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Date 5<sup>th</sup> April 2017

**Planning Act 2008 (as amended)  
Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)**

**Application by Transport for London (TfL) for an Order Granting Development Consent  
for the proposed Silvertown Tunnel ('the Scheme')**

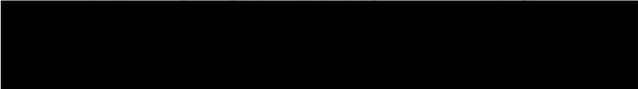
I write in response to your letter dated 18<sup>th</sup> October 2016, which set out the examination timetable, procedure and notification of hearings and requested information from the London Borough of Newham ('the Council') as an interested party.

In accordance with the Timetable for Examination of the application (Deadline 6) for 5<sup>th</sup> of April 2017, please find attached with this correspondence the following documents:

- Silvertown Tunnel Deadline 5: Statement of the London Borough of Newham
- London Borough of Newham – Silvertown Tunnel Issue Tracker (V3)
- Summary of representations made at the ISH's on 28<sup>th</sup> and 29<sup>th</sup> March 2017

The views of the Council as presented within this correspondence are considered to be both "important" and "relevant" pursuant to the determination of the Secretary of State under the Planning Act 2008 (as amended).

Yours sincerely,



Deirdra Armsby  
Director of Regeneration & Planning

Encl.



Silvertown Tunnel

Deadline 6:

Statement of the London Borough of Newham

5<sup>th</sup> April 2017

## Introduction

The purpose of this statement is to reaffirm the position of the London Borough of Newham (“the Council”) in light of new and updated documents submitted throughout the examination to date. It should be noted that while discussions continue with the Applicant on many detailed matters, the focus of this statement is to provide an update on the key matters considered as outstanding as presented in the Borough’s Deadline 5 submission and that were covered on the ISH sessions on 28<sup>th</sup> and 19<sup>th</sup> March 2017. While agreement (subject to the wording in the Applicant’s relevant revised documents to be submitted at Deadline 6) has been achieved between [ ] and [ ] on some issues, there remain matters where agreement is not expected to be reached, and a determination will need to be made by the Examining Authority and Secretary of State in due course. There also remains an issue for the Examining Authority to consider if the resolution of some of these issues by the suggested means is considered appropriate, or whether a more appropriate resolution should be imposed.

These matters, as presented in the Borough’s Deadline 5 submission and as covered in the ISH sessions on 28<sup>th</sup> and 29<sup>th</sup> March, are as follows:

1. The Legality of User Charging
2. Uncertainties and the Planning Process
3. Bus Strategy
4. User Charge Discounts
5. Emirates Air Line
6. Air Quality Mitigation (Hoola Building)

The matters above should not be taken to comprise an exhaustive list of the Council’s remaining concerns, and should be read in conjunction with the *London Borough of Newham – Silvertown Tunnel Issue Tracker (V4)*. The Council may wish to make further representations to the Examination, should the wording recently agreed with the Applicant discussed in the following sections not be forthcoming at Deadline 6.

The matters of concern outlined within this statement are considered to be matters, that are both “important” and “relevant” pursuant to the determination of the Secretary of State under the Planning Act 2008.

## **1. Legality of User Charging**

The Council's position regarding the powers of the Planning Act 2008 to authorise the User Charging proposed by the Applicant remains as previously submitted. Subsequently it remains that a judgement will be required with regard to the appropriateness and lawfulness of the proposals for User Charging of the Blackwall Tunnel, and whether this provision can be considered "ancillary", or "incidental or consequential" pursuant to section 120(3) or (5) of the Planning Act 2008.

Should the charging of the Blackwall Tunnel be deemed to fall out with the provisions of section 120(3) or (5) of the Planning Act 2008, then an alternative route is as prescribed in the GLA Act 2000. However, as demand management remains a key aspect of the user charge mechanism, an additional consideration is that a separately promoted User Charging policy at the Blackwall Tunnel will require full integration with the Silvertown DCO Scheme Charging Policies and Procedures Document.

## **2. Uncertainties and the Planning Process**

It is accepted by the Council that there are uncertainties associated with the Scheme which are outside of the control of the Applicant. Primarily, these uncertainties are linked to the forecast opening date in 2023, and compounded by the significant growth which is occurring, and expected to continue in the sub-region. The proposal itself is also inherently complex, proposing not only the construction of a new river crossing, but also to harmonise flows with an existing river crossing (Blackwall Tunnel) through the imposition of road user charging. Given the complexity of the Scheme and its context, it has been and remains a concern to the Council, that the current application is not supported by best-case modelling to provide a robust evidence base. Indeed, the Council has made clear throughout the Examination process that there are a number of areas where the modelling presented by the Applicant is considered to be deficient, reliant on inappropriate inputs, or contrary to guidance. As a result, the Council cannot be entirely satisfied that it has been appropriately demonstrated that the '*Assessed Case*' promoted by the Applicant is the most likely outcome, should consent be granted for the DCO.

There is now 'agreement' with the Applicant that the Council (or indeed any of the Host Boroughs) will not reach agreement on suitability of the Assessed Case prior to the conclusion of the Examination Process. Accordingly, the Host Boroughs' focus has shifted

from an examination of the Assessed Case Scheme, to working with the Applicant in developing strategies and requirements that could result in timely and targeted mitigations of impacts of the Scheme, through the *Monitoring and Mitigation Strategy*.

It is particularly noteworthy that this strategy proposes a “refreshed” assessment which will update and re-run the assessed case prior to Scheme opening. While this later process is supported by the Council, given its current position as an interest party, it falls to both the Examining Authority and the Secretary of State, to be satisfied that deficiencies within the TfL DCO application (the Assessed Case) can appropriately and satisfactorily be resolved *after* the grant of consent. It is the view of the Council that this particular point must also be considered in the context of the Scheme’s Environmental Impact Assessment which is based on Assessed Case traffic scenarios, and will define mitigation points for many Scheme impacts, including impacts on air quality.

Notwithstanding these remarks, the Council has made considerable progress on the content of the Monitoring and Mitigation Strategy with the Applicant and is now largely content with its provisions. Improvements to socio-economic monitoring metrics and potential mitigations strategies have now addressed the Council’s concerns on these matters.

### **3. Bus Strategy**

The Council’s position at Deadline 5 maintained that the level of bus services assumed in the Assessed Case must be secured in order for the net benefits of the Scheme to be realised in the London Borough of Newham. Although the provision of a Bus Strategy was welcomed, the commitment to a minimum of 20 bus movements per hour was clearly somewhat short of the 37.5 bus movements assumed in the Assessed Case. Noting there is merit in phased delivery, and the later determination of exact frequencies and routings, the Council’s position was that the Scheme should include a commitment to fund a quantum of services equal to the Assessed Case for a fixed period after Scheme opening.

Given that TfL’s business case and equalities impact assessment for the scheme are fundamentally reliant on bus provision, this level of commitment requested by the Council is considered proportionate, and in the view of the Council, necessary to make the development acceptable in planning terms.

