

TRANSPORT FOR LONDON - SILVERTOWN TUNNEL – DEVELOPMENT CONSENT ORDER APPLICATION

Written Summary of Transport for London's Oral Submissions made at the Compulsory Acquisition Hearing held on 29 March 2017

INTRODUCTION

1. This note summarises the case made by Transport for London ('TfL'/the Applicant') at the Compulsory Acquisition Hearing held on 29 March January 2017 ('the hearing') in relation to TfL's application for development consent for the Silvertown Tunnel ('the scheme').
2. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ('ExA') on 20 March 2017 ('the agenda'). In setting out TfL's position on the issues raised in the agenda, as submitted orally at the hearing, the format of this note follows that of the agenda.
3. TfL's substantive oral submissions commenced at item 2 of the agenda (Confirmation by the Panel of their decision on whether to accept each and all the proposed Non-Material Changes (NMCs) submitted by the Applicant); therefore this note does not cover item 1 on the agenda (welcome, introductions and arrangements for the hearing).
4. The Applicant's previous summaries of oral submissions made at the Compulsory Acquisition Hearings held on 8 December 2016 and 20 January 2017 covered, in addition to the agenda items as noted above, the Examining Authority's action points arising from those hearings, ('ExA action points'). Following the Compulsory Acquisition Hearing held on 29 March 2017, the Examining Authority confirmed that no ExA action points were issued; hence this note does not refer to any ExA action points.

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2. Confirmation by the Panel of their decision on whether to accept each and all the proposed Non-Material Changes (NMCs) submitted by the Applicant as NMCs to make clear on what basis the remainder of the Examination will proceed and the basis for reporting to the Secretary of State.		
	Confirmation of the ExA's acceptance of the proposed non-material changes (NMCs): The ExA confirmed its acceptance, in the light of government guidance ¹ , of each of the five proposed NMCs (NMCs 1, 2, 3, 5 and 6) previously requested by the Applicant.	NMC Application (NMCs 1, 2, 3 and 5) (AS-045) and covering letter (AS-046)

¹ Planning Act 2008: Guidance for the examination of applications for development consent. March 2015, DCLG

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	<p>In so doing, the ExA noted the very limited response received by the Applicant, as reported in the Applicant's 'Summary of Responses to Consultation on Proposed NMCs' (REP5-003).</p> <p>In confirming its acceptance of the 5 NMCs into the Examination, the Examining Authority:</p> <ul style="list-style-type: none"> • reiterated its earlier decision (set out in documents PD-010 and PD-011) that the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 did not apply on the basis that the additional land required to be included within the Order limits would be subject to powers of temporary possession powers as opposed to powers of compulsory acquisition; • expressed its acceptance of the NMCs, both individually and cumulatively, on the basis that the application as changed would remain materially the same project as applied for and because notwithstanding the changes, the application remains of sufficient standard for examination; • confirmed that it considered the Wheatcroft² principle to have been satisfied by the additional NMC-related confirmation carried out by the Applicant (as reported in REP5-003); and • confirmed that it considered that all procedural requirements had been met. <p>In conclusion, the ExA reported that the application under Examination was as changed by the incorporation of NMCs 1, 2, 3 5 and 6.</p> <p>In response, Michael Humphries QC, on behalf of the Applicant, welcomed the decision and thanked the Examining Authority.</p> <p>Post hearing note: The ExA's acceptance of the NMCs is set out in its Procedural Decision issued on 4 April 2017 (PINS doc ref still TBC).</p>	<p>Addendum to NMC Application (NMC6) (AS-048) and covering letter (AS-047)</p> <p>ExA's Procedural Decisions on the NMCs (letter dated 1 Feb 2017 - PD-010; and letter dated 10 Feb 2017 - PD-011)</p> <p>ExA's Procedural Decision accepting the NMCs (letter dated 28 March 2017, published on 4 April 2017 - ExA's Procedural decision accepting the 5 NMCs (PINS Ref No. not yet allocated))</p>

² Principle established in the case of *Bernard Wheatcroft Limited –v- Secretary of State for the Environment* [1982] JPL 37, which considered the issue of making amendments to development proposals during the period between the application for, and the grant of consent for, a project ('the Wheatcroft principle').

