

TRANSPORT FOR LONDON - SILVERTOWN TUNNEL – DEVELOPMENT CONSENT ORDER APPLICATION

ISSUE SPECIFIC HEARING ON THE DEVELOPMENT CONSENT ORDER

29 MARCH 2017

SUMMARY OF APPLICANT'S SUBMISSIONS

INTRODUCTION

1. This note summarises the submissions made by Transport for London ('TfL') at the Development Consent Order Issue Specific Hearing held on 29 March 2017 ('the hearing') in relation to TfL's application for development consent for the Silvertown Tunnel ('the scheme').
2. Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority on 20 March 2017 ('the agenda'). In setting out TfL's position on the issues raised in the agenda, as submitted orally at the hearing, this format of this note follows that of the agenda. In addition, extra items have been added where interested parties or the ExA raised points not specifically mentioned in the agenda and in relation to which TfL made oral submissions.
3. TfL's substantive oral submissions commenced at item 4 of the agenda, therefore this note does not cover items 1 to 3 on the agenda.

ExA's Agenda Item	Summary of TfL's Oral Submissions made in the hearing	Relevant document references
4. The Panel will ask the Applicant to introduce any further changes that are being put forward following agreement with any or all of the following: <ul style="list-style-type: none">• Environment Agency (EA)• Port of London Authority (PLA)• Marine Management Organisation (MMO)• Host Boroughs• Other IPs	Robbie Owen made the following points on behalf of the Applicant.	'Interim' dDCO submitted 24 March 2017 (AS-049)

	<p>The Applicant had, at the request of the ExA, submitted an 'interim' dDCO ahead of the hearings, together with an explanatory document commenting on each change made to the version of the dDCO submitted at Deadline 4. These documents were published on the PINS website, but had not yet been allocated PINS reference numbers.</p> <p>The reasoning for the changes made is set out in the explanatory document accompanying the 'interim' dDCO, but in summary:</p> <ul style="list-style-type: none"> • minor changes were made to the definition of 'the Blackwall Tunnel' in article 2(1) (and Schedule 9) following a suggestion from the LB Bexley; • a clarification has been made to article 4(2) following a suggestion from the PLA; • article 17 has been amended following discussions with the PLA, around how the various timeframes fit together; • articles 22, 25, 26 and 27 have been amended to reflect changes made to the compulsory acquisition and compensation legislative regime by the Housing and Planning Act 2016; • the PLA has helpfully suggested changes to articles 29 and 30 which bring the contents of the required notices under these articles in line with the expiry 'events' for the relevant powers, together with changes to better reflect the relationship between the compensation provisions in these articles and the protective provisions for the benefit of the PLA; • following comments from various Boroughs, a revised definition of 'emergency' has been included in article 43; • the ExA's proposed changes in their dDCO (PD-013) have been made to article 65, together with the deletion of paragraph (9) which the Applicant does not consider is necessary - where the article is silent on how STIG sets its procedures, it would be up to it to determine these in any case - an express provision is not needed for this; 	<p>Explanatory document accompanying 'interim' dDCO (AS-051)</p> <p>Applicant's Update Note (REP5-004) – section 4</p> <p>GLA submission at Deadline 5 (REP5-029)</p>
--	--	---

	<ul style="list-style-type: none"> • a new article 70 has been added following discussions with the Greater London Authority ("the GLA"), such that Secretary of State consent is not required for any transfer of the GLA's land in connection with the scheme. This provision has been agreed with the GLA (see REP5-029); • minor formatting changes have been made to Schedule 1, together with a consistency change in respect of the environmental 'no worse than' test (although this was discussed in the hearing on the previous days, and further changes will be made to the dDCO at future deadlines – see agenda item 8 and the Applicant's written summary for the outstanding issues including environmental matters issue specific hearing (ref: 8.109); • an amendment has been made to Requirement 4, following discussions with the London Borough of Newham and the Royal Borough of Greenwich to capture any of the 'catch-all' works in Schedule 1 which would consist of a permanent above ground structure and would not benefit from permitted development rights – the Applicant understands the London Borough of Newham to be content with this and comments are awaited from the Royal Borough of Greenwich; • small changes have been made to Requirement 5 to clarify the PLA's role; • discussions remain on-going with the Boroughs on Requirement 7, however, the following amendments have been made in the meantime: <ul style="list-style-type: none"> • the concept of post-opening quarterly monitoring reports has been added; • the definition of 'relevant air quality authority' has been broadened, such that the relevant authority is consulted even if the worsening does not occur in an area designated as an AQMA; and • an incorrect cross-reference has been amended; • a small amendment has been made to Requirement 12 in respect of the environmental 'no worse than' test (although this was discussed in the 	
--	--	--

	<p>hearing on the previous days, and further changes will be made to the dDCO at future deadlines – see agenda item 8 and the Applicant's written summary for the outstanding issues including environmental matters issue specific hearing (ref: 8.109);</p> <ul style="list-style-type: none"> • the concept of Euro VI has been expressly added to Requirement 13 following a comment from the Royal Borough of Greenwich; • changes have been made to Schedule 5 to reflect changes made to the compulsory acquisition and compensation legislative regime by the Housing and Planning Act 2016; • the dDML in Schedule 12 has been tweaked to make clear that the MMO will be provided with the initial archaeological written scheme of investigation and any subsequent revisions, where it contains marine elements; and • the protective provisions in Schedule 13 have been amended to reflect discussions with the PLA. In addition, the Applicant's preferred form of protective provisions for the benefit of the Environment Agency have been included, to take into account the Applicant's position on river wall maintenance. <p>In addition, Mr Owen confirmed that the Applicant would not be including the 'Grampian' condition in respect of Hazardous Substance Consents within the dDCO, but would instead be supplying to the ExA its preferred form of wording.</p> <p>However, having given this further consideration, the Applicant for ease of reference now proposes to include this proposed wording within the dDCO <u>but</u> in square brackets, reflecting the Applicant's position that it is not necessary – please see the Applicant's Update note submitted at Deadline 5 for more commentary on this.</p>	
<p>5. Any other textual changes sought on the face of the DCO.</p> <p>The Panel will go through the DCO, article by article and Schedule by Schedule inviting comment or making suggestions where further changes might be warranted.</p>		
	<p>The Applicant has set out below its submissions made at the hearing under this agenda item in</p>	

