SILVERTOWN TUNNEL

Volume 8

8.105 Applicant's Update Note

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MAYOR OF LONDON

TRANSPORT FOR LONDON

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Silvertown Tunnel

Applicant's Update Note

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Rev.	Date	Approved By	Signature	Description
0	20/03/2017	David Rowe (TfL Lead Sponsor)	[redacted]	For Deadline 5 submission

Contents

1. Introduction

1.1.1 This note provides an update to the Examining Authority (ExA) and Interested Parties (IPs) on the current status of a number of issues which have progressed through discussions with stakeholders since Deadline 4.

1.1.2 The Applicant intends to reflect the updates set out below and in the appendices to this note in revised documents at Deadline 6. This will enable the Applicant to comprehensively update these documents, incorporating any further changes agreed with IPs, including at the Issue Specific Hearings on 28 and 29 March.

2. Monitoring and Mitigation Strategy (M&MS) (REP4-046)

2.1.1 The Applicant has had further discussions with the Host Boroughs about the monitoring and mitigation proposals. These discussions have included the updates to Requirement 7 of the dDCO, the links between the M&MS and the Charging Policy and Procedures document (REP4-039) and the mitigation triggers.

2.1.2 The table at Appendix A sets out a summary of the Host Boroughs' comments on the M&MS submitted at Deadline 4 (REP4-046) and the Applicant's response. The Applicant proposes to submit an updated M&MS which incorporates the amendments set out in this table at Deadline 6.

2.1.3 However, whilst the Applicant understands that the M&MS is substantially agreed, the Host Boroughs have indicated there are still some outstanding issues and will be submitting further comments at Deadline 5. The views of the neighbouring boroughs have also been sought on the Deadline 4 proposals but no comments have been received to date.

3. Code of Construction Practice (CoCP) (REP4-035)

River Transport (Section 3.2, p.38)

3.1.1 The Applicant has considered further comments from the Host Boroughs and the PLA regarding river transport.

3.1.2 The Applicant is updating the process for monitoring and approving derogations for river transport. The Applicant will discuss these amendments with interested parties to seek agreement. These amendments will be included in an updated CoCP submitted at Deadline 6.

Contamination and remediation (Section 9.2, p.57)

3.1.3 The Applicant has had further discussions with the EA relating to approval processes for remediation works. The Applicant is updating the contamination protocol section of Chapter 9 to reflect these discussions. The revised wording will be in an updated version of the CoCP submitted at Deadline 6.

Spillage of soil (Section 15.1.3, p.82)

3.1.4 The Applicant has had further discussions with the PLA regarding what controls will be in place to minimise the risk of spillage of materials while being loaded onto, or unloaded from, barges or other vessels.

3.1.5 The Applicant considers that this risk will be addressed through the Marine Pollution Contingency Plan which will be submitted to the Marine Management Organisation (MMO) for approval under the Deemed Marine Licence, in consultation with the Environment Agency and Port of London Authority.

3.1.6 However, notwithstanding this risk being addressed through the Marine Pollution Contingency Plan, the Applicant has updated the CoCP to explicitly state that the Contractor will employ measures to minimise the risk of spillage of materials while being loaded onto, or unloaded from, barges or other vessels.

Coordination and communication stakeholder meetings (Section 4.1.4, p.43)

3.1.7 The Applicant has had further discussions with ExCel London Ltd regarding the impacts of construction traffic. As a result, the Applicant has offered

ExCel London Ltd the opportunity to attend regular road traffic meetings and this will be reflected in the updated CoCP submitted at Deadline 6.

Construction Workers Travel Plan (Section 3.1.4, p.43)

3.1.8 The Applicant has had further discussions with PLA regarding the use of the River Thames to transport construction workers. As a result, the Applicant has made explicit reference to the river when encouraging sustainable modes of transport. This will be reflected in the updated CoCP submitted at Deadline 6.

Outline Ecological Management Plan (Appendix H) (Habitats of Value, Section 4.1)

3.1.9 Following discussions with Natural England after Deadline 4, the Applicant has agreed to amend the Outline Ecological Management Plan to include reference to brownfield habitats. The relevant section will be replaced with the text below and included in an updated version of the CoCP submitted at Deadline 6.

All habitats, including trees, will be retained and protected where possible. Areas of temporary land occupation will be returned to their previous state, condition and owner following completion of construction.

The habitats listed below were identified in the Phase 1 Habitat surveys (October 2015) within the land to be temporarily occupied during construction of the Scheme.

- *Brownfield (open mosaic habitat) Habitat;*
- *Plantation Woodland and Scattered Trees;*
- *Dense Scrub;*
- *Grassland; and*
- *Standing Water;*

Site clearance will take account of seasonal constraints and as part of the EMP, the contractor will provide details of site clearance and restoration.

Following the completion of the works, all land temporarily occupied will be examined by a Suitably Qualified Ecologist (SQE) to ensure habitats have been returned to their previous state and condition.

4. Hazardous Substances

4.1.1 The Applicant provides the following update on the hazardous substance consents at East Greenwich Gasholder Site (EGGS) and at Brenntag.

4.1.2 East Greenwich Gasholder Site (EGGS)The Applicant's response to SWQ HSS2.1 (REP4-059) included evidence to demonstrate that the gasholder has been permanently decommissioned. In view of this evidence and the ongoing redevelopment of the Greenwich peninsula, which includes proposals for the redevelopment of the EGGS site, there is no reasonable prospect of the gasholder being re-commissioned.

4.1.3 As stated in REP4-059 the Applicant's preferred outcome is for the hazardous substances consent (HSC) for the EGGS to be revoked before the DCO application is determined such that the HSE's advice against the scheme can be removed. The Applicant continues to liaise with the Royal Borough of Greenwich on this matter, but it is acknowledged that revocation may not be possible within this timeframe.

4.1.4 Nevertheless, on the basis of the evidence submitted by the Applicant on the operational status of the gasholder, the Applicant considers that the Secretary of State would be justified in overriding the HSE's advice against the scheme in this instance. By its own admission, the HSE's advice is based purely on the consented status of the site and takes no account of its actual operational status or the wider circumstances that exist (see para 3.7 of the HSE's written representation (REP1-080)). The basis for the HSE's advice is that, whilst the HSC remains in place, there remains a possibility that gas could be re-introduced into the gasholder.

4.1.5 The Applicant fully understands the basis on which the HSE's advice is provided in accordance with its own *Land Use Planning Methodology*. It is accepted by both parties that, whilst the decision maker (the Secretary of State in this case) should give great weight to the HSE's advice, he is not bound to follow it.

4.1.6 This principle is reflected in the National Planning Practice Guidance which states that "any advice from the Health and Safety Executive that planning permission should be refused for development for, at or near to a hazardous installation or pipeline should not be overridden without the most careful consideration" (para 071 reference ID: 39-071-20140306).

4.1.7 In this instance, there are relevant circumstances which should be taken into consideration and which would justify the HSE's advice being overridden.

- The gasholder has been permanently decommissioned.
- The gasholder site is within one of the largest redevelopment sites in Europe, and the HSC for the site is clearly in conflict with nearby uses and the ongoing redevelopment of the peninsula.
- A planning brief is being prepared by the local planning authority for the site to be redeveloped for residential and mixed uses.

4.1.8 In view of these circumstances, there is no reasonable prospect of the gas holder being re-commissioned so as to present the risks to the public presented in the HSE's assessment. The Secretary of State has already directed that the Silvertown Tunnel is a scheme of national significance and the land required for the scheme in this location has been safeguarded for a number of years. Whilst the Secretary of State must give appropriate weight to the HSE's advice, for the reasons set out above the Applicant considers he would be justified in this instance in coming to a decision which does not follow that advice.

4.1.9 The Applicant therefore does not consider a *Grampian*-style requirement in the form proposed by the HSE is required. However, if the ExA and the Secretary of State are minded to recommend and include such a requirement in the DCO, the Applicant considers it is important for the drafting to be in the form set out below. This drafting includes some amendments from the Applicant's preferred drafting which was submitted at Deadline 4 with the Applicant's response to SWQ HSS2.1 (REP4-059).

4.1.10 The 'first limb' has been amended so that it also covers a scenario in which the HSC for the site is revoked or modified such that the HSE is able to remove its advice against the scheme. The original draft only referred to the consent being revoked, but it is important that it should also refer to modifications which would reduce the risks so as make the Scheme acceptable to the HSE. As previously drafted, a modification of the HSC would have prevented the tunnel from opening. This revision reflects the terms of the requirement proposed in the HSE's written representation (REP1-080) which states that:

> *"The Grampian-style requirement would need to prevent the use of the new southern approach roads ….unless or until the hazardous substances consent for the two major hazard sites <u>are revoked or modified</u> such that HSE no longer Advises Against the proposed new transport link" (para 6.14 emphasis added).*

4.1.11 For the reasons set out in the Applicant's response to SWQ HSS2.1 the 'second limb' of the requirement is essential as it provides a mechanism by which the Secretary of State would be able to take into consideration the extent of the actual risks (if any) to the public that would be caused if the authorised development were to open to the public in the event that (for whatever reason) the HSC for the EGGS site has not been revoked at the time the tunnel is ready to open. Some amendments to the drafting of the second limb have been made for clarification.

Applicant's preferred drafting for Grampian-style requirement:

East Greenwich Gasholder Site

(1) The Silvertown Tunnel must not open for public use and the tunnel services buildings at the South Portal comprised in Work No. 12 must not be occupied after their practical completion until:

(a) the hazardous substances consent for the East Greenwich Gasholder Station site has been revoked or modified in accordance with the Planning (Hazardous Substances) Act 1990, and in the case of a modification details of the relevant modifications have been submitted to the Health and Safety Executive, and the Health and Safety Executive has advised the Secretary of State in writing that it does not advise against the authorised development; or

(b) TfL has submitted to the Secretary of State an assessment of whether opening the authorised development for public use and occupying the tunnel services building would increase the number of people at risk from existing hazards at the East Greenwich Gasholder Station site with the potential to impact on local populations including fire or explosion following loss of containment of natural gas, and, on the basis of that risk assessment and following consultation with the Health and Safety Executive and the Hazardous Substances Authority, the Secretary of State has confirmed in writing that the Silvertown Tunnel may open to public use and that the tunnel services buildings at the South Portal comprised in Work No 12 may be occupied.