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<p>3. On the assumption that changes are accepted, the Panel will ask those affected persons directly affected by the NMCs whether they are now content to accept the CA/temporary use of the land in which they have interests, or if not to make their cases against the powers of acquisition or possession sought.</p>		
<p>The Applicant will be given an opportunity to respond to any objections that are pursued in relation to land affected by the proposed NMCs. Attendance by the Royal Borough (RB) of Greenwich in relation to this and the following item is likely to assist the Panel.</p>		
<ul style="list-style-type: none"> Knight Dragon Developments and Knight Dragon Investments Ltd ('KD') 	<p>The Applicant's understanding of KD's position on NMC3 (temporary diversion of Edmund Halley Way) and NMC5 (decked car park):</p> <p>Knight Dragon attended the hearing in order to hear the ExA's decision on the NMCs and to confirm its support for the ExA's acceptance of NMCs 3 and 5.</p> <p>By way of background to Knight Dragon's position on the NMCs:</p> <ul style="list-style-type: none"> Agreement completed: On Friday 17 March 2017, the agreement between Knight Dragon, AnSCO, Trinity (D) Limited, GLA and TfL regarding NMC5 (decked car park) was completed. Objection withdrawn: At Deadline 5, Knight Dragon submitted a letter dated 19 March 2017 to PINS (REP5-024) stating that, "<i>Subject to NMC3 and 5 being accepted as non-material changes by the examining authority, Knight Dragon confirm that their objections in relation to the parking arrangements and associated local highways issues are withdrawn</i>". <p>Knight Dragon confirmed that they did not wish to make any further representations in relation to car parking and associated highways matters.</p> <p>Aside from the NMCs, Knight Dragon confirmed that they did have some other concerns / outstanding grounds of objection, but that they would deal with these through the written representations procedure.</p>	<ul style="list-style-type: none"> KD's Relevant representation: RR-260 KD's Written representation: REP1-064 TfL response: Pages 32-52 of Deadline 2 TfL 8.37 Comments on Written Representations – Land Interests Part 1 Pages 116-117, 119-125 and 127-129 of Comments on IP's responses to FWQs KD's Letter to PINS dated 16 January 2017 re NMC5: AS-041 KD's DL5 submission: REP5-024

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<ul style="list-style-type: none"> • Ansko Arena Limited ('Ansko') 	<p>The Applicant's understanding of Ansko's position on NMC3 (temporary diversion of Edmund Halley Way) and NMC5 (decked car park):</p> <p>Ansko did not attend the hearing or make any oral submissions; however, the Applicant's understanding of Ansko's position is as set out below:</p> <p>NMC3 and NMC5</p> <ul style="list-style-type: none"> • Agreement completed: As for Knight Dragon - see above re timely completion of the agreement. • Objection withdrawn: At DL5, Ansko submitted a letter dated 20 March 2017 to PINS (REP5-016) stating that, "<i>(i) Subject to the acceptance of non-material changes NMC3 and NMC5 proposed on 12 January 2017 (the "Decked Scheme") and their inclusion in and delivery as part of the Scheme, the withdrawal of its objections in respect of parking arrangements and associated highway infrastructure necessary for the implementation of those non-material amendments; and (ii) that it will not make any further representations to the Examining Authority in respect of the parking arrangements and highway infrastructure for the Decked Scheme;</i>". <p>Ansko's position on outstanding/remaining objections (not covered by the NMCs) is as follows:</p> <ul style="list-style-type: none"> • Ansko's other objections are maintained (see REP5-016 and/or bullets below for details) and it reserves its right make representations in respect of these outstanding objections, which relate to: <ul style="list-style-type: none"> ○ any other (non-NMC-related) parking and highway arrangement – in particular the arrangement in the DCO ('initial base scheme') and/or the alternate parking arrangements at grade proposed by TfL in submissions made on 12 January 2017 (the 'base scheme'); and ○ the principle of and arrangements (including charging periods) for tolls/charges. 	<ul style="list-style-type: none"> • Ansko's Relevant representation: RR-262 • Ansko's (and Waterfront's) letter to PINS re NMC5 dated 10 January 2017 (PINS Ref: AS-038) AS-038 • Ansko's Deadline 2 submission: REP2-007 • Ansko's DL5 submission: REP5-016

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<ul style="list-style-type: none"> • Trinity (D) Limited 	<p>The Applicant's understanding of Trinity (D) Limited's position on NMC3 (temporary diversion of Edmund Halley Way) and NMC5 (decked car park):</p> <p>Trinity (D) Limited did not attend the hearing or make any oral submissions; however, the Applicant's understanding of Trinity (D) Limited's position is as set out below:</p> <p>NMC3 and NMC5</p> <ul style="list-style-type: none"> • Agreement completed: As for Knight Dragon - see above re timely completion of the agreement. • Objection withdrawn: At DL5, Trinity (D) Ltd submitted a letter dated 20 March 2017 to PINS (REP5-018) stating that, "<i>Subject to the relevant parts of the Changes Application insofar as it relates to NMC3 and NMC5 being accepted in the DCO, Trinity D confirms that its objection to the DCO is withdrawn.</i>" • There are no remaining/outstanding objections. 	<ul style="list-style-type: none"> • Trinity D's Relevant representation: RR-305 • Trinity D's Written representation: REP1-056 • Trinity D's letter to PINS re NMC5 dated 18 January 2017 (PINS Ref: AS-042) AS-042 • Trinity (D)'s Deadline 5 submission: REP5-018
<ul style="list-style-type: none"> • The Waterfront Limited Partnership 	<p>The Applicant's understanding of The Waterfront Limited Partnership's position on NMC3 (temporary diversion of Edmund Halley Way) and NMC5 (decked car park):</p> <p>The Waterfront Limited Partnership did not attend the hearing or make any oral submissions; however, the Applicant's understanding is that The Waterfront Limited Partnership's position is as set out above for AnSCO Arena Limited.</p>	<ul style="list-style-type: none"> • Waterfront's Relevant representation: RR-261 and RR-307 • Waterfront's Written representation: REP1-013 • Waterfront's (and AnSCO's) letter to PINS re NMC5 dated 10 January 2017: AS-038 • Waterfront's Deadline 5 submission: REP5-017