	<p>an order to reflect the order of provisions in the dDCO – however, this does not necessarily reflect the order in which these matters were dealt with at the hearing.</p> <p>All submissions were made by Robbie Owen on behalf of the Applicant, unless otherwise stated.</p>	
Article 14: Submissions made by Thames Water		
	<p>It was confirmed to the ExA that matters on the drafting of article 14 have now been resolved between the Applicant and Thames Water. That provision will no longer fall within the scope of the deemed consent provision (article 68). This amendment is reflected in the revised version of the dDCO submitted at Deadline 6.</p>	<p>Revision 5 of the dDCO submitted at Deadline 6</p> <p>Document explaining dDCO amendments submitted at Deadline 6</p>
Article 43: Submissions by the London Borough of Lewisham (amongst others)		
	<p>In response to points made by various interested parties, the Applicant responded by stating that it considers flexibility is required in respect of the procedures for giving notice and publicising any tunnel closures – however, this would be generally be done in line with the Applicant's current practices (i.e. that appropriate notice would be given, taking into account the circumstances).</p>	<p>Applicant's Update Note (REP5-004) – section 8</p>
Article 50: Classification of roads		
	<p>Whilst not mentioned at the hearing, the Applicant considers this document provides an opportunity to respond to a comment made by the London Borough of Tower Hamlets in written submissions, in respect of the transfer of roads where responsibility currently lies with the Boroughs, to the Applicant.</p> <p>The Applicant understands the London Borough of Tower Hamlets' concerns to be based on a potential 'transfer' of these roads post-construction of the scheme, which could necessitate repairs being carried out by Tower Hamlets (at its cost) to correct damage caused by the Applicant during construction. This is because article 50 is expressed as providing for any 'transfer' of roads to be on a date determined by the Applicant.</p> <p>The Applicant considers that flexibility is needed in this regard (hence the wording of the provision), but that Tower Hamlets' concerns would be raised in the context of the detailed discussions necessary to facilitate the 'transfer' of roads. The Applicant would not simply seek a</p>	<p>London Borough of Tower Hamlets' Deadline 5 submission (REP5-012)</p>

	'transfer' of these roads without engaging extensively with Tower Hamlets, and indeed all the affected Boroughs, beforehand.	
Article 52: User charges		
	<p>The Applicant confirmed it does not consider it is appropriate for user charging to be imposed in perpetuity, given the life of the Scheme and the unknown circumstances which might occur up to 120 years in the future. The Charging Procedures and Policies document requires charges to be imposed to the extent that this is necessary or expedient to achieve the project objectives. That document sets out criteria that will be applied to measure the Scheme's performance against the project objectives. If these criteria show that a charge is required, but none is imposed, the Applicant would be in breach of the DCO (given the requirement in article 52 to exercise any user charge functions in accordance with the Charging Procedures and Policies document).</p> <p>Indeed, it may be that conditions dictate in future that a charge would not be appropriate for the tunnels. Flexibility is therefore needed, in the context of the safeguards contained in the Charging Procedures and Policies document, to allow for this. A 'blunt' provision requiring charging to be imposed in perpetuity is therefore not appropriate.</p> <p>In response to a query from the ExA, the Applicant acknowledged that article 53(3) provides that a nil charge can be imposed even if there was a commitment to 'charge' in perpetuity. However, the Applicant considers it could cause confusion for users and would impose unnecessary administrative burdens if a charge was applied at nil rate for any sustained period.</p> <p>Michael Humphries QC pointed out on behalf of the Applicant that the DCO does contain a <i>power</i> to charge in perpetuity, but not an <i>obligation</i> to do so. The Applicant cannot foresee what is going to happen in future and so there could come a time when no charge (or 'nil' charge) is actually levied. In that context, it is important to focus on the 'Project Objectives' contained in the Charging Procedures and Policies document that provide the relevant parameters for the level of charges into the future.</p> <p>The London Borough of Lewisham made submissions that the proposed low income discount should apply to its residents, as opposed to just the 'host' Boroughs' residents. The Applicant has prepared a note, which sets out its rationale for not including the London Borough of Lewisham within these proposed discounts. This is attached to this note at Appendix A.</p>	Charging Policies and Procedures (Revision 3) submitted at Deadline 6

Article 56: Application of user charging revenue		
	<p>The Applicant acknowledged that the revenue from user charging could fund mitigation, but it would be inappropriate for the DCO to dictate the Applicant's funding mechanisms. Fundamentally, if the DCO is granted, the obligations contained within it would need to be delivered by the Applicant, or an offence would be committed. Indeed, the Applicant cannot rely on the user charge as a funding stream, as a surplus is not forecast until later years - there would be a shortfall initially.</p> <p>This same logic applies to suggestions that user charge revenue should be applied to funding other river crossings, as this would interfere with the Applicant's established funding mechanisms. In addition, if the DCO was to contain an express provision along these lines, it risks pre-judging policy for other schemes which are not yet settled.</p>	<p>Applicant's response the SWQ DC2.5 (REP4-052)</p> <p>Written Summary for dDCO ISH on 19 January 2017 (REP3-017)</p>
Article 58: Transfer of benefit		
	<p>In response to comments made by interested parties that certain elements of the scheme should be 'carved out' of the scope of article 58 (e.g. user charging), the Applicant submitted that no-one knows what the context for operating assets such as the tunnels will be in 20, 30, 60 years' time, given the 100 plus years' design life of the new tunnel. As such, it would not be appropriate to 'carve out' elements now, based on today's intentions for the current procurement.</p> <p>As previously submitted into the examination, any transferee would be bound by the same obligations and restrictions as the Applicant would be in exercising any function (article 58(4)). In the context of the user charging regime, article 52 is key as it provides that the relevant functions must be exercised in accordance with the Charging Policies and Procedures document.</p>	<p>Applicant's response to SWQ DC2.6 (REP4-052)</p>
Article 60: Bus lanes		
	<p>The Applicant responded to a point raised as to whether the status of the proposed bus lane could be amended by article 60 by confirming that this point would be discussed with the Boroughs.</p> <p>Having reflected on this further, it is clear that article 60 does provide for this power - in essence, the provision of the bus lane takes effect as if facilitated by a traffic regulation order ("TRO") made under the Road Traffic Regulation Act 1984 (article 60(6)). As such, this measure could be amended by a subsequent TRO made under that Act.</p>	

