragraph (17) is for clarity.</p> <p>The amendment in paragraph (18) is to apply specific regulations to this regime.</p> <p>A new paragraph (23) has been added to make clear what the scope of 'breaking down' includes.</p>
Article 45	<p>Amendments have been made to this article simply to rationalise and simplify the process (and drafting) for the removal of other obstructions, following a review by the Applicant. The overall effect of the article remains the same and is intended to better reflect the regime introduced by article 44 (e.g. by introducing the concept of a 'custodian').</p>
Article 46	<p>This amendment has been made to apply specific regulations, further to a FWQ, with related consequential amendments to paragraph (4).</p>
Article 52	<p>A small amendment has been made to paragraph (1) to clarify that Part 5 of the dDCO must be exercised in accordance with the "policies and procedures" contained in the charging policy.</p> <p>This article has also been amended to reflect the results of on-going discussions with the Royal Borough of Greenwich and the London Boroughs of Newham and Tower Hamlets. It now provides for STIG, rather than specific Boroughs, to be consulted during the process for revising the charging policy.</p>
Article 55	<p>As with other amendments made in this revised draft of the DCO, the drafting has been improved in this article to provide more clarity as to its intention and application. The effect of it, namely to apply penalty charges payable under existing regulations to the proposed user charging regime at the Blackwall and Silvertown Tunnels, remains the same.</p>
Article 58	<p>Drafting has been added to this provision further to the MMO's relevant representation to provide the MMO with notice of any transfer (provision for which has been moved from the DML).</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
Article 60(5)(a)	Further to a FWQ, the article has been amended to make provision for all notices given to traffic authorities to reference the time limit within which representations can be made in respect of publicity.
Article 64	Amendments have been made to this article following a suggestion from the ExA.
Article 65	<p>Amendments have been made to this article following discussions with the Royal Borough of Greenwich and the London Boroughs of Newham and Tower Hamlets and other interested parties.</p> <p>The GLA has been added as a member of STIG in paragraph (2) further to a request received by the Applicant. This is considered appropriate in the context of the GLA's statutory functions.</p> <p>The scope of matters which STIG may consider has been extended. This now includes revisions to the user charging policy and how the Applicant's bus proposals have been implemented.</p> <p>A new paragraph (6) makes clear that TfL must have regard to any recommendations from STIG in taking any decision in respect of the matters which STIG can consider.</p> <p>The drafting in paragraph (8) has also been amended in terms of the quorum of STIG, further to one of the ExA's FWQs.</p>
Article 68	<p>This article has been added to 'wrap up' the mechanics for consents, agreements and approvals under the dDCO. Originally, these provisions, in identical form, were found in a number of different articles.</p> <p>In addition, to address a query raised in the FWQs, provision has been made for any application for a consent, agreement or approval to draw the relevant authority's (i.e. the consenting body) attention to the 28 day deemed approval provisions.</p> <p>A number of consequential deletions have been made to other articles as a result.</p>
Preamble to Schedule 1	Reference to some of the works in Schedule 1 potentially falling under the definition of 'associated development' (as per the PA 2008) has been added. As has been stated by the Applicant in its response to FWQ DC89, it is not considered there is any purpose or value in separating out the NSIP and associated development elements. The formulation of this wording has precedent in made DCOs to date.
Schedule 1, Work No. 1	The wording 'cellular tunnel' has been added to this Work, to provide clarity that TfL can construct a cut and cover tunnel which is not two separate tunnels.
Schedule 1, 'catch-all'	<p>Due to the amendment of the definition of 'the river area' to limit its scope, the reference in Schedule 1 to that has been amended to refer to a wider area within the River Thames (i.e. so much of it as falls within the Order limits) to reflect the fact that some works listed may take place outside of the 'the river area'.</p> <p>Wording has been added to paragraph (y) further to a FWQ.</p>
Schedule 2,	Definitions have been amended to reflect comments made in the ExA's

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Paragraph 1 of Part 1	FWQs, including to add a definition of the Biodiversity Action Plan and Mitigation Strategy.