Brenntag

4.1.12 As stated in REP4-059 the Applicant's preferred outcome would be for the 2012 Brenntag application (ref 12/1247/H) to be determined before the end

of the examination such that the HSE's advice against the scheme could be removed.

4.1.13 The Applicant continues to liaise with the Royal Borough of Greenwich on this matter. The Applicant's current understanding is that Brenntag submitted an updated flood risk assessment to RB Greenwich on 14 February and that Brenntag hopes the council will be in a position to determine the application before the end of March 2017 (see Brenntag's submission at Deadline 4 - REP4-064)).

4.1.14 The Applicant will liaise with RB Greenwich, Brenntag and the HSE and will keep the ExA informed as to the determination of the 2012 application. In the event that the application is not determined by the end of the examination, further updates can be provided as necessary to PINS and the Department for Transport to ensure the Secretary of State is kept informed as to the outcome of the 2012 application before determining the DCO application.

4.1.15 The Applicant fully understands the basis on which the HSE has advised against the Scheme, but the HSE's advice does not reflect the reality of where the hazardous substances are actually stored on the Brenntag site. Reflecting the terms of the current deemed consent for the site, the HSE has assumed that the hazardous substances could be stored anywhere on the site, when in fact the substances are actually stored in the more confined areas shown on the location plan submitted with the 2012 application.

4.1.16 Furthermore, the HSE's risk assessment has taken no account of the presence of the existing A102 close to the Brenntag site and whether the opening of the Silvertown Tunnel would actually increase the number of people using that road who are exposed to risk. The HSE's 'Land Use Planning Methodology' disregards the presence of existing development and has effectively treated the Scheme as a new dual carriageway adjacent to a hazardous site. The HSE states that it advises against the Scheme "in view of the density of traffic that is likely to be present at this proposed transport link within the consultation Inner Zone" (REP1-080, para 5.2). However, the HSE does not appear to have compared the density of the traffic currently using the A102 with the traffic flows that are predicted with the Scheme in place.

4.1.17 Pending the determination of the 2012 Brenntag application, the Applicant proposes to submit at Deadline 6 further information to the examination which compares current and future traffic conditions on the A102 without the Scheme with the conditions that are predicted with the Scheme in place. This information will allow the ExA and the Secretary of State to come to an

informed view as to whether or not the Scheme will actually increase the number of people on the realigned A102 at risk from the hazardous substances stored at the Brenntag site.

4.1.18 Notwithstanding the above, if the ExA and the Secretary of State are minded to recommend and include a Grampian-style requirement in the DCO in relation to the Brenntag site, the Applicant considers it is important for the drafting to be in the form set out below. This drafting includes some amendments from the Applicant's preferred drafting which was submitted at Deadline 4 with the Applicant's response to SWQ HSS2.1 (REP4-059).

4.1.19 As explained above in relation to the EGGS requirement, the 'first limb' has been amended so that it covers a wider range of scenarios in which the HSC for the site is revoked or modified such that the HSE is able to remove its advice against the scheme. It is not envisaged that the current consent for the Brenntag site will be revoked, but the drafting would be flawed if it prevented the tunnel from opening in such circumstances. The second limb has also been amended to provide clarification.

Applicant's preferred drafting for Grampian-style requirement:

Brenntag Chemicals Site

(2) The Silvertown Tunnel must not be opened for use by the public and the tunnel services buildings at the South Portal comprised in Work No. 12 must not be occupied after their practical completion until:

(a) the hazardous substances consent for the Brenntag Inorganic Chemicals Ltd site has been revoked or modified in accordance with the Planning (Hazardous Substances) Act 1990, and in the case of a modification details of the relevant modifications have been submitted to the Health and Safety Executive, and the Health and Safety Executive has advised the Secretary of State in writing that it does not advise against the authorised development; or

(b) TfL has submitted to the Secretary of State an assessment of whether opening the authorised development for public use and occupying the tunnel services building would increase the number of people at risk from existing hazards at the Brenntag Inorganic Chemicals Ltd site with the potential to impact on local populations, including loss of containment of hazardous substances and, on the basis of that risk assessment and following consultation with the Health and Safety Executive and the Hazardous

Substances Authority, the Secretary of State has confirmed in writing that the Silvertown Tunnel may open to public use and that the tunnel services buildings at the South Portal comprised in Work No 12 may be occupied.

5. Update on discussions with Interested Parties

Introduction

5.1.1 A number of the Second Written Questions sought confirmation whether specific issues had yet been agreed between the Applicant and interested parties. The following is an update on discussions with SGN and Thames Water about protective provisions, the Port of London Authority and the Environment Agency. In addition to this update, the Applicant has agreed an updated Statement of Common Ground with the Marine Management Organisation (MMO) and Natural England (NE).

SGN and Thames Water – Protective Provisions

5.1.2 As reported at Deadline 4, the Applicant is in the process of concluding discussions with both these parties to reach agreement on the protection afforded to their operational equipment during the construction of the Silvertown Tunnel scheme. Whilst formal agreement has not yet been reached, agreement is anticipated before the end of the examination.

Port of London Authority

5.1.3 As reported by both the Applicant and the Port of London Authority at Deadline 4, positive progress has been made between the parties around the drafting of the DCO. Attached at appendix B is a paper of amendments agreed between the Applicant and the PLA. The Applicant considers agreement has now been reached on the majority of outstanding drafting points. I Minor amendments are proposed to articles 2, 4, , 29 and 30, together with Requirement 5 and the protective provisions for the benefit of the Port of London Authority. These will be reflected in the revised draft of the dDCO submitted at Deadline 6. Discussions will continue with the PLA on the outstanding points (including minor amendments to article 17 in respect of timeframes and proposed additions to article 69), and the Applicant will update the ExA verbally at the DCO ISH on 29 March.

5.1.4 The parties are not agreed on the form of article 47 and it is anticipated that agreement will not be able to be reached on this point. The parties have accepted this and that the Examining Authority and the Secretary of State will need to consider and determine the issue.

Environment Agency

5.1.5 As the Examining Authority will be aware, the Applicant and the Environment Agency ("the EA") have been engaged in discussions on the form of the protective provisions for the benefit of the EA for some time.

5.1.6 The Applicant included what it considered to be a 'standard' set of protective provisions in Schedule 13 to the application version of the dDCO (APP-013). These were provided to the EA, but comments were not received on the Applicant's proposals until January 2017. This was due to the EA undertaking an internal review of the form of protective provisions they would be seeking in works Orders going forward. Protective provisions in works orders for the EA have been relatively standard for many years, and go back to the form of provisions put in place soon after the creation of the National Rivers Authority in 1989, being updated to reflect the EA's broader functions in 1995.

5.1.7 The comments received by the Applicant amounted to the EA providing their preferred set of protective provisions, based almost exclusively on the protective provisions for the benefit of the EA in the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014. The Applicant submitted to the EA that these were inappropriate, given the differing nature and scale of the Thames Tideway Tunnel from the proposals which are the subject of this application, and that the more 'standard' form of protective provisions was appropriate.

5.1.8 This notwithstanding, in an effort to expedite matters (as it was clear from the EA that discussions would not advance otherwise), the Applicant agreed to take forward this form of the protective provisions. Good progress has been made in discussions to date, and it is considered by the Applicant that the protective provisions are now in an agreed form (subject to the precise nature of the plans to be submitted to the EA in respect of the structural integrity of the river walls – the principles are, however, agreed) except for one fundamental issue – the maintenance of the river walls.

5.1.9 The EA's position on this point is that the Applicant should be responsible for maintaining a 'fit for purpose' flood defence whilst it has control of the river walls, even if that means improving the walls from, in some cases, a poor baseline condition.

5.1.10 The Applicant's view is that any existing deficiencies in the river walls are the result of the EA failing to use its statutory powers to compel the relevant

riparian owners to fulfil their statutory and common law duty to maintain the river walls to the requisite standard.

5.1.11 The Applicant has, for several years, been corresponding with the EA to ask it to use these powers to ensure the river walls are up to an appropriate standard before the Applicant takes possession of them for the purpose of carrying out its works. The Applicant made clear at an early stage that it should not be held responsible for bringing the river walls 'up to standard' where the EA had failed to use its powers to achieve this previously.

5.1.12 The EA has communicated to the Applicant that it is concerned that the disapplication of the relevant statutory powers in article 3 of the dDCO (in respect of, in particular, the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879) would mean that the EA would not be able to compel any person to maintain a 'fit for purpose' flood defence. However, the Applicant's approach is that these disapplications are simply to remove any possibility of there being any conflicting works taking place during the construction of the Scheme, as a result of the EA opting to 'enforce' against any riparian owners. It is the purpose of the protective provisions to 'replace' this maintenance regime, but to a reasonable and fair extent, given the context of the EA not using its powers previously (where it could have done so) to compel riparian owners to bring the walls 'up to standard'.

5.1.13 The Applicant considers, as a matter of equity and reasonableness, that it should only be liable to maintain the river walls to their existing standard and hand them back to the riparian owners in the state in which the Applicant took them at the beginning of construction. In essence therefore, the existing standard of flood defence capability provided by the river walls would be maintained by the Applicant and not worsened as a result of the works. The Applicant is willing to commit to undertake the necessary protective works to achieve this (which the EA would approve under the protective provisions). This would be secured through the protective provisions and is therefore guaranteed. This approach would mirror that followed in the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004.