	<p>However, under the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996, if the Applicant in future wanted to remove or amend the bus lane provisions by promoting a new TRO, it would need to consult with certain persons in specified circumstances, including affected Boroughs. Objections can be made to the proposed TRO, and affected local authorities are expressly permitted to object.</p> <p>Therefore the Applicant cannot simply unilaterally revoke the bus lane provisions – instead, a prescribed, transparent process must be followed which the Boroughs would be involved with.</p>	
<p>Article 65: Consultation on cross-river bus services and STIG generally</p>		
	<p>There were various comments made by interested parties querying the removal of cross-river bus services from the scope of matters the members of STIG would be consulted upon under article 65(5). In response, Duncan O'Connor on behalf of the Applicant noted that this change had been made to reflect the extent of the statutory consultation duty that applies under the Greater London Authority Act 1999 when TfL proposed to changes bus services.</p> <p>That GLA Act duty requires TfL to consult with the Boroughs affected by the bus routes. In line with that duty, TfL had removed the reference to consultation on buses in article 65(5) as it considered a more focussed consultation with affected Boroughs rather than entire membership of STIG would be more appropriate. However, the Applicant also stated that it would give further consideration to this point and acknowledged that the Bus Strategy includes references to STIG.</p> <p><i>Post hearing note: The applicant has reintroduced to article 65(5) a reference to TfL consulting STIG on bus services. This wording is consistent with the revised Bus Strategy submitted at Deadline 6.</i></p> <p>In response to a query from the ExA, the Applicant agreed to reflect on the consistency between the frequency of STIG meetings as stated in article 65(7) and the related provisions in the Monitoring and Mitigation Strategy.</p> <p>Having subsequently reflected on this, the Applicant maintains that the current drafting of article 65(7) and the provisions of the Monitoring and Mitigation Strategy are consistent. Article 65(7) provides that, unless otherwise agreed with STIG, the Applicant must convene a meeting of STIG at least twice a year, including on each occasion that a monitoring report is produced.</p>	<p>Revision 5 of the dDCO submitted at Deadline 6</p> <p>Monitoring and Mitigation Strategy (Revision 1) submitted at Deadline 6</p> <p>Bus Strategy (Revision 1) submitted at Deadline 6</p>

	<p>The Applicant considers that this would allow quarterly meetings in the first year upon the publication of the monitoring reports under the Monitoring and Mitigation Strategy. Indeed, the provision as drafted does not preclude more frequent meetings as necessary.</p> <p>The Applicant wishes to note that the consultation undertaken with STIG members by the Applicant under article 65(5) does not <i>require</i> a meeting to be held with all the members of STIG (the scenario envisaged by article 65(7)). In practice, where the Applicant is required by the DCO to consult STIG members on any of the matters set out in article 65(5), it is envisaged that this would be done in writing on a member by member basis, rather than through a meeting of the wider group.</p> <p>As mentioned above, article 65(7) provides a <u>minimum</u> frequency of meetings – twice a year for the life of STIG, except in the first year post-opening where meetings must be held quarterly by virtue of the publication of the monitoring reports. However, more frequent meetings are not precluded.</p> <p>In response to submissions made by London City Airport, the Applicant confirmed that it agreed with the London Borough of Newham that it was best placed to represent London City Airport's interests in the context of STIG.</p>	
Schedule 2: Proposed new requirement in respect of the Emirates Air Line		
	<p>Certain interested parties proposed that obligations in respect of reviewing or discounting fares on the Emirates Air Line should be the subject of a requirement in Schedule 2 to the dDCO. The Applicant submitted that this is not an option, given that such an obligation would not meet the relevant tests for requirements contained in paragraph 4.9 of the NNNPS.</p>	
Schedule 2, Requirement 7		
	<p>The Applicant confirmed that discussions on the terms of Requirement 7 were on-going with the Boroughs.</p> <p><i>Post hearing note: The dDCO submitted at Deadline 6 contains amendments to the procedures set out in Requirement 7 that apply in respect of pre-opening mitigation measures. In particular, the amendments provide for an additional stage of liaison with any Borough in which TfL proposed to implement mitigation. This liaison must be carried out before TfL submits the proposed scheme of mitigation to the Secretary of State for approval.</i></p>	<p>Monitoring and Mitigation Strategy (Revision 1) submitted at Deadline 6</p>

	<p>In response to a comment from London City Airport, the Applicant explained that it did not consider there was any need for independent oversight in the post-opening monitoring and mitigation element of this requirement, given the non-specialist subject matter and the Applicant's expertise in traffic management, together with the role of STIG members and the local highway authority in developing the monitoring and mitigation required. It should be noted that the Secretary of State does have a role as part of the pre-opening element of the requirement.</p>	
Schedule 2, Requirement 13		
	<p>In response to various comments made by interested parties on the terms of Requirement 13, David Rowe made the following comments on behalf of the Applicant.</p> <p>The application documents always made clear that the bus routes proposed were illustrative only and remained subject to detailed planning, in line with the Applicant's normal procedures. Just as it is not appropriate to set the level of user charge now, due to the scope for the context with which the tunnels operate to change, so the same applies to the level of cross-river bus provision. In line with its statutory duties, the Applicant must promote efficient and economic bus routes (section 181(1) of the Greater London Authority Act 1999) – this is important for a public body such as the Applicant – there is no guarantee what is committed to now will meet these tests in the future.</p> <p>The Applicant will submit further evidence at Deadline 6 responding to a number of comments and queries arising at the ISH on 28 March 2017 around the Applicant's approach to the development of the Assessed Case bus network, its proposed approach to the planning of bus services, and the potential implications of its minimum opening year bus commitment for key Scheme impacts</p> <p>The Bus Strategy sets out the considerations the Applicant must take into account when developing at cross-river bus services. The intention behind the wording of Requirement 13 is that 20 buses per hour is the starting point, and the Applicant will look to grow this, using monitoring information as derived from the Monitoring and Mitigation Strategy.</p> <p>In response to a query from the ExA, Mr Rowe confirmed the Applicant will revise Requirement 13 to reflect this growth aim and to clarify that the minimum commitment of 20 bph applies for the duration of the monitoring period and not just to year 1.</p>	<p>Revision 5 of the dDCO submitted at Deadline 6</p> <p>Monitoring and Mitigation Strategy (Revision 1) submitted at Deadline 6</p> <p>Bus Strategy (Revision 1) submitted at Deadline 6</p> <p>Design Principles (Revision 3) submitted at Deadline 6</p> <p>Applicant's response to SWQ DC2.9 (REP4-052)</p>

