

SILVERTOWN TUNNEL

Volume 3

3.2 Explanatory Memorandum to Development Consent Order

TR010021

APFP Regulation 5(2)(b)

Revision 1

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and
Procedure) Regulations 2009

November 2016

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Document Reference: 3.2

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Regulations 2009

Document Reference: 3.2

Internal Code: ST150030-PLN-ZZZ-ZZ-DCO-ZZ-0061

Regulation Number: 5(2)(b)

Author: Transport for London

Rev.	Date	Approved By	Signature	Description
0	29/04/2016	David Rowe (TfL Lead Sponsor)		For DCO Application
1	15/11/2016	David Rowe (TfL Lead Sponsor)		Updated for deadline 1

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**INFRASTRUCTURE PLANNING
PLANNING ACT 2008
THE INFRASTRUCTURE PLANNING
(APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009
SILVERTOWN TUNNEL ORDER**

**EXPLANATORY MEMORANDUM
(Revision 1 – November 2016)**

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1. **SUMMARY**

1.1 This memorandum explains the purpose and effect of each article of, and Schedules to, the draft Silvertown Tunnel Order (“the Order”), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009¹.

2. **PURPOSE OF ORDER**

2.1 Transport for London (“TfL”) is applying to the Secretary of State for Transport for an Order to authorise the construction, operation and maintenance of the Silvertown Tunnel (“the Scheme”).

2.2 The Scheme comprises the construction of a twin bore road tunnel providing a new connection between the A102 Blackwall Tunnel Approach on Greenwich Peninsula (Royal Borough of Greenwich) and the Tidal Basin roundabout junction on the A1020 Lower Lea Crossing/Silvertown Way (London Borough of Newham). The Silvertown Tunnel will be approximately 1.4km long with the ability to accommodate large vehicles including double-deck buses. The Boord Street footbridge over the A102 would be replaced with a pedestrian and cycle bridge.

2.3 New portal buildings will be located close to each tunnel portal to house the plant and equipment necessary to operate the Silvertown Tunnel.

2.4 The introduction of free-flow user charging on both the Blackwall and Silvertown Tunnels will play a fundamental part in managing traffic demand and will help to support the funding of the construction and operation of the Silvertown Tunnel.

2.5 The design of the Silvertown Tunnel includes a dedicated bus/coach and HGV lane, which will provide opportunities for TfL to provide additional cross-river bus routes.

2.6 The main benefits of the Scheme are to (i) address existing resilience issues in the cross-river road network in east London; (ii) provide an opportunity to create new cross-river bus links; and (iii) improve journey times.

2.7 In June 2012 the Secretary of State for Transport gave a direction under section 35 of the Planning Act 2008 (“the Act”) that the proposed Silvertown Tunnel, as well as any associated matters, be treated as development for which development consent is required.

2.8 As a result of this, development consent must be obtained from the Secretary of State to authorise the Scheme, and an application for a development consent order (“DCO”) must be made to the Secretary of State, care of the Planning Inspectorate (“PINS”), under section 37 of the Act.

¹ S.I. 2009/2264

Associated development

- 2.9 Section 115(1) of the Planning Act 2008 provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The direction given in respect of the Scheme under section 35 of the Planning Act 2008 states that "the Silvertown Tunnel, as well as any associated matters, be treated as development for which development consent is required." On a strict interpretation, this could be taken to mean that any matters associated with the Silvertown Tunnel are to be treated as development for which development consent is required under section 115(1)(a) rather than associated development under section 115(1)(b).
- 2.10 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government². In this guidance, associated development is described as being "*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*" and "*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development.*"
- 2.11 The Order authorises a number of elements of development which are subordinate to the construction and operation of the Silvertown Tunnel and which, subject to the issue raised above regarding the interpretation of the section 35 direction, would be regarded as associated development. These include:
- 2.11.1 construction of a temporary jetty;
 - 2.11.2 diversion of utilities apparatus, including gas and water pipelines and electrical cables; and
 - 2.11.3 environmental mitigation measures.
- 2.12 For the reasons set out above, all elements of the Scheme fall within section 115(1) of the Act, and so can properly be authorised by the Order.
3. **SUPPLEMENTAL POWERS**
- 3.1 The Order also contains provision for a wide range of powers to support the Scheme.

² "Guidance on associated development applications for major infrastructure projects" (Department for Communities and Local Government) (April 2013).

- 3.2 It seeks to apply and modify statutory provisions in relation to the compulsory acquisition of land. It is for this reason that under sections 117 and 120(5) of the Act the Order is made by Statutory Instrument.
- 3.3 The Order authorises road user charging at both the Silvertown Tunnel and the existing Blackwall Tunnel. The implementation of user charging is critical to achieving the objectives of the Scheme, by acting as a demand management tool for traffic using the crossings.
- 3.4 Other powers for which the Order makes provision include the diversion and stopping up of lengths of existing highways in the vicinity of the new tunnel, the designation and redesignation of highways, the application of speed limits, the stopping up of private means of access and the creation of new private means of access, operational provisions and the making of byelaws in respect of both the Silvertown Tunnel and Blackwall Tunnel and the application and disapplication of legislation relating to the Scheme.

4. **DRAFT ORDER**

- 4.1 The purpose and effect of the provisions of the Order are now explained in sequence. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009³ has lapsed, the Order is broadly based on those model provisions (general and railway), as well as precedents in DCOs and relevant Orders under the Transport and Works Act 1992 that have been made to date.

5. **PART 1 – PRELIMINARY**

Article 1 – Citation and commencement

- 5.1 Article 1 sets out the name of the Order.

Article 2 – Interpretation

- 5.2 The purpose of article 2(1) is to define terms used in the Order.
- 5.3 The definition of “authorised development” encompasses the development authorised by the Order and should be read in that context in this memorandum.
- 5.4 The following definitions in particular have been included due to the nature of the Scheme:
- 5.4.1 “the 1984 Act”;
 - 5.4.2 “the 1999 Act”;
 - 5.4.3 “authorised person”
 - 5.4.4 “carriageway”;

³ S.I. 2009/2265

- 5.4.5 “GLA Road”; and
 - 5.4.6 “the river area”.
- 5.5 Other definitions to note include:
- 5.5.1 “commence” which makes clear that a number of works that would constitute a "material operation" under the Town and Country Planning Act 1990 do not mean that the authorised development has been "commenced". The effect of the definition is that certain ‘carved out’ works (including non-intrusive investigations for the purpose of assessing ground conditions) can be carried out prior to the requirements contained in Schedule 2 to the DCO being discharged. The ability to do this is of critical importance to TfL in the context of the envisaged construction programme. It is considered that the works that are ‘carved out’ would not have any impact on the effectiveness of the requirements from an environmental protection perspective. TfL is particularly keen to draw the Examining Authority’s attention to the importance of retaining this definition in the context of the definition of 'commence' deleted by the Secretary of State when the A160/A180 (Port of Immingham Improvement) Development Consent Order 2015 was made. Highways England (the promoter of that scheme) drew the Secretary of State's attention to the consequences of this and a Correction Order was made, amending some of the requirements, and it was recognised by the Secretary of State in the Correction Notice that the deletion of the definition of 'commence' had *‘the unintended consequence of removing an acceptable degree of flexibility in the implementation of the project and that this is a correctable error for the purposes of Schedule 4 to the Planning Act 2008’*.
 - 5.5.2 “maintain” which includes the power to “inspect, repair, adjust, alter, remove or reconstruct”. TfL considers this is entirely appropriate and has precedent in made DCOs to date, such as the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 and, indeed, does not go as far as other DCOs such as the Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015 and Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014;
 - 5.5.3 “the Order land” refers to land which is coloured pink and blue on the land plans, which comprises the land which TfL can permanently acquire or land in which TfL can permanently acquire new rights;
 - 5.5.4 “the Order limits” references the Order limits as shown on the works plans - the extent of the area within which the authorised development may be carried out; and

