TRANSPORT FOR LONDON - SILVERTOWN TUNNEL – DEVELOPMENT CONSENT ORDER APPLICATION

ISSUE SPECIFIC HEARING ON THE DEVELOPMENT CONSENT ORDER

19 JANUARY 2017

SUMMARY OF APPLICANT'S SUBMISSIONS

INTRODUCTION

1. This note summarises the oral submissions made by Transport for London ('TfL') at the Development Consent Order Issue Specific Hearing held on 19 January 2017 ('the hearing') in relation to TfL's application for development consent for the Silvertown Tunnel ('the scheme').

2. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority on 10 January 2017 ('the agenda'). In setting out TfL's position on the issues raised in the agenda, as submitted orally at the hearing, this format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which TfL made oral submissions.

3. TfL's substantive oral submissions commenced at item 2 of the agenda, therefore this note does not cover item 1 on the agenda.

4. In addition to covering the agenda items as noted above, this note also relates to the Examining Authority's list of action points arising from the hearing, published on 20 January 2017 (each referred to in this note as 'Action Point [X]' in bold).

ExA's Agenda Item	Summary of TfL's Oral Submissions made in the hearing	Relevant document references
2. Brief explanation by the Applicant of the changes made to the initial draft of the DCO in the R1 and R2 versions submitted at Deadlines 1 and 2 (and of any further changes being put forward at today's hearing)[Maximum 15 minutes].		
	Robbie Owen made the following points on behalf of the Applicant. As set out in REP1-181, the changes made in revision 1 of the DCO submitted at Deadline 1 arose from: • on-going discussions with interested parties, including the host Boroughs;	• Draft DCO Revision 1 (REP1-095) • Draft DCO Revision 1 (Tracked changes) (REP1-096) • Document Explaining DCO Amendments (to Revision 1) (REP1-181)

	• points raised at the first DCO ISH on 12 October; • points raised by the ExA in its FWQs; and • points identified by the Applicant since submission. The amendments were, in the main, not significant – a number of typographical errors were corrected or drafting changes made to rationalise the provisions. An explanation of each change made is set out in REP1-181, but in summary: • Some definitions in article 2(1) were amended – for example, the carve out in the definition of 'commencement' was reduced in scope. • Following discussions with the PLA, the vertical limits of deviation in article 5 was reduced for works taking place under the river bed. • Further to discussions at the first DCO ISH, the ability for the Applicant to lay out or improve means of access was made to be subject to street authority approval. • The scope of works able to be constructed on land temporarily occupied under article 29 was amended for clarity. • The scope of operational powers coming into force at the Blackwall Tunnel upon construction commencing at the Silvertown Tunnel was restricted, following issues raised by both the ExA and interested parties (article 38). • Article 52 was amended to explicitly provide for the Silvertown Tunnel Implementation Group's ("STIG") role in the user charging process, following discussions with the Boroughs. • Changes made to article 65 again reflected discussions with interested parties - the Greater London Authority was added as a member of STIG and specific provision was made that the Applicant must have regard to any	• Draft DCO Revision 2 (REP2-021) • Draft DCO Revision 2 (Tracked changes) (REP2-022) • Document Explaining DCO Amendments (to Revision 2) (REP2-033) • Draft DCO Revision 3 (reference: 3.1 (revision 3)) • Applicant's Update Note (reference: 8.59)

	recommendations by STIG, amongst other things. • Changes were made to the requirements in Schedule 2, following points made in the FWQs and at the first DCO ISH – this included re-ordering the Code of Construction Practice ("CoCP") requirement (5) and adding a commitment that buses using the tunnel would be Euro VI compliant. In addition, tweaks were made to the discharge of requirements mechanism, following comments received from the Boroughs. • The form of protective provisions in Schedule 13 for the benefit of National Grid was amended to be the agreed form between the parties. • The list of certified documents in Schedule 14 was also amended, following comments made at the first DCO ISH. As set out in REP2-033, the changes made in revision 2 of the DCO submitted at Deadline 2 arose from: • on-going discussions with interested parties, including the host Boroughs; and • points identified by the Applicant since submission. Minimal changes were made to the DCO at this Deadline 3 – aside from typographical corrections, in summary: • Highways England was added as a member of STIG due its role at the Dartford Crossing in article 65. • Article 58 was amended following submissions made at the first Compulsory Acquisition Hearing in terms of security of funding – any proposed exclusive transfer of the CA functions in the DCO would be subject to Secretary of State prior approval, in that the Secretary of State must be satisfied any transferee has sufficient resources.	

	• Tweaks were made to the requirements in Schedule 2. • Amendments were made to the protective provisions for the benefit of the Port of London Authority - an inadvertent consequence of amending the definition of 'specified work' in revision 1 of the DCO had resulted in paragraph 48 of Schedule 13 to the DCO applying to permanent acquisition and permanent works associated with the tunnels (such that the compensation code would not apply in respect of any permanent acquisition of the river bed – instead, the regime under s.67 of the Port of London Act would). The change simply corrects that consequence (i.e. the works to which s.67 applies) – it is now simply temporary possession of land and temporary works which the s.67 regime would apply to. Indeed, if paragraph 48 did apply to the permanent acquisition associated with the tunnels (such that s.67 of the Port of London Act would apply instead), it would offend section 126(3) of the Planning Act 2008 by excluding the compensation code provisions. • Schedule 14 was updated to reflect further revisions to documents. Mr Owen submitted that the Applicant did not propose to put forward any specific amendments under this agenda item, but recognised further revisions to the dDCO would be required as a result of discussions on later agenda items and indeed items discussed at the hearings on previous days in the week. These revisions are reflected in the revised version of the dDCO submitted at Deadline 3 alongside this note. Mr Owen also made the general point that throughout the DCO process, the Applicant has been listening to comments on the Charging Policies and Procedures, Monitoring Strategy and Traffic Impacts Mitigation Strategy documents. Whilst the Applicant considers that this framework of documents contains sufficient safeguards, it is considering changes to the Silvertown Tunnel Implementation Group ("STIG") and will shortly be presenting revised proposals to the Boroughs, incorporating frequency of meetings, voting and other matters. The Applicant considers that STIG is an important piece of the scheme framework. In response to a query from the ExA as to whether the proposed revisions for STIG would be brought forward at Deadline 3, Mr Owen stated that the Applicant wanted to aim to reach agreement with the Boroughs before any position was formally taken, so it was likely that any	

	changes to STIG would be submitted into the examination at Deadline 4. Please see the Applicant's Update Note (document reference: 8.59) for further commentary on this point.	
3. Opportunity for the host boroughs, other adjacent boroughs and IPs to comment as to whether the revisions to Articles 52 and 53 linked to the revised Document 7.11 Charging Policies and Procedures [REP1-123/4] to be certified under Schedule 14 now provide satisfactory assurance that the user charges would be applied to both tunnels upon opening and that through the operation of the enhanced remit for Silvertown Tunnel Implementation Group (STIG) and the Monitoring Strategy (Document 7.6) [REP1-12//2and the Traffic Impact Mitigation Strategy (TIMS) (Document 7.7) [REP2-031/2] there would be sufficient flexibility to adjust charges expeditiously so as to ensure that no adverse environmental effects arise.		
	Robbie Owen made the following comments in response to submissions made by the Boroughs. The Applicant will discuss the proposed amendments to STIG with all Boroughs, not just the three 'host' Boroughs and will consider the meaning of 'implementation' in article 65(7) in the context of these discussions. Further to **Action Point 2**, the Applicant has also considered whether it can consolidate various certified documents, including elements discussed during the various hearings. The Applicant has submitted at Deadline 3 the Applicant's Update Note (reference: 8.59) dealing with these issues, amongst others. Initial proposed monitoring locations are dealt with in the Monitoring Strategy at Appendix A (and not the Charging Policies and Procedures) with paragraph 3.3.3 providing that STIG can propose other monitoring locations – this mechanism will be wrapped up in discussions with the Boroughs.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • Applicant's Update Note (reference: 8.59) • Monitoring Strategy Revision 1 (Tracked changes) (REP1-122)
In particular, would the clarified measures be sufficient to prevent worsening of air quality and avoidance of any delay to the achievement of Air Quality targets within the area of London that may be affected by the DCO scheme and thus achievement of the targets for London as a whole at the earliest possible date?		
	The Applicant made no specific submissions under this agenda item, as it was more specifically dealt with in the discussions on DCO requirements in later agenda items (and was covered in a broad sense in the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing, which took place on 18 January 2017 (please see document reference 8.61 for a summary of the Applicant's submissions at this hearing)).	• Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61)

The Applicant will be asked to give examples of the circumstances under which the provisions of paragraph 4.5.1 of the revised Document 7.11 [REP1-123/4] might be applied as they are distinct from emergency situations that are provided for under paragraph 4.5.2. In addition, the Applicant will be asked to explain why variations to user charges would not be subject to a run of Environmental Statement (ES) tests and consideration of the assessment (as these steps are omitted in Figure 4.1 of that document) in order to give effect to Policy 9 of Document 7.11?		
	Robbie Owen stated that the Applicant required flexibility to deal with both planned and unplanned events in respect of the suspension of the user charging regime. Under the Congestion Charging regime ("CC"), there have been around 6 planned suspensions for all or part of the zone (such as the recent Tower Bridge closure). This is the type of event that paragraph 4.5.1 accounts for. Since 2003 the CC has been completely suspended only twice: terrorist attacks in July 2011 and in case of extreme snowfall. Both of these were emergencies and are the types of event that paragraph 4.5.2 accounts for. As requested by the ExA, the Applicant has included some further commentary below on this point: • The inclusion of paragraphs 4.5.1 and 4.5.2 in the Charging Policies and Procedures is intended to enable the Applicant to respond in a timely and appropriate way to events on the network or in London as a whole. • Paragraph 4.5.1 applies to planned and foreseen events such as, for example, planned road works which could otherwise have a major impact on users or potential users of the Blackwall and Silvertown Tunnels. For the CC, the charge is occasionally suspended in response to the need for drivers to divert into the zone because of full or partial road closures outside it or on its boundary routes. There have been around half a dozen of these since the CC began in 2003 and it should be noted that the suspension is only partial, affecting only those journeys made as a result of this diversion; most trips continue to be charged. Because these diversions are known about in advance, the Applicant can make drivers aware in advance via its website, for example. Unlike the CC (which is a 19km2 area of central London) the Blackwall and Silvertown Tunnels are distinct links, meaning that this type of diversion is likely to be unusual. It is possible that a closure of all alternative routes could lead to a suspension of the user charges, although this is an unlikely scenario. • For the type of incident addressed by paragraph 4.5.2, the key difference is	• Charging Policies and Procedures Revision 1 (Tracked Changes) (REP1-124) • Applicant's Update Note (reference: 8.59)

	that in this case the incident is not known about in advance; a vehicle collision, for example. In the CC, there are around 10-20 incidents per year which lead to a partial suspension without prior notice of the charge, owing to the decision to re-route traffic around the incident via routes within the charging zone. With regard to the scheme, vehicle collisions within one of the tunnels could lead to diversions to the alternative tunnel (where a charge might still apply); collisions at other locations are not likely to lead to diversions to the Blackwall or Silvertown Tunnel, although this remains a possibility. Other events, such as a failure of all or part of the enforcement infrastructure, might also necessitate a change or suspension of the user charges without prior notice. • The other circumstance for suspension without notice is an exceptional event which affects the entire city. This kind of event has led to a full suspension of the CC only twice, once for a terrorist attack and once in extreme weather. It is characteristic of such events that it is not possible to give examples that might affect the scheme. • In all cases, the ability to change or suspend the charge with or without notice enables TfL to better manage the overall impacts of the event on the network. It is envisaged that these powers would be used infrequently. • The Applicant does recognise however, that these paragraphs could be amended to clarify this. As such, amendments will be made to the revision of the Charging Policies and Procedures to be submitted at Deadline 4. Mr Owen submitted that in respect of the ES tests, the User Charging Assessment Framework ("UCAF"), which is part of the Charging Policies and Procedures, provides for two separate scenarios – the setting of the initial charges and the variation of these charges in the future. Policy 9 makes clear that in varying the user charges in future, regard must be had to the likely impacts on the environment. **John Rhodes** of Quod, planning consultants to the Applicant, made the following further comments. It is difficult to replicate the ES tests in future due to the baseline changing and, as such, it	

