

# SILVERTOWN TUNNEL

Volume 8

## Development Consent Order Application

Response to ExA's First Written Questions:

8.22 Principal Issue: General

The Infrastructure Planning (Examination Procedure)

Rules 2010

November 2016

Silvertown Tunnel

Response to ExA's First Written Questions:

General

---

THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

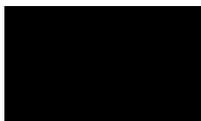
# Silvertown Tunnel

## Development Consent Order Application Response to ExA's First Written Questions: General

*Document Reference:* 8.22

*Internal Code:* ST150030-PLN-ZZZ-ZZ-REP-ZZ-0152

*Author:* Transport for London

Rev.	Date	Approved By	Signature	Description
0	15/11/2016	David Rowe (TfL Lead Sponsor)		For Deadline 1

Silvertown Tunnel

Response to ExA's First Written Questions:

General

---

THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK

# Contents

**GA GENERAL ..... 6**

GA.1 Question ..... 6

Response ..... 6

GA.2 Question ..... 7

Response ..... 7

## GA GENERAL

### GA.1 Question

**The Applicant is requested to review the Mitigation Route Map document [APP-108] and provide an updated edition into the Examination which provides details of all mitigation and explains where it is secured within the draft Development Consent Order (dDCO).**

### **Response**

- GA.1.1 TfL has reviewed the Mitigation Route Map document [APP-108] and provides an updated version as Appendix A. This provides details of all mitigation and explains where it is secured in the draft Development Consent Order (dDCO).

## GA.2 Question

**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.**

## Response

- GA.2.1 The applicant considers that, as a matter of law, the application must be decided in accordance with the National Networks NPS (NPSNN) under s. 104 of the PA 2008 unless the Secretary of State is satisfied that any of the exceptions in subsections (4) to (8) apply.
- GA.2.2 Section 31 of the PA 2008 provides that "... development consent is required to the extent that development is or forms part of a nationally significant infrastructure project."
- GA.2.3 Section 35(1) expands the effect of section 31 by providing that "*The Secretary of State may give a direction for development to be treated as development for which development consent is required.*" A direction under section 35(1) may only be made if the development is or forms part of a project in the field of energy, transport, water, waste water or waste, or is a business or commercial project.
- GA.2.4 It is clear from the nature of the development (a road tunnel under the River Thames), together with the Mayor of London's application for a section 35 Direction dated 1 June 2012, that the proposed development is a 'transport' project for the purposes of section 35(2). In that context the

Secretary of State was "*satisfied that the proposed Silvertown Tunnel is nationally significant*" and directed that the development, together with any matters associated with it, "*is to be treated as development for which development consent is required*". As section 31 (above) makes clear, development consent is 'required' for 'nationally significant infrastructure projects' and thus the Secretary of State's Direction means that the Silvertown Tunnel project must be treated as a nationally significant infrastructure project.

GA.2.5 Section 104 states that "*This section applies in relation to an application for development consent if a national policy statement has effect in relation to development of the description to which the application relates*".

GA.2.6 In that context, paragraph 1.1 of the NPSNN states that:

GA.2.7 "*It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks, and the basis for the Examination by the Examining Authority and decisions by the Secretary of State.*"

GA.2.8 Quite plainly, the Silvertown Tunnel is a nationally significant infrastructure project on the road network.

GA.2.9 Paragraph 1.1 of the NPSNN goes on to state that the thresholds for nationally significant road, rail and strategic rail freight infrastructure projects are defined in the PA 2008. The footnote to this sentence refers to the statutory provisions which establish these thresholds. These are:

- *section 22 (highways),*
- *section 25 (railways),*
- *section 26 (rail freight interchanges), and*
- *section 35 (directions in relation to projects of national significance); of the PA 2008 and*
- *article 4 of the Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 ("the threshold order")*

GA.2.10 The reference in the footnote to s. 35 of the PA 2008 makes clear, once again, that projects such as the Silvertown Tunnel, which are the subject of a direction given under s. 35, fall within the scope of 'national networks nationally significant infrastructure projects' for the purposes of the

NPSNN. Paragraph 1.2 explains that DCO applications for 'national networks nationally significant infrastructure projects' must be decided in accordance with s. 104 unless the Secretary of State is satisfied that any of the exceptions in s. 104(4) to (8) apply.

GA.2.11 Paragraph 1.3 of the NPSNN further reinforces that point that developments which do not meet the current requirements for NSIPs set out in the PA 2008 (as amended by the threshold order), but which are considered to be nationally significant, may be the subject of a direction given by the Secretary of State under s. 35 that they should be treated as a nationally significant infrastructure project. Paragraph 1.3 then goes on to make clear that:

GA.2.12 *"In these circumstances [i.e. following a s. 35 direction] any application for development consent would need to be considered in accordance with this NPS. The relevant development plan is also likely to be an important and relevant matter especially in respect of establishing the need for the development."* (emphasis added)

GA.2.13 It is therefore clear that: (a) the Silvertown Tunnel is to be treated as a highways nationally significant infrastructure project, (b) the National Networks NPS is the relevant national policy statement having effect for such projects, and (c) the Examining Authority is, therefore, under a legal duty to consider the application under section 104.

GA.2.14 This conclusion is supported by the Secretary of State's decision on the only s. 35 highway scheme to have been determined under the PA 2008 to date - the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 made in June 2015 (the NDR scheme).