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<ul style="list-style-type: none"> Southern Gas Networks plc and Birch Sites Limited 	<p>The Applicant's understanding of Southern Gas Networks' and Birch Sites Limited's position on the NMCs (including NMC6 - Birch Sites' site access):</p> <p>Southern Gas Networks and Birch Sites Limited did not attend the hearing or make any oral submissions; however, the Applicant's understanding as at the time of the hearing was that:</p> <ul style="list-style-type: none"> agreement had been reached between the Applicant and (i) Southern Gas Networks and (ii) Birch Sites Limited (as evidenced by agreements circulating for execution); and both Southern Gas Networks and Birch Sites were minded to withdraw their outstanding objections (as explained in the letter submitted to PINS on 28 March 2017 – AS-053). <p>Post hearing note:</p> <ul style="list-style-type: none"> On 31 March 2017 the Agreements between the Applicant and (i) Southern Gas Networks and (ii) Birch Sites Limited were completed; and On 31 March 2017, Southern Gas Networks and Birch Sites Limited withdrew all their previous remaining objections/representations in respect of the scheme (see letters to PINS dated 31 March 2017 – copies attached). 	<ul style="list-style-type: none"> National Grid relevant representation: RR-320 National Grid written representation: REP1-079 SGN's and Birch Sites' letter submitted to PINS on 28 March 2017 by CMS, explaining that these parties expect to be in a position to withdraw their objections shortly: AS-053 <div style="text-align: center;">  Letter of Withdrawal - SGN(218414412_1).PI </div> <ul style="list-style-type: none"> <div style="text-align: center;">  Letter of Withdrawal - Birch(218414401_1).P </div>
<ul style="list-style-type: none"> Brenntag UK Limited 	<p>The Applicant's understanding of Brenntag's position on NMC1 (accommodation works):</p> <ul style="list-style-type: none"> At the hearing, Brenntag re-confirmed their agreement to the package of accommodation works that the Applicant proposes to provide to mitigate the impacts of the acquisition of a portion of land within Brenntag's (leased) site for the construction of the replacement Boord Street footbridge. These works form the subject of NMC1. However, Brenntag explained that there remained one area of disagreement which was not 	<ul style="list-style-type: none"> Brenntag's Relevant representation: RR-216 Brenntag's Written representation: REP1-037

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	<p>resolved by NMC1: this was the issue of additional on-site storage, as previously discussed at the CA hearing held on 20 January 2017 (and summarised in the representations submitted thereafter – see REP3-018).</p> <ul style="list-style-type: none"> At the hearing, Brenntag also confirmed that negotiations with the Applicant were still on-going and that both parties were hopeful that agreement would be reached before the close of the Examination (failing which the parties would set out their respective positions in written representations submitted at Deadlines 6 and/or 7). <p>Post hearing update: the Applicant and Brenntag have now reached agreement on all matters contained within the Land and Works Agreement. It is anticipated that the Agreement will be completed before the end of the Examination, which will enable Brenntag to withdraw its objections to the Scheme proposals. A further update will be provided by the parties at Deadline 7.</p>	<ul style="list-style-type: none"> Copy of Brenntag's signed consent to NMC1, dated 16/01/2017 – see Appendix 4 to the Applicant's summary of oral submissions made at the CAH on 20 January 2017 - REP3-018 Brenntag's DL5 submission: REP5-019
<p>4. The Panel will offer an opportunity for any other parties with outstanding objections within the RB of Greenwich to make their case(s)</p>		
<p>Those that appear at D4 still to have unresolved CA/temporary use issues include:</p>		
<ul style="list-style-type: none"> U+I 	<p>The Applicant's understanding of U+I's position on its outstanding objections:</p> <p>U+I did not attend the hearing or make any oral submissions; however, the Applicant's understanding of U+I's position is as set out below, together with the Applicant's own position on the issues which remain outstanding:</p> <ul style="list-style-type: none"> Background on negotiations with U+I: The Applicant and Greenwich Limited (a company related to U+I) are progressing an Option Agreement for a Licence to Occupy land for three months to carry out works to remove a highways gantry. Separate discussions have taken place with U+I to discuss the public realm provision along Tunnel Avenue and the potential Grampian condition that would be imposed on the Applicant, if the extent of the COMAH zone associated with Brenntag's Hazardous Substances Consent is not reduced. 	<p>U+I's Relevant Representation: RR-185</p> <p>U+I's Written Submission: REP1-043</p> <p>U+I's Written Representation Attachment: REP1-044</p> <p>U+I's DL5 submission: REP5-023</p> <p>Design Principles (Revision 2) submitted by TfL at DL4:</p>