However, in the light of subsequent discussions with the Applicant that have suggested that similar levels of benefit could be delivered by a different quantum of services and in a different service pattern, with an alternative commitment possible. It is quite clear that the Applicant remains reluctant to commit to the service frequency as suggested in the Assessed Case this far in advance of Scheme opening. However, it was agreed with the Applicant that Requirement 13 could be amended to secure the *level of user benefits* delivered by the bus network in the Assessed Case rather than the quantum of services. This commits the Applicant to deliver at least the level of user benefits to Newham as are identified in the Assessed Case, therefore ensuring that this benefit will accrue to the Borough's residents – which, as previously stated in the Council's submissions to the Examination, are the only currently secured significant benefits to the Borough from the Scheme. The level of public transport benefit as modelled in the Assessed Case should also be ensured for the other Host Boroughs, and must not result in any adverse impacts on any other user benefits predicted in the pre-Scheme modelling, and compared with the Assessed Case. This would address the Council's concern that the predicted public transport benefits in the Assessed Case may not materialise in reality and secures an appropriate level of bus provision to ensure the delivery of the benefits to Newham as currently presented in the Applicant's submissions.

However, while agreement may potentially be achieved verbally between the Host Boroughs and TfL on this matter, it remains for the Examining Authority to determine if uncertainty over bus provision is acceptable in determining the Scheme, given the different spatial mapping of benefits and impacts that would result from any future service pattern that differs from that presented in the Assessed Case.

However, subsequent to the meeting at which this 'agreement' was reached (on 3<sup>rd</sup> April 2017), on the date of Deadline 6 (5<sup>th</sup> April 2017), the Applicant emailed the Host Boroughs to say that this requirement could not, after all, be accepted by TfL, due to legal concerns over the enforceability of such a requirement. However, the Council does not consider this approach to be materially different to the means by which pre-scheme mitigations would be identified and implemented, and therefore requests the ExA's view on such an amended requirement.

The proposed revised wording agreed by all three Host Boroughs by email exchange on 5th April 2017 for Requirement 13 is as follows:

13.-(1) TfL must implement a cross-river bus service provision using the tunnels which **delivers the same or greater levels of public transport benefits (as quantified in the pre-Scheme Refreshed Case modelling) as those identified in the Assessed Case without any reduction in any other user benefits generated by the Scheme** from the date on which the Silvertown Tunnel opens for public use and thereafter must keep under review and secure the provision of bus services through the tunnels in accordance with the Bus Strategy.

If neither the Applicant nor the ExA can support such an amendment, then the Host Borough position remains as previously stated, and the Requirement must be worded as follows:

13.-(1) TfL must implement and secure the provision of **not less than 37.5 buses per hour during the peak periods in each direction through the tunnels** from the date on which the Silvertown Tunnel opens for public use and thereafter must keep under review and secure the provision of bus services through the tunnels in accordance with the Bus Strategy.

If either of these Requirements and the associated Bus Strategy document can be agreed, the Council is now content that the level of bus benefits to Newham users can be secured without the Applicant requiring to commit to a prescribed service pattern in advance of pre-scheme modelling.

To be clear, the Council cannot accept any lesser commitment than either of the alternative Requirements presented above, as the public transport benefits cannot be guaranteed to the Host Boroughs and to Newham in particular without such a commitment.

#### **4. User Charge Discounts**

The Applicant's late proposal of a discount scheme in the revised Charging Policies and Procedures Document is to be welcomed, although it has arisen so late in the Examination process that full details of any such scheme are unlikely to be agreed prior to Deadline 7.

The Applicant's initial offer of a 50% discount has been subsequently examined, both in subsequent discussions with the Host Boroughs and also by the questioning of the Examining Authority at the ISH on 28<sup>th</sup> March 2017. It is the Council's view that a flat rate 50% discount across all low income groups is insufficiently targeted at those in most need, and fails to offer an adequate discount for these lowest income groups. An alternative proposal was tabled by the Council at Deadline 5 suggesting a tiered discount scheme ranging from 50% up to 90% for those on the lowest incomes, which has verbally received

favour by the Applicant. At the ISH on 28<sup>th</sup> March 2017, questioning from the Examining Panel revealed that the Applicant considered that a 90% discount for the very lowest income groups would have a negligible impact on both travel demand management or revenue objectives.

Unfortunately, the Council had hoped to provide the Applicant with proposed qualification criteria in three or four tiers, corresponding to differing levels of discount ranging from 50% to 90%, with the estimates of numbers of Borough households qualifying in each tier, but this has not been possible in the limited time available. As a result, without the surety of knowing the numbers in each discount tier, the Applicant cannot, understandably, commit to any tiered discount scheme at this stage. However, as the likely effect of such a tiered system is likely to be negligible in comparison with the flat 50% discount proposal, by the Applicant's own admission, it has been possible to secure agreement with the Applicant over an agreed form of words in the CPAP.

The revised commitment will be to offer a discount scheme of *at least* 50% for low income residents, with a further commitment to offer higher discounts of up to 90% to those on lowest incomes, subject to there being no adverse impacts on travel demand management identified in the pre-scheme modelling of such a discount scheme. Ease of administration will also be a factor, so the tiers in any tiered discount scheme must also be readily identifiable from DWP benefit data, although this is not considered to be a major concern and the identification of three or four tiers should be achievable.

The Council is yet to receive the precise wording, hence If this wording is so revised by the Applicant in the CPAP submitted at Deadline 6, then the Council is content that a mechanism exists to deliver targeted discounts to ensure low income Newham residents are protected from any adverse socio-economic impacts of the Scheme.

## **5. Emirates Air Line**

The Council's view on the provision of an alternative cycle and pedestrian connection, since none is delivered by the Scheme itself, remains as presented in its Deadline 5 submission. The Emirates Air Line (EAL) is an obvious above ground parallel for the Scheme but the Applicant's refusal to make any commitment to this service remains. While the Applicant claims that it is neither an objective or requirement of the Scheme to include provision for

pedestrian and cycle movement across the river, its omission is at best a policy exception and at worst - a blatant disregard for providing for sustainable travel.

The Council understands that pedestrian and cycle provision is now focussed on a shuttle service through the Blackwall Tunnel only. Given that the Emirates Air Line infrastructure is already in place, this is not a significant concern for the Council, if there is a level of commitment to the retention of the Emirates Airline, and the production of a fares strategy document to increase its attractiveness as a crossing and effectiveness as a tool for modal shift from local vehicle trips which may otherwise be suppressed through the imposition of user charging.

It remains the Council's view that the reluctance of the Applicant to make any firm commitment involving the EAL could be due to the uncertainty over the operation of the service in the future. When questioned at the ISH on 29<sup>th</sup> March 2017, Mr. Rowe, on behalf of the Applicant, assured those present that, on expiry of the existing Emirates sponsorship, the market would be approached and an alternative sponsor found. The Council believes that Mr Rowe's statement rather underestimates the challenge in finding such a future incumbent, given the imbalance between operating costs and revenue and the cable car's relatively low profile.

Should the Emirates Airline no longer exist as a transport link in the context of the Monitoring & Mitigation Strategy's "refreshed case", it is unclear how such an eventuality would be dealt with post-consent. Clearly this would have implications for the Scheme and may result in a level of mitigation which could not be known at the time of the consent. This would suggest to the Council that the viability of this transport link is a material consideration in the assessment of this application, and that clarity on these issues should be provided to inform the decision making process.