	therefore being difficult to isolate the impacts of the scheme - it has therefore always been the Applicant's intention to have the two scenarios for the setting of the initial charge and subsequent variations. The purpose of the UCAF is, in short, to replicate the process the Applicant went through when setting the charges used in the Assessed Case when varying the user charges in the future to account for a changing baseline. It lists metrics which are important for testing whether the user charges are meeting the project objectives – the data generated through the UCAF will be used to ensure that occurs. The Applicant considers the project objectives are a better long term measuring tool than the ES to ensure the user charges are operating in the intended way, as the further into the future the project operates, the more remote the original ES results become. As promised to the ExA and further to **Action Point 3**, a detailed note of Mr Rhodes's submissions[1], is attached to this note at **Appendix A**. Mr Owen responded to the ExA's query about figure 4.1 of the Charging Policies and Procedures by confirming that the Applicant will review this and consider how changes can be made to make clear the differences in procedures to be gone through during the initial setting of the user charges and subsequent variations. Also further to **Action Point 3**, and as set out in the Applicant's Update Note (reference: 8.59) submitted at Deadline 3, the Applicant will be making changes to this document in due course – the document at **Appendix A** of this note provides commentary on this point as does the Applicant's Update Note submitted at Deadline 3 (document reference: 8.59).	
Are there any other measures that need to be imposed as DCO Requirements, Deemed Marine Licence (DML) conditions or otherwise embodied in the DCO to ensure that there would be no significant adverse environmental consequences arising from the implementation of the Order, for example in relation to noise or flood risk?		
	The Applicant made no specific submissions under this agenda item, as it was more specifically dealt with in the discussions on DCO requirements in later agenda items (and was covered in the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing, which took place on 18 January 2017 (please see document reference 8.61 for a summary of the Applicant's submissions at this hearing).	• Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference:

[1] The ExA's Action Point 3 referred to the Applicant providing a written summary of the submissions of Mr David Rowe - the Applicant is assuming that this should refer to Mr John Rhodes given that Mr Rowe made no submissions on 19 January 2017.

		8.61)
Are 'Grampian'-type Requirements necessary to address the need for revocation or modification of Hazardous substance consents or provision of noise mitigation measures outside the Order Limits?		
	In response to submissions made by the Health and Safety Executive ("HSE"), **Robbie Owen** and **Michael Humphries QC** stated that the Applicant had misgivings about a 'Grampian' requirement in respect of the hazardous substances consents as this could affect its case for compulsory acquisition powers, as previously commented upon at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing, which took place on 18 January 2017 (please see document reference 8.61 for a summary of the Applicant's submissions at this hearing). Mr Owen commented that the Applicant intended to attempt to mitigate the issue of the extant hazardous substances consents by: • seeking a letter of no impediment from the Royal Borough of Greenwich in respect of both the amendment of the Brenntag, and revocation of the gas holder, hazardous substances consents; and • including a requirement in the DCO (the wording of which is currently being discussed with the HSE) which provides that the Silvertown Tunnel cannot be open for public use until (a) the hazardous substances consents are modified or revoked (as the case may be) **or** (b) the Applicant submits a risk assessment to the Secretary of State which satisfies him (following consultation with the HSE and the Royal Borough of Greenwich) that it would be safe to open the tunnel for public use. Mr Owen submitted that the Applicant was more comfortable with this mechanism, should there be an issue with revoking or amending the hazardous substances consents. In response to a query from the HSE as to how the risk assessment would tally with its unchallenged advice submitted into the examination thus far, Mr Owen stated that the HSE's advice would remain but the proposed risk assessment would if necessary come post-consent, so could take into account any changes in circumstances in the future. In response to queries from the ExA, Mr Owen commented that (a) the Applicant was aware of the U&I written representation in respect of the Brenntag consent and would take this into	• Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61) • Draft DCO Revision 3 (reference: 3.1 (revision 3))

	account and (b) the restriction in the proposed requirement is more appropriately tunnel opening rather than commencement of construction (as suggested by the ExA) as it would cause issues in terms of the PPP arrangements.	
Is a requirement necessary to secure removal of any temporary jetty and other temporary works and re-instatement of land after removal of temporary works? [NOTE: This agenda item will provide an opportunity to pick-up all other matters needing to be addressed in the DCO arising from the Environmental Issues ISH on 18 January 2017 including construction hours and traffic routing].		
	The Applicant made no specific submissions under this agenda item, as it was more specifically dealt with in the discussions on DCO requirements in later agenda items (and was covered in the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing, which took place on 18 January 2017 (please see document reference 8.61 for a summary of the Applicant's submissions at this hearing).	• Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61)
The Applicant will be given opportunity to comment on any alterations proposed by local authorities or other IPs as well as to respond to issues raised by the Examining Authority (ExA).		
	In response to points raised by the London Borough of Newham in respect of the *vires* of imposing user charging at the existing Blackwall Tunnel through the DCO, **Robbie Owen** stated that the Applicant had given very careful consideration to this point. **Michael Humphries QC** then made the following comments: • Section 120(3) of the Planning Act 2008 ("the 2008 Act") states that a DCO can include provisions 'relating' or 'ancillary' to the development for which a DCO grants consent. Schedule 5 to the 2008 Act includes a non-exhaustive list of matters which can be covered, including the imposition of charges. • Section 144 of the 2008 Act states that tolls included in a DCO should be treated as if authorised by a toll order under the New Roads and Street Works Act 1991 ("the 1991 Act"), but section 144(2A) makes clear this does not apply to 'other charges' - the charges proposed to be implemented under the DCO are not tolls, so the 1991 Act does not apply. • Section 120(5) of the 2008 Act provides that a DCO can include provisions that are necessary or expedient to give full effect to another provision of the	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

	DCO - because charging is required at both the new Silvertown Tunnel and the existing Blackwall Tunnel, due to them being operated as one crossing, this provision is also relevant. • It is better to include the charging proposals in this DCO process rather than pursue them separately under the Greater London Authority Act 1999 regime, as it would be difficult for the ExA to fully examine the impacts of the proposed scheme if everything was not brought forward together. • The request for a direction under section 35 of the 2008 Act did not need to include any charging proposals - the Applicant's statutory consultation did include these proposals, however. • The Applicant considers that the proposed charging regime is the best method for controlling traffic flows and environmental impacts, but that the Applicant would welcome any suggested alternatives that are more effective from the London Borough of Newham. The Applicant has attached to this note at **Appendix B** more detailed submissions on the *vires* of including charging provisions in the DCO. However, it should be noted that the Applicant intends to submit a full response at Deadline 4 to the London Borough of Newham's submissions on this point, which are expected to be submitted at Deadline 3, further to **Action Point 1**.	
4. Consideration of treatment of river areas in the DCO. Opportunity for the Port of London Authority (PLA), Marine Management Organisation (MMO) and Environment Agency (EA) to indicate whether they are now satisfied with the revised wording of the DCO including the dDML in Schedule 12 and the Protective Provisions in Schedule 13 Part 4 or, if not, to explain what further changes are required, including to conditions in Part 2 of the dDML and Requirements in Schedule 2.		
	In response to a point made by the MMO in respect of wanting to have a WSI licence condition added to the DML, **Robbie Owen** submitted that the MMO would have approval rights over any archaeological works in the river under the construction method statement condition currently contained in the DML. In addition, the CoCP (at paragraph 1.1.4) makes clear it applies to all construction works, and deals with archaeological works. However, Mr Owen stated that the Applicant would aim to continue and conclude discussions with the MMO on this point, and others raised, as soon as possible.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • CoCP Revision 2 (Tracked changes) (REP2-028)

	Mr Owen agreed with the Port of London Authority that discussions on various matters were progressing well, generally. Some amendments have been made to the dDCO submitted at Deadline 3 to reflect these discussions. Mr Owen stated, in response to submissions from the Environment Agency ("EA") on the status of the protective provisions in Schedule 13 to the DCO, that the Applicant is keen to continue working with the EA on these matters and to aid the ExA's understanding of the issues, proposed that a joint position statement or 'mini' statement of common ground between the Applicant and the EA be submitted at Deadline 3 to indicate what is agreed and what is still being discussed in respect of the contents of the DCO, including the protective provisions. As requested by **Action Point 5**, the Applicant has attached this joint position statement document to this note at **Appendix C** and anticipates the EA confirming in its Deadline 3 submissions that it concurs with its contents.	
5. Consideration of other provisions of the dDCO where the ExA or IPs have further questions. **The issues will be raised sequentially upon the text of the dDCO and its schedules for answer by the Applicant and the ExA will give opportunities to IPs to raise further issues on intervening articles as well as on those raised by the ExA. The Applicant will be asked to respond article by article and schedule by schedule.** **[NOTE: Specific amendments as might arise from any agreed changes or sustained objections to Compulsory Acquisition (CA) or temporary possession of particular plots will be considered at the Compulsory Acquisition hearing (CAH) scheduled for 20 January 2017].** **The particular issues upon which the ExA wish to hear further comment are as follows:**		
1. General: Although it is accepted that documents that are not referenced in the DCO do not need to be certified, the Design and Access Statement (DAS) is stated in the Design Principles (Document 7.4) [REP2-029/30] as needing to be read alongside that document, and the General Arrangement (GA) Drawings are also included in diagrams within that document. Please explain why Requirements 3(1) and 4(1) of the dDCO should not require the design "to have regard to" the DAS and GA drawings and thereby also be certified in Schedule 14 of the dDCO. In addition, should not the stakeholder Design Consultation Group also be referenced in Requirement 3(2)?		
	Robbie Owen and **Michael Humphries QC** made the following points on this agenda item. It is true to say that the Design Principles do refer to the Design and Access Statement ("DAS"), but only insofar as showing how the Design Principles *could* be applied to enable readers to obtain an understanding as to their effect. However, the DAS should not be treated as being 'packaged' with the Design Principles and therefore does not need to be referred to in Requirements 3(1) or 4(1). Indeed, the regime under the Statutory Instruments Act 1946 (in particular, regulations made under it – the Statutory Instruments Regulations (1947) 1948) provide that only documents	• DAS (APP-095) • Design Principles Revision 1 (REP2-029) • Draft DCO Revision 3 (reference: 3.1 (revision 3)) • General Arrangement Plans (APP-005)

	which are referred to in the statutory instrument itself (i.e. the DCO) need to be certified and does not apply to 'second generation' documents (i.e. documents referred to in documents which need to be certified), which the DAS would clearly be, as it is not referred to in the DCO. In terms of the General Arrangement Plans, the Applicant is of the view that given their purpose and role (i.e. they are an illustration of what the scheme could look like), it is not appropriate for them to be tied into the DCO in general terms as is suggested in the agenda item. However, the Applicant agreed to give further consideration to the treatment of landscaping in the context of Requirement 6 and whether the General Arrangement Plans could play a role in that context. The Applicant is still reflecting on this, and will report back on progress at Deadline 4. In response to a query from the ExA as to where it is shown what the scheme could look like within the DCO, **Michael Humphries QC** submitted that the purpose of the DCO is to set the legal parameters within which the scheme could be constructed. Article 64(3) of the DCO makes clear that any document certified is admissible in proceedings – this is important as it is a criminal offence to breach the terms of a DCO and certainty is required in terms of ensuring compliance with the legal parameters. This is where the certification process is needed - to provide that certainty of the parameters within which the Applicant would need to operate where those parameters are contained in documents referred to specifically in the DCO. As such, the Applicant is not bound to comply with any illustrative material (such as the General Arrangement Plans and the DAS) and therefore it does not need to be certified under the DCO. Mr Humphries also made the point in response to a further ExA query that there did not need to be any explicit 'guidance' in the DCO by reference to the DAS and General Arrangement Plans, as the Boroughs have an approval role in any case. More generally Mr Owen made the following points: • In response to a concern raised by the London Borough of Tower Hamlets in respect of their consultation role on approvals, this is contained in paragraph 16 of Schedule 2; • In response to a concern raised by the Royal Borough of Greenwich, the deemed approvals framework in article 68 does not apply to the requirements in Schedule 2 to the DCO; and	

