

SILVERTOWN TUNNEL

EXPLANATION OF AMENDMENTS MADE TO THE 'INTERIM' DRAFT DCO SUBMITTED ON 24 MARCH 2017

1. INTRODUCTION

- 1.1 This document provides a commentary on the changes made by the Applicant to the dDCO, as reflected in the 'interim' dDCO submitted to the ExA alongside this document on 24 March 2017. This version of the dDCO was requested by the ExA in its own version of the dDCO (PD-013) published on 20 March 2017.
- 1.2 This document updates, where necessary, the description of proposed changes to the dDCO contained in chapter 7 of the Applicant's Update Note submitted at Deadline 5 (REP5-004).
- 1.3 It should be noted that the Applicant proposes at Deadline 6 or 7 to amend some of the article numbering, so that new articles introduced during the examination are more appropriately positioned in the DCO. This has not been done at this point (with new articles simply being added to the end of the dDCO) to minimise the risk of confusion or miscommunication in submissions made by interested parties.

2. TABLE OF PROPOSED CHANGES TO THE DRAFT DCO

Provision in revised draft DCO	Brief description and explanation of proposed amendment
Article 2	<p>Following a comment made by the London Borough of Bexley at Deadline 4, the Applicant recognises that more clarity is needed in the definition of "the Blackwall Tunnel" to reflect the fact that it is formed of two distinct tunnel bores. The Applicant has therefore revised the relevant definition.</p> <p>In addition, minor amendments have been made to "business day", following suggestions from the Port of London Authority ("the PLA").</p>
Article 4	<p>The PLA has suggested some further clarificatory amendments to this article, which the Applicant agrees with and are reflected in the amendments.</p>
Article 17	<p>Following further discussions with the PLA, minor amendments have been made to this article to ensure the time periods set out fit together. In addition, the concept of business days has been added for consistency.</p>
Article 22	<p>A deletion has been made in paragraph (3) to reflect the changes made to Schedule 5 as a result of relevant amendments made by the Housing and Planning Act 2016. Commentary on this is provided below.</p>
Article 25	<p>Changes have been made to this article, following further consideration by the Applicant to the impact of changes made to the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016.</p>
Article 26	<p>A deletion has been made in paragraph (4) to reflect the changes made to article 27 as a result of relevant amendments made by the Housing and Planning Act 2016. Commentary on this is provided below.</p>

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Article 27	<p>Following the bringing into force of Schedule 2A to the Compulsory Purchase Act 1965 (as introduced by the Housing and Planning Act 2016) the Applicant considers it appropriate to apply the procedure contained within that Schedule in respect of the acquisition of part of a property (which is achieved by section 125 of the Planning Act 2008). As such, what was article 27 has been deleted in its entirety, and has been replaced with a new provision. This makes consequential amendments to the Compulsory Purchase Act 1965 more generally, as it is applied by the DCO, following the changes made by the Housing and Planning Act 2016.</p> <p>The amendments broadly follow the formulation (where relevant) set out in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017.</p>
Articles 29 and 30	<p>The Applicant and the PLA have agreed amendments to articles 29 and 30. These, in summary, correct erroneous cross-references, ensure consistency between the notice provisions and the time limits of the powers and amend the interaction between the compensation provisions in the articles and the PLA's protective provisions.</p>
Article 43	<p>Following comments made by various Boroughs at Deadline 4, the Applicant has further reflected on the definition of 'emergency' in paragraph (3) and has amended this to the following:</p> <p><i>"(3) In this article "emergency" means any circumstance existing or imminent which TfL considers is likely to cause danger to-</i></p> <p><i>(a) persons or property, including the tunnels or any person in or using the tunnels; or</i></p> <p><i>(b) the environment."</i></p>
Article 65	<p>Following a view expressed by the Royal Borough of Greenwich as to what 'value' paragraph (9) adds to this article, the Applicant has deleted it.</p> <p>In addition, the Applicant has made the amendments to article 65 as suggested by the ExA in its DCO (PD-013).</p>
Article 69	<p>Discussions remain on-going with the PLA on a few drafting changes in this article – amendments will be made at Deadline 6.</p>
Article 70	<p>Following discussions with the Greater London Authority, the Applicant has agreed the wording of a new article 70. 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 land acquisition powers.</p> <p>The GLA supports the inclusion of this new article, as expressed in its Deadline 5 submissions (REP5-029).</p>
Schedule 1	<p>The formatting of Work Nos. 20A and 20B has been amended to reflect good drafting practice.</p> <p>In addition, the Applicant acknowledges minor inconsistencies in the wording that has been used in various places in the DCO to provide that environmental effects shall be 'not worse than' those reported in the ES. To provide consistency, the test set out in paragraph (y) of the 'catch-all'</p>