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	<ul style="list-style-type: none"> • U+I's development aspirations: U+I leases land known as Morden Wharf (from Morden College) which it intends to develop and which is also affected by the consultation zone relating to Brenntag's site. U+I has stated its intention to submit a planning application to develop Morden Wharf at the end of 2017. • U+I's criticism of public realm proposals: U+I is not satisfied with the Design Principles submitted by the Applicant at DL4. U+I have stated that the principles do not refer to essential matters including adequate bridge length to accommodate safe southbound bus footway refuge and adequate footpath/cycle widths around the ramps/stairs (and have also raised more minor issues such as the quality of views from the bridge). • The Applicant's position: the Applicant believes that U+I's concerns about the proposed public realm enhancements stem from a desire for greater certainty about the type of vehicles that will (or will not) be permitted to use Tunnel Avenue (once it is reopened as a local access road) as U+I perceives this may have an impact on the amenity of the residential development which U+I is planning for the Morden Wharf site. U+I would also like a bus stop to favour their development. • U+I's position on proposed HSE planning condition relating to Brenntag's site: U+I have told the Applicant that unless an additional condition is imposed (restricting the storage of hydrofluoric acid to 28KG drums at 60% concentration only), then the HSC consultation zone around Brenntag's site will be insufficiently drawn in. • The background to this is that the HSE's Written Representation (REP1-080 at para 6.7) had suggested that (with the conditions that the HSE had previously suggested to Brenntag) the consultation risk zones for that site could be reduced. • In its Deadline 5 submission (REP5-023) U+I proposed an additional condition relating to the storage of hydrofluoric acid in 28KG drums at 60% concentration, as follows: <ul style="list-style-type: none"> ○ <i>"Concentrated 60% hydrofluoric acid is held on site in 24 litre (28kg) drums for onward transportation. The material does not get removed from the packaging which is a polyethylene drum with screw cap and seal. The drums are stored in a dedicated external bunded area surrounded by steel fencing approximately six feet in height access is via a locked gateway"</i> • It is understood that Brenntag and the HSE are in discussions regarding the necessary conditions 	<p>REP4-037</p> <p>HSE's Written Representation: REP1-080</p>

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	<p>for Brenntag's 2012 Hazardous Substances Consent.</p> <p>Post hearing update: In order to satisfy U+I's concerns relating to public realm, at Deadline 6 the Applicant submitted: a plan showing how a bus stop and pedestrian refuge could potentially be incorporated at a later date; a new Design Principle relating to the Boord Street footbridge principles; and an additional point along with illustrative sections and plans to the design guidance for Tunnel Avenue in Appendix C of the design principles.</p>	
<ul style="list-style-type: none"> • Morden College 	<ul style="list-style-type: none"> • Morden College did not attend the hearing, but is being kept informed by the Applicant as to the progress of its negotiations with Brenntag and U+I/Greenwich, which lease land owned by Morden College. • The Applicant and Morden College are working together to complete a Statement of Common Ground which will be submitted to the ExA at DL7. 	<p>Morden College relevant representation: RR-291</p> <p>Morden College written representation: REP1-034</p>
<ul style="list-style-type: none"> • Lidoka Estates Limited 	<p>The Applicant's understanding of Lidoka's position is that it maintains its outstanding objections, as was explained by Lidoka in the hearing.</p> <ul style="list-style-type: none"> • Current position: In respect of the land which is proposed by the Applicant to be subject to powers of compulsory acquisition for the purpose of providing a replacement fire escape route for Studio 338, the current position remains as set out by Lidoka and the Applicant in their respective submissions at DL4 (see REP4-050 and REP4-065). In short: <ul style="list-style-type: none"> ○ Lidoka objects to TfL's proposed compulsory acquisition of plot 01-058 for the purpose of providing a fire escape route for Studio 338. ○ the Applicant seeks CA powers over the land in plot 01-058 only in order to provide a replacement fire escape route for Studio 338. In the event that it becomes clear that plot 01-058 is not required for that purpose TfL would not exercise any CA powers granted in relation to that land. TfL considers that there is a compelling case in the public interest for the compulsory acquisition of land in plot 01-058, the basis for which is set out in detail in REP4-050, in the response to CA2.4, at paragraph 2.4.4 and Appendix B. 	<p>Lidoka's Relevant representation: RR-037</p> <p>Lidoka's DL4 submission: REP4-065</p> <p>TfL's DL4 submission (response to SWQ CA2.4 - see Appendix B): REP4-050</p>