Given that the Scheme would provide TfL with a new revenue stream in perpetuity, the Council considers that it would be entirely appropriate that the revenue generated by road traffic to be used to offset the running costs of the Emirates Airline, and to provide security for the active transport link at this part of the network. Indeed there is clear support for this principle within the National Networks NPS, Mayors Transport Strategy, Local Development Plan and the Project Objectives. The Council remains open to discussing a suitably worded requirement with TfL to ensure that the obligation is of a scale which meets the relevant planning tests, although there is no will on the part of the Applicant. As a result, the Council

intends to attempt to secure commitments to the EAL in the proposed legal agreement between the Council and Applicant.

That the Council has been unable to open such discussions on this matter with TfL to date, only lends greater weight to the concern that the future of the Emirates Airline is unsecure, and that a failure to secure cross river enhancements for sustainable transport will lead to Newham residents and businesses being disproportionately affected as a result of the Scheme.

## **6. Air Quality Mitigation (Hoola Building)**

Given the Mayor of London's clear strategic priority to improve London's Air Quality, it appears extraordinary to the Council that TfL continues to refute that the Scheme should require site specific mitigation of a considerable local impact, such as that predicted at the Hoola Building.

TfL's Updated Air Quality and Health Assessment (REP2-041), within Table 2-4, shows expected concentrations of nitrogen dioxide at various floor heights on the West Tower of the Hoola Development. These figures update those found within Table 6-18 of Chapter 6 of the Environmental Statement (Air Quality), on the basis of the increase in number of over height vehicles, revised DEFRA guidance, and the commitment to Euro VI (or equivalent) Busses through the Silvertown Tunnel. In its most recent submission on the matter (Technical Note Air Quality at the Hoola Development REP3-031), additional detail is provided in relation to the relative heights and position of residential flats in the Hoola West Tower, the building which is subjected to the greatest expected impact.

It is clear from review of these documents that there are dwellings within the Hoola which are predicted to have a large (>4 Magnitude of change in NO<sub>2</sub> (µg/m<sup>3</sup>)) worsening of air quality in the assessed case year 2021. The worsening in Air Quality also moves the Hoola building from below air quality objectives to above, which in itself would trigger the requirement for the Council to revise its Air Quality Management Area.

While it is noted that the Updated Air Quality and Health Assessment indicates improvements in Air Quality from the Environmental Statement predictions for the first floor and above (the residential units), this is caused by modelling the first floor at 5m in height

rather than at the standard 3m. It is worth noting that the Updated Air Quality and Health Assessment does actually produce some higher concentrations of nitrogen dioxide than stated in the Environmental Statement, with changes at the ground floor rising from 45.0µg/m<sup>3</sup> to 45.4 µg/m<sup>3</sup> Annual Mean NO<sub>2</sub>.

The Applicant's argument for not providing further mitigation for the Hoola is based on a prediction that 2023 is a more likely date for the opening of the Silvertown Tunnel, by which time the air quality at the Hoola would not be expected to exceed the objective value of 40 µg/m<sup>3</sup>. Mindful that the Scheme is based on an assessed case year of 2021, and that the dDCO as currently drafted does not include Grampian Requirements regarding Air Quality, this view is not accepted by the Council. Further, (as discussed prior) the Council do not agree the Assessed Case and the accuracy of these predictions either for traffic flows or the resultant air quality concentrations. Hence, the Applicant has failed to produce any quantitative assessment as to the accuracy of their models. Additionally there is no guarantee that London air quality will be as predicted in 2023 and successive reporting of air quality improvements have consistently underestimated air quality pollutant levels in the past.

The Interim Advice Note (IAN) *174/13 Updated advice for evaluating significant local air quality effects for users of DMRB Volume 11, Section 3, Part 1 'Air Quality (HA207/07)*, provides a broad framework for the assessment of significance of local air quality effects. It is clear though that this document is guidance, and not a policy which provides for a conclusive qualification of significance absent professional judgement. It would appear to the Council that Scheme-wide benefits for air quality are masking the recognition of the significance of a large local worsening of air quality, thereby justifying a failure to mitigate.

Recognising that TfL has undertaken a desk-top review of the Hoola's ventilation system, the Council notes that this system was fitted primarily for the purpose noise mitigation, in light of an assessment which did not include the impact of Silvertown Tunnel. Further, the Council notes that there is nothing intrinsic about mechanical ventilation that would improve air quality. In order for the mechanical ventilation system to provide an improvement it would need to include an NO<sub>2</sub> filtration system or air intake from a less polluted area. The Council maintains that the potential to retrofit such measures and seek necessary agreements with land-owners should be investigated as a priority. The Council has included such measures within the Council's draft planning obligation agreement.

# LONDON BOROUGH OF NEWHAM - SILVERTOWN TUNNEL ISSUE TRACKER (V4)



| LBN Issue  | Action Required by TfL  | Action required by LBN   | Progress - live   |
|--|---|--|---|
| <p>Commitments to financial benefits should be provided for local residents, to address socioeconomic implications of local trips which would be suppressed by the imposition of a user charge. The Council maintains that local discounts and/or a Community Fund could address this issue.</p> | <p>TfL to consider how discounts or subsidies could be provided and administered.</p> | <p>LBN to provide input to TfL into the scheme, review proposals and seek to agree outcomes.</p> | <p>The Council welcomes TfL's intention, as reported in the Host Borough meeting on the 23rd of February, to prepare a discount scheme which would mitigate the impact of the Scheme on lower income users. It is noted that the particulars of such a scheme are not yet known, but the Council maintains that a resource should be provided to ensure that important socio-economic trips of lower income groups are not suppressed. This position is directly supported by Project Objective PO3 - To support economic and population growth, in particular in east and southeast London by providing improved cross-river transport links. This is also fundamental, from the perspective of LBN to Project Objective P06 - To ensure where possible that any proposals are acceptable in principle to key stakeholders, including affected boroughs. TfL's proposition arrived late before deadline 4 and was presented in high level outline only, so there has been limited time to make progress towards a package of targeted discounts. Council officers are now identifying appropriate qualification thresholds for any discount scheme and cross-checking against household car ownership data to determine the number of Newham residents likely to benefit from any discount scheme. While this work is ongoing, it is already evident that a 50% discount for those in lower income tiers would remain a significant cost and a tiered discount scheme, depending on income is preferable and would be more targeted. Lowest incomes would receive a greater discount (say 90%). The Applicant has confirmed that extending the discount rate to 90% for those in the lowest income group would have negligible impact on travel demand or revenue objectives and proposes to amend the wording in the CPAP accordingly (ISH on 28th March 2017 and HB meeting on 3rd April 2017). Low income discount should be described as minimum 50% with potential for further targeted benefits for specific users subject to not undermining scheme objectives, although the Council would also wish to see 90% stated explicitly for those in the lowest income grouping. A means of readily identifying these potential income tiers from benefit and other information held by the Council is ongoing but is not considered to be a difficult process - there has simply been insufficient time to complete this analysis. While the principle of a discount scheme is now agreed, the detail of qualification tiers and the level of discount applied is unlikely to be fully resolved by the end of the Examination. However, if the CPAP is amended as agreed, and contains a commitment to discounts from 50% to 90% subject to not undermining scheme objectives for those in most need of financial assistance, then the Council is content.</p> |
| <p>Commitment to price reduction in the Emirates Air Line should be secured.</p>   | <p>TfL to consider how discounts or subsidies could be provided and administered.</p> | <p>LBN to review and agree</p>   | <p>The Council's position on this matter is set out within its Deadline 5 and 6 Statements under the heading Emirates Air Line.</p>   |
| <p>Pedestrian &amp; Cycle Scheme improvements outside of order limits need a legal agreement.</p>  | <p>TfL to draft</p>   | <p>LBN to review and agree</p>   | <p>This is agreed in principle, subject to detailed design proposals and legal agreement. Cost estimates have been sent through by the Applicant for these works on 4th April 2017 and these are being verified prior to their insertion into the legal agreement. The Council has no further update at this time.</p>  |