	• The role of the Stakeholder Design Consultation Group will be crystallised in the DCO by being explicitly referred to in Requirement 3 of the DCO (this is reflected in the revised draft of the DCO submitted at Deadline 3).	
In the Design Principles in Document 7.4 [REP2-029/30], Design Principle PRBD15 is stated to refer only to noise barriers within the Order Limits. Does it not need to apply to any noise barriers that may be required?		
	Robbie Owen stated that the Applicant did not consider that noise barriers outside the Order limits needed to be subject to the Design Principles, as any noise barriers outside of the Order limits are not necessary mitigation and therefore are <u>not</u> to be treated as part of the scheme applied for through the DCO. Those noise barriers would be subject to the normal approval processes. In response to a query from the ExA, Mr Owen confirmed that should the DCO functions be transferred as a result of the PPP process, the design of the noise barriers within the Order limits would not suffer due to the transferee also being subject to the same controls contained in the DCO as the Applicant would be (predominantly the requirement to obtain approval from the Boroughs and the overarching requirement to design the scheme in accordance with the Design Principles). In response to a point made by the Royal Borough of Greenwich in respect of the design of the noise barriers outside of the Order limits, Mr Owen submitted that this would be captured as part of the discussions on the legal agreement proposed to be entered into between the Applicant and the Royal Borough of Greenwich to secure the provision of these noise barriers.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • Design Principles Revision 1 (REP2-029)
2. Article 2(1): Could any potential confusion in relation to interpretive provisions be overcome with the inclusion of the words 'unless otherwise stated' after 'In this Order'?		
	Robbie Owen confirmed that legislative drafting practice differed on the approach proposed by the ExA, but the Applicant would consider it. As a result of these considerations, the Applicant has amended article 2(1) in the revised draft of the DCO submitted at Deadline 3.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
3. Article 2(1): Are all IPs satisfied that the Code of Construction Practice (CoCP) covers all matters that are referred to in the Construction Method Statement (CMS) so that the CMS does not require definition?		
	Robbie Owen confirmed that the Applicant is keen to listen to suggestions and observations from the Boroughs on the contents of the CoCP which the Applicant understands will be forthcoming.	• CoCP Revision 2 (Tracked changes) (REP2-028)

4. Article 3: To what extent are there issues outstanding with the EA in relation to the dis-applications listed in 3(1)? Given the answer to FWQ SW6 [REP1-154], can the provision sought in Article 3(2) be justified in such wide terms as drafted, as it has been stated by the Applicant that operational staff will be based in the tunnel services compound to deal with emergencies.		
	In respect of the EA, **Robbie Owen** reiterated the response to agenda item 4. In respect of the disapplication contained in article 3(2), Mr Owen confirmed that the Applicant was content with its approach and did not intend to remove the disapplication of the Community Infrastructure Levy, particularly in light of the fact that the scheme is community infrastructure. In this context, it would not be appropriate for it, in turn, to contribute to other community infrastructure, should the charging schedules of the Royal Borough of Greenwich or London Borough of Newham change in future such that any part of the scheme became chargeable development. The Secretary of State found such an approach to be acceptable on the Thames Tideway Tunnel scheme.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
5. Article 4(2): Although an explanation of the intent behind the meaning of the word 'adjacent' has been given, it is not explicit within the dDCO that this only refers to land with a common boundary to the Order Limits or to what distance from the common boundary such a provision would apply. The Applicant is invited to consider further how this uncertainty as to the extent of the applicability of the provisions of the dDCO might be overcome.		
	Robbie Owen confirmed that the Applicant had given this further consideration and intended to amend the provision such that it referred to land being 'directly' adjacent. Mr Owen acknowledged concerns raised by the Port of London Authority that this still created some uncertainty. As such, the drafting in the revised version of the dDCO submitted at Deadline 3 refers to land 'adjoining' the Order limits and expressly excludes any part of the river Thames outside of the Order limits.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
6. Article 5(1): The ExA notes the clarification provided by the Applicant in the supply of composite drawings showing the Works on the Land Plans. Is it intended that there will be a version of the Land Plans submitted for certification of this nature? Nevertheless, the justification provided for such wide limits to horizontal deviation does not cover the ability of the Applicant to undertake works outside the areas defined either for CA or temporary possession by agreement. Thus, even if a pictorial representation of individual limits of deviation might be difficult to show on plans, would it not be possible to specify that laterally limits to deviation would be 'x' metres from the centre lines of linear works and 'y' metres from the boundaries indicated for non-linear works? Moreover, if applying the justification provided to date in relation to the Land Plans, the limits to deviation should be to the extent of land indicated for CA (i.e. land covered pink) and not to the Order limits which include land for temporary possession?		
	Robbie Owen confirmed that the Applicant recognised the issue raised by the ExA. The Applicant is still reflecting on this point, and will report back on its proposals to address and	

	resolve this issue at Deadline 4. The solution was likely to be a combination of some additions to article 5 and some additional features shown on the plans and/or the sections but this would be confirmed.	
In addition, with regard to vertical deviation, the PLA has highlighted an inconsistency between the table in Article 5 and the Engineering Sections and Drawings. This needs to be corrected. This should be submitted with the post-hearing documents.		
	Robbie Owen stated that the Applicant did not consider that there was an inconsistency, as the table in article 5 and the dredge depths shown on the engineering section drawings are dealing with two distinct elements. However, the Applicant will include this in the on-going discussions with the Port of London Authority.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
Article 14: Point raised by Thames Water Utilities Limited in respect of deemed consent provisions		
	Robbie Owen responded by submitting that deemed consent provisions are well precedented in DCOs as it is important that various applications for consent required by DCO provisions are not delayed, in order to ensure timely construction. However, Mr Owen also stated that discussions are on-going with TWUL and it is hoped that a compromise solution can be agreed between the parties.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
7. Article 25(8): What is the justification for omitting the time limit for making a vesting declaration?		
	Robbie Owen made the following points. Article 25(8) simply applies the Compulsory Purchase (Vesting Declarations) Act 1981 ("the 1981 Act") so that it is consistent with the five year period within which compulsory acquisition powers under the DCO can be exercised. Under section 5A of the 1981 Act, a GVD must be made within three years of a CPO becoming operative (or the DCO coming into force in this case, by virtue of article 25(1)). This is clearly inconsistent with article 21(1) which provides that a GVD needs to be made within five years of the DCO coming into force – the five year period is generally the standard in DCOs, to reflect the significant nature of the projects they consent. That is the reason for the three year time limit being omitted in the DCO. It is noted that there is also a 3 year period for NTTs in the Compulsory Purchase Act 1965, but this Act is automatically 'read' into a DCO due to s.125 of the Planning Act 2008 but always subject to any modifications made in a DCO. Article 21(1) provides that modification. In contrast,	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

	the 1981 Act needs to be expressly applied into the DCO.	
8. Articles 29(4) and 30(5): The ExA would welcome further explanation for the inconsistency between these provisions as amended. Without the purpose for possession being specified, how would it be possible to understand what length of occupation would be 'reasonably necessary'. Current legislative practice appears insistent that periods for temporary possession are clearly defined.		
	Robbie Owen made the following points. The Applicant amended article 30(5) at Deadline 1 to provide that the purpose for temporary occupation in the context of maintenance needed to be specified in the notice given to occupiers. As alluded to, it was recognised that this would assist all parties in understanding the length of occupation. However, article 29 operates differently in terms of the length of occupation – this refers, as is standard, to a period following completion of the development (1 year) as opposed to a period that is 'reasonably necessary'. For Schedule 7 land, it is clear as to what the purpose of taking the land is - it is set out in Schedule 7. In terms of the second category of land which can be temporarily possessed (under article 29(1)(a)(ii), known as 'non-Schedule 7' land), it is considered that an element of flexibility is required in respect of the 'purpose' for which that land can be temporarily possessed. It is therefore considered inappropriate to prescribe what the notice should include. In response to a concern raised by the Port of London Authority that it would still not fully understand for what purpose 'non-Schedule 7' land would be used, **Michael Humphries QC** stated that the formulation in the current version of the DCO is well precedented and was found, for example, in the Thames Tideway Tunnel DCO showing that the Secretary of State considers it appropriate. Under the 'non-Schedule 7' land, the Applicant has compulsory acquisition powers over it, so there is less need to specify the purpose for which temporary possession is required as it will be the same as the purpose for which it could be acquired. However, in response to further submissions from the Port of London Authority, Mr Owen confirmed that, notwithstanding the drafting is the 'standard' formulation, the Applicant would consider amending the DCO such that in article 29(4) reference to the works for which temporary possession is required is included in any notice of proposed temporary possession. This amendment is reflected in the revised dDCO submitted at Deadline 3 (further to **Action Point 7**).	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

In addition, how do these articles maintain all rights of navigation on the river? Under what powers would PLA mooring buoys be re-located temporarily or permanently outside the Order limits or how would reinstatement be governed where this would be possible? Part of the answer may be in paragraph 40 of Schedule 13 Part 4, but this does not seem to provide a complete answer?		
	Robbie Owen confirmed agreement with the Port of London Authority's submissions under this agenda item, namely that these issues are all the subject of on-going discussions between the Applicant and the Port of London Authority, and that agreement is anticipated to be reached as soon as possible during the examination process. Some amendments have been made to the dDCO submitted at Deadline 3 to reflect these discussions.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
Article 43: Submissions on power to close the tunnels		
	In response to submissions made by the London Borough of Southwark and the Royal Borough of Greenwich, **Robbie Owen** made the following points: • The Applicant would give further consideration as to the wording of article 43 to provide more comfort to the Boroughs in respect of notice provisions; and • The Applicant would give consideration as to whether the term 'emergency' should be defined. The Applicant has now reflected on these points. A definition of 'emergency' has been added to the revised version of the DCO submitted at Deadline 3, to make clear that this includes anything that could pose a risk to the safety of the users of the tunnels or to the environment. Examples of the former situation would include pedestrians in the tunnel or a catastrophic equipment failure leading to an environment which TfL deems is not safe for users. In terms of the notice provisions, the Applicant has not made any amendments to the dDCO. Whilst in normal circumstances the Applicant would be giving more than 7 days' notice to relevant stakeholders, flexibility is needed in respect of unforeseen, non-emergency circumstances comprising, for example, short-term reactive maintenance.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
Article 52: Submissions on imposition of charges		
	In response to a submission made by the London Borough of Lewisham that the user charges should be imposed for perpetuity and this should be reflected on the face of the DCO, **Robbie Owen** made the point that the Charging Policies and Procedures deals with the detailed charging mechanism and is the more appropriate place for this as it can react to changing	• Charging Policies and Procedures Revision 1 (Tracked Changes) (REP1-124)