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	<ul style="list-style-type: none"> • Lidoka recently (28 March 2017) agreed to the Heads of Terms which had been the subject of negotiation between Lidoka and the Applicant. Notwithstanding having agreed the Heads of Terms, Lidoka still objects to the proposed CA of its land (plot 01-058) for the Studio 338 replacement fire escape route, but has accepted that TfL cannot seek CA powers in respect of a lease of the fire escape land. The parties intend to proceed from Heads of Terms to a legal agreement in due course, covering all matters save for the issue of the fire escape land (plot 01-058). • Route of the replacement fire escape: In response to a question from the ExA, the Applicant confirmed that the route for the replacement fire escape, despite appearing somewhat circuitous in skirting the side and rear elevations of the Studio 338 building, was the optimum route taking into account the relevant location and circumstances. A fire escape route through land owned by Southern Gas Networks, for instance, would not have provided an appropriate alternative option. The Applicant reported that in any case, negotiations with Southern Gas Networks and Birch Sites had culminated in agreement, which completion of legal agreements and corresponding withdrawals of objections to be effected imminently. • Planning application for reinstatement of Studio 338: in response to the ExA's query, the Applicant confirmed that the Mayor's response to the consultation on the Studio 338 planning application was expected within the next few days. The ExA noted that its reporting process would be simplified if clarification of the Studio 338 planning permission could be achieved. <p>Post hearing update:</p> <ul style="list-style-type: none"> • On 31 March 2017, the Mayor's response to RBG's consultation on the Studio 338 planning application was published. A copy is attached in the column headed 'relevant document references'. The response advises that, on the basis of the safeguarding of land for the Scheme, no part of the application design should conflict with the Silvertown Tunnel proposals. Further, the Mayor's response states specifically that "<i>TfL requires that the current design be amended so that the fire escape provision is managed within the applicant's site ownership and conforms to the current design of the Silvertown Tunnel scheme</i>". • The Applicant and Lidoka are working together to complete a Statement of Common Ground which will be submitted to the ExA at DL7. 	<p>The Mayor's response to RBG's consultation on the Studio 338 planning application (31 March 2017):</p> <div style="text-align: center;">  <p>4203.pdf</p> </div>

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Others with interests at or adjoining Studio 338		
<ul style="list-style-type: none"> Health and Safety Executive (HSE) 	<ul style="list-style-type: none"> The current position in relation to the Hazardous Substances Consents (HSCs) at the East Greenwich Gasholder Site ('EGGS') and at Brenntag's site is as set out in detail in the Applicant's Update Note submitted at DL5 (REP5-004 – see section 4, paragraphs 4.1.1 - 4.1.19). 	<ul style="list-style-type: none"> The Applicant's DL5 Update Note: REP5-004
<ul style="list-style-type: none"> Studio 338 	<p>Representatives of Studio 338 did not attend the hearing; however, to assist the ExA the Applicant has set out below its understanding of the current position with Studio 338.</p> <ul style="list-style-type: none"> Studio 338 – current position: Since Deadline 2, no further representations have been submitted on behalf of Studio 338 / Mustafa Osman Tary / Raduga Limited. Negotiations: the Applicant has recently liaised with Mr Tary (club operator) and representatives of Raduga Limited (leasehold land owner) (together 'Studio 338') to explain how the proposed replacement fire escape route would work. The Applicant's understanding is that Studio 338 is happy with the proposed arrangements for a replacement fire escape route. Studio 338's intentions: Studio 338 has confirmed to the Applicant that it will be re-opening in June 2017 to hold 'beach parties' etc. under its permitted development rights. The Applicant's position: the Applicant notes that Studio 338 expects and intends to resume its operational status within the site / footprint of its original building in advance of the delivery of the scheme. The Applicant considers that, because the scheme, if implemented, would remove the possibility of emergency egress/evacuation through Studio 338's frontage onto the A102 / Blackwall Tunnel Southern Approach, there will – if Studio 338 resumes operations (irrespective of the consenting route pursuant to which it does so) – be a future need for a replacement fire escape route to serve the Studio 338 premises. In this context, and for the reasons set out in the Applicant's Deadline 4 submission (response to SWQ CA2.4, in REP4-050, which includes, among other things, the consideration of alternatives), 	<ul style="list-style-type: none"> DL1 submission REP1-030 made by Affordable Architects on behalf of Tary Holdings Limited DL 2 submission REP2-002 made by Affordable Architects The Applicant's DL4 submission (response to SWQ CA2.4 – see Appendix B): REP4-050

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	<p>the Applicant considers that its request, in the DCO application, for powers of compulsory acquisition (and temporary possession) to provide the replacement fire escape route on the basis proposed (in the DCO application), is legitimate, proportionate and justified.</p> <p>Post hearing update:</p> <ul style="list-style-type: none"> On 31 March 2017, the Mayor's response to RBG's consultation on the Studio 338 planning application was published. A copy is attached in the column headed 'relevant document references' in the row allocated to Lidoka (above). The response advises that, on the basis of the safeguarding of land for the Scheme, no part of the application design should conflict with the Silvertown Tunnel proposals. Further, the Mayor's response states specifically that "<i>TfL requires that the current design be amended so that the fire escape provision is managed within the applicant's site ownership and conforms to the current design of the Silvertown Tunnel scheme</i>". 	
<p>5. Before considering land acquisition north of the river, the Panel will wish to explore with the Applicant, the Environment Agency (EA) and the Port of London Authority (PLA) the implications for CA/temporary use of any on-going concerns over the extent and nature of acquisition proposed within the river area, including the need for maintenance and improvement of river walls above the tunnel.</p>		
<p>This issue will involve:</p>		
<ul style="list-style-type: none"> The PLA 	<p>The PLA was in attendance at the hearing and set out its position then; the Applicant's understanding of that position is summarised below.</p> <ul style="list-style-type: none"> DCO drafting issues: Discussions leading up to and following the hearings in w/c 27 March 2017 enabled good progress to be made between the Applicant and the PLA on outstanding DCO drafting issues, with a number of amendments being agreed. Compulsory acquisition: From a CA perspective, new article 69 (included in the draft of the DCO previously submitted at Deadline 4 (revision 4)) provides for restrictions on activities in the river area. It has been agreed that this article will apply in place of the Applicant's ability to 	<ul style="list-style-type: none"> PLA's Relevant representation: RR-285 PLA's Written representation: REP1-053 PLA's DL5 submission: REP5-013 Draft DCO (Revision 4)