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| Public transport commitment should be known and should be not less than assumed in the Assessed Case. A Requirement is necessary for inclusion in the DCO. | TfL to provide further commitment       | LBN to review and agree        | While the Council welcomes the emerging commitment to run a minimum service pattern of 20 buses per hour, this still falls far short of the 37.5 buses per hour as coded in the Assessed Case. As stated elsewhere, the Council remains concerned over the reluctance to make any commitment to the level of public transport on which the demonstrated scheme benefits depend. This is of particular concern to Newham, as the only significant benefit to Newham residents is delivered by the new public transport services. Without a guarantee to the provision of such a service pattern, any benefits of the scheme to Newham residents cannot be secured. The Council is therefore unwilling to accept this commitment to a reduced service provision and insists on the full bus service frequency modelled in the Assessed Case, or alternatively, a service pattern which guarantees the level of Public Transport benefits as in the Assessed Case. The Council fully understands that defining the exact route and frequencies of these services at this stage is impractical, and that such an exercise would more usefully be undertaken in the pre-Scheme modelling phase, to which the Applicant has made a firm commitment. However, by similar means to existing S.106 planning agreements negotiated by TfL from developers, it is entirely feasible for the Applicant to commit to underwrite a prescribed bus frequency through the new tunnel using Scheme user charge revenue for a fixed period after Scheme opening. The alternative proposal, to link the Requirement to the delivery of the predicted PT benefits without a need to specify either a number or pattern of services has not been accepted by TfL for reasons of enforceability - although the Council does not accept this view. The Council will continue to press for one or other of these commitments, but remains of the view that the existing level of commitment is unsatisfactory. |
| Lack of evidence from the strategic model to validate local traffic, economic, socio and environmental impacts.  | No further action                       | No further action              | There is unlikely to be any agreement forthcoming on these issues, as the Applicant will not be able to demonstrate sufficient modelling information at this stage in the DCO process. However, the Applicant has subsequently given a full commitment to undertake detailed local modelling, using iterative processes as per guidance, during the pre-scheme modelling stage. As traffic, environmental and other impacts will be mitigated once identified by the application of the M&MS, the Council is content that this document could provide a mechanism to ease the Council's concerns. A suitable prescribed M&MS which can deal with socio-economic impacts and then deliver effective targeted mitigations will result in the agreement of the existing modelling outputs becoming less of a concern for LBN. Further, if the Applicant can undertake to improve the local validation of socio-economic characteristics within the model with specific local data (eg revised OD surveys, stated preference surveys and value of time validation) during the pre-Scheme modelling, then this will go some way further to addressing these issues. While progress on the M&MS is good and the Council is now content with its provisions, commitments on the scope of the pre-scheme assessment modelling still fall short of the requirements sought by the Council, particularly in relation to stated preference surveys to validate appropriate  |
| COCP Matters - Including FORS Gold, High Visibility Cabs, Lorry Routes, Receptor Site, Noise. NEWT   | Discussions continuing offline          | Discussions continuing offline | See response to SWQ CL2.6. The Council has no further update at this time, as discussions are continuing with TfL on these matters. Issues still outstanding after ISHs in March as outlined in LBN's Deadline 6 responses. The Council would wish to see a NEWT condition placed in the DCO.  |
| Monitoring strategy to be revised to include triggers and included as a Requirement in the DCO. Need environmental related triggers.                       | Agreed changes to be submitted formally | LBN to review and agree        | The Council broadly supports the decision to combine the Monitoring Strategy and TMS into one document known as the "The Monitoring and Mitigation Strategy", a draft of which has been sited by the Council. This document is currently under review, and the Council now considers this document acceptable. Considerable progress is still being made on the traffic and environmental trigger mechanisms and their likely means of mitigation, and now the monitoring of socio-economic data, appropriate triggers and what mitigations could be applied to address these are now emerging. It is hoped that progress can be made with the Applicant on developing this aspect of the M&MS further prior to Deadline 7.  |
| Lack of air quality and noise mitigation measures within the dDCO (Hoola and Western Beach in particular).   | Agreed changes to be submitted formally | LBN to review and agree        | The Council broadly supports the decision to combine the Monitoring Strategy and TMS into one document known as the "The Monitoring and Mitigation Strategy". It is understood that at Deadline 5, TfL intends on submitting a schedule of feedback, with agreed changes to be made to the document. The Council's position regarding this matter is further expanded within its Deadline 6 Statement under the heading Air Quality Mitigation (Hoola Building). The Council is satisfied that sufficient protection for noise, air quality mitigation is still outstanding and the Council has placed a requirement in the section 106 agreement  |
| London Borough of Newham is seeking further commitment to local employment   | TfL to clarify                          | LBN to review and agree        | Discussions are ongoing between LBN and TfL regarding obligations to local employment which would could be secured via a legal agreement. The Council anticipates updating the ExA once an agreement is reached in-principle.  |