5.1.14 Whilst the exact nature of any works required to bring the parts of the river wall within the Order limits up to a 'fit for purpose' standard is not clear at this stage, if the Applicant was obliged to do this (e.g. by replacing any part of the river walls) it could come at a significant financial and programme cost. In particular, in the context of the Applicant's status as a public body, it is not considered appropriate that it should be 'on the hook' to expend public money in this way, when the relevant private landowners are those that

properly should, if the EA chose to use the powers available to it, carry out such works – that is the intention behind the relevant statutory provisions.

5.1.15 The Applicant has attached at appendix C to this note its preferred overall form of the protective provisions that it wishes to see included in Schedule 13 to the DCO for the benefit of the EA (subject to any drafting changes which may be agreed with the EA or which the Applicant may consider necessary which it will submit at Deadline 6 - the effect of the provisions however, will remain the same). Whilst the parties are in agreement on the majority of the provisions, the particular provision that the parties disagree on is the paragraph entitled 'Maintenance of flood defences'. The Applicant understands the EA to be submitting its preferred form of this paragraph at Deadline 5 which will be in a similar, if not identical, form to that shown as deleted in the form of the protective provisions attached to the Applicant's latest joint position statement with the EA (Appendix B of REP4-052), which was:

"*Maintenance of flood defences*

X.—(1) Any work constructed under this Order for the purpose of providing a flood defence or replacing an existing flood defence shall be maintained to the statutory defence level and to the reasonable satisfaction of the Agency by the person who has control of the work.

(2) If any such work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the person to repair and restore the work, or any part of it, or (if the person having control of the work so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) If, within a reasonable period being not less than 20 business days beginning with the date on which a notice in respect of any work is served under paragraph 8(2) on the person who has control of that work, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in doing so from that person.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 8(2), the Agency shall

not, except in a case of immediate foreseeable need, exercise the powers of paragraph 8(3) until the dispute has been finally determined."

5.1.16 The EA has made clear that it intends to rely on this provision to achieve its aim of ensuring that the Applicant will maintain the river walls to a 'fit for purpose' standard. The Applicant is not necessarily convinced that the drafting achieves the EA's intention, but in any case, and to avoid a disagreement over interpretation in future, the Applicant wishes to clarify the drafting to explicitly reflect its position as to river wall maintenance (i.e. to 'maintain' not 'improve') – this reflects the form of the maintenance provision found in the Docklands Light Railway (Woolwich Arsenal Extension) Order 2004.

5.1.17 The Applicant will continue to discuss the protective provisions with the EA in order to try and agree as many of the provisions as possible. However, the parties consider it likely that agreement will not be reached on the issue of maintenance during the examination, so it is accepted that the Secretary of State will need to determine the appropriate form of maintenance provision. Subject to the Examining Authority's preferences, the Applicant will provide at Deadline 6 a detailed rationale for its proposed drafting of the maintenance provision, but it is hoped that the above provides an adequate explanation in the meantime, ahead of the relevant hearings.

Marine Management Organisation (MMO)

5.1.18 The applicant has been progressing discussions with the Marine Management Organisation and has submitted a Statement of Common Ground at Deadline 5 to update the ExA. The majority of issues are now agreed. However, two issues remain outstanding.

5.1.19 The first relates to the type of dredger recommended. TfL agreed to amend the Deemed Marine Licence at Deadline 1 (REP1-096) to ensure a construction method statement is provided at detailed design for approval of the MMO. The MMO are awaiting a response from Cefas before formally agreeing this issue.

5.1.20 The second concerns coastal processes, particularly the assumptions within the suspended sediment modelling and the need for monitoring during the dredging works. Following discussions with the MMO and Cefas in January 2017, TfL have proposed to re-run the suspended sediment modelling and sent the MMO a revised methodology on the 9 February 2017 for agreement ahead of TfL undertaking the re-modelling. TfL have since received conflicting comments regarding the modelling assumptions and the MMO are

currently clarifying these with Cefas. A telecon is proposed for 23 March with the aim of agreeing a way forward to resolve this issue.

Natural England (NE)

5.1.21 A completed and signed SoCG with Natural England has been submitted at Deadline 5. It comprises a list of matters agreed and one issue regarding the weighting of the marine ecology rMCZ which has not been agreed.

6. Design Principles (REP4-037)

6.1.1 The Port of London Authority (PLA) has requested that Requirement 3 be amended to include the following:

Whenever consultation under paragraph (2) relates to an issue that affects the river Thames, the Silvertown Tunnel Design Review Panel or, as the case may be, the Silvertown Tunnel Stakeholder Design Consultation Group must include a representative who is a member of the PLA.

6.1.2 Whilst it is unlikely that the matters relevant to Requirement 3 would relate to an issue that affects the river Thames, the Applicant will amend Appendix B of the Design Principles to include the PLA in the Silvertown Tunnel Stakeholder Design Consultation Group. The Applicant does not consider it is necessary or appropriate to amend Requirement 3 directly to reflect this amendment.

7. Development Consent Order (REP4-025)

7.1.1 The table below provides a commentary on changes which the Applicant proposes to make to the next iteration of the dDCO to be submitted at Deadline 6 (20 March). These changes have predominantly arisen from further discussions with interested parties, but also reflect amendments identified by the Applicant as being necessary.

7.1.2 The Applicant is continuing discussions with interested parties and expects to make further changes (in addition to those listed below) in due course. In particular, further changes may be required as a result of (a) the upcoming hearings at the end of March, which may also highlight potential changes needed to the dDCO; and (b) the publication of the ExA's dDCO at DL5. Any such additions will be reflected in the next iteration of the dDCO submitted at Deadline 6.

Table of proposed changes to the dDCO

Provision in revised draft DCO	Brief description and explanation of proposed amendment
Article 2	Following a comment made by the London Borough of Bexley at Deadline 4, the Applicant recognises that more clarity may be needed in the definition of "the Blackwall Tunnel" to reflect the fact that it is formed of two distinct tunnel bores. The Applicant will therefore revise the relevant definition. In addition, minor amendments will be made to "business day", following suggestions from the Port of London Authority ("PLA").
Article 4	The PLA has suggested some further clarification amendments to this article, which the Applicant agrees with.
Article 17	Following further discussions with the PLA, minor amendments will be made to this article to ensure the time periods set out fit together.
Articles 25, 27 and others	As reported at Deadline 4, the Applicant has been reflecting on the recent changes to the compulsory

Provision in revised draft DCO	Brief description and explanation of proposed amendment
	acquisition regime brought into force under the Housing and Planning Act 2016. As a result, the Applicant proposes to make amendments to articles 25 and 27, and consequential amendments to other provisions, to make the dDCO consistent with these changes. The amendments will broadly follow the formulation (where relevant) in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017.
Articles 29 and 30	The Applicant and the PLA have agreed amendments to articles 29 and 30. These, in summary, correct erroneous cross-references, clarify what needs to be included in any notices given by the Applicant and amend the interaction between the compensation provisions in the articles and the PLA's protective provisions.
Article 43	Following comments made by various Boroughs at Deadline 4, the Applicant has further reflected on the definition of 'emergency' in paragraph (3) and proposes to amend this to the following: "*(3) In this article "emergency" means any circumstance existing or imminent which TfL considers is likely to cause-* *(a) danger to persons or property, including the tunnels or any person in or using the tunnels; or* *(b) a serious threat to the environment.*"
Article 65	Following a view expressed by the Royal Borough of Greenwich as to what 'value' paragraph (9) adds to this article, the Applicant proposes at this stage to delete it. However, the Applicant will also seek views from the other Boroughs ahead of Deadline 6.
Article 69	Following further discussions with the PLA which will continue, amendments will be made to article 69. In addition, co-ordinates will also be added into paragraph (11).

Provision in revised draft DCO	Brief description and explanation of proposed amendment
New article	Following discussions with the Greater London Authority, the Applicant has agreed the wording of a new article to be included in the DCO. This is to ensure that the Secretary of State's consent is not required in respect of an agreement relating to land that is proposed to be made between the Applicant and the GLA in anticipation of the exercise of the DCO's provisions. The new article will be worded as follows: "*X-(1) The following are not to be regarded as a disposal by the GLA for the purposes of section 333ZC of the 1999 Act-* *(a) the making of any agreement between TfL and the GLA before this Order comes into force in anticipation of the exercise of the powers of this Order by TfL;* *(b) the implementation of any such agreement; and* *(c) the exercise of the powers of this Order by TfL in accordance with that agreement.* *(2) In this article the GLA includes a company or body through which the GLA exercises functions in relation to housing or regeneration.* *(3) Paragraph (1)(a) does not apply to a subsequent variation of any agreement made between TfL and the GLA before this Order comes into force.*" The Applicant understands the GLA will be submitting a statement in support of this new article at Deadline 5.
Schedule 1	The Applicant recognises the inconsistency between the 'NEWT' tests applied within the dDCO. As such, the test set out in paragraph (y) of the 'catch-all' in Schedule 1 will be amended to refer to "…*not materially worse environmental effects…*" so that this aligns with the test in article 39(2).