- 5.5.5 "the tunnels areas" includes both the "Silvertown Tunnel area" and the "Blackwall Tunnel area" which are both also defined in article 2 to include the tunnel and its approaches. All of these definitions stem from the "tunnels location and operational boundaries plans" which set out the extent of each element of the tunnels areas. TfL has defined these elements by reference to where it considers it appropriate (and indeed necessary) for control measures, such as the byelaws, to apply.
- 5.6 Article 2(3) expands the definition of rights over land and clarifies the purpose of the power within the Order to impose restrictive covenants.
- 5.7 Article 2(4) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances and points, although all works will take place within the limits of deviation. It is commonplace to include such provision in legislation authorising linear infrastructure – see, for example, the M1 Junction 10a (Grade Separation) Order 2013 at article 2(3), the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 at article 2(3) and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016 at article 2(3).
- 5.8 Article 2(5) provides that areas given in the book of reference are approximate, since these are not covered by article 2(4). This is intended to clarify the position of the area measurements in the book of reference, and the purpose and effect is the same as set out in the previous paragraph. The term 'approximately' is used before all plot area measurements in the book of reference, as these measurements are given in square metres, and each measurement is rounded up to the nearest whole square metre. Such approximation relates only to land within the limits of land already identified within the Order.
- 5.9 Articles 2(6)-(7) tie references to lettered/numbered plots and reference points and numbered works in the Order to the relevant plans.

6. **PART 2 – WORKS PROVISIONS - PRINCIPAL POWERS**

Article 3 – Disapplication of legislation, etc.

- 6.1 This article provides (in reliance on section 120(5)(a) of the Act (what may be included in order granting development consent)) for the disapplication of certain requirements which would otherwise apply under public general legislation, as well local legislation. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order.

Local legislation

- 6.2 Article 3(1)(a) to (m) disapplies a number of local enactments. The effect of the disapplications is explained in the table below. Throughout the table, it will be noted that the predominant reason for disapplying such enactments is to 'ensure consistency with the terms of the Order'. In short, this means that, without the disapplication, (a) certain third parties would have powers that could conflict with TfL's powers to construct, operate and maintain the Scheme; (b) TfL would need to obtain consent from third parties to undertake such works, or be at risk of being in breach of an enactment; or (c) TfL's ability to carry out necessary works is generally restricted.
- 6.3 It is considered by TfL that, in the context of the Scheme being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the Act is to ensure DCOs are a single, unified consent for significant schemes - the local legislation could threaten this. As a result, disapplying the below enactments is considered proportionate in that context and, indeed, necessary - otherwise, third parties could hold up construction or impede the operation and maintenance of the Scheme. To provide comfort for those parties, there are appropriate safeguards in the Order via the requirements in Schedule 2 or the protective provisions in Schedule 13.

Title of legislation	Effect of disapplication
Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879	Subject to the protective provisions for the benefit of the Environment Agency, limitations on execution of flood works contained in the Act will be excluded and will not apply so as ensure consistency with the terms of the Order.
Metropolitan Board of Works (Various Powers) Act 1882	Powers to undertake various works in respect of certain pipes will be excluded and will not apply so as ensure consistency with the terms of the Order.
London County Council (General Powers) Act 1907	Powers to undertake various kinds of infrastructure work (particularly around flood works including but not limited to parts II and VI of that Act) will not apply so as ensure consistency with the terms of the Order. The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will still remain.
Port of London	This Act contains a number of provisions

<p>(Consolidation) Act 1920</p> <p>Act part repealed</p>	<p>dealing with maintenance obligations.</p> <p>The disapplication ensures that any outstanding saving which preserves continuing maintenance obligations of the Port of London Authority will not apply so as ensure consistency with the terms of the Order.</p>
<p>London Overground Wires &c Act 1933</p>	<p>This Act contains restrictions on the placing of wires over or upon streets.</p> <p>The disapplication ensures consistency with the terms of the Order.</p>
<p>London County Council (General Powers Act) 1957</p>	<p>Powers to undertake various kinds of infrastructure work will not apply so as to ensure consistency with the terms of the Order (including but not limited to sections 17 and 18 concerning the power to use specified lands and section 20 concerning the continual power of maintenance of executed works).</p> <p>The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will still remain.</p>
<p>London County Council (General Powers) Act 1961</p>	<p>The Act allows gives certain powers to make subsidiary works including but not limited to part III of that Act.</p> <p>Powers to undertake various kinds of infrastructure work will not apply so as ensure consistency with the terms of the Order.</p>
<p>London County Council (General Powers) Act 1962</p>	<p>Powers to undertake various kinds of infrastructure work (particularly around discharges including but not limited to part II of that Act) will not apply so as ensure consistency with the terms of the Order.</p> <p>The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will still remain.</p>
<p>Sections 66 to 75 of the Port of London Act</p>	<p>These provisions of the Act control certain</p>

1968	<p>works and dredging in the River Thames.</p> <p>These controls will not apply so as ensure consistency with the terms of the Order.</p> <p>The Order contains protective provisions for the benefit of the Port of London Authority which, in effect, replace the controls under the Act.</p>
Greater London Council (General Powers) Act 1970	<p>Certain powers are bestowed to maintain certain works.</p> <p>These powers will not apply during construction of the authorised development so as ensure consistency with the terms of the Order.</p>
Thames Barrier and Flood Prevention Act 1972	<p>Powers to undertake various kinds of infrastructure work will not apply so as ensure consistency with the terms of the Order.</p> <p>The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will still remain.</p>
Thames Authority Water Land Drainage Byelaws 1981	<p>These byelaws contain certain controls on works (including but not limited to the following sections of that Act: sections 4 (control of structures, pipes and cable), 5 (control of excavations), 7 (endangering stability of bank), and 8 (interference with banks etc.)).</p> <p>These will not apply so as to ensure consistency with the terms of the Order.</p> <p>The controls contained in the protective provisions for the benefit of the Environment Agency ensure that the underlying purposes of the Act will still remain.</p>
Greater London Council (General Powers) Act 1986	<p>This Act contains restrictions on works affecting premises under the street including but not limited to section 5 of that Act (Demolition of works under street).</p> <p>These restrictions will not apply so as ensure</p>

	consistency with the terms of the Order.
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Consents

- 6.4 The article also provides for the disapplication of various additional consents or permits which would otherwise be required.
- 6.5 Article 3(1)(n) to (p) provide for the disapplication of consents ordinarily required from the Environment Agency, under the Environmental Permitting (England and Wales) Regulations 2010 (“the EPR Regulations”) and the Water Resources Act 1991⁴.
- 6.6 Specifically, these are the requirements for consents in respect of a ‘flood risk activity’ under the EPR Regulations and abstractions, together with the requirements for approval under flood defence byelaws made or deemed to have been made, under the Water Resources Act 1991. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the Scheme can proceed, the Order disapplies the requirement for a separate statutory consent to be obtained from the Environment Agency in relation to these activities. The requirement for a separate consent is replaced by the protective provisions for the protection of the Environment Agency in Schedule 13 which require certain works which could affect flood defences to be approved by the Agency before they are carried out.
- 6.7 As these provisions (aside from section 24 of the Water Resources Act 1991 cited in article 3(1)(n)) are prescribed under section 150 of the Planning Act 2008, the consent of the Environment Agency to the inclusion of these provisions in the Order will be needed and these consents have been sought. The relevant draft protective provisions currently included in the Order have been provided to the Environment Agency for comment. The Agency has not yet had the opportunity to comment in detail, but discussions between the parties are on-going with an aim to agree to the protective provisions (and therefore the proposed disapplications) before or during the course of the examination.