	<p>The Applicant also confirmed that it was content with the fact that Requirement 13(2) only applies to the three 'host' Boroughs.</p> <p>On a related matter, Mr Rowe confirmed that the Applicant was aware of the representations made by U + I that it was seeking passive provision for a bus stop so this is not excluded in future. Mr Rowe confirmed this is subject to further consideration by the Applicant.</p> <p>Having considered this point further, the Applicant has amended the Design Principles (a revised version of which has been submitted at Deadline 6) to make reference to this requested passive provision – please see new principle BRDFB.14 and new design guidance reference DG.TNAV.04 in Appendix C to the document.</p> <p>As previously submitted into the examination (see, for example, the Applicant's response to SWQ DC2.9), in response to a suggestion from the ExA that the Design and Access Statement should be secured within the DCO, the Applicant maintains that this is not appropriate. This document is illustrative only, and as explained within the document itself (paragraph 4.3.3) it merely shows one way in which the Design Principles could be implemented. Its purpose is to provide a means to visualise how the Scheme might look and understand the design rationale. It does not show the final design and as such, does not inform or secure any aspect of the Environmental Statement. It therefore performs no greater role within the application than an illustration, and as such, does not need to be and should not be secured within the DCO.</p>	
Part 5 of Schedule 13: Submissions made by the EA		
	<p>The main issue outstanding between the Applicant and the EA is the issue of maintenance of the river walls, a subject which was discussed at the previous day's hearing (see the Applicant's written summary for the outstanding issues including environmental matters issue specific hearing (ref: 8.109)). The Applicant confirmed that the parties will continue discussions.</p>	
Paragraph 49 of Schedule 13: Submissions made by the PLA		
	<p>The following submissions were made on behalf of the Applicant in response to summary submissions made by the PLA in respect of an outstanding issue on paragraph 49(2) of Schedule 13.</p> <p>There are two compensation regimes running in parallel in respect of the PLA's interests in the scheme. On the one hand, the compensation code applies to the acquisition of any of the PLA's</p>	

land, identically to how it applies to any other landowner. On the other, the intention of paragraph 49 of Schedule 13 is to provide that the PLA will be entitled to compensation for any temporary work as if a river works licence under that Act was required for that work (such a licence is not required because of the disapplications under article 3, but would be ordinarily). Therefore, such compensation would need to be calculated in accordance with section 67 of the Port of London Act 1968 ("the 1968 Act").

The basis for the calculation of compensation under section 67 of the 1968 Act is not completely transparent – the Applicant believes paragraph 49(2) assists all parties, in making absolutely clear that the calculation of compensation available to the PLA under this paragraph cannot take into account the value of any works which any temporary work facilitates the construction of. The particular example the Applicant is concerned about is the temporary jetty, which facilitates the construction of the proposed new tunnel (and therefore the user charging revenue/value from that tunnel). This provision provides the PLA with no opportunity to obtain a 'slice' of the value of the new tunnel, which the Applicant considers the proper and appropriate position.

The PLA confirmed at the hearing in response that it is in agreement as to this interpretation of section 67 of the 1968 Act and this key point of principle, but not to the inclusion of paragraph 49(2). The parties will continue to discuss this matter, and update the ExA before the end of the examination.

The Applicant also responded to a supplementary point made by the PLA in respect of the disagreement between the parties in relation to the appropriate calculation of compensation connected with the compulsory acquisition of the PLA's land. The PLA submitted that it should be entitled, as part of that compensation, to a share of the 'toll' revenue from the new tunnel when the construction costs have been paid off. The PLA made reference to the Dartford Crossing, where the intention had originally been for the tolls on that crossing to cease to apply when the construction costs had been settled - the PLA made a full and final settlement on that basis, but would have approached things differently had it known the tolls would continue to apply. It is currently investigating this situation.

The Applicant does not consider the Dartford Crossing to be relevant in this context. The Dartford Crossing was consented by an Act of Parliament, with PLA land compulsorily acquired under that Act, and was then subject to a 'toll' until the construction costs had been paid off. Once the costs had been paid off, the crossing was then subject to a user charge under the Transport Act 2000, which is fundamentally different to a toll (toll revenues are collected to pay

	<p>for the construction of an asset that is used). The Silvertown Tunnel will, from opening, be subject to a user charge for, predominantly, demand management purposes. It is inappropriate for the PLA to take a portion of these revenues.</p> <p>Indeed, following compulsory acquisition of the PLA's land, the Applicant will hold the freehold of that land and it therefore will be vested in the Applicant. The tunnel will be constructed in that land and will become an asset of the Applicant – the PLA will have no interest in that asset. As such, the compensation for the compulsory acquisition of the PLA's land should be subject to the normal compensation code. There is no precedent for the position the PLA is advancing.</p>	
Schedule 14: BAP		
	<p>The Applicant confirmed, in response to a query from the Royal Borough of Greenwich, that the BAP (as secured by Requirement 14) is certified, as it is part of the environmental statement, the entirety of which is to be certified. Indeed, the revised BAP is expressly listed in Schedule 14.</p>	
6. Any further amendments sought or required to supporting documents that would be certified under Schedule 14 to the extent not covered at the preceding ISH on outstanding matters including environmental considerations on 28 March 2017, the OFH on that day and the immediately preceding CAH.		
	<p>Robbie Owen confirmed on behalf of the Applicant that discussions were on-going with various parties (particularly the Boroughs) on the documents proposed to be certified under the dDCO.</p> <p>Revised versions of various of these documents have been submitted at Deadline 6, namely</p> <ul style="list-style-type: none"> • Code of Construction Practice; • Design Principles; • Charging Policies and Procedures; • Bus Strategy; • Monitoring and Mitigation Strategy 	<p>Code of Construction Practice (Revision 4) submitted at Deadline 6</p> <p>Design Principles (Revision 3) submitted at Deadline 6</p> <p>Charging Policies and Procedures (Revision 3) submitted at Deadline 6</p> <p>Bus Strategy (Revision 1) submitted at Deadline 6</p> <p>Monitoring and Mitigation Strategy (Revision 1) submitted at Deadline 6</p>

