

SILVERTOWN TUNNEL

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8.107 Document Explaining DCO Amendments

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Forms and Procedure) Regulations 2009

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SILVERTOWN TUNNEL

EXPLANATION OF AMENDMENTS MADE TO THE DRAFT DCO AT DEADLINE 6 (REV 5)

1. INTRODUCTION

- 1.1 This document provides a commentary on changes made to the draft Development Consent Order ("dDCO") in the version submitted at Deadline 6 (5 April 2017) (DCO Revision 5), compared with the 'interim' version of the draft DCO submitted into the examination on 24 March 2017 ahead of the final set of hearings (PINS document reference AS-049). The Applicant's revised draft DCO (Revision 5) is document 3.1 (Revision 5), and an electronic comparison between the two versions has also been submitted.
- 1.2 In broad terms the changes made in the latest dDCO have been made for the following reasons:
- 1.2.1 changes arising from continued discussions with the host boroughs and other local authorities, statutory undertakers and landowners;
 - 1.2.2 changes arising from issues raised at the hearings that took place in the week commencing 27 March 2017; and
 - 1.2.3 other points which the Applicant has identified as requiring amendment.

2. TABLE OF CHANGES TO THE DRAFT DCO

Provision in revised draft DCO and/or issue	Brief description and explanation
Article 1	A small amendment has been made to this article, to reflect changes made to article 38.
Article 2	A new definition of the 'MMO' has been added, as this is required here given the reference to the MMO in article 58, together with a new definition of 'the 2009 Act' for consistency.
Article 3	<p>A new disapplication has been added in article 3(1)(p), to provide that the provisions of the Neighbourhood Planning Act (when enacted – the Bill is currently going through Parliament) do not apply to the dDCO's temporary possession powers. Without this, the provisions of the Neighbourhood Planning Act would have effect in place of the DCO's temporary possession provisions which have been the subject of detailed scrutiny during the examination.</p> <p>A new article 3(3) has been added (with a consequential amendment to article 3(1)(a) to give the Environment Agency comfort in respect of the effect of the disapplication of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 on their powers to enforce against riparian owners in relation to river wall maintenance. The new provision makes clear that the disapplication of that Act by article 3(1) does not affect the Environment Agency's ability to use its powers under that Act against persons other than TfL (or a person exercising a power under the DCO) where it would not interfere with the construction or maintenance (during the 5 year maintenance period provided for under article 30) of the authorised development. Where there would be such interference, the protective provisions for the</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	benefit of the Environment Agency would have effect instead.
Article 14	As confirmed at the third DCO Issue Specific Hearing which took place on 29 March 2017 ("the ISH"), following discussions with Thames Water the Applicant has removed article 14 from the scope of the deemed consent provision (article 68). In light of this, new wording has been added to this article to make clear the consent required from any person under this article must not be unreasonably withheld or delayed.
Article 22	<p>Following discussions with the PLA on the protections afforded by article 69, the Applicant is content for its power to impose restrictive covenants not to apply to any areas of the river Thames covered by the scope of that article.</p> <p>It should be noted that the Applicant is only prepared for this 'carve out' to apply provided that article 69 is included in the DCO, if made.</p> <p>Discussions remain on-going as to the scope of article 69(4), but agreement is expected before Deadline 7.</p>
Article 38	<p>Following a review of Part 4 of the dDCO, the Applicant has made a number of amendments to better reflect the intention of the provisions.</p> <p>Article 38 has been amended to make clear as to when various provisions of Part 4 come into force. Articles 41 to 43 were removed from the scope of what is now proposed to be paragraph (2) at Deadline 1, so that they did not apply 'early' to the Blackwall Tunnel from the commencement of construction of the Silvertown Tunnel. However, on reflection the Applicant considers the new paragraph (1) is also required to give this intention proper effect, as if the provision remained silent, articles 41 to 43 would come into effect immediately on the DCO coming into force.</p>
Article 39	Article 39 has been amended to bring this provision into line with the Applicant's proposed approach on the not 'worse than' test, following the final set of hearings. Further explanation of this can be found in the Applicant's written summary for the outstanding issues including environmental matters issue-specific hearing (document ref: 8.109).
Article 44	Paragraph (4) has been amended to provide the necessary power to return a removed vehicle immediately to its owner where appropriate - as previously drafted, there was no option but to deliver a removed vehicle to a 'custodian', even if immediate return was more appropriate.
Article 45	Amendments have been made to paragraph (2) for the same reason as amendments were made to article 44 – a power is provided to immediately return a load rather than deliver it to a custodian.
Article 48	<p>Paragraphs (2) and (3) of this article have been amended to simply reflect the fact that these duplicated to an extent the effect of article 38, so were redundant in part. The Applicant considers 'merging' these two provisions is appropriate in this context. This is also the rationale for deleting paragraph (8).</p> <p>New paragraph (6) has been moved from paragraph 12 of Schedule 9 to the dDCO, as it is considered that a provision creating an offence is more appropriate for inclusion on the face of the enabling power</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	(reflecting statutory practice), rather than being <i>in</i> the byelaws.
Article 49	A minor addition has been made to article 49, to reflect the increasing use of electronic 'Apps' as a means of carrying out financial transactions.
Article 50	On reflection, the Applicant considers that it would be appropriate for any exercise of powers under this article to be publicised by way of a notice in <i>The London Gazette</i> - the addition of paragraph (5) reflects this.
Article 53	An addition has been made to the contents of the 'statement of charges', due to the addition of article 55(3) - please see the commentary below.
Article 55	<p>Having further considered its powers under the normal road user charging regime, the Applicant considers that certain of these powers under the Transport for London Act 2008 are appropriate to be applied to the user charging regime proposed by the dDCO, to enable consistency across the Applicant's operations. In summary, the provisions of the Transport for London Act 2008 applied deal with:</p> <ul style="list-style-type: none"> • the ability for a charging scheme to create offences (with Secretary of State consent) where a 'specified requirement' of a charging scheme is contravened (but such an offence cannot apply to the failure to pay a charge or penalty charge or where a penalty charge would be payable under certain regulations); • the ability for a charging scheme to authorise the examination and immobilisation of vehicles and extending the scope of relevant regulations for powers to extend to vehicles in off street parking spaces; and • where a charging scheme makes provision for reduced charge rates or exemptions in the case of a class of vehicle or description of persons and it also requires the registered keeper to notify any change of circumstances, an offence being committed if such notification is not given.
Article 58	<p>Following a discussion at the ISH, the Applicant has added provision in paragraph (3) to make clear that where there is an agreement made with a third party under this article for that party to exercise any functions of the dDCO, references to TfL in both the DCO <i>and</i> any relevant certified documents (e.g. the Charging Policies and Procedures document) should be read as including references to that third party. Paragraph (4) 'carves out' from this new provision the CoCP (due to the way the obligations are expressed in that document) and the references to the 'TfL Board' in the charging policies (due to the unique role it plays in the setting of the user charges).</p> <p>A minor change has been made to paragraph (7) to clarify the formal means by which the Secretary of State will confirm her or his</p>