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|---|---|--|---|
| Landholdings - Agreement (in principle) to be reached regarding Waterfront studios, car parking issue.                              | TfL to clarify  | LBN to review and agree                  | The Council met with TfL and its advisors on the 1st March 2017. TfL agreed to provide more detailed plans relating to the location and layout of the temporary and existing car parks together with specifications of the car parks. The Settlement of the terms of the related agreement is also still ongoing. The Council is not in a position to accept the proposals without clarity on these issues.   |
| Lack of mitigation for the Woolwich Ferry impacts   | TfL to clarify  | LBN to review and agree                  | While the Applicant has suggested some trigger metrics which will indicate when there is a defined adverse impact on the Woolwich Ferry, the means by which this could be mitigated remains unclear. It is understood that the Applicant will investigate the process of changing the existing Woolwich Ferry Act and report in due course - although it is not clear what may commitments may be possible in a revised M&MS or DCO as a result.  |
| Surface water and flood risk assessment. Approval of drainage scheme to meet Council flood risk                                     | TfL to Clarify  | LBN to review and agree                  | This is now close to resolution with the Applicant  |
| A Construction Method Statement incorporating a piling statement and strategy should be a Requirement and included in the DCO.      | TfL to clarify  | LBN to review and agree                  | The Council understands that TfL proposes to ensure control of piling impacts through the CoCP. The Council has concerns over the noise chapter of the CoCP and reserves its judgement on the suitability of TfL's suggested control method. Discussions on this matter are continuing and the Council anticipates providing a further update on this matter at upcoming Deadlines  |
| Further clarification is required from the applicant as to how a land contamination remediation strategy is secured within the DCO. | TfL to clarify  | LBN to review and agree                  | Subject to the inclusion of the ExA's recommended wording and its inclusion within the DCO, LBN view this issue as resolved.  |
| Article 12 – Agreements with street authorities   | TfL to review and confirm.                                    | LBN to review and provide comment to TfL | The Council welcomes the principle of the addition of Protection Provisions within Part 6 of Schedule 13. Subject to further discussion on minor wording amendments, these provisions would resolve the Council's objection to the current wording of Article 12.   |
| Part 4 and Part 5, Operational Provisions and User Charging   | TfL to review and confirm.                                    | No further action                        | Legal matters relating to user charging of the Blackwall Tunnel were outlined by Thomas Hill QC at the ISH on the wording of the DCO on the 19th of January 2017. A summary of this statement was submitted at Deadline 3.  |
| Article 58 - Transfer of benefit of Order, etc  | Discussed with TfL in meeting 1st March 2017 - TfL to update. | LBN to review and agree                  | The Council maintains a high level of concern with regard to the extent of the provisions of this Article. TfL, through the Charging Policies and Procedures Document (7.11) sets out its statutory duties to apply policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within London. TfL also has statutory responsibilities to make sure road networks are managed effectively to minimise congestion and disruption to vehicles and pedestrians. These functions provide a level of security to the Council as to how the decisions of the TfL board can be made in respect to the user charge. It is a substantial concern then, that this Article allows TfL to transfer its role in setting the charge to a private entity. The Council is not convinced that there is adequate transparency and security within the user charging assessment framework to protect the public interest. The Council has sought further clarification from the Applicant on this matter, these discussions have not yet been resolved. It has been proposed that this issue could be dealt with by a redefinition of TfL in the DCO to include all potential successors or contractors appointed to deliver any aspect of the Scheme. However, the Council is still awaiting the TfL response to this suggestion. |
| Requirement 4 - Scope of works attributed to this requirement is deficient.   | TfL to propose revised wording                                | LBN to review and agree                  | This has now been resolved following the change of wording suggested by the Applicant at Deadline 5.  |

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| Article 68 – Deemed consent provisions | TfL to review and confirm.    | LBN to review and provide comment to TfL | The Council welcomes the principle of the addition of Protection Provisions within Part 6 of Schedule 13. Subject to further discussion on minor wording amendments, these provisions would resolve the Council's objection to the current wording of Article 12.   |
| Schedule 2, Part 1, Requirement 5      | Wording to be provided by TFL | LBN to review and agree                  | Code of Construction Practice<br>There were several outstanding issues at the time of the Issue Specific Hearing. One issue, whose potential resolution met with agreement across the host boroughs and the Environment Agency was the inclusion of the remediation and verification approval scheme, using the Examining Authorities recommended wording, within the DCO.<br>Revised versions of Chapters 3 and 11 and Appendix H were provided to LBN before the afternoon session began, with the ambition these addressed previous concerns held over a number of matters, namely: <ul style="list-style-type: none"> <li>• how the 55% weight of all material associated with the scheme that is to be transported by river is to be composed and to seek assurances the chosen developer would be unable to bypass this figure by using material elsewhere on the project.</li> <li>• to avoid confusion over the chronology of what is required in terms of assessments, monitoring and mitigations within the Noise and Vibration Chapter of the CoCP; and</li> <li>• how the Construction Noise and Vibration Mitigation Scheme, which is intended to form Appendix H of the CoCP, works alongside the requirements of Chapter 11 and the NVMP, the latter being produced by the contractor post-DCO approval.</li> </ul> The issues bulleted were not resolved by these revisions and the Council have provided further comment to TfL, a response is still awaited. The Council will respond on these issues for deadline 7. |

**Resolved / No further action required**

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| Limits of Deviation (horizontal) to be specified and included in the DCO   | No further action | No further action | Resolved DC 35.9 or FWQ 8.19 Wording of DCO  |
| The Emergency Plan is required to be submitted to the LPA for approval. This should be included as a Requirement in the DCO.   | No further action | No further action | Now included in Sch 2. part 5  |
| The NVMP will need to be submitted to the LPA for approval prior to any works commencing on site. A Requirement on this matter should be included in the DCO.  | No further action | No further action | Now included   |
| Proposed construction hours not acceptable.  | No further action | No further action | Amended and accepted   |
| Compliance with the the Arboricultural Survey (ES Appendix 9.D) should be expressly demonstrated in any applications seeking LPA approval pursuant to Requirement 6 (Landscaping)  | No further action | No further action | The requirement to submit a statement of compliance with obligations, as set out in Requirement 16 (3), resolves this concern. |
| Requirements 4(1) and 6(1) should clarify that the details to be submitted are those that are to be designed in accordance with the design principles as required under Requirement 3(1).This should also include specific reference to details of materials | No further action | No further action | The requirement to submit a statement of compliance with obligations, as set out in Requirement 16 (3), resolves this concern. |

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| Schedule 2, Part 1, Requirement 13, Enforability of Euro VI busses.  | No further action | No further action | TfL has provided additional information to the Council in relation to how this Requirement would be enforced. This has been accepted by the Council as appropriate.   |
| Schedule 2, Part 2, Article 16 - Consultation of requirements with LBTH  | No further action | No further action | The consultation process, as set out in Requirement 16 (5) now makes the clear the responsibilities of the Council  |
| Schedule 2, Part 2, Article 17 - Business  | No further action | No further action | It is understood that this has been resolved in the Deadline 4 dDCO.  |
| Requirement 12 - Low Noise Surfacing wording   | No further action | No further action | The Council is satisfied with the wording of Requirement 12, with regard to low noise road surfacing. [12.(2)(b)]   |
| Displacement and management of existing uses on the portal sites should be known. Re-location could cause more vehicle movements, reduce river usage.  | No further action | No further action | It is now acknowledged that the Applicant has limited responsibility on this issue, given the nature of the lease arrangements and planning consents of the northern work-site occupiers and their dates of expiry. It is hoped that GLA can find suitable alternative locations for these operations that will ensure continued use of the river in preference to additional lorry movements. However, acknowledging this, the Applicant cannot also express lorry movements associated with the construction of the Scheme in terms of relative change, where the base figures include these existing lorry movements to and from these operational sites, where the consent for these sites expires prior to the commencement of scheme construction. All existing lorry movements associated with the current operational sites to be relocated by the Scheme worksite must not be included in any base traffic levels from which construction highway impacts of the Scheme are derived. |
| Schedule 2, Part 2, Article 17 - should be Business days   | No further action | No further action | Resolved within Deadline 4 dDCO   |
| Article 65 – Functions of the Silvertown Tunnel Implementation Group   | No further action | No further action | The Council is generally satisfied with the drafting of this Article, and the revised role of STIG.   |
| Article 29 (1) – Temporary use of land for carrying out the development. Could provide for ongoing operations and re-siting of northern portal uses during construction which result in effects greater than Assessed. | No further action | No further action | Resolved by amendedments to this Article within Deadline 4 dDCO   |

## Summary of oral representations made by the London Borough of Newham to the Issue Specific Hearings held on 28<sup>th</sup> and 29<sup>th</sup> March 2017

LBN Submissions are highlighted in **Blue** under each agenda item below

### 1. ISH – Any outstanding issues, including environmental matters 28<sup>th</sup> March 2017

#### **1. Welcome, introductions and arrangements for this Issue Specific Hearing**

#### **2. Traffic and Transportation**

2.1 The Panel intends to examine in depth the responses the Applicant has made and the observations offered by IPs to matters of concern raised by the Panel under **Traffic and Transportation** and **Socio-economic Issues** contained in its Second Written Questions (SWQs) published on 10 February 2017 [REP4-055]. In some cases these questions and answers to them straddle both topics as set out below.