	circumstances.	
Article 56: Submissions on priority of application of user charging receipts		
	In response to a number of points raised by Boroughs and the ExA, **Robbie Owen** made the following points: • the user charging receipts would go to TfL, and it is proposed that TfL would then make availability payments to the proposed Project Company under the Project Agreement; • the Project Company would be responsible for Silvertown Tunnel maintenance but the arrangements beyond the life of the proposed Project Agreement had not been contemplated by the Applicant at this stage, and so the DCO needs to retain flexibility as to how user charge receipts can be used; • the arrangements within the Applicant as to funding for elements such as bus services is complex, and would come from different 'pots' – therefore, the Applicant needs to be careful not to include provisions in the DCO that could 'cut across' its existing funding arrangements – for example, the revised bus strategy proposed to be secured by the DCO could better deal with funding than the DCO; and • the Applicant would, in this light, consider whether the list of payments could be amended and whether a 'cascade' arrangement would be appropriate, particularly around including funding for mitigation, STIG and enhanced bus services (although arguably mitigation would be included in the wording in article 56(a) - '...*consenting, designing, constructing...the Silvertown Tunnel*'. Further to **Action Point 8,** having given further consideration to these issues, the Applicant is still of the view that the wording of article 56 is appropriate in its current form. The Applicant is particularly wary of affecting/cutting across its current internal funding arrangements. In essence, mitigation and other measures will be committed to through the DCO (e.g. the requirements) and so be secured - it is then up to the Applicant as to how it funds these commitments, particularly any subsidies required for bus routes and the like. But irrespective, they will remain firm and legally binding commitments. It is therefore both unnecessary and	Draft DCO Revision 3 (reference: 3.1 (revision 3))

	inappropriate for the DCO to prescribe the source of funds needed to pay for those commitments. To expand on this point further, the Applicant will deliver all of the commitments made in the DCO. The funding statement submitted with the application (APP-016) demonstrates that the scheme is fundable, primarily through the user charging element, although, should the user charging element provide less revenue than anticipated, the Applicant has a strong enough covenant to deliver on the commitments.	
9. Article 58: Why is there a need to refer to the 'exclusive' transfer of CA provisions needing the consent of the Secretary of State (SoS)? Any transfer including CA functions should be subject to SoS consent? And as substantial compensation could arise from temporary possession, does the need to secure SoS approval also apply to the powers under Articles 29 and 30?		
	Robbie Owen confirmed that, having given this further consideration, the Applicant would make the following amendments to the dDCO at Deadline 3: • delete the term 'exclusive'; and • add the temporary possession powers in articles 29 and 30 to the scope of the powers in relation to which the Secretary of State must be satisfied, before the Mayor can give his consent to any transfer. These changes are reflected in the revised version of the DCO submitted at Deadline 3. In response to a query from the London Borough of Tower Hamlets, Mr Owen confirmed that under article 58(4) any transferee would be subject to the same restrictions as TfL would be in exercising any transferred statutory functions. Mr Owen pointed out that this is a well precedented provision and is how the construction of various DLR extensions, for example, had been achieved.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
10. Article 65(12): Are the local authorities satisfied that STIG meetings would not be in public nor required (albeit able) to publish minutes and recommendations?		
	In response to a more general submission made on article 65 by London City Airport in respect of its view that it should be part of STIG, **Robbie Owen** made the following points. The Applicant's overall philosophy for the formulation of the membership of STIG is that local authorities should represent businesses in their areas. Having given this further consideration as requested by **Action Point 6**, the Applicant remains of the view that this is an appropriate	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • Applicant's Update Note (reference: 8.59)

	'threshold' for membership and, as such, London City Airport should not be added as a named member of STIG within article 65 of the dDCO. A number of businesses in the vicinity of the scheme could be said to have a 'special status' and the Applicant considers the interests of businesses can be appropriately represented by the Boroughs in this context, otherwise the membership of STIG would grow to such a size that its effectiveness could be compromised. It should also be noted that article 65(10) of the dDCO provides that STIG may establish committees, sub-committees and working groups which may include bodies that are not named under article 65(2) - London City Airport could therefore be brought into any such committees, sub-committees or working groups. In response to a number of submissions made by Boroughs, together with queries raised by the ExA (and indeed **Action Point 6**), Mr Owen confirmed that the Applicant is working on a number of revisions to the STIG provisions in the dDCO which it intends to present to *all* of the Boroughs (not just the three 'host' Boroughs) at a meeting in early February in an attempt to obtain a consensus before a 'position' on STIG is submitted into the examination. This meeting will be after Deadline 3, so revisions to the dDCO will be reflected in the revised draft submitted at Deadline 4. The Applicant has submitted at Deadline 3 the Applicant's Update Note (reference: 8.59) on this issue, amongst others. Article 65(12) was not specifically discussed at the hearing.	
11. Schedule 1: Are all IPs satisfied that there is no distinction between integral works and associated development?		
	No specific submissions were made by the Applicant on the first agenda item point, as the ExA confirmed it had no concerns and accepted previous submissions made – no interested parties raised any objections.	
In Work No 1, does a definition need to be included of the term 'cellular tunnel'? Nothing in the dDCO confines it to cross passages as opposed to the full cut and cover sections. Would it be preferable to use the description …'and comprising either a single cellular tunnel or two tunnels…? It is noted that the byelaws in Schedule 9 still refer to a twin bore tunnel.		
	Robbie Owen confirmed that the Applicant welcomed the ExA's suggestion and that this would be reflected in the revised version of the dDCO submitted at Deadline 3. In addition, the Applicant does not consider the byelaws need to be amended in this regard, due to the context of the use of the description - it is simply a description of the Silvertown Tunnel in the relevant	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

	definition rather than a technical description for the purposes of the works schedule.	
The change to authorise works within the river Thames outside the defined 'river area' has not been provided with a clear justification and new plans are promised.		
	Robbie Owen made the following points. The application draft of the DCO included a power to carry out works listed in the 'catch all' at the end of Schedule 1 to the DCO in 'the river area' which had a wide definition (the entire river within the Order limits). Following discussions with the PLA this definition was restricted to the Work No. 20 area, in light of its interaction with article 17. However, the Applicant is still seeking powers over the rest of the river, hence this drafting change (which doesn't amend the applied for powers). All such works would be subject to the DML licence conditions and the PLA protective provisions and, as such, it is considered there are appropriate safeguards in place. There has been no change, merely a clarification.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
Where in the dDCO is provision for phasing Work No 20 to maintain navigation or for issue of notices to mariners? What in the dDCO would prevent the combined effect of Articles 17, 29 and 30 causing the whole river to be closed to navigation for up to 11 years? What provision is made for the relocation of or maintenance of acceptable access for users of the safeguarded Thames Wharf during construction and for access to be maintained or reinstated to all other wharves that may be affected by construction?		
	Robbie Owen confirmed agreement with the Port of London Authority's submissions under this agenda item, namely that these issues are all the subject of on-going discussions between the Applicant and the Port of London Authority, and that agreement is anticipated to be reached as soon as possible during the examination process. The Applicant made no submissions on the wharf users – this has been dealt with in other forums. The Applicant will be providing support for impacted businesses, but this will take effect post-consent (should the DCO be made).	
More generally, in relation to works 'for the purposes of or in connection with the construction of any of the works (and other development?) mentioned above', further justification is sought for the breadth of wording used in sub-sections such as (p), (v) and (w), for example 'associated plant and equipment', 'temporary structures, storage areas (including storage of spoil and other materials)…' and 'other buildings, machinery, apparatus, works and conveniences' and 'and other ancillary and administrative accommodation' and the content of sub-section (y) in its entirety.		
	Robbie Owen submitted that the Applicant is not seeking authority in Schedule 1 to the DCO for anything unusual – it reflects a number of made DCOs to date (for example, the A14, Thames Tideway Tunnel, M4 and Hinkley Point C Connecton DCOs). In addition, any works included in Schedule 1 would be subject to the protections within the DCO, such as the	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

	requirements and protective provisions. Mr Owen continued by confirming that the Applicant's engineers, Atkins, have confirmed that the scope of the works is required to enable the Applicant sufficient flexibility to construct the scheme. As noted, the Applicant has provided further information below as to the justification for the scope of works included at the end of Schedule 1 in the 'catch-all'. • The description of works in the catch-all as drafted has been assembled in conjunction with the individually numbered Works, to reflect the full nature and scope of the works foreseen as necessary to safely and efficiently construct the whole of the scheme. • Listed are elements of permanent works (those parts forming the final structures of the Scheme), temporary works (those parts and processes that do not form permanent works in themselves, but which are necessary to construct the permanent works), and plant and a variety of equipment necessary to be used to undertake various construction processes. • Whilst the description of the permanent works, temporary works, plant and construction equipment is detailed, it clearly cannot be so comprehensive so as to include every fixture, fitting and small hand tool needed to construct a capital project of the size of the Silvertown Tunnel. Therefore following what the Applicant considers to be convention, the principal elements of permanent and temporary works are listed, along with the more significant generic types of plant and equipment which are needed to construct the Scheme. • The use of 'associated plant and equipment' used in clause (p), and queried by the ExA, is included because a variety of different plant is needed individually for the various processes identified in this list which includes shafts, foundations and deep excavations. In this way the Applicant has tried to strike a balance between a 'full' description of the works and processes necessary, whilst seeking to not encumber the reader with an attempt at drafting an exhaustive list, which in any event is unlikely to be possible at preliminary design stage.	

	• In paragraph (v), which describes the temporary facilities associated with construction working sites, temporary structures and storage areas have been expressly identified so as to ensure it is understood that the purposes of these sites are for use as temporary construction areas. Therefore the temporary structures that will be needed in these areas, such as site welfare, and staff accommodation facilities, stores and fitters area, are clearly identified as requisites for constructing the scheme. • The broad drafting of (y) is necessary to ensure all works, even those not presently foreseen but ultimately required for implementing the scheme when the detailed design has been completed (none of which can result in more detrimental environmental effects from those assessed), are encompassed. • An example of such a work could be a safety-critical and highly method-related element of temporary works (a process to control groundwater in excavation works beneath the river perhaps), which is uniquely described or proprietary in nature, where a number of different temporary processes are available, and which the most appropriate can only be identified and optimised for safe construction through a future detailed design process.	
12. Schedule 2: The issue concerning the DAS and GA drawings is relevant to Requirements 3(1) and 4(1). Please provide further justification for inclusion of Requirement 4(3). Why is this necessary, rather than relying on the ordinary definition of development under the Planning Acts?		
	In response to points raised by the London Borough of Newham, other Boroughs and the ExA, **Robbie Owen** made the following points: • the Applicant would reflect on the use of the term 'consult' rather than 'engage' in Requirement 3(2). Following further consideration, the Applicant has made this change in the revised version of the dDCO submitted at Deadline 3; • in Requirement 4(3), the Applicant's starting point was that the works listed are those that it considered appropriate and reasonable in planning terms for a local planning authority to have controls over - it would be inappropriate for a local planning authority to have approval rights over any highway works.	