Provision in revised draft DCO	Brief description and explanation of proposed amendment
Schedule 2, Paragraph 4	The Applicant continues to discuss the form of Requirement 4 with the Royal Borough of Greenwich and the London Borough of Newham, to ensure that they, as local planning authorities, are content with the scope of the works over which they will have design approval. An updated requirement will be included in the next iteration of the dDCO, which will include reference to particular elements of the 'catch-all' in Schedule 1 over which the Applicant considers it is appropriate for the Boroughs to have approval (i.e. where the works would constitute permanent above ground structures which would not ordinarily benefit from permitted development rights). However, it is considered that the form of the requirement contained in the Deadline 4 version of the dDCO (revision 4) has moved the parties significantly towards agreement.
Schedule 2, Paragraph 5	Minor amendments will be made to this requirement to make clear the PLA's consultation role on certain subsidiary plans.
Schedule 2, Paragraph 7	The Applicant continues to discuss the terms of Requirement 7 with the local authorities with a view to reaching agreement. Subject to the outcome of these discussions, the Applicant proposes to make the following clarifications at Deadline 6: Paragraph 7(6)(b) will be amended to refer to quarterly monitoring reports produced during the first year that the Silvertown Tunnel is open for public use and annual monitoring reports for subsequent years of the monitoring period. This reflects the frequency of monitoring reports required under the Monitoring and Mitigation Strategy. Paragraph 7(16) – the definition of 'relevant air quality authority' will be broadened to refer to the Council of a London Borough for an area in relation

Provision in revised draft DCO	Brief description and explanation of proposed amendment
	to which the expert review concludes that the authorised development has materially worsened air quality. This broader definition will ensure that the relevant authority is consulted even if the worsening does not occur in an area designated as an AQMA.
Schedule 2, Paragraph 13	Following a comment made by the Royal Borough of Greenwich, the Applicant will be amending this requirement to make express reference to 'Euro VI' standards to aid understanding.
Schedule 5	As stated above, the Applicant has been giving consideration to further amendments required to the dDCO in light of legislative changes made by the Housing and Planning Act 2016. The Applicant has identified consistency changes which will be required to this Schedule.
Schedule 12	Following discussions with the Marine Management Organisation ("MMO"), the parties have agreed minor amendments to the definition of "the Archaeological Written Scheme of Investigation" ("the WSI") and the relevant licence condition. This is simply to make clear that the MMO will be provided with the initial WSI, and any revisions to the WSI, where it contains marine elements.
Schedule 13	The Applicant considers that agreement is unlikely to be reached with the Environment Agency over the form of protective provisions, due to the difference in opinion over the appropriate maintenance obligations in respect of the river walls during the works period. Please see the Applicant's commentary in section 5 above. Following further discussions with the PLA, the parties have largely agreed minor revisions to the protective provisions for the benefit of the PLA. Please see the Applicant's commentary in section 5

Provision in revised draft DCO	Brief description and explanation of proposed amendment
	above.
Schedule 14	The list of documents to be certified will be updated.

8. Responses to interested parties submissions at Deadline 4

8.1.1 The host and neighbouring boroughs raised issues on a number of key areas, including the Bus Strategy and commitments to run bus services, proposals for monitoring and mitigation, user charging and discounts, and the operation of STIG. There was a degree of overlap across many of these comments, and in many cases interested parties explicitly noted that their position was potentially subject to change depending on the content of submissions expected from the Applicant at Deadline 4.

8.1.2 The Applicant considers that the materials it submitted at Deadline 4 substantially address the majority of comments submitted by these parties at the same deadline, and therefore does not propose to provide further detailed comments on these points at Deadline 5.

8.1.3 However, the table below provides a response to the issues raised by interested parties at Deadline 4 that relate directly to the draft Development Consent Order. This has been submitted to assist the ExA and interested parties understand the Applicant's latest position in advance of the Issue Specific Hearing on the draft DCO on 29 March.

Article/Provision No. of the dDCO	Document ref. of comment	Interested Party Comment	Applicant's response
Article 2	LB Southwark Update and comments on the updated draft Development Consent Order –	"Monitoring and mitigation strategy" It is not clear what is meant by 'the implementation' of mitigation. Should (e) not just read mitigation as reference to	The Applicant considers that the definition clearly sets out the purpose of the monitoring and mitigation strategy. It should be noted that the definition has no operative function legally and is for 'signposting' only, in that it does not limit the contents of the document it

	page 10	'implementation' appears to limit the extent to which mitigation will be applied. The commitment on TfL should be to successfully mitigate and not just to implement mitigation.	defines. As such, the definition needs to be read alongside the contents of the monitoring and mitigation strategy. The Applicant does not consider any amendment is necessary.
Article 2	LB Bexley response to Ex A's SWQ – page 1	The definition of Blackwall Tunnel to refer to 'tunnels' (as there are two distinctly separate tunnels). That would be of a piece with the definition of the Silvertown Tunnel as a twinbore tunnel.	The Applicant recognises this slight inconsistency and will reflect on how best to amend the definition in the next version of the dDCO submitted to the examination.
Article 43	LB Southwark Update and comments on the updated draft Development Consent Order – page 11	• Reference to 'as such manner as TfL considers appropriate' is vague. As a minimum TfL should provide local authorities (or the members of STIG) with at least 1 week notice where it plans to close 1 tunnel and 4 weeks where it plans to close both tunnels. This does not need to apply in emergency situations as defined. • Article 43 (2) (b) is not clear and should be amended to read:- Prior to and throughout the period of such closure display signs at appropriate convenient situations on the roads network communicating with the tunnels giving warning of the closure. • TfL should be under an obligation to assess the impact of the proposed closure and to	The Applicant does not consider any amendments are required to the first 2 paragraphs of article 43, as per its response to the Boroughs' LIRs and WRs (REP2-035). The Applicant anticipates following its usual tunnel closure procedure it employs for the Blackwall Tunnel. The new definition of 'emergency' was added to provide clarification, as had been requested, but the Applicant notes the submissions made by some Boroughs that this does not go far enough. As a result, the Applicant proposes to 'tighten' this definition in the next iteration of the dDCO (please see section 7 above for a fuller explanation of the

		formulate and implement a suitable mitigation strategy. • The definition of "emergency" is of little value because it contains the word 'include', which just means the example given is one of a number of potential emergency situations.	Applicant's proposed DCO amendments).
Article 52	LB Southwark Update and comments on the updated draft Development Consent Order – page 12	• This article only applies where TfL intend to 'revise' their charging policy and should be amended to apply to when the charging policy 'is first set' and subsequently 'revised.' • The requirement to consult STIG is unclear. LB Southwark strongly believes TfL must write to each member of STIG individually and this should be reflected in the wording, as should the time period for any such response to be made. Without these amendments, the procedure is unclear. • TfL must be under an obligation to have 'due regard' to any consultation response. Reference to just 'regard' is insufficient because this just means TfL need to lightly consider the response.	The Applicant does not consider any changes are necessary to article 52. Interested parties have had the opportunity to scrutinise the charging policies and procedures document (i.e. 'the charging policy') during the examination process and it is therefore intended that it is a document that is certified by the Secretary of State to 'set' its form. As such, the article does not need to provide for this initial 'setting' of the policy, only subsequent revisions. The latest version of the dDCO (revision 4) provides in article 52 that the 'members of STIG' must be consulted on any charging policy revisions. This, in conjunction with the amendments to article 65 which provide for the members of STIG to be consulted on certain matters, including revisions to the charging policy, is considered by the

			Applicant to be adequate. Lastly, the Applicant does not consider any amendments are required in respect of consultation. The concept of consultation and the public law principles applying to it are well understood, and public bodies, such as the Applicant, would need to properly consider any responses received as part of a consultation - the procedure under article 52 is no different. Indeed, the term 'have regard' is used in the Planning Act 2008 itself (see sections 49(2) and 55(4)).
Article 52	LB Newham response to ExA's SWQ – DC2.4	The Council are concerned that this Article would grant TfL (with the approval of the Mayor of London) the power to revise this certified document after consultation with organisations it considers representative of regular users of the tunnels, and STIG. The Council is accepting that there is merit in allowing provision for adaptability, however remains concerned that this power is such that TfL (or its transferee) could at any time re-write the certified document with new project objectives and new policies.	The procedures under article 52 are intended to provide an appropriate, proportionate but robust safeguard in respect of any revisions to the charging policies and procedures document. TfL cannot simply re-write this unilaterally - consultation would need to be carried out, with ultimate approval by the Mayor who is democratically accountable and would need to exercise his quasi-judicial powers here in the appropriate manner. The Applicant considers no amendments are therefore necessary.

Article 53	LB Southwark Update and comments on the updated draft Development Consent Order – page 13	Article 53(1) should be amended to read "(1) Subject to and in accordance with the provisions of this Part, from the date when the Silvertown Tunnel is first opened for use by the public, TfL may levy charges, determined in accordance with article 52, in respect of motor vehicles using either of the tunnels."	The Applicant considers no amendments are necessary – article 52 already makes clear the powers in Part 5 of the DCO (including those in article 53) need to be exercised in accordance with the charging policy.
Article 56	LB Lewisham response to Ex A SWQ – DC2.5	Still has concerns regarding mitigation funding. There should be a hierarchy for spending the charges levied and there should be an additional bullet point to make provision for payments to go into a dedicated fund for a package of crossings and sustainable transport measures.	Please see the Applicant's response the SWQ DC2.5 (REP4-052) and its Written Summary for dDCO ISH on 19 January 2017 (REP3-017).
Article 56	LB Hackney Update and comments on the updated dDCO – 4.11	There should be a hierarchy for spending the charges levied and there should be an additional bullet point to make provision for payments to go into a dedicated fund for a package of crossings	Please see the above response.

		and sustainable transport measures.	
Article 56	LB Hackney's response to Ex A's SWQ – DC2.5	There should be a hierarchy for spending the charges levied and there should be an additional bullet point to make provision for payments to go into a dedicated fund for a package of crossings and sustainable transport measures	Please see the above response.
Article 56(e)	LB Bexley response to Ex A's SWQ – page 1	Once the capital and financing costs of the Silvertown Tunnel has been paid off and maintenance costs deducted, surplus toll income should firstly be ring-fenced to help finance the costs of constructing a Belvedere Crossing and, following that, be ringfenced for other transport infrastructure specifically in east and SE London - this has not been included.	Please see the above response.
Article 58	RB Greenwich response to Ex	The Council would like clarification on the possibility of transference of	Please see the Applicant's response to SWQ DC2.6 (REP4-052).