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<p>Item 14.2 of the ISH/Environmental Agenda:</p> <p><i>Further to PLA's D4 representations regarding Article 47, please can the Applicant/PLA provide an update on whether the matter of the potential for TfL to gain commercial benefits from the</i></p>	<p>impose restrictive covenants over the river under article 22, with a corresponding express carve out of the power to impose restrictive covenants which is otherwise provided in article 22. The Applicant and the PLA continue to discuss the circumstances which would apply in the event that the river walls were to retreat in future (thus widening the river channel) but agreement is anticipated shortly. The parties have agreed that the protections afforded by article 69 are satisfactory to apply in place of restrictive covenants.</p> <ul style="list-style-type: none"> • Compensation: The PLA have for some time been seeking a share in the revenues from the user charging in return for the compulsory acquisition of the subsoil of the river bed. This is not agreed, with TfL maintaining the position that the compensation code applies (and noting that if required it will put this position to the Lands Chamber of the Upper Tribunal). The parties have accepted compensation will likely need to be determined by the Upper Tribunal as necessary in due course. The relevant statutory frameworks for compensation are summarised below. • Relevant statutory framework(s) for compensation: <ul style="list-style-type: none"> ○ The PLA submits that compensation for any CA or TP should be assessed with reference to ss.66 and 67 of the Port of London Act 1968 rather than the Compensation Code. Under s.67, consideration is payable for a works licence. As such, the PLA seeks compensation based on a percentage of revenues from the user charging scheme for the Silvertown Tunnel. In short, it would appear that the PLA is seeking to benefit from a share of the revenue from the tunnel tolls. ○ the Applicant's position is that the correct basis of compensation under Compensation Code is the open market value of land, assuming cancellation of the Silvertown Tunnel scheme. In this scenario, there is no demand for the land (being mainly subsoil beneath the river) and its value is nil or nominal. ○ The Applicant relies on s.126 of the Planning Act 2008 to rebut the PLA's claims that s.66/67 should apply, on the basis that s.66/67 is not a 'compensation provision' in the context of CA, but provides for 'consideration' payable when a river works licence is granted – taking the PLA's approach would, in effect, modify the application of a 'compensation provision' (i.e. the Compensation Code) which is prohibited by section 126; and ○ The Applicant has sought to draft the DCO in terms which provide that consideration 	<p>submitted (in mark-up) at DL4 – see article 69: REP4-026</p> <ul style="list-style-type: none"> • PLA's Response to ExA's Second Written Questions: REP4-069 • PLA's further submissions for Deadline 4: REP4-070

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<p><i>installation of other apparatus by third parties (such as wires or cables) through the tunnel, if the Order is made, has been resolved?</i></p> <p>Item 14.1 of the ISH/Environmental Agenda:</p> <p><i>Further to the Applicant's report on wharves (Wharves Access Impact Technical Note) [REP4-048], please can the Applicant and the PLA provide an update to the Panel regarding which existing wharf operators/wharf-side businesses would be adversely affected by the proposed development, due to the expiry of their existing short term lease(s), with</i></p>	<p>under s.66/67 will only be payable for works carried out on land temporarily possessed under the DCO(e.g. jetty and associated works) (but not for the exercise of CA powers).</p> <ul style="list-style-type: none"> • The PLA has also raised objections on the drafting of article 47 – the Applicant's position on this issue is set out in its response to Item 14.2 of the ExA's ISH/Environmental Agenda for the ISH held on 28 March 2017. • On the issue of river wall maintenance, the Applicant's position is set out in the summary of its ISH submissions. • In so far as it is relevant from a CA perspective, in relation to Item 14.1 of the above-mentioned ISH/Environmental Agenda, the Applicant's understanding is summarised as follows: <ul style="list-style-type: none"> ○ Euromix doesn't operate from part of the wharf that is safeguarded – they are on a lease which expires Summer 2017, and after that the lease is on a rolling annual basis with a rolling 6 month break option. ○ Keltbray does operate from part of the wharf that is safeguarded but their lease expires in January 2018. They would like assistance with relocation if they are displaced. ○ The PLA has been in talks with both parties (as confirmed to the Applicant in its meetings with all three parties). ○ General Marine previously owned land at Thames Wharf, but now occupies it pursuant to a sale and lease-back agreement, and in the expectation that it will be required to relocate, has been 'decanting' from the Thames Wharf site for some time. General Marine's explosives licence is required in relation to the preparation of New Year's Eve celebratory fireworks on the site, in readiness for transportation up-river. General Marine is understood to be holding over on a tenancy at will but has informed the Applicant that it is planning to relocate. ○ It should be noted that the PLA bought the Peruvian Wharf site at the end of 2016 – the site is safeguarded, is located a few hundred yards to the east of the existing Thames Wharf site, and is significantly bigger than the existing Thames Wharf site from which Keltbray and Euromix currently operate – the total area of land used by Keltbray is 0.745 hectares and the area used by Euromix is 0.638 hectares, whereas the safeguarded 	<p>Plan showing land ownerships at Thames Wharf and at the Carlsberg-Tetley site, with safeguarded wharf boundary overlaid</p>  <p>Thames Wharf and CT landowners.pdf</p>