7. Consideration of the proposed s106 DCO Agreements with Royal Borough (RB) of Greenwich and London Borough (LB) of Newham [as Appended to the Applicant's answers to the EXA's SWQ on DCO Wording [REP4-052] and any other s106 or other agreements sought.		
	<p>Robbie Owen made the following points on behalf of the Applicant.</p> <p><u>Status of agreements</u></p> <p>The Applicant wishes to clarify that the legal agreements proposed to be entered into with the London Boroughs of Newham and Tower Hamlets and the Royal Borough of Greenwich are NOT agreements proposed to be entered into under section 106 of the Town and Country Planning Act 1990 ("the 1990 Act") as a 'development consent obligation'. Instead, the Applicant is proposing for these to be entered into by the Boroughs under their general powers.</p> <p>A development consent obligation would need to be entered into by a person 'interested in land' (section 106(1) of the 1990 Act) - the Applicant does not hold any adequate portions of land to be bound for the purpose of enforcement at this point in time. Therefore, without this, the current landowners would need to 'sign up' to this agreement, which would take time and fundamentally could jeopardise the ability of the commitments offered by the Applicant to be formally secured.</p> <p>Indeed, the Applicant is of the view that binding land is not necessary, from a legal enforceability point of view, in the context of the dDCO. In the ordinary course of events, planning permissions under the TCPA regime run with the land. Whilst this is the 'default' position in the Planning Act 2008 ("the 2008 Act") too (under section 156 of the 2008 Act, the DCO benefits the land) this is subject to any contrary provision in the DCO - in the case of the Silvertown Tunnel DCO, contrary provision <u>has</u> been made to make the Order personal to the Applicant or any transferees (articles 57 and 58). As such, there is less need for any legal agreement securing obligations to also bind the land.</p> <p>The legal agreements will be binding contracts, enabling the Boroughs to enforce under normal contract law accordingly – the Applicant does not consider this to 'diminish' the status of these legal agreements. Indeed, the Applicant's status as a public body should also provide the Boroughs with comfort as to the performance of the obligations contained in the agreements.</p> <p>The Applicant understands LBTH and RBG to be content with the approach, but recent discussions with Newham indicate that it is intent on binding land.</p>	<p>Applicant's response to SWQ DC2.10 (REP4-052)</p>

Policy tests

Para 4.10 of the NNNPS states: Planning obligations should only be sought where they are **necessary to make the development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind to the development.**

The footnotes of the NPS make clear that a planning obligation means a section 106 agreement, which is not being used for the scheme, as mentioned above.

However, the Applicant still considers that any necessary measures need to be taken into account, and given due weight, by the Secretary of State in the decision making process.

That being said, the Applicant considers the vast majority of these commitments to be enhancements which the Scheme 'unlocks' - para 3.3 of the NNNPS talks about applicants considering reasonable opportunities to deliver environmental and social benefits as part of schemes – the legal agreements will help achieve this. As such, the Applicant considers it should get 'policy credit' for this.

Duncan O'Connor, on behalf of the Applicant, then took the ExA through the progress of each legal agreement with the Boroughs and the obligations proposed in each, at the same time applying the above policy tests to determine whether a measure meets the relevant policy tests (under para 4.10 of the NNNPS) mentioned above, or whether it is a benefit/enhancement (under para 3.3 of the NNNPS).

Royal Borough of Greenwich

A copy of the draft legal agreement was submitted into the examination at DL4 as part of the Applicant's responses to SWQs (DC2.10). It is considered that good progress is being made towards agreement – a second draft has now been supplied to the Royal Borough of Greenwich, following a meeting between the parties.

The Applicant has offered the following obligations:

- **Employment/skills/training provisions (including around using reasonable endeavours to recruit at least 25% of the total construction workforce from**

	<p>Greenwich, Newham or Tower Hamlets residents) – benefit/enhancement as:</p> <ul style="list-style-type: none"> • not 'necessary' to make the development acceptable in planning terms, as the scheme itself would not have any negative impacts on employment (so no mitigation is required as absent this commitment there would be no related planning disbenefits) but, instead, it presents an opportunity for local people to work on the scheme and obtain training where appropriate. • Siebert Road noise barrier delivery – benefit/enhancement as: <ul style="list-style-type: none"> • not 'necessary' to make the development acceptable in planning terms, as the assessments have shown that no impacts arise at this location as a result of the scheme such that mitigation is required to bring any impacts to an acceptable level in policy test terms - the impacts arise due to the existing conditions. • Biodiversity Offsetting Contribution – meets the relevant planning tests under para 4.10 of the NNNPS as: <ul style="list-style-type: none"> • the environmental assessment has identified habitat loss as a result of the scheme - to mitigate this loss, biodiversity offsetting is proposed, adopting the natural capital value approach (i.e. the habitat loss is valued, with a sum calculated and then paid to the local authority to put towards relevant projects) – as such, this contribution is necessary to make the development acceptable in planning terms, given the biodiversity loss; • the contribution is directly related to the development, as it has been calculated by reference to the habitat lost as a result of the scheme and is being paid to the Council for the sole reason of helping to mitigate that loss; and • because of the way the contribution has been calculated, and its purpose, it is fairly and reasonably related in scale and kind to the development. • Payment for work associated with the discharge of requirements – 	
--	---	--

	<p>benefit/enhancement as:</p> <ul style="list-style-type: none"> • it is an offer by the Applicant in recognition of the burdens that discharging requirements will place on the Boroughs – however, the offer is not 'necessary' to make the development acceptable in planning terms as it is not seeking to mitigate any planning disbenefits which would affect the acceptability of the scheme in planning policy terms. • Road safety/school crossing contribution during construction – benefit/enhancement as: <ul style="list-style-type: none"> • the assessments undertaken for the scheme do not identify any discernible need for enhanced road safety schemes or school patrols during construction and, as such, there are no impacts that are required to be mitigated in order to make the scheme acceptable in planning terms – again, the sum is purely an offer of assistance to RBG during construction to help it manage any minor impacts that may arise (but these impacts are not of a magnitude that affect the acceptability of the scheme in policy terms). • Cycle shuttle bus trial – benefit/enhancement as: <ul style="list-style-type: none"> • the Applicant considers it has used 'reasonable endeavours' under the NNNPS to address the needs of cyclists and pedestrians in the design of new schemes (para 3.17). The Applicant considers it has done this in terms of the design process and as part of considering alternatives (which have then been discounted, as solutions don't meet the project objectives, etc). Not including cycling/pedestrian measures in the scheme does not automatically make it unacceptable in planning terms as a result. In light of this, a cycle shuttle bus trial is not necessary to meet planning policy tests, but is a potential benefit/enhancement that is being explored by the Applicant. This measure was proposed by the Mayor. • Local business support – benefit/enhancement as: <ul style="list-style-type: none"> • the Applicant recognises that the imposition of user charging will have an impact on some businesses, although not to an extent that would make the 	
--	--	--

scheme unacceptable in planning terms. In this light, the Applicant is of the view that this support is not 'necessary' to make the scheme acceptable in planning terms. In effect, the Applicant considers this is more a recognition that it would be good practice to offer this – it is mitigation, but not necessary mitigation.