	A's SWQ – DC2.6	TfL/GLA/Mayoral statutory responsibilities.	
Article 60	LB Southwark Update and comments on the updated draft Development Consent Order – page 13	It should specifically require TfL to consult each member of STIG individually. Reference to 'such persons as TfL considers necessary and appropriate' is unsuitable. Again, the provision should set out the timeframe for any consultation response to be made and impose an obligation on TfL to have 'due regard' to any such response.	The form of article 60 is relatively standard, and follows a number of precedents in made Orders. The Applicant therefore does not consider any amendments are necessary, so as to have to consult all the members of STIG before the exercise of any traffic regulation powers in the DCO (indeed, this would go beyond the requirements of, for example, the Road Traffic Regulation Act 1984). In addition to the consultation requirement, notice must be given to the police and the relevant traffic authority, which the Applicant considers to be appropriate.
Article 65	LB Hackney Update and comments on the updated dDCO – 4.13	Article 65(5) • Concerned with removing article 65(5)(e) (consulting STIG on proposals for cross-river buses) as STIG appears to be key in the revised Bus strategy. • There is still no requirement for STIG's recommendations on user charges to be binding on TfL/the Mayor. • TfL still appear to be chairing STIG meetings when TfL said there would be no meetings.	The Applicant will continue to discuss the role of STIG with the Boroughs, but it should be noted that it is finding it difficult to obtain a consensus from the Boroughs as to the form of article 65. The Applicant understands the Royal Borough of Greenwich and the London Borough of Newham to be broadly content with the provisions as drafted at Deadline 4. In relation to the specific points raised:

		• Concerned that the amendments dilute STIG and lack of voting which will lead to the Borough's views being marginalised.	Buses – Art 65(5) refers only to those matters on which TfL is required to consult all of the members of STIG. Accordingly, article 65(5)(e) was deleted because the Applicant considers it is appropriate for TfL only to consult the relevant boroughs on its proposals for cross-river bus services through the tunnel (i.e. boroughs that are affected by those services) rather than all STIG members. This reflects the statutory consultation obligation which applies under s. 183 of the Greater London Authority Act when TfL is proposing new or varied bus services. The revised Bus Strategy submitted at Deadline 4 was intended to reflect this by referring to STIG members, rather than STIG but it is acknowledged that the document is not as clear as it could be. Further clarifications will be made to the next iteration of the Bus Strategy. User charges – the revised article 65 no longer requires STIG to produce a single recommendation to TfL, and instead enables the various members of STIG to hold different views. The revised drafting requires TfL to have regard to all of these different views when taking decisions on the matters set out in 65(5). This change was made in response

			to concerns from the host boroughs, in particular, that they could be outvoted by other members under the original provision. As the statutory highway and traffic authority for the tunnels it is appropriate that decisions on user charging should be taken by the TfL Board having regard to the views of STIG members. The fact that STIG members are likely to hold different views is a practical reason why it is not appropriate for the group's recommendations to be binding on the TfL Board when setting or varying the user charges. TfL as chair – It is appropriate that TfL convenes and chairs meetings of STIG when it is required to do (e.g. whenever it publishes a monitoring report). Now that STIG is no longer required to vote on matters in order to agree a recommendation, the role of the chair is purely administrative and it no longer holds a casting vote, which the Applicant understands was the principal concern of LB Hackney in relation to this issue. Voting – Because STIG is a consultative body, it was recognised that it was not appropriate or necessary for the group to be required to vote on matters in order to provide

			a recommendation. The host boroughs, in particular, expressed concerns about this approach to the Applicant on the grounds that it could lead to them being outvoted and their views being marginalised as a result. The revised drafting enables all of the STIG members to present their views to TfL and requires TfL to have regard to all of these views when taking decisions. The revised drafting does not 'dilute' the role of the group and does not prevent the individual members reaching a consensus and presenting a single view to TfL on any particular matter.
Article 65	LB Hackney's response to Ex A's SWQ – DC2.7	• Concerned with removing article 65(5)(e) (consulting STIG on proposals for cross-river buses) as STIG appears to be key in the revised Bus strategy. • There is still no requirement for STIG's recommendations on user charges to be binding on TfL/the Mayor. • TfL still appear to be chairing STIG meetings when TfL said there would be no meetings. • Concerned that the amendments dilute STIG and lack of voting which will lead to the Borough's views being marginalised.	Please see the above response.

Article 65	LB Lewisham response to Ex A SWQ – DC2.7	• Concerned with removing article 65(5)(e) (consulting STIG on proposals for cross-river buses) as STIG appears to be key in the revised Bus strategy. • There is still no requirement for STIG's recommendations on user charges to be binding on TfL/the Mayor. • TfL still appear to be chairing STIG meetings when TfL said there would be no meetings.	Please see the above response.
Article 65	LB Southwark Update and comments on the updated draft Development Consent Order – page 14	This article does not flow very well and should be rewritten to acknowledge that TfL must consult each member of STIG individually and the ability for the group to meet is secondary to this. TfL should consult on the extent, nature, duration and methodology to be implemented in accordance with the monitoring and mitigation strategy. Article 65 (5) (c) and (d) should be swapped around and an additional subcategory covering the implementation	Please see the above response. The Applicant considers that the scope of the matters on which TfL must consult STIG under 65(5)(a) covers all necessary aspects of the monitoring that TfL is required to implement under the monitoring and mitigation strategy. The 'methodology' of the monitoring is covered by the reference to 'the nature' of the monitoring. It is not appropriate for STIG to be consulted on amendments of the byelaws. Article 48(4) already provides for the host local authorities to be consulted on proposed amendments. The Applicant considers the phrase "have regard to" is appropriate in relation to consultations carried out under article 65.

		and amendment of any bylaw should be added. TfL must have 'due regard' and not just 'regard' to any consultation response. TfL should consult the members of STIG on proposals for cross bus services and the Bus Strategy. The proposed TfL amended wording deletes the wording which previously required TfL to consult STIG in relation to buses (Article 65 (5) (e) is proposed for deletion). This is contrary to the draft Bus Strategy.	Indeed, the term is used in the Planning Act 2008 itself (see sections 49(2) and 55(4)).

9. National Policy Statement Compliance

9.1.1 The Scheme's compliance with the National Networks NPS is set out in the following application documents:

- *Planning Policy Compliance Statement* (APP-094)
- *ES Appendix 1A (NPS compliance)* (APP-044)

9.1.2 The Applicant is preparing a comprehensive schedule of compliance with the requirements of the NPS which reflects the up to date position and cross refers to relevant document submitted during the examination. The Applicant proposes to submit this document to the examination at Deadline 6.

Appendix A. M&MS issues discussed with Host Boroughs and proposed changes

A.1 The table below sets out the comments made by the Host Boroughs on a draft version of the M&MS circulated to Host Borough officers on 27/02/17, the position agreed between TfL and the Host Boroughs at a meeting on 09/03/17 and an indication of where changes will be made to the updated M&MS to be submitted at Deadline 6. In some cases the comment made on the earlier version of the document was deemed to be addressed in the version submitted for Deadline 4.

A.2 The Applicant understands that the Host Boroughs will be submitting some further comments at Deadline 5. RB Greenwich has indicated that they have comments on four items listed in the table and these are noted below.

No.	Section in DL4 version	Host Boroughs' comment	Agreed position	Change to MMS for DL6?
1	2.1 Overview of the refreshed assessment	There is agreement in principle to this production of a refreshed assessment, however, should the ExamA not accept the proposal for a refreshed assessment as the approach may lead to information that, if available, would have influenced the Exam A recommendations then the monitoring and mitigation will need to be based upon the outputs of the ES.	The HB's recognise the commitment to a refreshed assessment means that specific mitigation measures can be defined more accurately with the benefit of up to date information. It is appropriate for the methodology for the refreshed assessment to contain a more detailed commitment to local modelling given that it is the refreshed assessment which will	

			determine the detail of the mitigation.	
2	2.2 Scope of the refreshed assessment	The updating of the strategic transport model and the development of the local traffic models will need to be carried out as stated in our submission to D4. The updated data sets and the VoT will have to be agreed with the HB including LBTH prior to use by TfL. The reiteration of the strategic model with the proposed local mitigation needs to be carried out and reported upon.	TfL to insert words into the next version of the M&MS setting out a commitment to areas of work that will be designed through meaningful engagement with STIG members and the HBs. This will include the use of updated origin and destination data and updated values of time. Parties are content with the reference to local modelling at 2.2.1.	✓
3	2.3.2	It should be noted that methodical approach advocated in part 2.4.1 is not supported. This process was found lacking in previous reviews and the outputs not accepted. The development of local models needs to be agreed with the LHAs, including the scope of the modelling area. The production of a long list of locations should actually form the copied area of the local model which as stated previously should be agreed with the LHAs.	Matter resolved in version of M&MS submitted at Deadline 4. **Post meeting note: RB Greenwich considers that this is not resolved.**	