	However, it is recognised that some works excluded from Requirement 4(3) are not highway works - the Applicant would therefore reflect on this in the context of the usual definition of 'development' in the Town and Country Planning Act 1990 and other pieces of legislation. The Applicant is still reflecting on this issue, and will report back on its proposals to address this point at Deadline 4.	
With regard to Requirement 5(2), are the relevant planning authorities, the EA and PLA satisfied that these plans only require consultation with the named bodies and not approval?		
	In response to a number of comments made by the Boroughs and the Port of London Authority, **Robbie Owen** submitted that the Applicant would look again at the approval/consultation balance of the plans to be produced under the CoCP. **Samuel Laider** submitted that the Applicant's approach on these plans was to, in principle, embed mitigation in the CoCP so that controls do not require approvals. The plans to be produced under the CoCP, in the main, outline steps to undertake the overall controls already contained in the CoCP. **Michael Humphries QC** added that the intention was that the CoCP itself would be considered in detail during the examination process and certified as the final document should the DCO be made – there would be no subsequent approval process. In response to submissions made by the Royal Borough of Greenwich that the CoCP should be subject to a separate requirement in the DCO for a subsequent approval, Mr Owen made clear that the Applicant would resist this as its proposed approach for the CoCP to be finalised during the examination process has remained unchanged since the application was submitted in 2016 – if there is disagreement, it will be something for the Secretary of State to balance up during the decision-making process. Mr Humphries added that the Applicant is taking this approach due to there being two host Boroughs which could result in there being disputes in the future - it is easier for there to be a single document. However, Mr Humphries confirmed that the Applicant would consider the approach for approving plans and strategies. This will be reported to the examination at Deadline 4. In addition, in response to the ExA's query on the CoCP and a potential NEWT test, Mr Owen referred the ExA to the submission made at the previous day's hearing. Please see the	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • CoCP Revision 2 (Tracked changes) (REP2-028) • Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61))

	Applicant's Update Note (reference: 8.59) submitted at Deadline 3 for more commentary on this issue.	
Do all the subsidiary plans referred to in relation to the CoCP require definition within the dDCO either explicitly or by clear reference to the CoCP or ES?		
	Robbie Owen confirmed that the Applicant had considered this point and was of the view that the drafting was sufficiently clear that the plans were those as defined within the CoCP (which itself is defined) such that no further interpretation provisions are required to be included in the DCO.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • CoCP Revision 2 (Tracked changes) (REP2-028)
Submissions on Requirement 6		
	In response to a query from the ExA as to whether Requirement 6 should include an explicit reference that the landscaping for the scheme should be designed in accordance with the Design Principles, **Robbie Owen** made the point that this would be duplicating Requirement 3(1) which provides that the entirety of the scheme must be designed in accordance with the Design Principles, including the landscaping. No extra drafting in this regard is needed in Requirement 6 as a result. In response to a further query from the ExA, Mr Owen explained that paragraph (2)(e) of Requirement 6 had been deleted to avoid duplication, as it was already included in the CoCP. The ExA raised other queries on potential additions to Requirement 6 (e.g. seed mix), which had been raised at the previous day's hearing. Please see document reference 8.61 for a summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing which contains further commentary on this point.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • CoCP Revision 2 (Tracked changes) (REP2-028) • Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61)
Submissions on Requirement 11		
	In response to a query from the ExA, **Robbie Owen** submitted that the Applicant had not included a separate Water Framework Directive requirement (in addition to the existing Flood Risk Assessment requirement) as it is considered that this is something more appropriately dealt with under the protective provisions for the benefit of the Environment Agency - the definition of 'specified work' (in relation to which the Environment Agency has approval rights) includes reference to any works which could affect the 'purity or quality' of water. As such, the Applicant considers that there should not be any duplication between the requirements and the protective provisions.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

In relation to Requirement 12(1) are the local authorities satisfied that there is sufficient definition of the terms within the dDCO?		
	Robbie Owen submitted that issues around Requirement 12 had been dealt with at the previous day's hearing, including around low noise, and high friction, surfacing. Please see document reference 8.61 for a summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing which contains further commentary on issues relating to this Requirement. Amendments have been made to Requirement 12 in the revised version of the dDCO submitted at Deadline 3.	• Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61) • Draft DCO Revision 3 (reference: 3.1 (revision 3))
Environment Agency: Submissions on requirements		
	In response to submissions made by the Environment Agency that they consider that new requirements in respect of groundwater protection and land contamination may be required, **Robbie Owen** submitted that discussions on these issues would continue, but that the Applicant considers these protections may be more appropriately included within the protective provisions for the benefit of the Environment Agency. Further, Mr Owen made the point that sufficient protections were included in the CoCP, notwithstanding that previous DCOs have included standalone requirements on these issues. The joint position statement document attached to this note at **Appendix C** set out more detail on the areas of agreement on these points, and where discussions are still on-going.	• Draft DCO Revision 3 (reference: 3.1 (revision 3)) • CoCP Revision 2 (Tracked changes) (REP2-028)
Submissions on Requirement 16		
	In response to a submission made by the London Borough of Tower Hamlets in respect of their precise role in terms of being consulted on applications for discharge of requirements, **Robbie Owen** agreed with the suggestion made by the London Borough of Newham that a three-way meeting between the Applicant, the London Borough of Tower Hamlets and the London Borough of Newham should take place to conclude the provisions that all parties wish to see in the DCO. It is anticipated any required amendments will be reflected in a revised draft of the DCO submitted at Deadline 4.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
Are the local authorities satisfied with the appeal provisions in Requirement 18, including the replacement of the appeal provisions under s60 and s61 of the Control of Pollution Act (COPA)?		
	In response to a point made by the London Borough of Tower Hamlets, **Robbie Owen** made clear that the intention and effect of Requirement 18 was not to extend the right of appeal to the	• Draft DCO Revision 3 (reference: 3.1 (revision 3))

	Secretary of State to third parties, but simply to either the Applicant or any transferee under article 58.	
Is a Requirement (or undertaking) necessary to guarantee that new bus services will be promoted through the new tunnel and not merely that any local service buses would be low emission vehicles? How else would this objective of the dDCO be secured?		
	In response to submissions made by interested parties, together with queries raised by the ExA on this agenda item, **Michael Humphries QC** noted that this was raised at a hearing earlier in the week and it would be secured by way of a DCO requirement or legal agreement, but the specific approach was still being worked on. Please see the summary of the Applicant's submissions at the Traffic/Transport Modelling, Forecasting and User Charging and Economic Issues Issue Specific Hearing (document reference 8.60) which contains further commentary on issues relating to bus service commitments. In summary, a Bus Strategy for the scheme was submitted with the Applicant's response to FWQ PN.6. This explains why the level of bus service assumed in the assessment is considered appropriate. The Applicant has been considering how to be revise that document to be more explicit about the principles for bus services and how they will be delivered and planned with the boroughs. A revised version of that document will be submitted at Deadline 4. The implementation of this strategy will be secured by an additional requirement in the dDCO, the form of which is reflected in the revised version of the dDCO submitted at Deadline 3.	• Summary of the Applicant's submissions at the Traffic/Transport Modelling, Forecasting and User Charging and Economic Issues Issue Specific Hearing on 17 January 2017 (reference: 8.60) • Draft DCO Revision 3 (reference: 3.1 (revision 3))
Proposals for new requirements		
	In response to points made by the London Borough of Newham and the Royal Borough of Greenwich on construction lorry routes, **Robbie Owen** submitted that the CoCP, in short, defers detailed lorry routes to the Construction Traffic Management Plan ("CTMP"), which is proposed to be approved by the Boroughs. Principal routes are set out in the CoCP, but they can be varied under the CTMP. However, Mr Owen confirmed the Applicant would be willing to listen to any comments provided by the Boroughs on the terms of the CoCP with a view to settling as many differences at this point, rather than in the future. The ExA also raised a number of other proposed requirements which had been discussed in previous hearings (for example, working hours). Commentary is provided on these in the summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental	• CoCP Revision 2 (Tracked changes) (REP2-028) • Summary of the Applicant's submissions at the Air Quality, Noise and Other Environmental Issues Issue Specific Hearing on 18 January 2017 (reference: 8.61)

	Issues Issue Specific Hearing (document reference 8.61). The Royal Borough of Greenwich and London Borough of Newham proposed that other requirements should be included in the DCO, namely relating to charging at the Woolwich Ferry, mitigating impacts on small businesses and the provision of a community fund. No submissions were made by the Applicant on these points at the hearing, but it is maintained that these requirements are not appropriate for inclusion within the DCO. The Applicant has responded to these points previously during the examination.	
13. Schedule 9: As the Byelaws are intended to be a stand-alone document, do they not need to include a definition of Transport for London (TfL)?		
	Robbie Owen said that the Applicant agreed with this observation and the revised version of the DCO submitted at Deadline 3 reflects this change.	• Draft DCO Revision 3 (reference: 3.1 (revision 3))
14. Schedule 12: As most of the conditions refer to the river as defined in paragraph 1, please explain the justification for a distinction between the river area and the area defined in 3(3) as the area within which licensed activities may take place?		
	No specific submissions were made by the Applicant on this point, as the substantive issues were dealt with under agenda item 4.	

APPENDIX A

NOTE ON VARYING USER CHARGES

SILVERTOWN TUNNEL

Note on Varying User Charges

(Response to Issue Specific Hearing on dDCO

Action Point 3)

TR010021

January 2017

MAYOR OF LONDON

TRANSPORT FOR LONDON

EVERY JOURNEY MATTERS

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Silvertown Tunnel

Note on Varying User Charges

Author: *Transport for London*

Rev.	Date	Approved By	Signature	Description
0	27/01/2017	David Rowe (TfL Lead Sponsor)	[redacted]	For Deadline 3

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1 INTRODUCTION

1.1 Background and purpose of this note

1.1.1 This note was prepared in response to Action 3 from the ISH on 19 January 2017. At that ISH, Mr John Rhodes was asked (under Agenda item 3), to explain why the Applicant had proposed different processes for setting the initial user charges and for making subsequent variations, as set out in Figure 4-1 of the Charging Policies and Procedures (CPAP) (REP1-123).

1.1.2 The CPAP was revised at Deadline 1 to introduce the User Charging Assessment Framework (UCAF), which is a means of assessing the extent to which the proposed initial and future user charges will help to deliver the Project Objectives.

1.1.3 The different processes which apply when setting the initial user charges and in making subsequent variations are set out in Section 2 of this note. Section 3 explains the rationale for the different processes. Section 5 of the note explains the role of the UCAF in both contexts.

1.1.4 To make these processes clearer, Section 6 provides an updated version of Figure 4-1. It also notes the proposed inclusion of a 12-month review of the user charges.

2 THE PROPOSED PROCESSES FOR SETTING AND VARYINGTHE USER CHARGES

2.1.1 The Charging Policies and Procedures (the CPAP) (REP1-123) draws a distinction between the process that would apply to setting the initial user charges and the process for setting subsequent variations to user charges.

2.1.2 In particular, the process and policy for setting the initial user charges is covered from section 3.2 of the document and is subject to Policies 6 and 7. In particular, Policy 7 provides:

> *"TfL will set the initial charges at a level and subject to conditions so that the Scheme in operation is not likely to give rise to significant environmental effects which are materially worse than those reported in the ES[1]."*