London Borough of Newham

A draft of the agreement has been provided to the London Borough of Newham by the Applicant and the Borough has sent back a draft to the Applicant with a number of outstanding points the Borough needs to confirm internally – one particular outstanding point between the parties is that the London Borough of Newham is seeking for land to be bound by the obligations contained in the agreement. As per the commentary above, the Applicant does not consider this is necessary.

The Applicant has offered the following obligations:

- **Employment/skills/training provisions (including around using reasonable endeavours to recruit at least 25% of the total construction workforce from Greenwich, Newham or Tower Hamlets residents)** – benefit/enhancement as:
 - not 'necessary' to make the development acceptable in planning terms, as the scheme itself would not have any negative impacts on employment (so no mitigation is required as absent this commitment there would be no related planning disbenefits) but, instead, it presents an opportunity for local people to work on the scheme and obtain training where appropriate.
- **Pedestrian, cycling and urban realm improvement contributions** – benefit/enhancement as:
 - the Applicant considers it has used 'reasonable endeavours' under the NNNPS to address the needs of cyclists and pedestrians in the design of new schemes (para 3.17). The Applicant considers it has done this in terms of the design process and through considering alternatives (which have then been discounted, as they don't meet the project objectives, etc). Not including cycling/pedestrian measures in the scheme does not automatically

	<p>make it unacceptable in planning terms as a result. In light of this, the contributions offered by the Applicant are a recognition of the benefits that could be unlocked by the scheme in its vicinity. The contributions are not necessary to meet planning policy tests, but is a potential benefit/enhancement being offered by the Applicant. These measures were proposed by the Mayor.</p> <ul style="list-style-type: none"> • Payment for work associated with the discharge of requirements – benefit/enhancement as: <ul style="list-style-type: none"> • it is an offer by the Applicant in recognition of the burdens that discharging requirements will place on the Boroughs – however, the offer is not 'necessary' to make the development acceptable in planning terms as it is not seeking to mitigate any planning disbenefits which would affect the acceptability of the scheme in planning policy terms. • Cycle shuttle bus trial – benefit/enhancement as: <ul style="list-style-type: none"> • the Applicant considers it has used 'reasonable endeavours' under the NNNPS to address the needs of cyclists and pedestrians in the design of new schemes (para 3.17). The Applicant considers it has done this in terms of the design process and through considering alternatives (which have then been discounted, as they don't meet the project objectives, etc). Not including cycling/pedestrian measures in the scheme does not automatically make it unacceptable in planning terms as a result. In light of this, a cycle shuttle bus trial is not necessary to meet planning policy tests, but is a potential benefit/enhancement that is being explored by the Applicant. This measure was proposed by the Mayor. • Local business support – benefit/enhancement as: <ul style="list-style-type: none"> • the Applicant recognises that the imposition of user charging will have an impact on some businesses, although not to an extent that would bring the scheme outside of the NNNPS tests, thus making the scheme unacceptable in planning terms. In this light, the Applicant is of the view that this support is not 'necessary' to make the scheme acceptable in planning terms. In effect, the Applicant considers this is more a recognition that it would be good 	
--	--	--

practice to offer this – it is mitigation, but not necessary mitigation.

London Borough of Tower Hamlets

The Applicant has discussed an initial draft of the agreement with LBTH and will circulate a revised draft of the agreement following the hearings. **[Note: This has subsequently been done]**

The obligations are as follows:

- **Employment/skills/training provisions (including around using reasonable endeavours to recruit at least 25% of the total construction workforce from Greenwich, Newham or Tower Hamlets residents)** – benefit/enhancement as:
 - not 'necessary' to make the development acceptable in planning terms, as the scheme itself would not have any negative impacts on employment (so no mitigation is required as absent this commitment there would be no related planning disbenefits) but, instead, it presents an opportunity for local people to work on the scheme and obtain training where appropriate.
- **Cycle shuttle bus trial** – benefit/enhancement as:
 - the Applicant considers it has used 'reasonable endeavours' under the NNNPS to address the needs of cyclists and pedestrians in the design of new schemes (para 3.17). The Applicant considers it has done this in terms of the design process and through considering alternatives (which have then been discounted, as they don't meet the project objectives, etc). Not including cycling/pedestrian measures in the scheme does not automatically make it unacceptable in planning terms as a result. In light of this, a cycle shuttle bus trial is not necessary to meet planning policy tests, but is a potential benefit/enhancement that is being explored by the Applicant. This measure was proposed by the Mayor.
- **Local business support** – benefit/enhancement as:
 - the Applicant recognises that the imposition of user charging will have an impact on some businesses, although not to an extent that would bring the