Schedule 2, Paragraph 5 of Part 1	<p>Amendments have been made to the approval bodies of some of the plans as a result of on-going discussions between the Applicant and the relevant local authorities and other interested parties, as well as points raised in the ExA's FWQs.</p> <p>This paragraph has also been re-ordered to reflect comments made by the ExA at the ISH - it now splits up the plans into those requiring approval and those simply being consulted upon.</p> <p>Amendments have been made to sub-paragraphs (4) to (6) to reflect comments made in the ExA's FWQs.</p>
Schedule 2, Paragraph 13 of Part 1	This requirement has been added to secure that TfL must ensure that any buses running as part of a bus service provided or secured by TfL through the Silvertown Tunnel must meet the 'Euro VI' European emission standard.
Schedule 2, Paragraph 14 of Part 1	This requirement has been added to secure that the authorised development must be carried out in accordance with the Biodiversity Action Plan and Mitigation Strategy, which forms part of the Environmental Statement.
Schedule 2, Paragraph 16 of Part 2	<p>Following discussions with the LBTH and other interested Boroughs, the Applicant has amended the procedure in Part 2 of Schedule 2. The amended procedure provides for (a) the Applicant to supply a draft 'application' for the discharge of a requirement at least 28 days before formally submitting the application; and (b) where a draft application is submitted to the London Borough of Newham in respect of the requirement in paragraph 5(3) of Part 1 of Schedule 2, LBTH must be consulted on that draft. The element in (b) is in place of including LBTH in the definition of 'relevant planning authority' and has been agreed by LBTH.</p> <p>Paragraph (4) provides that the London Borough of Newham must consult with LBTH before deciding on an application for a discharge of the requirement in paragraph 5(3) of Part 1 of Schedule 2.</p> <p>Paragraph (5) has been amended to deal with issues raised by the Boroughs as part of on-going discussions with the Applicant - this now explicitly provides that a discharge of a requirement can be given subject to conditions.</p>
Schedule 2, Paragraph 18 of Part 2	Paragraph (2)(f) has been amended further to a FWQ, such that the Secretary of State is now not bound to adhere to a particular time limit within which a decision on an appeal needs to be made.
Schedule 4	Plot 04-044 has been removed, as it was erroneously included in the previous draft of the DCO.
Schedule 7	Amendments have been made to this Schedule to reflect the outcome of on-going discussions with various landowners.
Schedules 8 and 9	Consequential amendments have been made to these Schedules as a result of the Applicant removing the defined term 'the operator'.

Provision in revised draft DCO and/or issue	Brief description and explanation
	Some definitions in Schedule 9 have been amended to make them consistent with amendments made to article 2(1).
Schedule 9, Paragraph 8 of Part 4	Sub-paragraph (2) has been deleted as, on a further review, the Applicant does not consider that it is necessary when the procedure is read together, bearing in mind the prior-consent requirement. Wording has been added at sub-paragraph (6) to ensure that TfL can inspect any motor vehicle for the purposes of ascertaining compliance with the requirements in respect of the carriage of dangerous goods.
Schedule 12	A number of amendments have been made to this DML contained in this Schedule as a result of on-going discussions with the MMO, which also reflect points raised by the ExA in its FWQs. A new licence condition has been added in relation to approval of a method statement and the coordinates of the relevant area within which licensed activities can take place. The notice of transfer of benefit condition has been deleted, as this has been added to article 58 and the time limits in Part 3 have been amended. Discussions continue with the MMO on the DML.
Schedule 13	<p>Amendments have been made to the protective provisions contained in this Schedule as a result of on-going discussions with various statutory undertakers, National Grid and the Port of London Authority.</p> <p>As the Environment Agency stated in its relevant representation (at paragraph 6.0) it is considering internally its preferred form of protective provisions, and therefore the set contained in Part 5 will form the subject of discussions in due course when that exercise has concluded.</p> <p>The protective provisions in Part 3 for the benefit of National Grid are agreed.</p> <p>The terms of the other sets of protective provisions are not yet settled, but there only remain, from the Applicant's perspective, minor points outstanding. It is therefore hoped that agreement will be reached by Deadline 2 on 14 December. A further update will be provided at that point.</p>
Schedule 14	The list of documents to be certified has been amended following a further review by the Applicant in light of points raised by the ExA in its FWQs, as well as revisions to documents being submitted at Deadline 1.