4	2.3.5	Does not provide surety due to the phrase "could be used". A definite statement on modelling packages to be used is required here.	TfL to revise 'could' to 'will'. Agreed that specific modelling packages will not be listed as these are subject to change.	✓
5	2.3.8	Does not make any recognition to the role of STIG in this process which is expected. There is no reference to the bi lateral work between TfL and HB that has been discussed in the meeting on 23 Feb with TfL and the HBs.	This is to be read in conjunction with Requirement 7, however some discrepancy in exact wording - an amendment to the requirement is proposed to reflect consultation with *relevant* STIG members (ie those directly impacted) rather than all members	✓
6	2.3.9	Makes no reference to the use of triggers to determine the investigation and necessity for mitigation. As it is stated at present in this paragraph TfL will unilaterally make a decision on whether a localised mitigation measure is necessary. This is not acceptable.	The version at DL4 is clear now about the joint working that will be undertaken, together with the fact that the final decision is not made by TfL - see para 2.3.14. **Post meeting note: RB Greenwich considers that this is not resolved.**	
7	2.3.13 to 2.3.15	This approach is not accepted. This approach appears to run contrary to the DCO process. The guidance on DCO December 2015 refers to SoS involvement when there is a non material or material change to the DCO. There does not appear any reason here to involve the SoS unless TfL is advocating at this stage that a non material change will be incurred by the provision of mitigation. This is premature in the process as the DCO has not been determined yet.	It is agreed that it is legitimate to refer matters to the Secretary of State. This is done in other DCOs and it is the Secretary of State who would have approved the mitigation through the DCO if it had been proposed in the application. The Secretary of State's role here effectively completes that process with the benefit of more up to date information. This is different from any process of material or non material change and simply involves the sign-off of matters under a requirement.	✓

			TfL wish to agree these matters with the relevant boroughs but an approval process is nevertheless necessary - for instance for boroughs who do not agree that mitigation measures may not be proposed in their borough. TfL to consider again whether the wording of requirement 7 may allow matters agreed with the relevant boroughs not to be unpicked by the Secretary of State, so that the SOS only mediates on matters of disagreement. Ideally a time limit should be imposed on the SOS to ensure mitigation can be implemented timely. TfL explained that this wasn't acceptable to the ExA in relation to a version of the dDCO that included time limits for determination of appeals. Therefore this can't be progressed.	
8	2.4.2	This paragraph should clarify that CTMP mitigation will also be implemented.	Commitment currently made in CTMP/CoCP, but will be reiterated in M&MS for avoidance of doubt.	✓
9	2.4.5	"Normal procedures" should be defined and included in this paragraph.	Matter resolved in version of M&MS submitted at Deadline 4.	
10	2.4.6	This is agreed	No action for implementation by TfL **Post meeting note: RB Greenwich have**	

			requested further clarification on this.	
11	2.5.1	This paragraph should refer to an agreed timetable which is then referenced in this document.	Timetable is included in version of M&MS submitted at Deadline 4. TfL to revise text to explicitly cross reference to this timetable	✓
12	2.5.2	The finalised scope of the monitoring programme should mirror the UCAF which is included in the certified document "Charging Policy…"	TfL to make it clearer in M&MS how UCAF and M&MS dovetail during monitoring period and to check that the information collected through the M&MS is aligned also to inform the UCAF process.	✓
13	2.5.3	This table needs to include the commissioning and validation of survey data. The monitoring plan should mirror the UCAF sites. the strategic model needs to be revised for VOT and the zonal distribution of VOT agreed. The timescales also needs to reflect the timescales for the production for updated air quality and noise models. The submission of package of mitigation to the SoS for agreement is not agreed.	TfL to review the current timeframes to ensure these deadlines are adequate for the validation etc work required. TfL to revise current text to flag that work may commence earlier if necessary to ensure tasks are completed on time.	✓

14	3.3.1	Monitoring is to be based on the expected impacts. It is suggested that RBG (& LBN) have a different view as to what the expected impacts compared with TfL's EIA.	Comment relates to monitoring locations for AQ monitoring. The area is set out in the M&MS and cannot be reduced. Monitoring locations are based on ES, but scope to increase these if any new areas of impact are identified by STIG members, or during the refreshed assessment process. LBN and others to consider whether there are any additional locations to be added at this stage.	Tbc
15	3.4.2	Monitoring is only to be continued for three years. This is reasonable if monitoring shows that TfL's projections for traffic & pollution as set out in the EIA are correct. If TfL's forecasts are incorrect, monitoring should be continued until the end of the forecast periods set out in the EIA. There should not be an arbitrary cut-off date of 5 years.	3-5 year period (potentially longer in the case of AQ if an exceedance is recorded) agreed as suitable monitoring duration. Matter resolved in version of M&MS submitted at Deadline 4.	
16	Figure 3-1: Monitoring area	The plan shown as appendix B and the distribution is agreed. However any environmental impacts will be dependent on traffic changes. we would like to see a more precise location of the monitoring locations which is not feasible on the scale of the appendix B map. There may also be overlap with some of our monitoring locations: especially Woolwich flyover. They do give eastings and northings but a local site plan of air (and noise) monitoring points would be helpful.	TfL will provide Boroughs with a clearer depiction of the exact indicative locations in Appendix B. It was agreed that the final exact locations will be decided with the hosting local authority at the time of installation.	✓

17	3.72	RBG would want the real time station to measure PM2.5 as well as NO2. There is increasing evidence of the impact of ultra fine particles on human health.	ES shows that the impacted area has current PM2.5 levels of ~14-16 micrograms, with any Scheme related changes predicted to be 0-0.3micrograms. It was agreed that this level is so low that it would struggle to be identified by monitors. If other variables change dramatically (NO2, traffic etc), or third party monitors show dramatic PM2.5 changes nearby this will be picked up by existing local authority monitoring.	
18	3.7.8	RBG would support this statement rather than the 5 year cut off date mentioned in 3.4.2 above.	Matter resolved in version of M&MS submitted at Deadline 4	
19	4.1.2	Monitoring sites should support the UCAF process. This needs to be reflected in this paragraph.	As per #12. M&MS to reflect UCAF linkages	✓
20	4.2.5	The frequency of reporting needs to be included in this paragraph. It should also reflect the discussions that have taken place with regards to the use of data platforms that could provide neo real time data information.	Text including agreed frequency provided in version of M&MS submitted at Deadline 4 - para 3.10.3.	
21	3.3.1	Bullet point three should state comprehensive understanding of "travel behaviour" .Bullet point four - definition of "reasonable expectations" to be included.	TfL to revise text to reference the Scheme's wider potential effects, including travel behaviour. Bullet four re reasonable expectations to be removed as superfluous.	✓

22	3.4.1	The monitoring should support the understanding of trends. it may be the case that over time it is difficult to establish the effects of the scheme from other projects but the monitoring needs to be string enough to do so because of the obligations set around triggers and mitigation.	Matter resolved in version of M&MS submitted at Deadline 4.	
23	3.4.4	Is agreed in terms of taking into account construction traffic.	No action for implementation by TfL	
24	3.5	Geographical scope of the monitoring needs to support the UCAF and sites requested through the ExamA should be incorporated. RBG note that this is left blank! It is probably not a major issue as that changes to traffic flow are unlikely to be of such a magnitude to make a significant impact on noise levels (as opposed to air quality). We ought to have something here to comment on.	Matter resolved in version of M&MS submitted at Deadline 4.	
25	3.6.4	The control sites should be agreed with STIG	TfL best placed to decide control sites, these may extend beyond STIG boroughs. Agreed that any control sites used will be presented to STIG and sent to the hosting local authority for comment/information.	✓
26	4.2.8	The triggers should not be reviewed again prior to scheme opening as these will be in a certified document. If changes are made to this document then the SoS needs to approve which could cause significant timescale changes to implementation.	Agreed that if a certified document allows for changes then the SoS does not need to be involved in the stipulated change process. Agreed that some triggers may need reviewing, but not all, TfL to make explicit in the M&MS at Deadline 6 which ones may need to be	✓

			varied/reviewed.	
27	3.10.3	The interim reports should include discuss the results of the emerging data and potential implications/ emerging trends with regards to the triggers. This should be stated in this paragraph.	Agreed. TfL to revise text to reflect the intention to provide/present some level of analysis with regard to data collated from monitoring programme (not simply provide raw data which cannot be interpreted).	✓
28	3.10.4	The use of data platforms should be included is paragraph as a mechanism for STIG members and HB to access data sets.	TfL to consider explicit reference to the idea of future platforms/mechanisms for sharing data. TfL to remove commitment to sharing data as soon as it is available, as real time platforms would make this onerous and unnecessary.	✓
29	3.11.2	If these documents are to be certified then it is not clear how monitoring will be amended easily.	As per #26. Agreed that if a certified document allows for changes then the SoS does not need to be involved in the stipulated change process.	
30	4.2.1	Traffic impacts. This paragraph implies that impacts will be experienced for a year prior to any consideration for mitigation. Is this to be the case?	M&MS commits to quarterly monitoring/reporting in year one, with an annual report at end of the year, and a check back against ES predictions. It also allows for any observed impact to be raised to TfL for consideration by STIG members at any time. The dDCO allows for emergency changes to the user charge if necessary. TfL to delete the	✓

			word 'annual' from 4.2.1.	
31	4.2.2	This paragraph does not include reference to the use of the refreshed case model. It should do, please include.	Agreed that this is unnecessary as paragraph refers to post-opening.	
31a	4.2.8 (also 3.11.2)		**Post meeting note: RB Greenwich is concerned that this document could be reviewed at an early stage in the implementation, and that the inclusion of the ability to review process at this stage gives rise to uncertainty as to the provision of a baseline of triggers agreed during the DCO and contained in the M&MS.**	
32	4.2.12	The use of the word investigated for mitigation once triggers are activated is agreed.	TfL to make sure that 'investigated' is used not 'assessed' as in some sentences in version of M&MS submitted at Deadline 4.	✓
33	4.3	This section should include references to other types of mitigation including the Business Transition mechanism, low income discounts and the Community Impact Fund.	TfL to insert text including references to a wider range of mitigation options, including 'soft measures'. HBs to provide TfL justification for separate funds given extensive mitigation commitment in M&MS.	✓