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<p><i>little or no prospect of being relocated onto a similar site with wharf facilities?</i></p>	<p>Peruvian Wharf is 3.62 hectares in total.</p> <ul style="list-style-type: none"> ○ On the basis that: <ul style="list-style-type: none"> ▪ Keltbray (demolition company; have assisted Crossrail construction) and Euromix (Tarmac) took the leases on the terms they did (i.e. short term and unsecured) and thus knew they would have to relocate; ▪ the PLA/Mayor's joint report identified an excess of safeguarded wharf sites in this area; and ▪ Peruvian Wharf has more than enough capacity to accommodate Euromix, Keltbray (and, if required, General Marine) and is now owned by the PLA, <p>there is no reason to expect that any affected wharf-side businesses would not be able to relocate to suitable alternative premises.</p> ● Availability / surplus of alternative wharf facilities: Notwithstanding the PLA's comments (at the CA hearing) regarding the length of time necessary to restore a wharf area to operational use, the Applicant notes that: <ul style="list-style-type: none"> ○ The Final Recommendation of the Safeguarded Wharves Review (March 2013, carried out by the Mayor's Office in collaboration with the PLA)) identified an over-supply of wharves in the North-East London sub-region. ○ The report identified 25 wharf sites with 6 proposed for release from safeguarding due to 'surplus capacity in NE London' and one (Alexander Wharf) proposed for safeguarding. ○ It is reported that the consolidation of Thameside Wharf West area (Thames Wharf, Peruvian Wharf and Manhattan Wharf) was under consideration (The Royal Docks OAPF – talks about consolidating wharf use at Peruvian Wharf). ○ The report recommends working with relevant stakeholders to encourage greater use of wharf facilities river freight at a number of sites. ○ Peruvian Wharf was acquired by the PLA at the end of 2016 - they have reported that the site is now let but it is significantly bigger than the combined sites occupied by Keltbray and Euromix (and General Marine) <i>and</i> the PLA were in discussion with Euromix and 	

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	<p>Keltbray re: relocation before letting the site to a third party.</p> <ul style="list-style-type: none"> • Need for other land uses at / near the Wharf sites: <ul style="list-style-type: none"> ○ The Applicant is aware that many of the current occupiers would be required to move in any event (irrespective of the Applicant's scheme) and given that the land is proposed, in the mid to long term future to be redeveloped for housing etc, the Applicant's scheme is not the sole trigger for displacement / relocation. 	
<p>6. The Panel will then offer opportunity for any other parties with outstanding objections within the London Borough (LB) of Newham to make their case(s)</p>		
<p>Those that appear at D4 still to have unresolved CA/temporary use issues include:</p>		
<ul style="list-style-type: none"> • ASD Limited (trading as Kloeckner Metals UK) 	<ul style="list-style-type: none"> • ASD Limited did not attend the hearing as negotiations with the Applicant have recently made good progress and, on the basis that the parties are now close to reaching agreement on all outstanding issues, the Applicant agreed to present, at the hearing, a position statement which had been jointly prepared and agreed between the parties, and which was as follows: <ul style="list-style-type: none"> ○ "Transport for London and ASD Limited have been in on-going discussion to reach an agreement in relation to mitigating the impacts of the temporary possession of ASD's land resulting from the Silvertown Tunnel. ○ "Good progress has been made in these discussions, with specifications for temporary and permanent access provision to ASD's site almost agreed. ○ "The agreement remains outstanding due to further discussion needed on some detailed legal points, however the parties are working on the basis that an agreement should be in place by the end of the Examination. ○ "Until an Agreement is reached, ASD's objections to the Scheme remain. However, as stated above, both sides consider that matters between the parties can be resolved such that ASD's objections will be able to be withdrawn by Deadline 7. 	<ul style="list-style-type: none"> • ASD's DL4 submission: REP4-004 • Pages 9-14 of Deadline 2 TfL 8.38 Comments on Written Representations – Land Interests Part 2