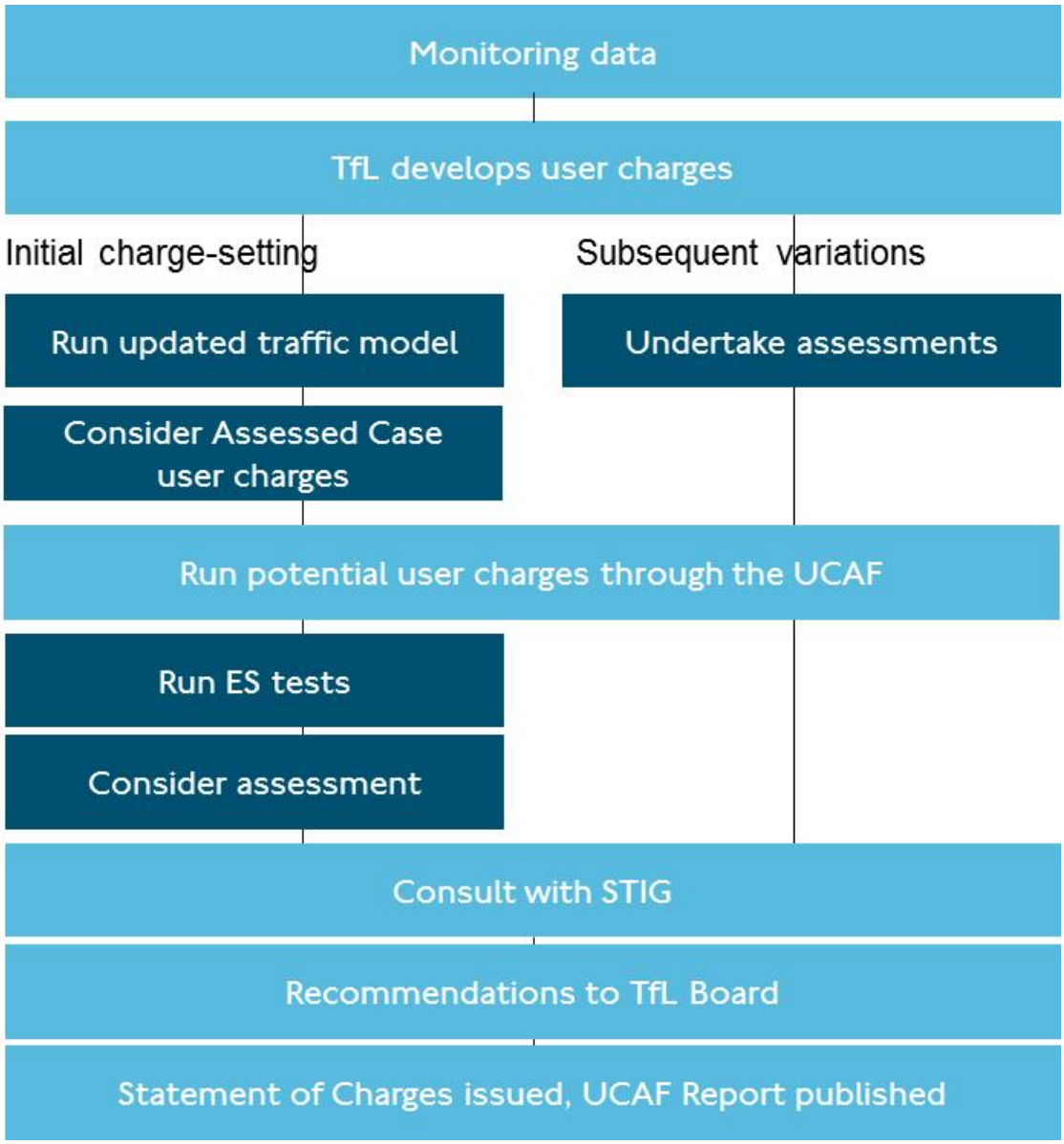
2.1.3 The process and policies for subsequent variations for the user charges are set out in section 3.3 and, in particular, are subject to Policies 8 and 9. Policy 9 makes no reference to the ES but does provide that:

> *"The extent to which the user charges will assist in the continued achievement of the Project Objectives is the primary consideration which TfL will have regard to when varying the user charges."*

2.1.4 The separate procedures and processes are further set out in section 4 of the CPAP and the different processes are summarised in Figure 4-1, which is reproduced below.

[1] Environmental Statement (ES) (Document 6.1)

Figure 2-1: Reproduction of Figure 4-1 in CPAP



3 RATIONALE FOR THE DIFFERENT APPROACHES

3.1.1 The Applicant explains from paragraph 5.2.4 of the Charging Statement (APP-097) that different processes would be necessary for setting the initial charge and for subsequent variations.

3.1.2 A principal reason for this is the practical difficulty inherent in seeking to replicate the ES assessment after the Scheme is open and operating. From the moment of operation, it will become increasingly difficult to isolate the effects of the Scheme from other local factors and to assess them against the baseline of the ES. In this dynamic part of London, there will be multiple events which impact upon the baseline (for example population growth will lead to changes in the number and location in residential receptors), so that it will become practically impossible to identify whether specific effects (such as increases or decreases in noise or air quality or even traffic) are attributable to the operation of the Scheme. In practice, the Silvertown Tunnel will simply become part of the strategic road network.

3.1.3 TfL has discharged its responsibility to identify the likely significant environmental effects of the Scheme in the submitted ES. In fact, TfL has committed to go further than is normally the case in assuring the ES outcomes by committing to retest the initial user charges prior to the opening of the scheme with the benefit of monitoring data. The Monitoring Strategy (REP1-121) sets out that monitoring will commence three years prior to Scheme opening. This further commitment creates a situation in which the relationship between the ES and its likely significant effects is particularly strong.

3.1.4 What is not practical, however, is to commit in perpetuity to maintain the precise outcome of the ES. TfL has therefore proposed a process which seeks to assure the continued achievement of the Project Objectives when the charges are varied.

4 THE APPROACH TO SUBSEQUENT VARIATIONS OF THE USER CHARGES

4.1.1 TfL's document selecting the Charges for the Assessed Case, October 2016 (Appendix A of Responses to Socio Economic FWQ, REP1-176) was produced in response to FWQ SE2 to explain the policy and processes applied in arriving at the Assessed Case user charges.

4.1.2 In order to create confidence that the scheme will continue to operate in a comparable way to the Assessed Case, TfL has thought it helpful to codify the process to be followed by means of the User Charges Assessment Framework (UCAF), which is explained at section 3.4 of the CPAP and provided in full at Appendix C of that document. TfL is committed to the use of CPAP at paragraph 4.2.2. As far as practical, the UCAF seeks to replicate the process used for selecting the charges for the Assessed Case. The UCAF is also to be used for setting the proposed initial charges (para 4.1.2). It is this consistency of approach which is intended to provide comfort and assurance about the future operation of the Scheme.

4.1.3 It is also intended that the variation of user charges would be subject to the same governance process as the initial charges – i.e. reported through STIG and approved by the TfL board (CPAP section 4.2).

4.1.4 Additionally, any future charges are also subject to CPAP Policies 1, 2, 3, 4, 8 and 9 to ensure that they are appropriately regulated in accordance with policy and TfL's wider network duties.

4.1.5 At both initial charge-setting and in subsequent variations, Policies 6 and 9 ensure that the continued achievement of the Project Objectives will be the primary consideration when setting or varying the user charges. Those project objectives, of course, include:

> *"PO5: to minimise any adverse impacts of any proposals on communities, health, safety and the environment."*

5 THE OPERATION OF UCAF

5.1.1 Section 3.4 of the CPAP explains the operation of the UCAF and its requirement to consider the environmental and socio economic effects of the Scheme under a series of headings, namely:

- Traffic
- Environment
- Population, Economy and Growth
- Other considerations (local and strategic policies, the views of stakeholders and value for money)

5.1.2 The UCAF is structured so as to ensure that the full range of potential impacts is appropriately considered in relation to the Project Objectives, as required by Policy 9. Appendix C identifies indicative metrics that could be generated in order to undertake the assessment. More than 20 are listed to ensure that all principal issues are taken into account to enable a comprehensive assessment to be made against the Project Objectives. The assessment will be informed by the detailed monitoring information available from the operation of the Monitoring Strategy for the life of that document, and will thereafter benefit from the substantial quantity of data which TfL generates through its ongoing monitoring of transport conditions across London.

5.1.3 The specific analysis undertaken for each metric is best determined at the time when a variation is being considered, rather than prescribed now. When TfL decides, as a result of its ongoing review of the Scheme (Policy 8), that it may be appropriate to vary the user charges, it will be able to deploy the UCAF with the benefit of its engagement with stakeholders and feedback from STIG members. TfL should therefore have a good understanding of the specific issues that may need particular attention when the UCAF is completed.

5.1.4 The intelligence related to these issues will be important in TfL's consideration of the assessment. Depending on these issues, it may be appropriate for example to undertake further analysis on specific matters related to traffic or air quality, for example. By the same token, some of the metrics in the UCAF might not be very sensitive to changes in the user charges and not require detailed analysis on every occasion. However, it should be reiterated that the continued achievement of the Project

Objectives, as set out in UCAF, will be the primary consideration in varying the user charges (Policy 9), and this assessment will always be undertaken prior to any charge variation.

5.1.5 The scale of data generated through the Monitoring Strategy and TfL's continuing obligations to monitor and manage the road network, coupled with experience of operating the Traffic Impacts Mitigation Strategy (REP2-031) and the focused engagement available through STIG will mean that there will be a high quality of information available to inform the assessment.

6 FURTHER CHANGES TO THE CHARGING POLICIES AND PROCEDURES DOCUMENT

6.1.1 Against this background, TfL agrees that Figure 4-1 could more clearly show the different processes to be followed in initially setting and subsequently revising the user charges. To achieve this, TfL has prepared separate replacement diagrams which show the procedure to be followed when setting the initial user charges and when making subsequent variations. The proposed replacement diagrams for Figure 4-1 are set out below and, subject to further review and comments, will be incorporated into the next iteration of the Charging Policies and Procedures document to be submitted at Deadline 4.

6.1.2 Additionally, and in order to provide further assurances as to the suitability of the initial user charges, TfL has proposed that it be required to carry out a review of the user charges after 12 months of Scheme operation, using monitored data. This proposal is referred to in the Applicant's Update Note submitted at Deadline 3 and will be included in the next iteration of the Charging Polices and Procedures.