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	<p>in Schedule 1 has been amended to refer to "...<i>not materially worse environmental effects</i>..." so that this aligns with the test in article 39(2).</p> <p>Please note that various hyphenated terms show as changes in the 'mark-up', but this is purely down to formatting changing in the drafting template and are not substantive changes.</p>
Schedule 2, Paragraph 4	<p>Requirement 4 has been updated, so that the relevant Boroughs have approval rights over particular elements of the 'catch-all' works in Schedule 1 (i.e. where the works would constitute permanent above ground structures which would not ordinarily benefit from permitted development rights). The Applicant understands the London Borough of Newham now to be content with Requirement 4, and comments are awaited from the Royal Borough of Greenwich.</p>
Schedule 2, Paragraph 5	<p>Minor amendments have been made to this requirement to make clear the PLA's consultation role on certain of the subsidiary plans.</p>
Schedule 2, Paragraph 7	<p>The Applicant continues to discuss the terms of Requirement 7 with the local authorities with a view to reaching agreement.</p> <p>However, the following amendments have been made in the meantime:</p> <ul style="list-style-type: none"> • Paragraph 7(6)(b) has been 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' has been broadened to refer to the council of a London Borough for an area in relation 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. • An incorrect cross-reference to the Monitoring and Mitigation Strategy has also been corrected.
Schedule 2, Paragraph 12	<p>A minor amendment has been made to provide consistency in the DCO in terms of the wording that has been used to provide that environmental effects shall be 'not worse than' those reported in the ES.</p>
Schedule 2, Paragraph 13	<p>Following a comment made by the Royal Borough of Greenwich, the Applicant has amended this requirement to make express reference to 'Euro VI' standards, in order to aid understanding.</p>
Schedule 5	<p>The Applicant has made consistency changes to this Schedule, to reflect relevant changes brought about by the Housing and Planning Act 2016. For example, due to the application of Schedule 2A to the Compulsory Purchase Act 1965, consequential amendments to this DCO Schedule are required in respect of the creation of new rights.</p> <p>As above, the amendments broadly follow the formulation (where relevant) set out in Schedule 14 to the High Speed Rail (London - West Midlands) Act 2017.</p>
Schedule 9	<p>An amendment has been made to the definition of "the Blackwall</p>

Provision in revised draft DCO	Brief description and explanation of proposed amendment
	Tunnel" to reflect the same change in article 2(1).
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	<p>The Applicant considers that complete agreement is unlikely to be reached with the Environment Agency over the form of protective provisions for its benefit, due to the difference in opinion over the appropriate maintenance obligations in respect of the river walls during the works period. The position is summarised in chapter 5 of the Applicant's Update Note submitted at Deadline 5 (REP5-004). The Applicant has therefore included in the dDCO its preferred form of protective provisions. The parties will continue to discuss minor revisions to the other, non-river wall maintenance related provisions, as necessary.</p> <p>Following further discussions with the PLA, the parties have agreed minor revisions to the protective provisions for the benefit of the PLA.</p> <p>The Applicant is awaiting comments from the London Borough of Newham and the Royal Borough of Greenwich on the protective provisions contained in Part 6 of Schedule 13.</p>

24 March 2017