CIL Regulations

- 6.8 Article 3(2) in effect disapplies the Community Infrastructure Levy Regulations 2010, by making clear that any building comprised in the authorised development is to be deemed to be a type that does not trigger liability for payment of the Community Infrastructure Levy.

Article 4 – Development consent granted by the Order

⁴ Certain ‘flood risk’ consents that were required to be obtained under the Water Resources Act 1991 have only very recently been removed and brought under the scope of the Environmental Permitting regime.

- 6.9 Article 4 confers the principal power to construct the authorised development – the development consent. Schedule 1 describes the elements of the authorised development.
- 6.10 Article 4 grants development consent to TfL to carry out the authorised development.
- 6.11 Development consent is subject in particular to the requirements set out in Schedule 2 (see paragraph 11).

Article 5 - Limits of deviation

- 6.12 Since the authorised development involves linear works, article 5 provides for limits of deviation to allow for a lateral deviation from the lines and situations of the authorised development shown on the works plans.
- 6.13 The vertical limits of deviation of the works allowed by the Order differs depending on the element in question:
 - 6.13.1 a maximum deviation of 3 metres upwards (subject to a 1.5 metre deviation limit in respect of tunnelling works under the River Thames and provided that that deviation does not affect the dredged depth of the River Thames for navigation purposes) and any deviation downwards for certain elements related to underground works; and
 - 6.13.2 a maximum deviation of 0.5 metres upwards and any deviation downwards for all elements of the authorised development.
- 6.14 The purpose of this provision is to provide TfL with a necessary but proportionate degree of flexibility when constructing the authorised development, reducing the risk that the authorised development as approved cannot later be implemented for unforeseen reasons.

Article 6 – Street works

- 6.15 This article would confer authority on TfL to interfere with and execute works in or under any streets for the purposes of the authorised development. This is subject to the consent of the street authority.
- 6.16 Whilst widely drafted, the scope is considered necessary in light of the early design stage the Scheme is at - maximum construction flexibility is required.
- 6.17 The authority given by this article is a statutory right for the purposes of the 1991 Act.

Article 7 – Application of the 1991 Act

- 6.18 Article 7 provides for the application of the 1991 Act. There is precedent for these provisions in respect of other major schemes, e.g. the

Nottingham Express Transit System Order 2009 (article 4), the M1 Junction 10a (Grade Separation) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

- 6.19 Paragraphs (1) and (2) provide that certain works carried out under the authority of the Order are to be "major highway works" for the purposes of the 1991 Act. The effect of this is to clarify that the cost-sharing provisions relevant to the diversion of utility apparatus (which would apply to such works under the 1991 Act if carried out by the highway authority) will apply in respect of the works authorised by the Order, irrespective of who, in fact, carries them out.
- 6.20 Paragraph (3) provides that certain provisions of the 1991 Act listed in that paragraph will not apply. The disapplication of these provisions (which are designed primarily to regulate the carrying out of street works by utility companies in respect of their apparatus) is appropriate given the scale of works proposed under the Order, the specific authorisation given for those works by the Order (particularly article 4 and Schedule 1), and the specific provisions in the Order which would regulate the carrying out of the Order works.
- 6.21 Paragraphs (4) to (6) apply certain provisions of the 1991 Act (listed in paragraph (5)) to streets which are to be temporarily stopped up under the Order. This is for two reasons: first, it prevents any confusion as to whether works in respect of a temporarily stopped-up street are "street works" for the purposes of the 1991 Act; and secondly, it simplifies the implementation of the works by providing for a single process in respect of streets which are stopped up and those which are not.
- 6.22 Paragraph (7)(a) provides that nothing in article 8 of the Order (which provides that the streets constructed, altered or diverted under the Order are to be maintained by the highway authority) affects the ability of the local highway authority (under s.87 of the 1991 Act) to apply Part 3 of the 1991 Act to such streets in advance of those streets becoming publicly maintainable. Paragraph (7)(b) limits the operation of article 8 to off-street works.

Article 8 – Construction and maintenance of new, altered or diverted streets

- 6.23 The purpose and effect of article 8 is as follows:

6.23.1 Under the Highways Act 1980 TfL is the highway authority for, any roads designated as a 'GLA Road' under the Order and will therefore be responsible for maintaining those roads. For any other streets constructed, altered or diverted, paragraphs (1), (2) and (3) specify the body that will be liable for maintenance, namely the street authority (this would be the local highway authority in the case of a public highway). These paragraphs

allow TfL to make contrary agreements with the local highway (or street) authority concerned.

6.23.2 The effect of paragraphs (4) and (5) is that in any action for damages against TfL alleging failure to maintain a street, TfL will have the defence that it had taken such care as was reasonably required in the circumstances to secure that the street was not dangerous for traffic.

Article 9 - Permanent stopping up of streets and private means of access

6.24 This article allows streets and private means of access named in Parts 1, 2, 3 and 4 of Schedule 3 to be stopped up (i.e. the legal right of way along them to be extinguished).

6.25 For the streets and private means of access to be stopped up as specified in Parts 1 and 3 of the Schedule, a substitute street is to be provided. The existing street or private means of access cannot be stopped up until either the street authority is satisfied that the new street or private means of access is fit for purpose, or a temporary street or private means of access is made available while the existing is stopped up and before the new street or private means of access is ready.

6.26 For the streets or private means of access to be stopped up as specified in Parts 2 and 4 of Schedule 3, no substitute street or private means of access is to be provided. Such a street or private means of access may not be stopped up unless the conditions referred to in paragraph (4) of article 9 are met in relation to all the land which abuts either side of the street to be stopped up.

6.27 Paragraph (5) of article 9 makes clear that site notices must be erected before certain rights of way are stopped up and the rights of way are extinguished.

6.28 Appendix C of the Statement of Reasons (document reference 4.1 (revision 1)) sets out the rationale for permanently stopping up (and replacing where relevant) rights of way and private means of access.

Article 10 – Temporary stopping up and restriction of use of streets

6.29 This article allows for the temporary stopping up, alteration, diversion or restriction of streets for the purposes of the authorised development, whilst ensuring that pedestrian access is provided. The power is drafted widely due to the early design stage the Scheme is at - maximum construction flexibility is required.

6.30 Paragraph (2) confers a power on TfL where the use of a street has been temporarily stopped up under this article to use it as a temporary working site. This provision has precedent in recent orders made under the Transport and Works Act 1992 and the Act; for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of

Heysham to M6 Link Road)) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

- 6.31 In the context of the breadth of the power, it is important to note that the consent of the street authority is required where TfL is not the street authority.