Figure 6-1: Process for setting the initial user charge

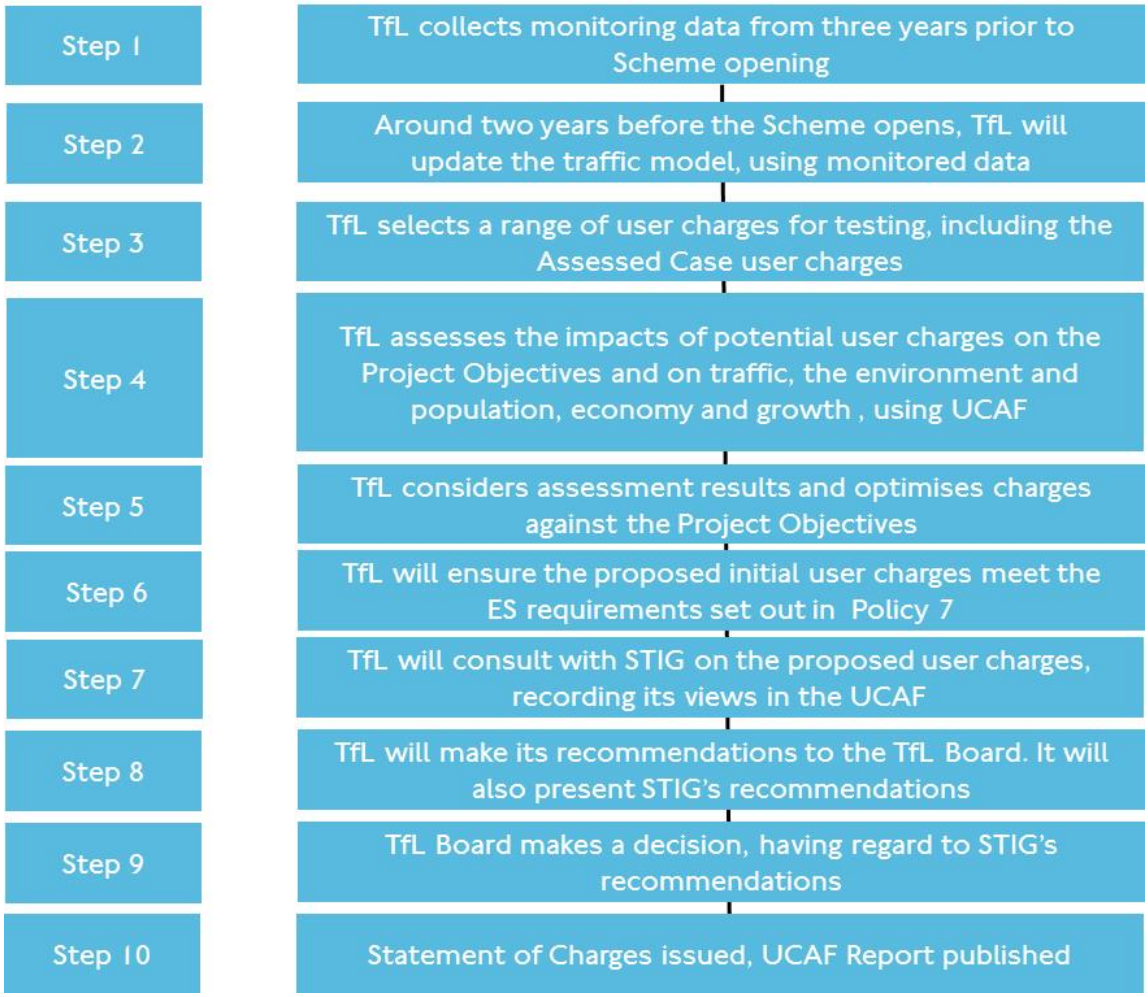
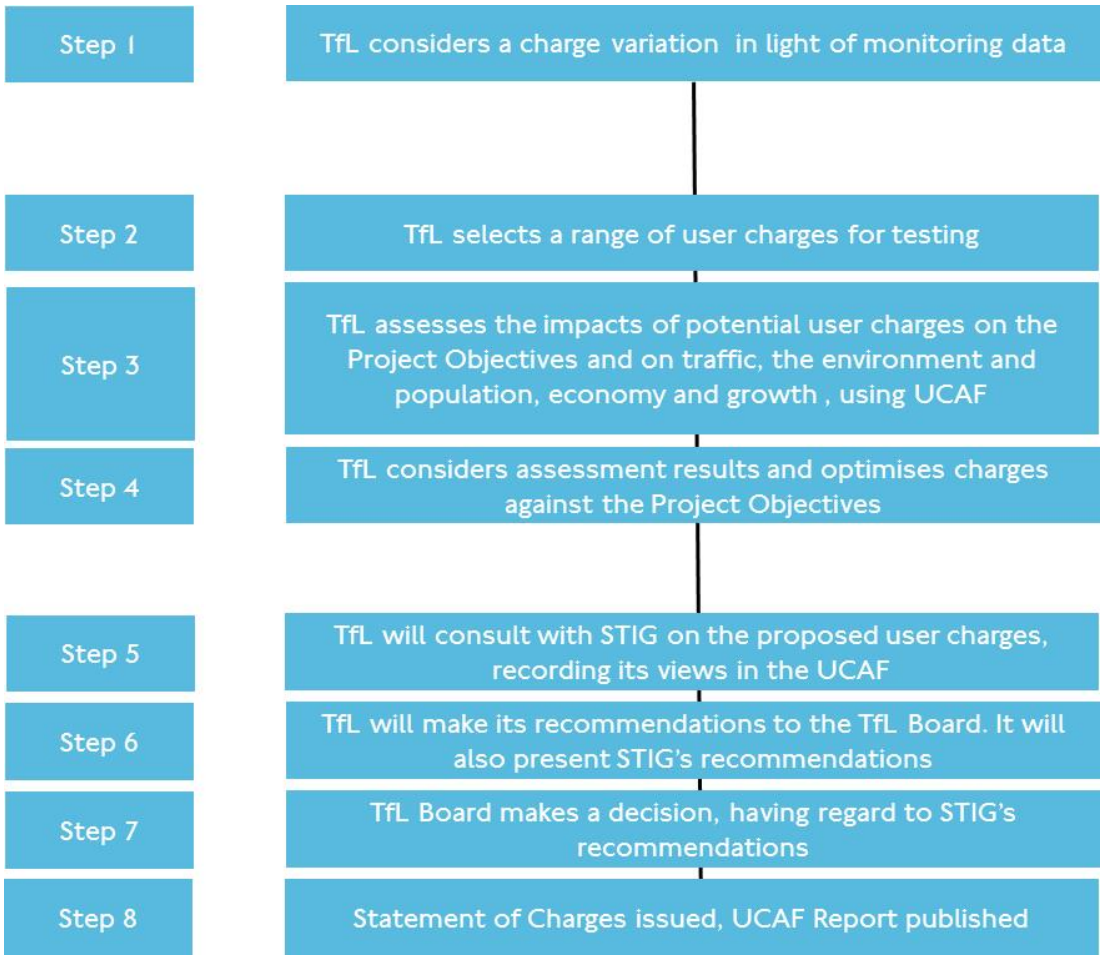


Figure 6-2: Process for varying the user charges



APPENDIX B

SUBMISSIONS ON THE VIRES OF INCLUDING USER CHARGING AT THE BLACKWALL TUNNEL IN THE DCO[2]

LB Newham submissions

Thomas Hill QC, on behalf of the London Borough of Newham ('LB Newham'), made submissions relating to the powers available to the Applicant under the Planning Act 2008 ('PA 2008') to impose a user charge at the Blackwall Tunnel.

Mr Hill submitted that the PA 2008 does not expressly authorise the charging of tolls on 'other' roads and that the National Networks NPS ('NN NPS') has a policy not to toll roads. He stated that section 295 of the Greater London Authority Act 1999 ('GLAA 1999') gave TfL a power to impose road user charges and suggested that that power should have been used in relation to the Blackwall Tunnel. He then drew attention to the fact that, in relation to the Silvertown Tunnel, the project comes within the PA 2008 regime by virtue of a section 35 direction.

Mr Hill referred to section 144(1) of the PA 2008, which states that an order granting development consent may include a provision authorising the charging of 'tolls' in relation to a highway only if a request to that effect has been included in the application for the order, but suggested that this was not available for charging in relation to the Blackwall Tunnel.

Mr Hill then briefly referred to section 120 and to the issue of whether user charging was 'ancillary' or 'necessary or expedient'. He stated that some 77% of the income stream for the project would come from charging the Blackwall Tunnel, which had not previously been charged in its 120 year history.

Overall, it appeared that LB Newham was suggesting that there was no power under the PA 2008 to impose a user charge on the Blackwall Tunnel.

Applicant submissions

Counsel for TfL, Michael Humphries QC, made the following submissions in response to those of LB Newham on the powers under the PA 2008 to impose road user charging at the Blackwall Tunnel.

The legal basis for imposing road user charges as part of a DCO is to be found in section 120(3)-(5) of the 2008 Act:

"(3) An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.

[2] Please note that the Applicant intends to submit a full response at Deadline 4 to the London Borough of Newham's submissions on this point, which are expected to be submitted at Deadline 3, further to **Action Point 1**. As such, these form only an initial, summary response.

(4) The provision that may be made under subsection (3) includes in particular provision for or relating to any of the matters listed in Part 1 of Schedule 5.

(5) An order granting development consent may—

(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;

(b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the decision-maker to be necessary or expedient in consequence of a provision of the order or in connection with the order;

(c) include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order;

(d) include incidental, consequential, supplementary, transitional or transitory provisions and savings.

(6) In subsection (5) "statutory provision" means a provision of an Act or of an instrument made under an Act…" (emphasis added)

Here the 'development' for which development consent is sought is the Silvertown Tunnel as more particularly described in Schedule 1 to the dDCO. Thus by section 120(3), the dDCO may "*make provision relating to, or to matters ancillary to*" that development.

Section 120(4) further provides that the provision that may be made under subsection (3) "*includes*" in particular "*provision for or relating to*" any of the matters listed in Part 1 of Schedule 5. Thus whilst section 120(3) is the primary power to 'make provision' relating to or to matters ancillary to the development, section 120(4) states that that power 'includes' the power to make provision for the matters in Part 1 of Schedule 5. The use of the word 'includes' make clear, however, that this is a non-exhaustive list.

Part 1 of Schedule 5 (Provision Relating to, or to Matters Ancillary, to Development) to the 2008 Act includes: "*18. Charging tolls, fares and other charges*."

On their ordinary meaning, the words "*other charges*" in Part 1 of Schedule 5 is wide enough to include 'road user charges'. Indeed, there is support for this interpretation in section 144(1)(2A) of the 2008 Act which expressly refers to "*an order that includes provisions authorising other charges in respect of the use or keeping of motor vehicles on roads*" (emphasis added).

Mr Humphries submitted that the provision for road user charging the Silvertown Tunnel itself would clearly 'relate to' or be a matter 'ancillary to', the development authorised by the DCO in that it is intended to manage traffic flows, and hence environmental effects, at the new tunnel and to raise funds to pay for the construction and operation of the new tunnel.

The LB Newham legal submissions, however, specifically raised the issue of the introduction of charges at the Blackwall Tunnel.

There are two points to be made. First, where the dDCO can properly contain a provision for road user charging of the Silvertown Tunnel itself (see above), Mr Humphries submitted that it is clear that a provision for road user charging of the Blackwall Tunnel could be a matter 'relating to' or 'ancillary to' the Silvertown Tunnel (i.e. the section 120(3) development), in that it would be related to or ancillary to the 'operation' of that development. The Applicant's evidence has been clear throughout that road user charging of the Blackwall Tunnel is necessary for the proper and effective road user charging of the Silvertown Tunnel itself; indeed, neither LB Newham nor any other borough has challenged that proposition. Thus it is clear that the road user charging of the Blackwall Tunnel is authorised under section 120(3).

Secondly, however, we note also that section 120(5)(c) says that an order granting development consent may:

"*(c) include any provision that appears to the decision-maker to be necessary or expedient for giving full effect to any other provision of the order*" (emphasis added)

'Necessary' means needed to be done, achieved or essential (see Oxford English Dictionary). 'Expedient' means convenient and practical (see, again, the Oxford English Dictionary). Furthermore, the use of the word 'expedient' in section 172 of the Town and Country Planning Act 1990 was held by the High Court in R (Ardagh Glass Ltd) v. Chester CC [2009] Env. L.R. 43 to involve the balancing of the advantages and disadvantages of a course of action.

Mr Humphries submitted that it is clear on the Applicant's evidence that in order to give 'full effect' to the proposed road user charging at the Silvertown Tunnel, it is 'necessary' or 'expedient' to also charge users of the Blackwall Tunnel. Failure to charge users at the Blackwall Tunnel would lead to greater flows through the two tunnels than has been considered in the Assessed Case and, therefore, greater environmental effects. Indeed, charging only at the Silvertown Tunnel would not achieve the scheme's Project Objectives, as set out in the User Charging Policies and Procedure (REP1-124). Again, this has not been challenged by LB Newham or any other borough. Thus it is clear that user charging at the Blackwall Tunnel also falls within the power in section 120(5)(c).

The power to impose a user charge at the Blackwall Tunnel is available, therefore, under both:

a. section 120(3) as being a provision "*relating to, or to matters ancillary to*" the operation of the Silvertown Tunnel, and / or

b. section 120(5)(c) as being a provision "*necessary or expedient for giving full effect to*" charging at the Silvertown Tunnel.

It is also important to point out that LB Newham's reference to Government policy relating to 'tolls' in the NN NPS is based on a misunderstanding. In any event, it is worth stressing that what is proposed by TfL is a user charge and not a toll. This distinction is recognised in section 144 (see above).

Furthermore, paragraphs 3.23-3.25 of the NN NPS provide as follows:

"*3.23 The Government's policy is not to introduce national road pricing to manage demand on the Strategic Road Network, comprising the motorways and key trunk roads for which the Secretary of State is responsible.*

3.24 The Government will consider tolling as a means of funding new road capacity on the Strategic Road Network. New road capacity would include entirely new roads and existing roads where they are transformed by an improvement scheme.

3.25 River and estuarial crossings will normally be funded by tolls or road user charges."

It is, however, important to bear in mind what is meant by the 'Strategic Road Network' in this context. As paragraph 3.23 (and paragraph 1.5 footnote 7) makes clear, this statement of policy relates to roads for which the Secretary of State is responsible as traffic authority. Thus these statements of policy do not relate to the Silvertown Tunnel or the Blackwall Tunnel, where TfL is the traffic authority.

Policy on 'other roads' (i.e. not the Secretary of State's Strategic Road Network) is set out in paragraphs 3.26-3.27 of the NN NPS, as follows:

"*3.26 Proposals for tolling or user charging to fund new capacity and/or manage demand on roads or proposed roads that do not form part of the Government's Strategic Road Network are a matter for local and other traffic authorities.*

3.27 Where tolls or road user charges are proposed as part of a highways project that is the subject of a direction given under section 35 of the Planning Act 2008, the Government will expect the applicant to demonstrate that the proposals are consistent with this NPS, the relevant development plan and relevant statutory transport strategies and plans." (emphasis added)

It is clear that the reference in paragraph 3.26 to "*roads or proposed roads*" (emphasis added) indicates that road user charging under the PA 2008 is not confined to 'proposed roads' and the reference in paragraph 3.27 to a project where a section 35 direction has been made shows that this policy applies to projects such as the Silvertown Tunnel, which includes user charging on the existing Blackwall Tunnel. Furthermore, paragraph 3.26 makes it absolutely clear that proposals for user charging on 'other roads' is a matter for the local traffic authority; in this case, TfL.