	<p>scheme outside of the NPS tests, thus making the scheme unacceptable in planning terms. In this light, the Applicant is of the view that this support is not 'necessary' to make the scheme acceptable in planning terms. In effect, the Applicant considers this is more a recognition that it would be good practice to offer this – it is mitigation, but not necessary mitigation.</p> <p>Mr Owen, in response to various comments from the Boroughs on 'further' obligations they are seeking, stated on behalf of the Applicant that the proposed 'sustainable transport fund' was discussed in detail at the previous day's hearing (see the Applicant's written summary for the outstanding issues including environmental matters issue specific hearing (ref: 8.109)) – in short, the Monitoring and Mitigation Strategy provides a robust means by which to implement necessary mitigation.</p> <p>Mr Rowe responded to comments made about the Emirates Air Line fares, by stating that if a book of 10 tickets was purchased, it worked out at an economical £1.70 per journey so significant changes to the fare structure were unlikely. Mr Rowe also confirmed that the Applicant would be going out to market when the existing sponsorship of the Emirates Air Line ends.</p>	
<p>8. Any other matters relevant to the wording of the DCO</p>		
	<p>Robbie Owen raised the following two points on behalf of the Applicant.</p> <p><u>Not environmentally 'worse than' test</u></p> <p>The Applicant had given this further thought, following the discussions at the previous days' hearing. In conclusion, the Applicant proposes the following:</p> <ul style="list-style-type: none"> • to amend the appropriate wording in the dDCO to a materially new 'or different' test; and • to amend the Code of Construction Practice to add wording as to the process for the Contractor assessing the impacts of its proposed construction methods. <p>These changes are reflected in the revised version of the dDCO (and CoCP) at Deadline 6.</p>	

Further commentary on this point is provided in the Applicant's written summary of the outstanding issues including environmental matters issue specific hearing (ref: 8.109).

Certified documents and transfers of benefit

Following a query from the ExA under agenda item 5 (but only mentioned in this note under this agenda item), the Applicant proposes to include in article 58 an express provision that provides that where there is a transfer of a function to a third party, references to 'TfL' in any relevant certified documents are to be read as including references to the transferee (with some express exceptions/'carve outs'). The Applicant considers this is implicit, but is content to make this explicit for ease of reference. This amendment is reflected in the revised version of the dDCO submitted at Deadline 6.

Separately, Mr Owen also confirmed that a 'validated' version of the dDCO would be submitted into the examination at Deadline 7 (in line with statutory instrument drafting standards).

APPENDIX A

NOTE ON WHY A DISCOUNT FOR THE RESIDENT OF THE LONDON BOROUGH OF LEWISHAM IS NOT APPROPRIATE

Low income discount eligibility – why a discount for residents of LB Lewisham is not appropriate

Why is a discount appropriate for Host Boroughs?

- Residents of the Host Boroughs have fewer opportunities to use alternative crossings, so they rely on the Blackwall Tunnel and Silvertown tunnels to a much greater extent than residents from other Boroughs
- This is evidenced in Figure 7-9 of the Transport Assessment (reproduced below) which shows that trips through the Blackwall and Silvertown Tunnels in the AM peak from Greenwich are far greater in number than from all other areas and constitute about half of all crossing demand.
- Under the Assessed Case (without a low income discount) there are some small reassignment effects as low income highway users seek to avoid the charge and re-route to the Rotherhithe Tunnel instead. These reassignment effects are more costly for host borough residents because they have to travel further to use an alternative crossing.
- Applying a low income discount for residents of the Host Boroughs reduces the potential for reassignment and the associated negative impacts of additional traffic from longer journeys, including those on Lewisham highways

Why doesn't Lewisham qualify for a low income discount on this basis?

- Residents of Lewisham can more easily access alternative crossing options (particularly Rotherhithe Tunnel) compared to the host boroughs, therefore they have much less reliance on the Blackwall and Silvertown crossings.
- Figure 7-9 of the Transport Assessment (reproduced below) shows that the number of trips that use the Blackwall/Silvertown Tunnels in the AM peak and start from LB Lewisham is five times fewer than those from RB Greenwich
- Figure 7-10 of the Transport Assessment shows that the number of trips with a destination in LB Lewisham in the PM peak is over 10 times fewer than those to RB Greenwich

Figure 7-9: Origins and destinations of northbound trips through the Blackwall and Silvertown tunnels in the AM peak hour⁶¹

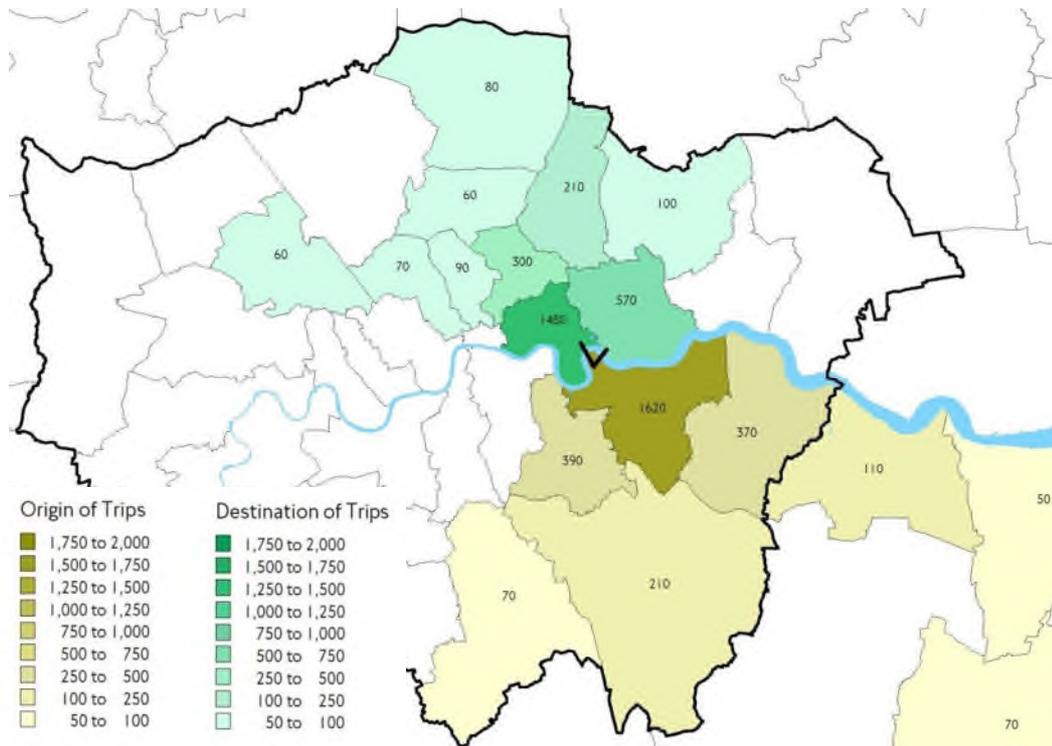
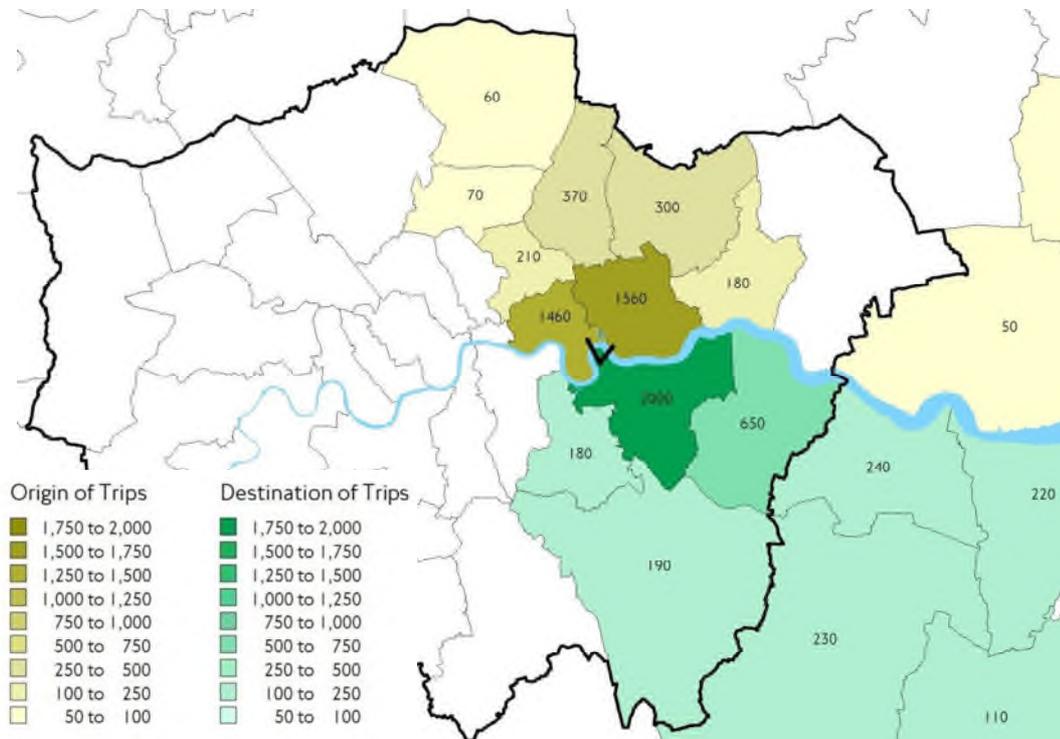