34	4.4.2	This methodology should include a statement of which traffic models will be used in this process.	TfL to make clear outputs from strategic and local modelling can be used.	✓
35	4.6	This should include the reference to the bi lateral working practice to be carried out with the HB.	Now addressed in the Deadline 4 version together with requirement 7.	
36	5.2.4	This paragraph should include the variance due to worsening environmental conditions: air quality exceedances, increase in journey times and delay.	Matter resolved in version of M&MS submitted at Deadline 4	
37	Appendix D	This table should include further details on the approach to collecting socio-economic monitoring data including indicative sample sizes and frequency of surveys. TfL to also include commitment to monitoring participation in Business Transition Fund	TfL will add additional information to the table which includes further details on how the socio-economic data will be collected, including indicative sample sizes and frequency of surveys. TfL will include text making commitment to monitoring participation in Business Transition Fund	✓

38	Appendix E	Section E of this document does not reflect the Trigger discussion paper of 2 February 2017 from TfL and therefore our comments submitted to D4 on this matter still stand.	Matter resolved in version of M&MS submitted at Deadline 4, subject to the following: TfL to make clearer the preferred approach to reflecting variability and growth in the triggers. TfL to make clearer the basis of the queue-based trigger for the Woolwich Ferry (methodology outlined in separate note circulated on 27/02/17). HBs to provide comments on potential options for a VCR based trigger (options outlined in separate note circulated on 09/03/17). HBs also to provide any further comments on the trigger levels set out in Appendix E.	☐☐☐
39	Appendix F	The table at the end of the document which references the Discount for low income users and the Business Transition Fund should also reference the Sustainable Transport Fund and the Community Impact Fund.	See 33 above.	Tbc

Appendix B. PLA Protective Provisions

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PROPOSED SILVERTOWN TUNNEL DEVELOPMENT CONSENT ORDER

[DRAFT]

AGREED AMENDMENTS

- for the –

PORT OF LONDON AUTHORITY

DRAFT DCO

References are to the draft DCO Rev 4 [REP4-025]

Article 2 (interpretation)

1. Article 2, in the definition of "business day" –

   (a) after "Sunday" leave out "or" and insert ", a";

   (b) after "England" insert ", Good Friday or Christmas Day".

Article 4 (development consent granted by the Order)

2. Article 4, paragraph (2) –

   (c) leave out "or adjoining" and insert ",adjoining or sharing a common boundary with";

   (d) leave out "excluding any" and insert "other than land comprising"

Article 29 (temporary use of land for carrying out the authorised development)

3. Article 29, paragraph (3), leave out – "17(4)" and insert "17(7)".

4. Article 29, sub-paragraph (6)(b), leave out "work" and insert "works, use of facilities or other purpose".

5. Article 29, paragraph (9), leave out "paragraph 49 of Schedule 13 (protective provisions)".

6. Article 29, paragraph (10), at end insert "; and nothing in this article affects any liability to pay compensation to the PLA under paragraph 49 of Schedule 13 (protective provisions)".

Article 30 (temporary use of land for maintaining the authorised development)

7. Article 30, paragraph (3), leave out "17(4)" and insert "17(7)".

8. Article 30, paragraph (6) –

   (a) leave out "contain" and insert "state";

   (b) at end insert ", including particulars of the part of the authorised development for which possession is to be taken";

9. Article 30, paragraph (11), at end insert "; and nothing in this article affects any liability to pay compensation to the PLA under paragraph 49 of Schedule 13 (protective provisions)".

Schedule 2 (Requirements)

Requirement 5 (code of construction practice and related plans and strategies)

16. Requirement 5, paragraph (2) –

(a) in sub-paragraph (a), at end insert "and the PLA".

(b) in sub-paragraph (c), leave out from "and the PLA" to the end of the sub-paragraph.

(c) in sub-paragraph (e), after "authority" insert ", the PLA".

Schedule 13, Part 4 (protection for the PLA)

17. Schedule 13, paragraph 32, leave out "the maintenance" and insert "a maintenance".

18. Schedule 13, paragraph 33, in the definition of "construction", leave out "the maintenance" and insert "a maintenance".

19. Schedule 13, paragraph 35 –

(a) after sub-paragraph (1) insert –

"(2) When complying with sub-paragraph (1) TfL must allow for potential 'over-dredge' of 0.5 metres attributable to standard dredging methodology."

(b) in sub-paragraph (3) –

(i) after "the PLA" insert " – (a)";

(ii) after "(2)(c)" insert –

" –

(b) such other information relating to any of the documents provided under sub-paragraph (2) or (3)(a) as the PLA may reasonably require";

(iii) after "upon request" insert "made by the PLA within 10 business days of the day on which the PLA receives the document that gives rise to the request".

(c) in sub-paragraph (4), leave out "receipt of those documents" and insert "the paragraph 35 specified day".

(d) in sub-paragraph (5) –

(i) in sub-paragraph (5) (b), leave out "sub-paragraph (1)" and insert "sub-paragraphs (1) and (2)";

(ii) in sub-paragraph (5) (b), at and leave out "and";

(iii) after sub-paragraph (5) (c) insert –

"(d) "the paragraph 35 specified day" means –

(i) the day on which the documents referred to in sub-paragraph (3) are provided to the PLA under that sub-paragraph; or

(ii) the day on which TfL provides the PLA with all drawings and further information that has been requested by the PLA under sub-paragraph (4);

whichever is the later".

and re-number sub-paragraphs (2) to (5).

20. Schedule 13, paragraph 46, leave out sub-paragraph (5).

21. Schedule 13, paragraph 49 -

(a) leave out "lying below mean high water level" and insert "and belonging to the PLA";

CODE OF CONSTRUCTION PRACTICE

References are to the CoCP Revision 3 [REP4-035]

Table 1-1 (summary of subsidiary environmental management plans)

22. Table 1-1 –

(i) entry 2, column 3, after "Emergency Plan" insert "will relate to the Order land that is not within the River Thames";

(ii) entry 2, column 4, leave out "the PLA";

(iii) entry 5, column 2, at beginning insert "(a)" and at end insert –

"(b) To make provision in respect of the River Thames that is equivalent to the provision for dry land in the Emergency Plan."

Appendix C. EA Protective Provisions

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PROTECTIVE PROVISIONS FOR THE BENEFIT OF THE ENVIRONMENT AGENCY

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

Definitions

2. In this Schedule—

"the Agency" means the Environment Agency;

"asset control limits" means the predefined values, based on assessment, relating to safety and serviceability considerations that instigate a review of risk to the flood defences with respect of movement impacts;

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

"baseline monitoring" means any surveys carried out to determine and establish movements of the flood defences due to factors external to the authorised work including (but not limited to) seasonal variations or diurnal impacts due to tide or temperature;

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

"damage" includes (but is not limited to) scouring, erosion, loss of structural integrity and environmental damage to any drainage work or any flora or fauna dependent on the aquatic environment, and "damaged" is to be construed accordingly;

"detailed designs" means any information submitted under paragraph 4(1);

"drainage work" means any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring or flood storage capacity;

"Ecological Enhancements" means the inclusion of any features integral to or adjacent to the foreshore structures and any new, modified, or replaced flood defences that can support wildlife. This includes, but is not limited to, where practicable, the set back of flood defences to provide inter tidal habitat and the creation of shelters for juvenile fish;

"environmental duties" means the Agency's duties in the Environment Act 1995, the Natural Environment and Rural Communities Act 2006 and the Water Environment (Water Framework Directive)(England and Wales) Regulations 2003 (SI 2003 no 3242);

"fishery" means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food for such fish;

"the flood defences" 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 which is—

(a) within the Order limits; or

(b) within the 1mm settlement contour for the final tunnel alignment;

"flood storage capacity" means any land, which, taking account of the flood defences, is expected to provide flood storage capacity for any main river;

"main river" "means all watercourses shown as such on the statutory main river maps held by the Agency and the Department of Environment, Food and Rural Affairs, including any structure or appliance for controlling or regulating the flow of water into, in or out of the channel;

"maintenance" has the same meaning as in article 2(1), save for the exclusion of the works of inspection;

"specified day" means the business day on which detailed designs of that work are received by the Agency under paragraph 4(1) and for the avoidance of doubt if any further information is requested by the Agency under paragraph 4(1)(g), the specified day is the business day on which the Agency receives this information from TfL;

"specified work" means so much of any permanent or temporary work or operation forming part of the authorised work (other than works required in an emergency) as is in, on, under or over a main river or drainage works or within 16 metres of a drainage work or is otherwise likely to—

(a) affect any drainage works or the volumetric rate of flow of water in or flowing to or from any drainage works; or

(b) affect the flow, purity or quality of water in any main river or other surface waters or ground water; or

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

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

(e) affect the conservation value of the main river and habitats in its immediate vicinity;

"statutory defence level" means [5.18m] AOD;

"the structural integrity plans" means the plans and documents to be provided to the Agency under paragraph 3; and

"TE2100" means the standards associated with the strategy for managing flood risk across the Thames estuary, including recommendations for action in short, medium and long term time periods to take account of sea level rise and climate change, as adopted and updated from time to time by the Environment Agency.