No LBN submission made at this item.

2.2 **Regarding SWQ TT2.1** under which the Applicant was asked to revisit its response to Action Point (AP1) from the ISH (17 January 2017) in providing '*a comprehensive note giving full borough distributions of car trips that are not suppressed but re-assigned - to include estimates of behaviour impacts*'. The Panel will explore in depth responses and observations made by IP's in relation to the question. A particular issue for close inspection relates to the behavioural and associated implications for lower income groups as referred to below. See also Agenda item 3.4 (below) regarding Socio-economic Issues question TT2.7.

The Applicant's response to this issue simply underlined the importance of the bus provision in addressing socio-economic impacts and how closely the pattern of benefits correlate with proposed bus services. However, the document was a little hard to navigate given the incorrect figure numbering throughout, and the Council would welcome a more intelligible version at DL6. Some clarity over the proportion of existing trips through Blackwall made by low income residents would also be welcomed, as the Applicant appeared to be confused over whether the figure was 30% or 7%.

2.3 **Regarding SWQ TT2.2** under which the Applicant was asked to address shortcomings in its response to the Panel's AP2, the Panel will consider the revised information supplied by the Applicant in relation to the further request by the Panel for it to address shortcomings in its original response by providing '*a comprehensive note showing the journey time and generalised cost impacts for those forecast to switch from car to bus*' [REP4-055]. The observations offered by IP's will also be examined and additional information sought where deemed necessary. The implications for selected socio-economic groups will also be examined under Socio- economic Issues.

The Applicant's response to this issue was considered unsatisfactory as by the Applicant's own admission, the model is insufficiently fine grained to provide this information without proxy. It is clear that the Applicant cannot answer the question fully due to limitations in the modelling suite – as benefits are only allocated to the mode where change has occurred. .

2.4 **Regarding SWQ TT2.3** the Applicant was asked to quantify the potential compounding effect of uncertainties in inputs, specification errors and parameter estimates for the scale

of uncertainty in the transport model system and to provide estimates of the implications of this effect for uncertainty in the inputs feeding into the environmental assessments. The Panel will examine the information proffered by the Applicant in supporting the conclusions presented in its document 'Response to ExA's Second Written Questions: 8.94 Principal Issue: Traffic and Transportation' (March 2017) [REP4-055], and request further clarification and information. The Panel will seek to establish greater precision in estimates of uncertainty attributable to the model system and inputs to environmental assessments.

While a plausible piece of work, the answer provided by the Applicant here makes some assumptions over probability which could be queried. The possibility of a high growth scenario, for example, is considered quite likely, given the acceleration in development in the sub-region above London Plan levels. However, while the exact probabilities can be questioned in the Applicant's arithmetic, the degree of uncertainty in the forecasts is very apparent, and may explain the Applicant's reluctance to commit to Assessed Case bus services.

**2.5 Regarding SWQ TT2.8 Part 1** following on from AP17, the Applicant was asked to comment on the potential implications of user charge exemptions for the efficient operation of the scheme. The evidence on the assessment of the effect of exemptions on operation of the scheme as well as observations from other IP's will be discussed further at the hearing and clarification sought where appropriate to ensure all points are addressed.

The Council welcomed the ExA's questioning on this issue and noted the Applicant's responses with interest. Critically, the Applicant admitted that the effect of a 90% discount on user charges for lowest income groups would have a negligible affect on scheme objectives – notably demand management and revenue. This is a positive for the Council, as a tiered discount scheme offering discounts ranging from 50% to 90% of user charge for those in most need is currently favoured by Newham. The Council believes that a more targeted discount scheme than the flat rate 50% originally proposed would address genuine need better and continues to discuss this with the Applicant, who appears agreeable to such a tiered discount scheme – subject to there being no detrimental impact on scheme objectives and to the tiers being readily identifiable from existing benefits records held by the relevant Authorities and the appropriate Govt. Departments. Discussions on these matters will continue with the Applicant until the end of the hearing, with as much detail as possible to be included in the final version of the CPAP.

**2.6 Regarding SWQ TT2.8 Part 2:** (see below under Socio economic Issues)

### **3. Socio-economic Issues**

**3.1 Regarding SWQ TT2.4:** Under this question the Applicant was requested to expand on the material supplied in response to AP12 relating to the projected Net Present Value (NPV) without implementation of the proposed bus strategy. The Panel will examine the Applicant's assessment of and the implications for, the efficacy of the Silvertown scheme under such a scenario, together with any observations from IP's.

While the Scheme appears to continue to represent some degree of value for money in NPV terms without any commitment to bus services at all, this continues to be of great concern to the Council, given the importance of bus-driven user benefits for Newham. It is clear that the benefits to Newham would be massively impacted to the negative were there any erosion of the bus services as proposed in the Assessed Case. It is also clear from the

previous agenda discussions above that the role of bus services in addressing the adverse socio-economic impacts of the Scheme is critical and must remain a critical component of the outcomes delivered by the proposals.

**3.2 Regarding SWQ TT2.5:** Under AP13, the Applicant had been asked to provide '*a Benefit Cost Ratio (BCR) for the scheme assuming without implementation of bus strategy and scheme funded publicly (not PPP)*'. The Panel had indicated under TT2.5 that the Applicant's reply to AP13 was insufficient and required an enhanced response. The Panel will explore and examine the Applicant's response under SWQ TT2.5.

Despite the Applicant's obvious reluctance to provide such a figure, and the caveats that were given alongside the number when it was eventually provided, the figure itself at around 1.6 represents modest value for money at best. It certainly does not match the BCR's for Borough-led highways and traffic schemes, where BCR's are generally in the range of 2.5 – 5.0.

However, it was noted with interest when the Applicant's representative stated that schemes funded by a user charge are considered to be of zero cost, and of little interest to the Treasury as a result. This was considered somewhat surprising that no value for money scrutiny is apparently required for any such scheme that is so funded.

**3.3** In the context of Her Majesty's Treasury's (HMT) Five Case Model under **SWQ TT2.6**, the Panel requested from the Applicant, quantitative estimates of the economic impacts of alternatives to the preferred scheme assessed by the Applicant, encompassing both costs and benefits, including wider economic benefits. At the hearing the Panel will examine and review the response of the Applicant to this request within the framework of HMT's Five Case Model Guidelines.

The Council remains unconvinced by the Applicant's responses on this issue at both this and the previous ISH. The Council would have expected a strategic framework assessment comparing the qualitative costs and benefits of a range of intervention options and their achievement of certain project objectives to have been presented – and indeed the Council would still wish to see such a transparent decision making framework that shows how a range of options had been evaluated and why these were discarded or considered inappropriate solutions. It is very clear, for example, that a crossing in a location further east would meet the regeneration and connectivity objectives far better than a new crossing adjacent to where there is already a crossing as proposed by the Scheme, but there has been little transparency from the Applicant on this options appraisal process since project inception. One must not forget that the Applicant's preferred option less than 10 years ago was an entirely different solution in a different location and it is not entirely clear why that position has changed, as transport planning considerations remain largely the same.