Article 11 – Access to works

- 6.32 This article allows works accesses to public highways to be created. It gives TfL a general power to form means of access with the consent of the street authority.

Article 12 – Agreements with street authorities

- 6.33 This article allows a street authority and TfL to enter into agreements with respect to the construction of new streets, the strengthening, improving or maintenance of streets, the stopping up, alteration or diversion of streets, the execution of any street works as listed in article 6 and Schedule 1 and any other works which the parties may agree.

- 6.34 Such agreement would provide the street authority with the power to carry out any function under the Order which relates to the street in question. The agreement may set out a reasonable time for completion of the works, provide for the dedication of any new street as public highway and contain terms as to payment and otherwise as the parties consider appropriate.

Article 13 – Use of private roads for construction

- 6.35 This article authorises the temporary passage of persons or vehicles along private roads situated within Order limits for the purpose of, or in connection with, the construction of the authorised development without the necessity for TfL to acquire an easement over that land. Provision is made for compensation.

Article 14 – Discharge of water

- 6.36 This article sets out the circumstances in which TfL is entitled to discharge water into a sewer, watercourse or drain, and its purpose is to establish statutory authority for doing so.

- 6.37 The effect of article 14 is that discharge can only be done with the consent of the owner.

Article 15 – Protective works to buildings

- 6.38 The purpose of this article is to allow TfL to undertake protective works such as underpinning to buildings affected by the authorised

development and to set out the procedure that will apply in those circumstances.

- 6.39 Paragraph (3)(b) is wider than wording found in precedents, in that TfL is authorised to enter and survey (and monitor) land falling outside of the Order limits which is adjacent to a building (and its curtilage) in respect of which TfL has the power to undertake protective works, should it be necessary or expedient. This is because certain buildings that may require protective works are on the edge of the Order limits, and it is considered necessary to include the power to undertake survey and monitoring work outside of the Order limits on land adjacent to these buildings, should it be necessary. Such land was not considered appropriate for inclusion within the Order limits, on the basis that there is no certainty at this stage as to whether monitoring and survey work will be carried out on this land.

Article 16 – Authority to survey and investigate land

- 6.40 This article gives TfL the power to enter certain land (both in and outside the Order limits, for the same reason as presented in paragraph 6.39 above) for the purpose of surveying and testing. It provides that TfL must give 14 days' notice before exercising the power of entry, and that compensation is payable for any loss or damage caused.

Article 17 – Work in the River Thames

- 6.41 This article provides, at paragraph (1) and (2), that TfL may, in connection with the construction and maintenance of the authorised development, temporarily interfere with the river area (an area defined by reference to the works plans). This power will be required in connection with, for example, the construction of the temporary jetty (if delivered).
- 6.42 There are certain provisos in paragraph (3) which apply to the exercise of these powers.
- 6.43 Paragraph (4) provides that, except in the case of emergency, TfL must give 35 days' notice to the owner of any mooring (and the owner or master of any vessel or structure) likely to be regularly affected by the exercise of the powers of the Order.
- 6.44 Paragraph (5) provides that TfL must pay the costs reasonably incurred by the owner of any mooring where it is necessary to temporarily or alter such mooring.
- 6.45 Paragraph (6) ensures that certain works cannot be carried out by others without the consent of TfL.

Article 18 – Felling or lopping of trees

- 6.46 This article allows any tree or shrub that is near the authorised development to be felled or lopped, or have its roots cut back, if it is

considered to obstruct the construction, operation or maintenance of the authorised development or endanger anyone using it. Compensation is payable for any loss or damage caused.

7. PART 3 – POWERS OF ACQUISITION AND POSSESSION OF LAND

7.1 The Housing and Planning Act 2016 received Royal Assent on 12 May 2016. However, a number of provisions are not yet in force. TfL is monitoring the commencement dates of the various provisions under the Act and will consider any changes to the drafting of the Order that will be required and, in due course, submit any amendments during the examination. A small amendment has been made to article 25.

7.2 TfL is also monitoring the progress of the Neighbourhood Planning Bill through Parliament, particularly in respect of its proposed temporary possession provisions.

Article 19 - Compulsory acquisition of land

7.3 This article authorises the compulsory acquisition of the Order land. It grants the power to acquire such land as is required for the authorised development. This is subject to articles 22 (*Compulsory acquisition of rights*) and 26 (*Acquisition of subsoil, etc., only*), which are explained below.

7.4 The drafting of this provision broadly follows the approach taken in the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.

Article 20 – Compulsory acquisition of land – incorporation of the mineral code

7.5 By incorporating Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981, this article exempts existing rights in minerals from the scope of compulsory acquisition unless they are expressly named and conveyed. It also makes provision for a situation where the owner of mines or minerals wishes to work such mines or minerals.

Article 21 – Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

7.6 This article gives TfL five years to issue ‘notices to treat’ or to execute ‘general vesting declarations’ to acquire the land that is subject to the power of compulsory acquisition. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made. The article also provides that land subject to the power of temporary possession for the carrying out the authorised development - under article 29 (*Temporary use of land for carrying out the authorised development*) - may not be occupied after the end of that same period unless the land is already being occupied by TfL in exercise of the powers of the Order.

Article 22 – Compulsory acquisition of rights

- 7.7 This article allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land.
- 7.8 It provides for such rights as may be required to be acquired by TfL over land which it is authorised to acquire under article 19. The public benefit of this is that it would allow TfL, if possible, to reduce the area of outright acquisition and rely on rights instead. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills, and has been followed in a number of development consent orders, for example the Network Rail (North Doncaster Chord) Order 2012, the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013 and the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014.
- 7.9 Paragraph (2) provides that, for the land described in Schedule 4, TfL's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes set out in that Schedule.
- 7.10 The power to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in Transport and Works Act Orders⁵.
- 7.11 Paragraph (3) provides that, where TfL needs only to acquire rights over land, it shall not be obliged to acquire any greater interest in that land.
- 7.12 Paragraph (4) applies Schedule 5 for the purpose of imposing modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories and is commonplace in Transport and Works Act Orders. For the purpose of section 126(2) of the Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights, and not to affect the amount of compensation to which landowners would be entitled.

Article 23 – Private rights over land

- 7.13 This article applies to private rights generally and not just to rights of way. It also provides for the extinguishment of private rights on Order land already owned by TfL, when any activity authorised by the Order

⁵ See the Docklands Light Railway (Stratford International Extension) Order 2006 S.I. 2006/2905.

interferes with or breaches those rights. This draws on the approach taken in article 17 of the Rookery South (Resource Recovery Facility) Order 2011, article 23 of the Lancashire County Council (Torrisholme to the M6 Link (A683 Completion of Heysham to M6 Link Road)) Order 2013, article 21 of the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and article 22 of the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016.

Article 24 – Power to override easements and other rights

- 7.14 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4), and paragraphs 2 and 3 of Part 1 of Schedule 5 Planning Act 2008. This article has precedent in, for example, article 32 of the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. It provides that land vested in TfL is discharged from all rights, trusts and incidents to which it was previously subject at the point of vesting, together with the benefit of restrictive covenants and instances where land subject to third party rights is acquired by agreement rather than through compulsory acquisition. It also provides for the situation where access to the land for the purposes of the authorised development occurs before vesting.