Provision in revised draft DCO and/or issue	Brief description and explanation
	satisfaction under that provision.
Article 60	A minor amendment has been made to paragraph (6) to require the Applicant to publicise any traffic regulation measure made under this article (rather than just a <i>proposal</i> to make such a measure) – the Applicant considers this appropriate, to reflect the requirements of the normal traffic regulation regime.
Article 65	Having reflected on whether bus services should fall within the scope of paragraph (5), following discussions at the hearings, the Applicant considers that for consistency they should – as such, a consequential amendment has been made.
Article 68	As commented on above, following discussions with Thames Water, article 14 has been removed from the scope of article 68.
Article 69	Co-ordinates to define the 'Regions' for the purposes of article 69 have been added – these have been agreed with the Port of London Authority.
Schedule 1	A small amendment has been made to paragraph (y) of the 'catch-all' to reflect the Applicant's approach to the not 'worse than' test as mentioned above.
Schedule 2, Paragraph 7 of Part 1	<p>Following discussions with the Boroughs, paragraphs (2) and (3) of this requirement have been amended to reflect a more 'collaborative' approach to developing the pre-opening scheme of mitigation before it is submitted to the Secretary of State for approval.</p> <p>A cross-reference to the Monitoring and Mitigation Strategy has also been corrected.</p>
Schedule 2, Paragraph 12 of Part 1	A small amendment has been made to this requirement to reflect the Applicant's proposed approach to the not 'worse than' test as mentioned above.
Schedule 2, Paragraph 13 of Part 1	This requirement has been amended, to provide that the 20 buses per hour commitment is for at least the monitoring period (i.e. a minimum of 3 years, but potentially 5 years). In addition, express reference to the objectives of the bus strategy has been added.
Schedule 2, Paragraph 15 of Part 1	<p>Following discussions at the final set of hearings and with the Environment Agency and the relevant Boroughs, the Applicant considers that a new requirement should be added to deal with contaminated land issues, rather than provisions in the Code of Construction Practice. To avoid duplication (and potential conflict), related provisions in the Code of Construction Practice have accordingly been removed.</p> <p>The requirement reflects the Applicant's preferred solution – namely that only a remediation scheme should be the subject of planning authority approval, given the potential administrative burden (and programme delays) that could arise from multiple-stage approvals on a phased scheme the scale of the proposed Silvertown Tunnel. The concerned parties should derive comfort from the fact that the site investigation and risk assessments will be provided to the relevant Borough, which can</p>

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	<p>then influence the process through its approval of the remediation scheme. In addition, the Boroughs will be provided with a verification report (the scope of which will have been approved under the remediation scheme) and any measures not shown to be carried out in that will need to be subsequently carried out to the satisfaction of the that Borough.</p> <p>The Applicant will continue to discuss this with the Environment Agency and the relevant Boroughs with a view to reaching agreement before Deadline 7.</p>
Schedule 2, Paragraph 16 of Part 1	For ease, the Applicant has added in its proposed hazardous substances consent requirement to the dDCO. The Applicant maintains this is not required (hence the square brackets), but recognises it would assist the ExA and the Secretary of State if the wording was easily accessible during the recommendation and decision stages.
Schedule 8	<p>The Applicant considers that the changes to the definition of “the charging scheme” make it clearer.</p> <p>In addition, the wording removed from the definition of “person liable” is considered redundant, given that article 54(1) provides that a person liable to pay user charges and any penalty charges under the DCO is the registered keeper of the vehicle. This is also the rationale for the change made to paragraph 5(2).</p> <p>References have been added to the 'county court' in paragraph 12 to make this consistent with the rest of the provision (see paragraph 12(1)(a)).</p>
Schedule 9	<p>Minor amendments have been made to paragraph 2(1) for consistency or where wording is considered redundant.</p> <p>Paragraph 4 has been amended, such that the activities restricted in article 42 are fully reflected in the byelaws, to provide for adequate enforcement. Sub paragraph (i) has been amended to ensure there is no conflict between separate provisions within the byelaws.</p> <p>Paragraph 12 has been moved into article 48 (please see commentary on this above).</p>
Schedule 14	The list of documents to be certified has been amended to reflect revisions to documents being submitted at Deadline 6.