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	<ul style="list-style-type: none"> ○ "On this basis, ASD will not be appearing at the hearings on 28 and 29 March 2017 (other than to observe) and without prejudice to ASD's position generally." 	
<ul style="list-style-type: none"> • Quintain Limited 	<ul style="list-style-type: none"> • Please see comments below for Silvertown Homes Limited. 	
<ul style="list-style-type: none"> • Newable Property Developments Ltd (successors to GLE Property Developments Ltd and Waterfront Studios Limited) 	<ul style="list-style-type: none"> • Waterfront Studios and LB Newham did not attend the hearing as negotiations with the Applicant have recently made good progress and, on the basis that the parties are now close to reaching agreement on all outstanding issues, the Applicant agreed to present, at the hearing, a position statement which had been jointly prepared and agreed between the parties, and which was as follows: <ul style="list-style-type: none"> ○ "Transport for London, Newable Property Development Ltd, Waterfront Studios Ltd & The London Borough of Newham have been in on-going discussion to reach an agreement in relation to mitigating the impacts, particularly over the loss of car parking, of both the permanent acquisition and temporary possession of land by TfL in which Newable, Waterfront and Newham have an interest. ○ "Good progress has been made in these discussions, with agreement reached on the principle of TfL providing temporary and permanent replacement car parks (during and after construction respectively), with specifications for these car parks now agreed. ○ "The agreement remains outstanding due to further discussions needed on a few remaining detailed legal points, however the parties are working on the basis that an agreement should be in place by the end of Examination. ○ "On this basis Newable Property Development Ltd, Waterfront Studios Ltd & The London Borough of Newham (in its capacity as a landowner) will not be making representations at today's CA and DCO hearings. ○ "Until an agreement is reached, objections to the scheme remain, however as stated above all sides consider the matters between the parties can be resolved such that the objections of Newable, Waterfront and Newham will be able to be withdrawn by the end 	<ul style="list-style-type: none"> • Newable and Waterfront's written representation: REP1-032 • Pages 40-42 of Deadline 2 TfL 8.38 Comments on Written Representations – Land Interests Part 2

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	of the examination, if not before."	
<ul style="list-style-type: none"> • Silvertown Homes Limited (formerly Quintain) 	<ul style="list-style-type: none"> • Please see the Applicant's separate Deadline 6 submissions (document reference TBC) which respond to the issues raised by Silvertown Homes Limited in writing, in its late Deadline 5 submission (REP5-032), and orally at the compulsory acquisition hearing held on 29 March 2017. 	<ul style="list-style-type: none"> • Quintain's/Silvertown Homes DL4 submission: REP4-007 • Silvertown Homes Limited's late DL5 submission: REP5-032
7. The Panel will ask the Applicant to confirm whether or not there remain any outstanding issues in relation to CA/temporary possession of land or rights of Statutory Undertakers in relation to section (s)127 or s138		
	<p>Update provided by the Applicant on progress of negotiations with statutory undertakers:</p> <ul style="list-style-type: none"> • In terms of negotiations with statutory undertakers which are still on-going, the Applicant reports as set out below in relation to Thames Water, UKPN and Southern Gas Networks. • With regard to all other statutory undertakers, matters are settled (as previously reported in the Applicant's response to at Deadline 4 to the ExA's SWQ CA2.3). This will be re-confirmed to the ExA at Deadline 7 by means of an updated version of the Applicant's tracker, earlier versions of which were previously presented at Deadline 1 in the response to FWQ CA2 and at Deadline 4 in the response to SWQ CA2.3. • In short, however, the Applicant anticipates that it will be in a position to reach agreement with all statutory undertakers by close of the Examination, with the sole potential exception of Thames Water; however, should that be the case, the Applicant will set out its position in a written submission at Deadline 7. • The Applicant anticipates that when negotiations with affected statutory undertakers are concluded, it will be able to demonstrate, to the Secretary of State's satisfaction, that the tests in sections 127 and 138 of the Planning Act 2008 have been met. 	<ul style="list-style-type: none"> • TfL's DL4 submission (response to SWQ CA2.3): REP4-050

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<ul style="list-style-type: none"> • Thames Water 	<ul style="list-style-type: none"> • The main principles of protections for the benefit of Thames Water's assets have been agreed between the parties, as has the issue raised by Thames water relating to article 14 of the draft DCO; however, discussions continue on the precise terms of the settlement with the aim of agreeing all matters so as to enable withdrawal of Thames Water's remaining grounds of objection. The parties will aim to provide a jointly agreed statement at Deadline 7 as to the status of these discussions and the likely timeframes to formalising agreement. 	<ul style="list-style-type: none"> • Thames Water's DL4 submission: REP4-004 • TfL's DL4 submission (response to SWQ CA2.4 REP4-050) as updated on 28 March 2017
<ul style="list-style-type: none"> • Southern Gas Networks 	<ul style="list-style-type: none"> • Agreement has been reached and Southern Gas Networks' objection has been withdrawn (see above for details). 	<ul style="list-style-type: none"> •
<ul style="list-style-type: none"> • UKPN 	<ul style="list-style-type: none"> • Agreement has been reached on the form of the protective provisions contained in Schedule 13 to the dDCO. 	<ul style="list-style-type: none"> •
6. Any other business relating to CA or temporary possession		
<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • N/A