Article 25 – Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 7.15 This article applies the provisions of the 1981 Act to compulsory acquisition under the Order. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of serving a notice to treat). They allow title in the land concerned to pass to the acquirer more quickly than using the notice to treat method. They also enable several parcels of land to be acquired at the same time and therefore more efficiently than under the notice to treat procedure.

Article 26 – Acquisition of subsoil, etc., only

- 7.16 This article allows TfL compulsorily to acquire land and/or new rights below the surface or in the airspace, as required for the tunnel and its protection from subsequent development, instead of acquiring all of the land up to and including the surface.
- 7.17 The purpose of article 26 is to give TfL the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners and lower compensation payments. It is considered to be in the public interest to provide this flexibility at the point at which TfL begins to acquire the necessary land.
- 7.18 Paragraph (2) references Schedule 6 and provides that only the ‘subsoil’ of, and new rights over the ‘remaining subsoil’ and land contained in plots listed in that schedule can be acquired.

- 7.19 Paragraph (5) makes clear, for the purposes of paragraph (2), the meaning of ‘subsoil’ (by reference to depths in Schedule 6) and ‘remaining subsoil’.

Article 27 – Acquisition of part of certain properties

- 7.20 This article provides for an alternative procedure where TfL acquires compulsorily part only of certain types of property subject to the right of the owner to require the whole of the property to be acquired if part cannot be taken without material detriment to the remainder. It replaces section 8(1) of the Compulsory Purchase Act 1965 and, unlike that provision, sets out a process and timescales for dealing with claims of material detriment.

Article 28 – Rights under or over streets

- 7.21 The purpose of this article is to allow TfL to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power without acquisition is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.

Article 29 – Temporary use of land for carrying out the authorised development

- 7.22 The purpose of this article is to allow the land set out in Schedule 7 to be occupied and used temporarily while the works are carried out. This is land which is required during construction of the authorised development but not required permanently. Article 29 also allows for the temporary occupation of any of the land intended for permanent acquisition, or for the acquisition of new rights, but which has, or which have, not yet been acquired.
- 7.23 The article provides for any of the authorised development listed in Schedule 1 or article 17, in particular, to be built and left on land that has been temporarily occupied. The rationale for this is that it reduces the need for the compulsory acquisition of land.
- 7.24 The article also provides that land temporarily occupied can be used for temporary facilities or works for the benefit of landowners temporarily displaced as a result of TfL carrying out the authorised development.
- 7.25 In addition, the article provides that TfL's temporary possession powers over the river area are limited to what is necessary for TfL to carry out the authorised development (or the powers under article 17). Where TfL is carrying out the authorised development, the public right of navigation is suspended.
- 7.26 The time limits set out in article 20 (*Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily*) apply to this article.

Article 30 – Temporary use of land for maintaining the authorised development

- 7.27 This article provides that TfL may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose. Owners and occupiers of the land must be given 28 days' notice and that notice must include details of the purpose for which TfL requires the land. They are also entitled to compensation. The power is exercisable within a period of 5 years from the time the particular infrastructure is first (a) opened for use; or (b) brought into operational use (as the case may be).
- 7.28 This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.
- 7.29 In addition, the article states that TfL's temporary possession powers over the river area are limited to what is necessary for TfL to carry out the maintenance. Where TfL is carrying out the maintenance, the public right of navigation is suspended.

Article 31 – Statutory undertakers

- 7.30 This article allows TfL to extinguish rights of statutory undertakers (i.e. utilities such as electricity and gas companies), and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 7.31 As the land where this power may be exercised is shown on the land plans, and the beneficiaries of such rights are identified in the book of reference, the requirements of regulations 5(2)(i)(iii) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.

Article 32 - Apparatus and rights of statutory undertakers in stopped up streets

- 7.32 This article governs what happens to statutory utilities' apparatus (pipes, cables, etc.) under streets that are stopped up by the Order. Without the article, the statutory utility would not have access to the apparatus, since there would no longer be a right of way along the street. TfL may require such a statutory utility to relocate the apparatus elsewhere, although it will compensate the statutory utility for doing so. Paragraph (6) discounts from this compensation the increase in value to the statutory utility of having new rather than old (i.e. older than 7½ years) apparatus.

- 7.33 Paragraph (7) provides that in certain cases the cost of relocating apparatus will be subject to alternative cost sharing arrangements between TfL and the statutory utility which are provided for in regulations made under section 85 of the 1991 Act.

Article 33 – Recovery of costs of new connections

- 7.34 This article provides that if a gas, water, electricity or sewerage undertaker's or public communications provider's apparatus is removed thereby interrupting the service to owners or occupiers of premises, their costs in obtaining a new service can be recovered from TfL.

Article 34 – Special category land

- 7.35 Under section 132 of the 2008 Act an order granting development consent is subject to Special Parliamentary Procedure when it authorises the compulsory acquisition of a right over land to which section 132 applies (i.e. a common, open space or fuel or field garden allotment). The exception is if the Secretary of State is satisfied that certain tests under section 132(3) to (5) are met, including if the Secretary of State is satisfied that the land, when burdened with such rights, will be no less advantageous than it was previously to certain persons. TfL submits that this is the case, for the reasons set out in the Statement of Reasons.

- 7.36 The land specified in article 34 which forms open space is therefore proposed to be released from all rights, trusts and incidents to which that land was previously subject where they would be inconsistent with the new rights acquired.

Article 35 - Disregard of certain interests and improvements

- 7.37 This article provides for the Tribunal to disregard certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

- 7.38 It complies with section 126 of the 2008 Act as it does not have the effect of modifying or excluding the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 37).

- 7.39 The wording of this article mirrors section 4 (*Assessment of compensation*) of the Acquisition of Land Act 1981 (in this paragraph "the 1981 Act"). It is necessary to specifically apply the effect of section 4 of the 1981 Act in the Order. This is because the 1981 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the Act (nor standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and

Schedule 5 (by virtue of section 120(3)) of the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 36 - Set-off for enhancement in value of retained land

- 7.40 This article provides that in assessing the compensation payable to any person in respect of the acquisition of any land, the Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 7.41 This article complies with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation. The article has precedent in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (article 38), demonstrating that the Secretary of State agrees with this.
- 7.42 The principle in this article is established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*), which needs to be applied. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3)) to the Act allow the application in a DCO of statutory provisions which relate to the payment of compensation.

Article 37 – No double recovery

- 7.43 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 7.44 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than his loss, is long established and no part of the compensation code conflicts with this principle.

8. PART 4 – OPERATION

Article 38 – Application of Part 4

- 8.1 This article makes clear that articles 44 to 46, 48 and 49 apply to the Blackwall Tunnel from the date the construction of the Silvertown Tunnel commences and to the Silvertown Tunnel from the date the Silvertown Tunnel is open to the public.
- 8.2 A notice must be published in the London Gazette stating the date that construction has commenced.
- 8.3 It is appropriate from an operational perspective for the new regime to commence at the Blackwall Tunnel as soon as construction of the

Silvertown Tunnel commences on the basis that the surrounding network will begin to change at this time as a consequence of the construction works.