GA.2.15 A s. 35 direction was given in relation to the NDR scheme in August 2013. In the decision letter for the scheme (dated 2 June 2015), the Secretary of State, at paragraphs 9 and 11 states:

GA.2.16 *"Since the examination closed, the Secretary of State designated the National Policy Statement for National Networks ("NPSNN") under section 5 of the 2008 Act on 14 January 2015. He is accordingly required now to decide this application in accordance with section 104 of the 2008 Act (decisions in cases where national policy statement has effect) rather than section 105 of the 2008 Act, which was operative at the time when the examination closed. This means that, in addition to the matters referred to at ER 3.4, he must have regard to the NPSNN as designated and must*

*decide this application in accordance with the NPSNN unless any of the considerations described in section 104(4) to (8) of the 2008 Act apply. ...*

GA.2.17 *The Secretary of State agrees with the Examining Authority's assessment at ER 3.8-60 of the legislation and policy that are relevant and important matters to be taken into account in deciding this application, while noting that the designated NPSNN is now the primary policy document against which the NDR project is to be assessed."*

GA.2.18 The precedent set by the decision letter for the NDR scheme provides confirmation that the Secretary of State considers that the NPSNN has effect in relation to highway projects that are the subject of s. 35 directions and is the primary policy document against which those projects are to be assessed.

GA.2.19 The applicant is also aware of the recently made Triton Knoll Electrical System Order 2016 (an energy scheme that was the subject of a s. 35 direction) which was decided by the Secretary of State under section 105 of the PA 2008. This decision reflects the fact that the suite of energy NPSs, in contrast to the National Networks NPS, contain no reference to s. 35 schemes and state only that they have effect in relation to energy projects of a type, and within the thresholds, set out in the PA 2008. The Triton Knoll connection is an underground cable which is not one of the categories of NSIP development set out in Part 3 of the PA 2008 (s. 16 only covers above-ground electric lines) and therefore there is no 'relevant NPS' for the purposes of s. 104 which has effect 'in relation to development of the description to which that application related' (s. 104(2)(a)).

### **Strategic Environmental Assessment**

GA.2.20 The applicant notes the nature and scope of the Strategic Environmental Assessment (SEA) that was carried out alongside the development of the National Networks NPS<sup>1</sup>, but does not see any basis on which this alters the statutory requirement in s. 104 for the application to be decided in accordance with the NPSNN.

GA.2.21 The Appraisal of Sustainability, which incorporates the SEA, states at paragraph 7.1.3 that:

---

<sup>1</sup> In accordance with Directive 2001/42/EC.

- GA.2.22 *In developing alternatives, DfT considered variations in the strategic approach to each of the choices set out above. As the scope of the NN NPS is largely confined to the development of the national rail network, the strategic road network (SRN), and strategic rail freight interchanges, the alternatives focused on these networks, rather than for example, strategic choices available on urban roads that are the responsibility of local authorities.*
- GA.2.23 Although the focus of the assessment of alternatives was on the strategic road network, the footnote to paragraph 7.1.3 expressly acknowledges that the NPSNN would also have effect in relation to any nationally significant schemes on local roads. The SEA notes, however, that such local schemes "are likely to be a small minority" of schemes considered under the NPSNN and therefore the focus on the strategic road network was justified.
- GA.2.24 The Appraisal of Sustainability found no significant adverse effects of the policy set out in the NPSNN whilst acknowledging that the nature of effects will depend upon the exact locations of development and the sensitivity of the receiving environment<sup>2</sup>. The applicant is not in a position to speculate as to whether or not the conclusion of the assessment would have been different had it included a supplemental focus on strategic choices available on the local road network. However, it is important to note that the NPSNN is not locationally-specific and, accordingly, the SEA is high level and generic in nature and does not seek to appraise specific schemes in specific locations<sup>3</sup>.

### **Application of the NPSNN to GLA Roads**

- GA.2.25 At the preliminary meeting, the ExA queried whether the NPS has effect in relation to the current application on the basis that the NPS does not deal with Greater London Authority (GLA) roads (i.e. roads for which TfL rather than the Secretary of State, is the highway and traffic authority). This point is directly addressed in paragraph 1.5 of the NPS.
- GA.2.26 Paragraph 1.5 notes that "the great majority of nationally significant infrastructure projects on the road network are likely to be developments on the Strategic Road Network". The footnote to that paragraph explains

---

<sup>2</sup> NPS, paragraph 1.10.

<sup>3</sup>See paragraph 1.0.2 of the Appraisal of Sustainability.

that the Strategic Road Network covers trunk roads and motorways in England where the Secretary of State is the traffic authority, but also goes on to add that "development of local roads will only be NSIPs if an order (sic) under s. 35 of the PA 2008 has been made". The paragraph goes on to state:

GA.2.27 "In this NPS the 'national road network' refers to the Strategic Road Network and other roads that are designated as nationally significant under Section 35 of the Planning Act."

GA.2.28 Throughout the NPS the term 'national road network' is used, rather than the Strategic Road Network, and this reflects the fact that the NPS has effect in relation to highways schemes that are the subject of s. 35 directions. Accordingly, the NPS applies to proposed developments on the GLA road network where those proposals are the subject of a direction given under s. 35.

#### **Other Matters**

GA.2.29 The applicant does not consider that any matters have arisen since the publication of the NPS that may cause s. 104(4) to (8) to apply in the context of the scheme.