Furthermore, whilst it may be possible to impose road user charging on the Blackwall Tunnel under the GLAA 1999, it is clearly important that the user charging regime at that tunnel should be coordinated with the user charging regime at the Silvertown Tunnel and that the two tunnels should be operated to achieve a common set of Project Objectives; that is exactly what the User Charging Policy and Procedure for the tunnels seeks to achieve. There is no merit, therefore, is requiring TfL to impose user charging at the Blackwall Tunnel under a wholly separate legislative framework and LB Newham has suggested no reasons why there should be.

Thus there is nothing in LB Newham's submissions on the lawfulness of imposing a road user charge on the existing Blackwall Tunnel as they are based on a misunderstanding of both the PA 2008 and national policy as set out in the NN NPS.

APPENDIX C

JOINT POSITION STATEMENT IN RESPECT OF MATTERS BETWEEN THE APPLICANT AND THE ENVIRONMENT AGENCY

SILVERTOWN TUNNEL

JOINT POSITION STATEMENT ON DCO DRAFTING ISSUES CONCERNING THE ENVIRONMENT AGENCY

1. INTRODUCTION

1.1 This document sets out the status of discussions between Transport for London ("the Applicant") and the Environment Agency ("the EA" and, together, "the Parties") in respect of issues concerning the drafting of the dDCO for the proposed Silvertown Tunnel. All other issues between the Parties are covered in the Statement of Common Ground between them.

1.2 This document was requested by the Examining Authority at the Development Consent Order Issue Specific Hearing which took place on 19 January 2017.

1.3 This document has been jointly agreed by the Parties.

1.4 A revised version of this document will be submitted at Deadline 4.

2. PROTECTIVE PROVISIONS

2.1 Discussions between the Parties in respect of the protective provisions to be included in Schedule 13 to the dDCO for the benefit of the EA are on-going.

2.2 The form of protective provisions included in the revised version of the dDCO submitted at Deadline 3 remains unchanged from the application draft to avoid confusion.

2.3 However attached at Appendix 1 to this document is the latest working draft of the protective provisions, showing tracked changes compared to the set of the protective provisions currently in Schedule 13 to the dDCO. This is a working document and has not been agreed between the Parties.

2.4 However, one main issue remains outstanding on the protective provisions, namely the responsibility for, and standard of, river wall maintenance during the construction phase, particularly in light of the disapplications the Applicant is seeking in article 3(1) of the dDCO.

2.5 The Parties will continue discussions with a view to reaching agreement as soon as possible during the examination.

3. REQUIREMENTS

3.1 At this moment in time, the EA considers further provisions are required in the dDCO in respect of:

3.1.1 land contamination investigation, remediation and validation; and

3.1.2 Water Framework Directive assessments to be undertaken when the temporary jetty is removed.

3.2 The EA's initial view is that these protections should be included in the dDCO as new requirements in Schedule 2. However, the Applicant remains of the view that these protections would be better wrapped up in the approval mechanism contained in the protective provisions.

3.3 Discussions remain on-going between the Parties on these two issues and, as such, the EA does not yet consider it appropriate to propose requirement wording on the two

issues cited above. Should agreement not be reached by Deadline 4, it will propose wording at that point.

3.4 It should be noted that the EA and Applicant have agreed that:

3.4.1 the EA does not need to approve the site waste management plan to be prepared under paragraph 5(2) of Schedule 2 to the dDCO; and

3.4.2 the EA does not need to approve the flood warning and evacuation plan to be prepared under paragraph 5(3) of Schedule 2 to the dDCO,

and the dDCO has been amended accordingly at Deadline 3.

APPENDIX 1

WORKING DRAFT OF PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

51. The following provisions apply for the protection of the Environment Agency unless otherwise agreed in writing between TfL and the Agency.

Definitions

52. In this Part of this Schedule—

"the Agency" means the Environment Agency;

"authorised work" means any work forming part of the authorised development;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are to be construed accordingly;

"drainage work" means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

"environmental duties" means the Agency's duties in the Environment Act 1959(**a**), the Natural Environment and Rural Communities Act 2006(**b**)and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(**c**);

"fishery" means any waters containing fish and fish in such waters and the spawn, habitat or food of such fish;

"flood defence" means any bank, wall, embankment, bridge abutments, lock gates or other structure or any appliance (including any supporting anchorage system) that fulfils a function of preventing, or reducing the risk of, flooding to land or property;

"plans" includes sections, calculations, elevations, drawings, specifications ~~and~~ , method statements, designs and any other documents submitted to the Agency by TfL under paragraph 53(1);

"relevant ~~section of~~ sections of the river wall" means ~~[TO BE DEFINED];~~the existing flood defences—

(i) within the Order limits; and

(ii) within 16 metres of the Order limits;

"specified work" means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or flood defence or is otherwise likely to—

(b) ~~(a)~~affect any drainage work or flood defence or the volumetric rate of flow of water in or flowing to or from any drainage work;

(c) ~~(b)~~affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;

(d) ~~(c)~~cause obstruction to the free passage of fish or damage to any fishery; or

(e) ~~(d)~~affect the conservation, distribution or use of water resources~~;~~,

and includes any protective works identified as being required in any intrusive survey submitted under paragraph 53(1)(b) but does not include any piling works;

"statutory defence level" means [TO BE DEFINED];

"TE2100 levels" means 6.2 metres above ordnance datum; and

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

Approvals

53.—(1) Before ~~commencement~~ commencing construction of any specified work, TfL must submit to the Agency—

(a) plans of the specified work;

(b) the results of an intrusive survey of the relevant sections of the river wall ~~giving~~ to include details ~~of the structural condition and bearing capacity of the relevant sections of river wall;~~of—

(i) their structural condition;

(ii) their estimated remaining life expectancy; and

(iii) the predicted impacts of the specified work on them, the need for any protective works and plans of those works;

(c) where the intrusive survey prepared under paragraph (b) concludes that the specified work could lead to a significant impact on any relevant sections of the river wall, and the Agency is in agreement with that conclusion, a monitoring and mitigation plan in relation to those sections to include—

(i) the extent, nature and duration of monitoring to be undertaken by TfL;

(ii) baseline monitoring results;

(iii) threshold levels for any mitigation required to be implemented by TfL in relation to the relevant sections of the river wall; and

(iv) mitigation and remediation measures to be implemented should the thresholds as mentioned in sub-paragraph (iii) be triggered, including—

(aa) construction methodologies;

(bb) the hierarchy of implementation of the measures;

(cc) demonstration that the measures would not significantly impact the ecological or water environment; and

(dd) demonstration that the measures would not prevent the relevant sections of river wall being raised to TE2100 levels in the future;

(d) ~~(c)~~information to demonstrate that ~~that~~ the ~~authorised works~~ specified work will not prevent the relevant sections of river wall being raised to TE2100 levels in the future; ~~and~~

(e) information to demonstrate that the Agency will be afforded sufficient access to drainage works or flood defences within the Order limits to discharge its statutory functions;

(f) where appropriate, a scour and accretion monitoring and mitigation plan; and

(g) ~~(d)~~such further particulars available to ~~it~~ TfL as the Agency may within ~~28~~ 20 business days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency or determined under paragraph ~~58~~60 in respect of constructing any such specified work or undertaking any monitoring or implementing any mitigation or remediation measures (if required under the monitoring and mitigation plans submitted under paragraphs (1)(c) or (1)(f)).

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 8 weeks of the submission of the plans or within 4 weeks of the receipt of further particulars if such particulars have been required by the Agency for approval;

(c) in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(d) may be given subject to such reasonable requirements or conditions as the Agency may make for the protection of any drainage work, flood defence, fishery or water resources, for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) Without limitation on the scope of sub-paragraph (3)(d), but subject always to the provisions of that paragraph as to reasonableness, the requirements or conditions which the Agency may make under that paragraph include conditions requiring TfL at its own expense to construct such protective works, whether temporary or permanent and including any new works as well as alterations to existing works, before or during the construction of the specified works as are reasonably necessary to—

(a) safeguard any drainage work or flood defence against damage;

(b) secure that the efficiency or effectiveness of any flood defence is not impaired; or

(c) ensure that the risk of flooding is not otherwise increased,

by reason of any specified work.

Construction and inspection

54.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 53 must be constructed—

(a) without unnecessary or unreasonable delay;

(b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; ~~and~~

(c) in a manner so as not to damage or obstruct any drainage work or flood defence (subject to the contents of the approved plans);

(d) ~~(c)~~to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) TfL must give to the Agency not less than 10 business days' notice in writing of its intention to commence construction of any specified work and notice in writing of its ~~having been brought into use~~ completion not later than ~~7~~ 5 business days after the date on which it is ~~been brought into use~~completed.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require TfL, at TfL's own expense, to comply with the requirements of this Part of this Schedule or (if TfL so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon TfL, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from TfL.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

Maintenance of flood defences

55.—(1) TfL must maintain any flood defence in its control during the construction of the authorised development to the same standard that the flood defence was in prior to TfL taking control of it (whether or not the flood defence was at the statutory defence level).

(2) If any flood defence is not maintained as required by sub-paragraph (1) to the reasonable satisfaction of the Agency, the Agency may by notice in writing require TfL to repair and restore the flood defence, or any part of it.

(3) If within a reasonable period, being not less than 20 business days beginning with the date on which a notice is served under sub-paragraph (2), TfL has failed to begin taking steps to comply with the reasonable requirements of the notice, the Agency may do what is necessary to comply with the notice and may recover any expenditure reasonably incurred by it for that purpose from TfL.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of emergency, exercise the power of sub-paragraph (3) until the dispute has been finally determined.

Emergency powers

56.~~55.~~ ~~55.~~ (1) Subject to sub-paragraph (2), if by reason of the construction of any specified work or of the failure of any such work the efficiency or effectiveness of any ~~drainage work for~~ flood defence ~~purposes~~ or the conservation value of the aquatic habitat is impaired, or ~~that~~ a drainage work is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by TfL to the reasonable satisfaction of the Agency and if TfL fails to do so, the Agency may make good the same and recover from TfL the expense reasonably incurred by it in so doing.

(2) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency must not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (1) until the dispute has been finally determined in accordance with paragraph ~~58~~60.

Free passage of fish

57.~~56.~~ ~~56.~~ (1) TfL must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

(a) the construction of any specified work; or

(b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on TfL requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, TfL fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from TfL the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from TfL the reasonable cost of so doing provided that notice specifying those steps is served on TfL as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnities and Costs

58.~~57.~~ ~~57.~~ (1) TfL must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

(2) Without affecting the other provisions of this Part of this Schedule, TfL must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any ~~drainage work so as to impair its efficiency for the purposes of~~ flood defence (but subject to paragraph 55);

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any water in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of TfL, its contractors, agents or employees whilst engaged upon the work.

(3) The Agency must give to TfL reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of TfL.

(4) The fact that any work or thing has been executed or done by TfL in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve TfL from any liability under the provisions of this Part of this Schedule.

Notices

59. All notices under this Part of this Schedule to be served on the Agency by TfL must be sent to the head office of the Agency applying at the time, unless otherwise agreed in writing.

Dispute resolution

60.~~58.~~ Any difference or dispute arising between TfL and the Agency under this Part of this Schedule is to, unless otherwise agreed in writing between TfL and the Agency, be determined by arbitration in accordance with article 67 (arbitration) of the Order.