Article 39 – Maintenance of authorised development

- 8.4 This article sets out the scope within which TfL may maintain the authorised development. In doing so, it supplements the standard maintenance powers under the Highways Act 1980 and ensures that TfL has the necessary powers to allow the authorised development to be maintained.
- 8.5 As the Blackwall Tunnel is not included in the definition of 'authorised development', it will not be included in the scope of the maintenance article – the existing maintenance powers for the Blackwall Tunnel which TfL currently utilises will continue to have effect.
- 8.6 The definition of "maintain" is contained in article 2(1) and reflects that which was approved by the Secretary of State in the M1 Junction 10a (Grade Separation) Order 2013, the A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014 and the A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016. It is therefore considered to be appropriate and acceptable to adopt the same definition for this highway scheme. The various elements of the definition ("inspect, repair, adjust, alter, remove or reconstruct") would bear their common sense meanings and would allow TfL to undertake all types of works reasonably associated with maintenance.
- 8.7 It should be noted that powers of maintenance are subject to other provisions in the Order, in particular article 8, which makes provision in relation to maintenance by highway authorities. Further, article 39(2) does not allow maintenance works which would give rise to any materially new or materially worse environmental effect from those assessed in the environmental statement.

Article 40 – Local legislation relating to the Blackwall Tunnel

- 8.8 This article provides for certain enactments relating to the Blackwall Tunnel to have effect subject to the provisions of the Order. This is to ensure that the operational provisions in the Order relating to the Blackwall Tunnel are not inconsistent with any existing powers. It is considered appropriate in order to 'rationalise' the operation of the tunnels that operational provisions applying to both sit in the same statutory instrument.

Article 41 – Power to operate and use the tunnels

- 8.9 This article authorises TfL to operate and use the Silvertown Tunnel and the Blackwall Tunnel.

Article 42 – Protection of the tunnels, etc

- 8.10 This article provides that a person must not interfere with any part of the tunnels or remove, move or otherwise interfere with any such works without the consent of TfL. This article is intended to protect the tunnels from harm. Equivalent provisions are included in other statutory instruments authorising the construction of tunnel (for example, article 23 of the South Hampshire Rapid Transit Order 2001).

Article 43 – Closing the tunnels

- 8.11 Article 43 permits TfL to close the tunnels when in its opinion such closure is necessary. Except in an emergency, TfL must follow the notice procedure set out in this article.
- 8.12 This is considered a critical power, bearing in mind the impact on the traffic network (and the safe operation of the tunnels) should there be an incident and closure was not permitted.

Article 44 – Removal of motor vehicles

- 8.13 This article makes provision enabling motor vehicles causing an obstruction to be removed from the tunnels and the approaches. Provision is made for the steps to be taken to find the owner of a motor vehicle which has been removed so that notice might be sent to him. The owner may reclaim the motor vehicle on payment of all charges for the removal, storage and disposal of the motor vehicle. Penalty charges which apply to the removal, storage and disposal of motor vehicles in the congestion charge zone are made to apply to removals, storage and disposals under this article. Provision is made for appeals against the imposition of charges. Whilst the article is novel, its provisions are based on principles drawn from the Removal and Disposal of Vehicles Regulations 1986.
- 8.14 Article 44 introduces Schedule 8 (Removal of Motor Vehicles). It enables those who feel aggrieved by the imposition of a penalty charge to challenge it on specified grounds and for the matter to be ultimately determined by an adjudicator. It also puts in place a scheme for the enforcement of penalty charge notices with the duty to pay ultimately being determined by an adjudicator. The procedure to be followed is that which applies to road user charging appeals. The provisions are largely based on the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001.

Article 45 – Removal of other obstructions

- 8.15 This article enables obstructions falling from motor vehicles in the tunnels and the approaches to be removed. Except in the case of perishable items (which can be disposed of immediately), an owner of the goods (providing that person can be traced) will have 5 weeks to claim and take possession of the load. The owner will need to account for any expenses incurred in removing and storing the load.

Article 46 – Dangerous goods

- 8.16 The first purpose of this article is to enable charges to be imposed for escorting motor vehicles carrying dangerous goods through the tunnels. This provision will take effect only in the event that dangerous goods are permitted to be taken through the tunnels. The second purpose is to ensure that TfL has the same enforcement powers as certain bodies mentioned in the Carriage of Dangerous Goods and the Use of Transportable Pressure Equipment Regulations 2009 to prosecute those carrying dangerous goods in the tunnels.

Article 47 – No apparatus in the Silvertown Tunnel area without consent

- 8.17 This article prohibits the placing of utilities' apparatus in the Silvertown Tunnel, and the use of that tunnel in connection with such apparatus, without the consent of TfL.
- 8.18 This is considered necessary on the basis that whilst the road within the Silvertown Tunnel will be part of the wider road network, it is inappropriate (for obvious reasons) for the usual provisions to apply to a tunnel in respect of the powers of statutory undertakers to lay apparatus in roads. Comparable provisions are included in authorising legislation for other highway river crossings (see for example, article 38 of the River Mersey (Mersey Gateway Bridge) Order 2011 and article 37 of the River Tyne Tunnels Order 2005).

Article 48 – Byelaws relating to the Silvertown Tunnel area and the Blackwall Tunnel area

- 8.19 Paragraph (1) authorises TfL to make and enforce byelaws to regulate the use and operation of both the Silvertown Tunnel and the existing Blackwall Tunnel.
- 8.20 Paragraphs (2) and (3) provide for the byelaws contained in Schedule 9 to have effect and be treated as confirmed by the Secretary of State.
- 8.21 The procedure to be adopted in the Local Government Act 1972 for the making of byelaws is applied by paragraph (4). That provision is supplemented by paragraph (5) which applies the fast-track procedure in the Byelaws (Alternative Procedure) (England) Regulations 2016 to byelaws under this article.
- 8.22 Paragraph (7) revokes the existing Blackwall Tunnel byelaws.

Article 49 – Fixed penalty notices

- 8.23 This article gives an authorised person the power to serve a fixed penalty notice on a person who has committed an offence under byelaws made under article 48. A person who has breached a byelaw can avoid prosecution by paying the penalty. The amount of the fixed penalty is expressed as a percentage of the maximum fine which may be imposed, i.e. the maximum amount that applies from time to time

under level 3 on the standard scale (currently £1,000). A person who pays the penalty in 7 days will only pay one fifth of the maximum amount of the fine; otherwise the penalty will be one half of the maximum amount of the fine. Failure to pay within 14 days exposes the offender to the risk of prosecution. Provision is made for a deposit to be taken from those offenders who cannot provide a UK residential address.

Article 50 – Classification of roads, etc.

- 8.24 The designation and classification of highways is an ancillary matter which may be included in a DCO⁶. Designation and classification is addressed by this article, mainly by reference to Schedule 10, which is integral to the implementation of the Scheme.
- 8.25 This article provides that certain lengths of highway are to be re-classified (in respect of road numbering) and/or re-designated (in respect of identifying the relevant highway authority). It applies to both existing and new lengths of highway. TfL considers the changes brought about under this article are appropriate to ensure the effective operation of the highway network in this area.
- 8.26 Paragraph (1) provides that certain roads specified in Schedule 10 are to be classified as the A12.
- 8.27 Paragraph (2) provides that certain highways specified in Schedule 10 are to be classified as the A102.
- 8.28 Paragraph (3) provides that certain highways specified in Schedule 10 are to become GLA Roads as if this was ordered under section 14B of the Highways Act 1980.
- 8.29 Paragraph (4) provides that certain highways specified in Schedule 10 cease to be GLA Roads.