Figure 7-10: Origins and destinations of southbound trips through the Blackwall and Silvertown tunnels in the PM peak hour



⁶¹ Boroughs with less than 50 trip origins or destinations in the time period not shown.

Why shouldn't eligibility for the low income discount be based on distance from the crossings, instead of for residents of an entire Borough?

- LB Lewisham suggested at the Hearing on 29th March 2017 that eligibility for a low income discount should be based on distance from the crossing, as there are parts of Lewisham that are closer to the Tunnels than other parts of the host Boroughs.
- The Applicant does not think this is appropriate because there is not a clear linear relationship between distance from, and demand for, the Blackwall and Silvertown tunnels.
- This is because the option to use alternative crossings is also a major contributing factor.
- In general, demand for the Blackwall and Silvertown crossings is greater from the south east of the crossing, compared to the same distance from the south west, because those from the south east have fewer alternative crossing options. This is demonstrated in Figure 1 below.
- For example, in Evelyn ward (LB Lewisham), which is 4km from the crossings, just 8 people in the AM peak use the Blackwall or Silvertown crossings, whereas in Eltham South ward (RB Greenwich), which is 6km from the crossings, 68 people use the crossings in the same period.
- If the Applicant were to apply a distance based catchment to the low income discount, there is no clear evidence for what catchment distance would be appropriate.

Why shouldn't eligibility for the low income discount be based on ward level characteristics?

- LB Lewisham have suggested that eligibility for a low income discount could be based on ward level characteristics rather than at a Borough level.
- The Applicant does not think this would be appropriate as it would result in a patchwork of wards which would not be part of a single contiguous area. This would result in a discount area that would be very difficult for the public to understand.
- Furthermore, it would also require a set of eligibility criteria to be defined to identify qualifying wards. Again, there is no clear evidence for what these eligibility criteria should consist of.

What are the impacts of not applying a low income discount to low income residents of Lewisham

- During the Hearing on 29th March 2017, LB Lewisham made reference to the fact that the north of the borough has a number of areas which are amongst the most deprived in London, and, given their proximity to the Blackwall and Silvertown Tunnels, residents of these areas should be eligible for a low income discount.
- Figure 1 (above) shows that, whilst these areas are indeed in the 20% most deprived in London, the total demand they generate for the Tunnels is very small, with just 8 trips from Evelyn ward and 17 from New Cross. Demand from these wards is much smaller than from wards in RB Greenwich.
- Furthermore, the model outputs demonstrate that the number of low income highway users in the morning peak is even smaller, with just 13 low income residents from the whole of LB Lewisham using the Blackwall and Silvertown Tunnels during the AM peak.

What are the highway impacts of offering a discount to LB Lewisham?

- Although it has not been tested, the above indicates that the traffic impact of adding LB Lewisham to the low income discount zone would be relatively minor.
- However, the Applicant would have to consider on what basis LB Lewisham should be included in the discount zone. If it is based on demand for the crossings, this would mean we would also have to include other boroughs across East London. The traffic impacts of these additional Boroughs would be more significant.
- Whereas a discount for Host borough residents reduces reassignment to other crossings, if we introduce discounts for Boroughs further away, it could encourage reassignment to the Blackwall and Silvertown crossings from trips that currently use other crossings.

Conclusion

- There is a clear rationale for why the low income discount should be focused on the Host Boroughs – because they have fewer options to use alternative crossing options, they are much more dependent on Blackwall and Silvertown Tunnels.
- LB Lewisham residents have a greater number of options to cross the river, are less dependent on the Blackwall and Silvertown Tunnels, and therefore do not require a low income discount.
- Although there are concentrations of deprivation in the north of LB Lewisham, there are very few trips made through the Blackwall and Silvertown Tunnels by residents of this part of the Borough.
- The number of low income residents of LB Lewisham that use the Blackwall and Silvertown Tunnels is very small (13 trips in the AM peak), so the impacts of not applying a low income discount to the Borough are insignificant.
- Applying a discount at a Borough level is easier to administer and for the public to understand than other options.