There is of course the possibility that there has been some setting of objectives to match the scheme, to retrospectively justify the preferred option. The Applicant could quash this accusation easily were they to provide a transparent scheme appraisal document, but has singularly failed to do so, despite repeated requests.

**3.4 Regarding SWQ TT2.7:** Following on from AP16, under which the Applicant was requested to supply '*a comprehensive note explaining the intended local benefits/enhancements to offset the dis-benefits to some low income groups within the host or nearby boroughs*', the Applicant was asked to enhance the quantitative information

supplied to differentiate between impacts for lower income car users and existing public transport users attributable to the scheme. The Panel will explore and examine the material provided by the Applicant and its adequacy in addressing what was requested by the Panel. These tasks will be undertaken in conjunction with agenda item 2.2 relating to SWQ TT2.1.

[See above remarks at agenda item 2.5](#)

**3.5 Regarding SWQ TT2.8 Part 1:** (see above under Traffic and Transportation).

[See above remarks at agenda item 2.5](#)

**3.6 Regarding SWQ TT2.8 Part 2:** Under the second part of this question the Applicant was asked to assess the implications of permitting lower income groups in the host boroughs to avail of a discount scheme or exemption from the charge. The Panel will review the evidence provided by the Applicant and the provision offered in the draft s106 agreements [Appendix A to REP4-052] as well as contributions from other IPs.

[See above remarks at agenda item 2.5 and the Written Statement provided at Deadline 6](#)

**3.7 Regarding SWQ TT2.9:** Under AP18 the Applicant was requested to provide '*an update on progress towards securing a commitment to the enhanced bus routes strategy in the DCO (including procurement/tendering arrangements)*'. Under SWQ TT2.9 the Applicant was asked to provide more details on outline net costs of supplying the enhancement and the tendering and procurement arrangements for securing this goal. The hearing will review the information provided by the Applicant on this matter [REP4-055], together with IP contributions with a view to informing an assessment of the level of confidence that can be placed in the delivery of the enhanced bus strategy. The Panel will examine and expect clarification of the provisions arising from and period over which the commitment of £2m revenue support is intended to apply.

[The Council remains concerned over the level of Bus Service commitment and the position of the Borough is clear to the ExA. Some proposals to suggest a commitment to securing the PT benefits as presented in the Assessed Case without the Applicant requiring to commit to a level of bus service provision in advance of pre-scheme modelling has been rejected by the Applicant, so the position remains that Requirement 13 must secure the level of service provision as identified in the Assessed Case – ie 37.5 services per hour in each direction during peak hours.](#)

[This is discussed more fully in the Council's Written Statement submitted at Deadline 6](#)

#### **4. Construction on Land**

4.1 The Panel understands from various deadline 4 (D4) representations that parts of the revised updated Code of Construction Practice (CoCP), revision 3 [REP4-036], are still not agreed with IPs, including Port of London Authority (PLA); London Borough (LB) of Newham, LB of Tower Hamlets and Royal Borough (RB) of Greenwich.

- Please can those IPs that raised issues regarding the updated CoCP at D4 give a short update to the Panel on whether the CoCP matters identified are now resolved, or are likely to be resolved before the end of the Examination?

- Please can the Applicant also provide an update on how it intends to address outstanding matters?

Prior to the ExA Hearing a number of issues relating to the CoCP remain outstanding:

- The interchangeable use of the terms ‘materially worse than’ and ‘materially different’ throughout the COCP and the consequential potential for ambiguity of its definition by the contractor, TfL and the local authorities;
- The make-up and justification behind the 55% by weight of all materials associated with the scheme being transported by river;
- The approval process ground remediation and verification associated with the construction of the Silvertown Tunnel – discussed later in Agenda Item 6; and
- The chronology of timelines relating to the steps outlined within Chapter 11 Noise and Vibration.

Just before arriving at the ExA hearing the Council were handed edited versions of Chapters 3, 9 and 11 and Appendix H (Construction Noise and Vibration Mitigation Scheme). LBN had no time to review these revisions before this agenda item was raised and LBN offered an update at Deadline 6 in light of these revisions.

Since the ExA Hearing the Council have reviewed the edited chapters. The Council consider that despite the editions outstanding issues remain on all points listed above, excluding the river transport target and the remediation. The Council provided TfL with further comments on the revised documents on 31st March to TfL and at the time of writing await a response. The Council remain hopeful of reaching agreement on the CoCP. However if there is no agreement the Council will provide the ExA with details of outstanding issues at Deadline 7.

4.2 Further to the Applicant’s response to SWQ CL2.7 regarding the use of the concept ‘Not Environmentally Worse Than’ (NEWT) [REP4-054], please could the host authorities provide their views on the Applicant’s response to this SWQ? In particular, the Applicant states that the Contractor would assess the likely significance of any change which would be approved by the Applicant and details of these changes would be included in the CoCP, which itself would be secured by Requirement (R)5 of the draft DCO (dDCO).

The Council remain concerned that the CEMP may allow changes to the works to be undertaken or the method to which these works are undertaken which the Council consider significant whilst the CEMP, the contractor and TfL do not. Further the CEMP is a document that the Council is only consulted upon leaving the Council with no right to address this inconsistency.

The Council request that the NEWT test would be better held within the DCO to enable it to cover all aspects of the development not merely construction. The wording suggested by RBG as amended by the ExA, “not materially new” or “not materially different” are agreed by the Council.

4.3 In relation to the Applicant’s details on NEWT, please can the Applicant provide its views on RB of Greenwich’s proposed wording, that *the consequences of the scheme should result in the monitoring and mitigation strategy maintaining conditions which are equal to/or better than those forecast in the ES* (The Panel has modified the proposed wording slightly for clarity). If the Applicant does not agree with this wording, what is its reasoning?

The Council agrees with the RBG position with regard to NEWT, requiring that the development equal or better the forecasts within the ES. This requirement should be held within the DCO so that it covers both impacts arising from construction and operation.

4.4 LB of Southwark [REP4-017] and LB of Hackney [REP4-019] raise concerns about what is the difference between the terms '*not materially worse than*' and '*not environmentally worse than*'. Please can the Applicant provide clarification on this point?

No LBN submission made at this item.

4.5 Further to the response from LB of Newham in relation to SWQ CL2.4 [REP4-012], regarding the two new environmental appraisals submitted at D3, please can the Applicant respond to LB of Newham's concerns about the character of any noise produced during the concrete segment manufacturing process and whether this has been considered? In addition, please can the Applicant explain whether effects of any identified characteristics could be mitigated at source? This is particularly important given the aspiration to work 24/7 at this facility.

The Council welcome the clarification provided by Rupert Thornely-Taylor, on behalf of TfL. Specifically the clarification that there is no tonal characteristic to the noise from the concrete manufacturing plant and further mitigation is available through the construction of the building housing the manufacturing plant. On this basis the Council will not be taking this matter any further.