Structural integrity of flood defences

3.—(1) Prior to commencing the first authorised work likely to impact a flood defence and at least at the same time as submitting any submissions for approval in respect of the first specified work under paragraph 4, TfL must prepare at its own expense and provide to the Agency (for its approval where stated below), the following documents in the corresponding order (but nothing precludes TfL from submitting more than one document to the Agency at a time)—

(a) a schedule of defects existing in the flood defences including, where reasonably practicable, a description of the magnitude of any defect;

(b) a survey plan, for approval by the Agency, to include details of any further surveys [and intrusive investigations] of the flood defences proposed to be undertaken by TfL to inform the detailed design process, construction methodology and mitigation proposals;

(c) an assessment report, to—

(i) include details of the structural integrity of the flood defences in light of any proposed authorised works;

(ii) include asset control limits of any sections of the flood defences; and

(iii) identify any sections of the flood defences requiring protective works by reason of the authorised works,

such report to be based on the findings of the additional surveys carried out by TfL under the survey plan under sub-paragraph (b), the schedule of defects provided under sub-paragraph (a) and any available historical information;

(d) a mitigation design report (or reports), for approval by the Agency, to include details of the protective works identified by the assessment report provided under sub-paragraph (c) that—

(i) are necessary before; or

(ii) may be required to be implemented as an action under the emergency preparedness plan provided under sub-paragraph (f) during or after,

the construction of the authorised development and that such details will—

(iii) be sensitive to the foreshore and hydraulic regime; and

(iv) not prevent the relevant sections of the flood defences being raised to TE2100 levels in future and such standards being maintained;

(e) an instrumentation and monitoring plan, for approval by the Agency, to include, in respect of the flood defences—

(i) details of monitoring locations (which must be established having regard to the asset control limits);

(ii) details of monitoring in respect of scour of any flood defence within the Order limits;

(iii) the frequency of monitoring (which must, as a minimum, be until (a) the rate of settlement experienced by the flood defences directly attributable to the authorised development ceases or is less than or equal to 2 millimetres per annum; or (b) the period of 2 years has expired following the completion of the authorised development, whichever is later); and

(iv) the minimum amount of baseline monitoring; and

(f) an emergency preparedness plan, for approval by the Agency, to include details as to what actions TfL will take, including the implementation of any mitigation identified in the mitigation design report (or reports) approved under sub-paragraph (d), in respect of the asset control limits identified in the assessment report provided under sub-paragraph (c), including timescales and the hierarchy of actions.

(2) TfL must, where relevant, implement and act in accordance with the approved structural integrity plans.

(3) Any protective work identified as being required by the structural integrity plans is to be treated as a specified work for the purposes of this Part of this Schedule.

(4) Following completion of the authorised development, TfL must prepare at its own expense and provide to the Agency, a completion report, to include details of—

(a) any modifications or mitigation measures to be implemented in respect of the flood defences;

(b) illustrations in respect of the interactions between ground movement relating to the flood defences and construction activities;

(c) actual ground movement in respect of the flood defences compared to predicted ground movement;

(d) the results of a post-construction defects survey but only in relation to any differences identified when compared to the schedule of defects provided to the Agency under sub-paragraph (1)(a);

(e) any remedial works undertaken by TfL to the flood defences; and

(f) final as-built drawings and plans of the parts of the authorised development situated within 16 metres of a flood defence.

Specified works

4.—(1) Before commencing construction of a specified work (excluding any piling works), TfL must submit to the Agency for its written approval—

(a) plans, calculations, cross-sections, elevations, drawings, specifications and designs of the specified work together with the details of the positioning of any structure within the main river;

(b) proposals for strengthening, modification, renewal or replacement of any drainage work required as a result of the anticipated impacts of the specified work;

(c) any proposed mitigation measures to minimise the impact of the specified work on the foreshore, ecologically sensitive areas and the wider environment;

(d) details of any Ecological Enhancements which are considered by TfL to be appropriate and reasonable to be incorporated into the specified work having regard to the nature of the specified work;

(e) method statements in respect of the specified work to include both timing of and methods used, sequence of construction and the type, location and storage of all machinery, materials and fuel;

(f) any proposals for reinstatement of the foreshore setting out timing of reinstatement works, measures to be used to minimise environmental impact of the works, materials to be used, methods of reinstatement and any proposed pollution protection measures;

(g) information to demonstrate that the Agency will be afforded sufficient access to drainage works within the Order limits and the flood defences during the construction of the specified work to discharge its statutory functions; and

(h) such further particulars as the Agency may within 20 business days of the receipt of the detailed designs reasonably require.

(2) Any such specified work must not be constructed except in accordance with all detailed designs as may be approved in writing by the Agency under paragraph 4(1) [(having regard to any structural integrity plans approved under paragraph 3)], or settled in accordance with paragraph 12 where applicable, and in accordance with any reasonable conditions or requirements specified under this paragraph.

Approvals

5.—(1) Any approval of the Agency required under paragraph 3(1) or 4(1)—

(a) must not be unreasonably withheld;

(b) in the case of a refusal, must be accompanied by a statement of the grounds of refusal;

(c) 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, main river or water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties; and

(d) is deemed to have been refused if it is neither given nor refused within 35 business days of the specified day unless otherwise agreed.

(2) Without limitation on the scope of paragraph 5(1) the requirements or conditions which the Agency may make under paragraph 5(1) include conditions requiring TfL at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

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

(b) to secure that its efficiency or effectiveness for flood defence purposes is not impaired; or

(c) to ensure the risk of flooding is not otherwise increased by reason of any specified work, maintenance work or protective work,

during the construction of or by reason of the works.

(3) Any dispute in respect of any approval or refusal under this paragraph is subject to the dispute resolution procedure in paragraph 12.

Inspection and construction

6.—(1) All works must be constructed without unnecessary delay in accordance with the detailed designs or plans approved or settled under this part of this Schedule and to the reasonable satisfaction of the Agency.

(2) Save where TfL constructs a specified work in accordance with any detailed designs or plans approved by the Agency under paragraph 4, or as is otherwise authorised by this Order, TfL must not damage or obstruct any drainage work during the construction of a specified work.

(3) An officer of the Agency is entitled to watch and inspect the construction of any works.

(4) TfL must give to the Agency not less than 10 business days' notice in writing of its intention to commence construction of specified works and notice in writing of its completion not later than five business days after the date on which it is completed.

(5) If the Agency reasonably requires, TfL must construct all or part of any protective works so that they are in place prior to the carrying out of any specified work to which they relate.

(6) If any part of a work 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.

(7) Subject to paragraph 6(7), if within a reasonable period, being not less than 28 days from the date when a notice under paragraph 6(5) 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.

(8) In the event of any dispute as to whether paragraph 6(5) is properly applicable to any work in respect of which notice has been served under that 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 paragraph 6(6) until the dispute has been finally determined.

Maintenance of the flood defences

7.—(1) Subject to the provisions of this Schedule and except to the extent that the Agency or any other person is liable to maintain any drainage work and is not precluded by the exercise of the powers of this Order from doing so, TfL must from the commencement of the construction of the specified works until their completion maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by TfL for the purposes of or in connection with the specified works, whether or not the drainage work is to be constructed under the powers of this Order or is already in existence.

(2) In so far as any drainage work mentioned in sub-paragraph (1) comprises any part of the flood defences, then it must be maintained under sub-paragraph (1) to the same standard of repair and condition as the schedule of defects and assessment report prepared under paragraph 3(1) showed it to be in before commencement of the specified works.

(3) If any such work that TfL is liable to maintain under sub-paragraph (1) is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require TfL to repair and restore the work, or any part of it, or (if TfL so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) If, within a reasonable period being not less than 20 business days beginning with the date on which a notice in respect of any work is served under paragraph 6(3) on TfL, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in doing so from that person.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 6(3), the Agency must not, except in a case of immediate foreseeable need, exercise the powers of paragraph 6(4) until the dispute has been finally determined.

(6) If any maintenance of a drainage work carried out by TfL under sub-paragraph (1) is not required as a result of, or is not attributable to the construction of the specified works, then TfL may recover the expenditure reasonably incurred by it in maintaining the drainage work from the person who is ordinarily liable to maintain that work.

(7) In the event that the Agency recovers from TfL any expenditure for work carried out by it under sub-paragraph (4) in respect of maintenance that is not required as a result of, or is not attributable to the construction of the specified works, then TfL may in turn recover from the person who is ordinarily liable to maintain the drainage work so much of that expenditure as that person would ordinarily have incurred in maintaining the work.

Emergency powers

8.—(1) Subject to sub-paragraph (4), if by reason of the construction of any specified work or any other development authorised by this Order or the failure of any such work the efficiency or effectiveness of any drainage work or the conservation value of the aquatic habitat is impaired, or that 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.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require TfL to restore it to its former standard of efficiency or where necessary to construct some other work in substitution for it.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of impaired or damaged drainage work is served under paragraph 8(2) on TfL TfL has failed to begin taking steps to comply with the requirements of the notice and has not thereafter made reasonably expeditious progress towards its implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from TfL.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under paragraph 8(2), the Agency must not except in a case of immediate foreseeable need exercise the powers conferred by paragraph 8(3) until the dispute has been finally determined in accordance with paragraph 12.

(5) In any case where immediate action by the Agency is reasonably required in order to secure that the imminent flood risk or damage to the environment 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 the notice specifying those steps is served on TfL as soon as it is reasonably practicable after the Agency has taken or commence to take the steps specified in the notice.

Protection for fish and fisheries

9.—(1) TfL must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any 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 specified work,

damage to a 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 paragraph 9(1), 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 the notice specifying those steps is served on TfL as soon as is reasonably practicable after the Agency has taken, or commenced to take the steps specified in the notice.

Indemnities and costs

10.—(1) TfL is responsible for and must indemnify the Agency against all claims, demands proceedings, costs, expenses, damages and losses not otherwise provided for in this Part of this Schedule which may be reasonably incurred or suffered by the Agency by reason of—

(a) the construction or operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or

(b) any act or omission of TfL, its employees, contractors or agents or others whilst engaged upon the construction or operation or maintenance of the authorised works or dealing with any failure of the authorised works,

and TfL must indemnify and keep indemnified the Agency from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Agency on behalf of TfL; or

(b) by TfL, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Agency, or in a manner approved by the Agency, or under its supervision or the supervision of its duly authorised representative;

does not (if it was done or required without negligence on the part of the Agency or its duly authorised representative, employee, contractor or agent) excuse TfL from liability under the provisions of this paragraph.

(3) The Agency must give TfL reasonable notice of any such claim or demand as is referred to in paragraph 10(1), and no settlement or compromise of any such claim or demand can be made without the prior consent of TfL.

Notices

11. All notices under this Part of the Schedule are to be sent to the head office of the Agency applying at the time unless otherwise agreed in writing.

Dispute resolution

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