Article 51 – Operational land for purposes of the 1990 Act

- 8.30 This article declares that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990.

9. PART 5 – USER CHARGING

- 9.1 This section of the memorandum should be read in conjunction with the Charging Statement (document reference 7.5) which also accompanies the application. This sets out further details of TfL's approach to user charging.

Article 52 – The charging policy

⁶ Planning Act 2008 section 120(5) and Schedule 5, paragraphs 19 and 20

- 9.2 This article provides that TfL must exercise its functions under Part 5 of the Order in respect of user charging in accordance with the policies and procedures in the “charging policy”, a document entitled the “charging policies and procedures” that is certified under the Order.
- 9.3 Paragraph (2) provides that TfL may revise the charging policy, but only after undertaking certain steps and obtaining approval from the Mayor of London (who may approve the revised charging policy with or without modifications).

Article 53 – Power to charge for use of tunnels

- 9.4 This article provides TfL’s general power to impose user charges in respect of both (or either of) the Silvertown Tunnel and the Blackwall Tunnel (in both cases, from the date the Silvertown Tunnel is open for public use).
- 9.5 The basis of this power is section 120(3) or section 120(5) of the Planning Act 2008. Section 120(3) provides that "an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted". Paragraph 18 of Schedule 5 to the Act indicates that the matters for which provision may be made include "charging tolls, fares (including penalty fares) and other charges". Section 144(2A) of the Act further indicates that the 'other charges' which may be imposed under this provision can include "charges in respect of the use or keeping of motor vehicles on roads".
- 9.6 The user charges for the Silvertown Tunnel relate to, or are ancillary to, the development for which consent is granted in the Order.
- 9.7 The user charges for the Blackwall Tunnel also relate to, or are ancillary to, that development as they are necessary to enable effective road user charging of the Silvertown Tunnel. . Without this 'dual' charging, the Silvertown Tunnel would not be effective at alleviating congestion, as road users would opt to use the adjacent free crossing.
- 9.8 Section 120(5)(c) of the Act provides that an order granting development consent may "include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order". The road user charges for the Silvertown Tunnel will only be of practical utility in traffic management terms if linked with road user charging of the existing Blackwall Tunnel. Therefore the user charges at the existing crossing are necessary for the purposes of section 120(5)(c).
- 9.9 The charges are to be at such a level which TfL may from time to time determine and different charges can be imposed for different aspects (e.g. time of day, vehicle, direction of travel).

- 9.10 Any charge imposed by TfL can be waived, suspended, reduced, compounded, or discounted by TfL at any time.
- 9.11 Under paragraph (5), TfL must publish a 'statement of charges', a document setting out certain details in relation to the user charges to be imposed.

Article 54 – Payment and recovery of charges and penalty charges

- 9.12 This article provides for who is liable to pay a user charge (or penalty charge), namely the registered keeper of the vehicle concerned.
- 9.13 Paragraph (2) states that the payment methods are to be set out in the statement of charges to be published under article 53.
- 9.14 Paragraphs (4) to (5) provides that TfL can enter into 'advance payment agreements' with users. This is a relatively standard power in respect of tolls/user charges and is found in Orders under the Transport and Works Act 1992, such as the River Tyne (Tunnels) Order 2005 (article 42) as well as charging schemes under the Transport Act 2000, such as the A282 Trunk Road (Dartford-Thurrock Crossing Charging Scheme) Order 2013 (article 6).
- 9.15 Paragraph (6) provides that TfL may claim administrative and other expenses where a person has not paid the user charge (or any penalty charge that applies).

Article 55 – Penalty charges, examination of motor vehicles, etc.

- 9.16 This article applies a number of regulations in force in respect of TfL's congestion charging powers under Schedule 23 to the Greater London Authority Act 1999, to any user charging applied in respect of the tunnels. The article provides that the statement of charges to be published under article 53 is to be treated as a 'charging scheme' for the purposes of those regulations, with the tunnels being treated as the 'charging area'.
- 9.17 This is to ensure a relative level of consistency of enforcement powers for TfL, so the enforcement powers in force in respect of congestion charging, also apply to the user charging at the tunnels.
- 9.18 The applied regulations deal with penalty charges, the installation of equipment on roads, offences, the examination of motor vehicles and the removal or immobilisation of motor vehicles.

Article 56 – Application by TfL of charges levied

- 9.19 This article provides for how TfL can apply any charges received from the user charging at the tunnels.

10. PART 6 – MISCELLANEOUS AND GENERAL

Article 57 – Benefit of order

- 10.1 Article 57 overrides section 156(1) of the Act (as permitted by section 156(2)) to give the benefit of the Order to TfL rather than anyone with an interest in the land. It would be impracticable for a variety of landowners to implement parts of the Order in an uncoordinated manner, which might be the case if section 156(1) were to apply.
- 10.2 The purpose of paragraph (2) is to clarify the exceptions where the Order will self-evidently benefit others, e.g. rights for statutory undertakers, and mitigation works outlined in the Schedule 1 description of the works. Without this provision, there would be a contradiction since strictly speaking only TfL could benefit from these works.

Article 58 – Transfer of benefit of Order, etc.

- 10.3 This article allows powers under the Order to be transferred to others by TfL.
- 10.4 This would allow TfL to make the kind of agreements that need to be made for the procurement of a project of this sort. The structure of this provision has precedent in orders made under the Transport and Works Act 1992, such as the London Cable Car Order 2012 (article 9).

Article 59 – Application of landlord and tenant law

- 10.5 This article provides that landlord and tenant law will be overridden so as not to prejudice the operation of any agreement entered into under article 58.

Article 60 – Traffic regulation measures

- 10.6 The purpose of this article is to provide TfL with powers to make deemed traffic regulation orders, so that it can implement traffic management measures (e.g. restrictions on the use of roads) in connection with the authorised development.
- 10.7 It includes a number of specific traffic regulation measures set out in Schedule 11 (which are brought into effect by paragraph (1)), as well as more general powers by virtue of paragraph (3).
- 10.8 Implementation in certain circumstances is subject to the prior approval of the traffic authority in whose area the roads are situated and consultation with the relevant chief officer of police.

Article 61 – Deemed marine licence

- 10.9 This article constitutes deemed consent (as provided for under 149A of the Act) under section 65 of the 2009 Act, the successor provision to section 34 of the Coast Protection Act 1949. Schedule 12 sets out the

terms on which the licence would be granted. The overall structure of this licence reflects that found in schedule 15 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014.

- 10.10 TfL considers that the terms of the licence reflect the response by the Marine Management Organisation (“MMO”) to the statutory pre-application consultation exercise undertaken by TfL, which suggested a number of conditions, along with further discussions since the application was submitted. However, TfL and the MMO are continuing their dialogue with a view to settling the deemed marine licence at the earliest opportunity.

Article 62 – Defence to proceedings in respect of statutory nuisance

- 10.11 This article provides a defence to statutory nuisance proceedings brought under the Environmental Protection Act 1990 in respect of noise emitted from premises. The defence is only available if:

10.11.1 the noise is created in the course of carrying out or maintenance of the works authorised by this Order in accordance with a notice given under section 60 or 61 of the Control of Pollution Act 1974; or

10.11.2 is a consequence of the construction, maintenance or use of the authorised development and that it cannot be reasonably be avoided.

- 10.12 Section 61(9) of the Control of Pollution Act 1974 does not apply if the consent relates to the use of premises by TfL for the purposes of or in connection with the construction or maintenance of the authorised development.

Article 63 – Protective provisions

- 10.13 This article introduces Schedule 13, which contains provisions protecting the interests of third parties.

- 10.14 Schedule 13 currently contains protective provisions for the benefit of the following parties:

10.14.1 electricity, gas, water and sewerage undertakers;

10.14.2 electronic communications code networks;

10.14.3 National Grid;

10.14.4 the Port of London Authority (which any works in the 'river area' will be subject to); and

10.14.5 the Environment Agency.

Article 64 – Certification of documents

- 10.15 This article provides for various plans and other documents to be submitted by TfL to the Secretary of State for certification as true copies of those documents referred to in the Order. The documents in question (with their reference numbers) are listed in Schedule 14.

Article 65 - Silvertown Tunnel Implementation Group

- 10.16 This article provides for the establishment and operation of the Silvertown Tunnel Implementation Group ("STIG"). The first meeting of STIG must be held no less than 3 years before the expected opening of the Silvertown Tunnel. STIG will play an important role in relation to the setting and varying of user charges by TfL and in the framework that has been established to monitor and, where necessary, mitigate the operational impacts of the Scheme. STIG's role in relation to each of these elements is explained in the Charging Statement, the Monitoring Strategy and the Traffic Impacts Mitigation Strategy.
- 10.17 Paragraph (2) provides for the make-up of STIG, namely one representative from a number of Boroughs and the GLA, together with TfL.
- 10.18 STIG's main roles are provided for in paragraph (5), namely to:
- 10.18.1 consider the implementation of the monitoring strategy and traffic impacts mitigation strategy under the requirements of the Order (see section 11 below);
 - 10.18.2 consider the level of charges to be imposed under Part 5 of the Order and any proposed revisions to the Charging Policy; and
 - 10.18.3 for a period ending three years after the Silvertown Tunnel has been open to traffic, reviewing proposals for cross-river bus services through the Silvertown Tunnel and how those proposals have been implemented.
- 10.19 STIG may make recommendations to TfL accordingly and TfL must take these into account.
- 10.20 The operation of STIG must be reviewed annually by a committee of STIG made up of representatives of the London Boroughs of Newham and Tower Hamlets and the Royal Borough of Greenwich.

Article 66 – Service of notices

- 10.21 This article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act do not apply to notices served under the Order.

10.22 An article governing the service of documents is common in development consent orders and has numerous precedents.

Article 67 – Arbitration

10.23 This article governs what happens when two parties disagree in the implementation of any provision of the Order. A dispute will be settled by arbitration, and if the parties cannot agree on an arbitrator the appointment will be decided by the President of the Institution of Civil Engineers.

Article 68 – Consents, agreements and approvals

10.24 This article provides for the mechanics of consents, agreements and approvals that need to be obtained by TfL under the Order. In summary, it ensures that any consents, agreements or approvals (a) cannot be unreasonably withheld or delayed; and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day any application for a consent, agreement or approval is made.

10.25 Any application for a consent, agreement or approval must include a written statement that the 28 day 'guillotine' provision is in force.

10.26 The purpose of the article is to draw together the usual provisions for consents, agreements and approvals under the Order, rather than including them for each consent, agreement or approval required under the Order which TfL considers is repetitive.

10.27 The article does not apply to any consent, agreement or approval required under Schedule 2 or Schedule 13 to the Order.

11. REQUIREMENTS

11.1 The requirements in Part 1 of Schedule 2 are the equivalent of planning conditions. Whilst some themes have been discussed with the Boroughs at a high level, it is TfL's intention to discuss the requirements in detail (and to seek agreement) following submission of the application.

11.2 Most approvals will be sought from the local planning authority, being, as relevant, the London Borough of Newham or the Royal Borough of Greenwich.

11.3 Turning to the purpose and effect of the requirements:

11.3.1 Requirement 1 contains a number of definitions used in Part 1 of Schedule 2.

11.3.2 Requirement 2 provides that the proposed development must not commence later than 5 years from the date of the Order coming into force.

- 11.3.3 Requirement 3 requires the authorised development to be designed and implemented in accordance with the “design principles”, a certified document under the Order.
- 11.3.4 Requirement 4 provides that certain details of any "permanent above ground buildings and structures" (defined by reference to certain Work Nos. in Schedule 1) must be submitted to and approved by the relevant planning authority.
- 11.3.5 Requirement 5 requires the authorised development be carried out in accordance with the code of construction practice, a certified document under the Order and which contains the vast majority of construction related mitigation. Certain plans and strategies must be produced (and, in some cases, approved by certain parties) prior to the commencement of the relevant part of the authorised development. Such plans and strategies must be made public until the authorised development has been opened for public use.
- 11.3.6 Requirement 6 requires the preparation and implementation of a landscaping scheme covering all hard and soft landscaping works including those listed in sub-paragraph (2). Provision is also made in sub-paragraph (5) for replacing trees and shrubs which become diseased or damaged.
- 11.3.7 Requirement 7 provides that the monitoring strategy and traffic impacts mitigation strategy are implemented. These deal with monitoring and mitigation during operation of the authorised development. STIG, as established under article 65, has a role to play in overseeing compliance with these strategies, in addition to the requirement.
- 11.3.8 Requirement 8 requires that details of the surface water drainage system, must be prepared (prior to commencement of a relevant part of the proposed development), approved and implemented.
- 11.3.9 Requirement 9 provides that no part of the authorised development is to be open for public use until written details of external lighting installed in connection with the operation of any building or other structure for that part have been submitted to and approved by the relevant planning authority.
- 11.3.10 Requirement 10 requires TfL to submit a signage strategy for approval for highway signage to the relevant highway authority. The signage for the authorised development must be installed in accordance with the approved strategy.
- 11.3.11 Requirement 11 requires that the authorised development is carried out in accordance with the flood risk assessment, a

certified document under the Order by virtue of being an appendix to the Environmental Statement.

11.3.12 Requirement 12 provides that no part of the authorised development can be opened for public use until details of noise mitigation have been submitted to, and approved, by the relevant planning authority (in consultation with the relevant highway authority) and those details have been implemented. The details must reflect mitigation measures as set out in the Environmental Statement.

11.3.13 Requirement 13 requires TfL to operate only buses compliant with the Euro VI European emission standard through the Silvertown Tunnel.

11.3.14 Requirement 14 requires that the authorised development is carried out in accordance with the biodiversity action plan and mitigation strategy.

11.4 Part 2 of Schedule 2 provides a clear procedure for the discharge of requirements by the relevant body that is discharging a requirement. It sets out clear time limits for decisions to be made and makes provision for circumstances where the discharging body requires further information to be provided in relation to an application for the discharge of a requirement. It also provides that 'draft' applications for discharge need to be provided prior to 'formal' applications being made.

11.5 Part 2 of Schedule 2 also includes an appeals process in respect of discharge, broadly in line with a number of DCOs made to date, including the Hinkley Point C (Nuclear Generating Station) Order 2013 and the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The process also applies in the circumstances where a notice under s.60 or 61 of the Control of Pollution Act 1974 is issued. This reflects provisions in Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 and streamlines the appeal process, thus minimising the risk to timely delivery of the proposed development.