## **5. Air Quality**

5.1 Without discussing detailed drafting of various parts of the requirement (which can be considered at the DCO Hearing on Wednesday 29 March), please can the host authorities provide a summary of their views on new R7 in the dDCO [REP4-026] (as far as they address air quality impacts arising from traffic and air quality monitoring and mitigation)?

The Council remains concerned over 2 particular areas of Regulation 7.

Firstly - Paragraph 16 of regulation 7 refers to "the relevant air quality authorities". Consequently under the current wording of paragraph 16 only areas declared as air quality management areas (AQMA) could trigger the test "that the authorised development has materially worsened air quality". The Council consider that the test is incorrect test, and would for example exclude consideration of the Hoola building, currently not in an AQMA yet predicted in the assessed Case to be worse off and to exceed National Air Quality Objectives.

Secondly - Paragraph 10 of Regulation 7 outlines how air quality experts appointed to assess the air quality data as a result of the monitoring set out in the monitoring and mitigation strategy, are to consider a material worsening of air quality. Paragraph 10 directs users to the monitoring and mitigation strategy (4.4.6) which in turn directs to the test of "significant impact in the interim Advice Note (IAN) 174/13". The Council assume that the intent of TfL is for this paragraph to refer to "significant effect" which is the term used in the interim advice note. Consequently the Council are concerned that as a result of the test only areas where National Air Quality Objectives (NAQO) are exceeded and the change in concentration is greater than imperceptible could such exceedances be considered significant.

Therefore the test ignores any change in air quality level as long as the NAQO are met. In light of increased public concern over NO2 levels in London the Council would welcome a more appropriately conservative approach using lower threshold levels and lower thresholds of change as used in the “Guidance on land-use planning and development control: Planning for air quality” January 2017 (v1.2)

5.2 Please can the neighbouring authorities provide their views on the updated/combined Monitoring and Mitigation Strategy [REP4-046], initially in relation to whether the proposed monitoring locations now cover all of the areas that they have raised as being of concern, including Old Kent Road, New Kent Road and Tower Bridge (LB of Southwark); Wick Road, Kenworthy Road, Cassland Road, Victoria Park Road as well as the A12 (LB of Hackney); B218, A21, A2212 (LB of Lewisham).

No LBN submission made at this item.

5.3 Please could the Applicant and LB of Southwark provide an update to the Panel explaining whether LB of Southwark’s concerns that Chapter 2 of the draft Monitoring and Mitigation Strategy [REP4-046], which includes a feasibility study for the pre-opening mitigation measures would be expanded to include the area which is of concern to the LB of Southwark (along the A200)?

No LBN submission made at this item.

5.4 Please can the neighbouring authorities (LBs of Southwark; Hackney; Lewisham and Bexley), provide an update to the Panel regarding whether there is agreement over the additional modelling work provided by the Applicant, which was the subject of the Panel’s SWQ AQ2.4, in respect of whether the new information provides any comfort in relation to whether the proposed development would impact their ability to achieve EU Limit Values? LBs of Southwark and Lewisham stated at D4 that the scheme would affect their LAQM and EU responsibilities.

No LBN submission made at this item.

## **6. Geology, Soils and Contaminated Land**

6.1 The host authorities and the EA consider that the approval by the Local Planning Authorities (LPAs), of a remediation statement prior to commencing construction should be the subject of a requirement, as well as the approval of a verification report prior to the various parts of the proposed development becoming operational. The EA have proposed draft wording for the requirement. The Panel notes the reasons why the Applicant has not included it in its D4 dDCO [REP4-026], as provided in [REP4-057], but notes that the agreement of the EA to include these details within the CoCP/Protective Provisions had not been obtained by D4. Has agreement been obtained? The Panel notes also the view of host boroughs that a specific requirement would be preferable so that they can be sure that verification requirements are met. For the avoidance of doubt, the Panel has included a suggested requirement based upon the EA’s wording for the remediation statement and verification report in its recommended DCO being published at D5.

The Council agrees with the revised wording and the placement of the requirement within the DCO provided by the ExA. The Council remains concerned that the wording suggested by TfL does not provide the Local Authority with an approval process for section 9.2.2 of the

CoCP that relates to the assessment of whether any remediation is required and the nature of the remediation.

## 7. Noise and Vibration

7.1 Please can the host authorities provide their views on the draft noise and vibration mitigation scheme, Appendix H of the updated CoCP [REP4-036]?

The Council is generally in agreement with the Construction Noise and Vibration Mitigation Scheme, which forms Appendix H of the CoCP. The Council has expressed their concerns to TfL on 23<sup>rd</sup> March 2017 that chronological issues remain within the requirements of the scheme.

The Council were handed a revised version of Appendix H just prior to the ExA oral hearings beginning and were unable to provide a review. The Council proposed to review the document and provide an update on the progress and any agreement with TfL at Deadline 6.

Since the ExA Issue Specific Hearing on 28th March the Council has reviewed the revised scheme and considers that there are still outstanding issues. The Council provided TfL with further comments on the revised scheme on 31st March and awaits a response from TfL. It is hoped agreement can be made on the CoCP. However if there is a lack of agreement the Council will provide the ExA with details of any outstanding issues at Deadline 7.

7.2 Further to the Applicant's report on the 520 Overheight Vehicles (OHV) Scenario Noise Impacts [REP4-047], please can the Applicant explain where the dwellings that would experience a minor increase in night-time road traffic noise and the dwellings that would experience a minor increase in night-time noise are located? Is any mitigation being proposed in the event that this higher number of Heavy Good Vehicles (HGVs) does indeed travel northbound through the proposed development, should the Order be made?

The Council responded to TfL's response regarding the Hoola Building, the currently installed noise mitigation at the development and the conclusion that the internal noise levels at the most affected apartments within the development would still be comfortably within the BS8233 good levels. The Council has nothing further to add.

7.3 Please can the Applicant define the terms used in R12(5) "*materially new*" and "*materially worse adverse environmental effects*" in the Interpretation (Requirement 1)? There are various terms (including these and those addressed in agenda items 4.3 and 4.4 above) that the Applicant is currently using in the dDCO and various schemes and plans and the Panel requires the terms to be standardised throughout, with explanations and clarification regarding why different terms are used in different contexts.

No LBN submission made at this item.

7.4 Please can the Applicant and LB of Newham provide an update to the Panel on whether there is agreement regarding the need for noise monitoring and mitigation for the potentially adversely affected flats at the Hoola Development? Are these flats likely to be the subject of the sound-proofing insulation schemes or re-housing mitigation proposed in the draft Construction Noise and Vibration Scheme?

The Council is in agreement with TfL over the need for noise monitoring to take place at the Hoola development, for both construction and operational noise. As with responses to 4.1 and 7.1 LBN are still awaiting responses to its comments with regards to the CoCP and subsidiary documents before agreement can be reached on this point.

## **8. Health, Safety and Security**

8.1 Please can RB of Greenwich provide an update on when the Brenntag application to modify its Hazardous Substances Consent (HSC) is likely to be determined?

No LBN submission made at this item.

8.2 Further to the Health and Safety Executive (HSE)'s response to the Panel's SWQs [REP4-002], please could the Applicant and HSE provide an update regarding whether there is yet agreement in respect of the draft wording for the Grampian style Requirements that would be required, in view of HSE's ongoing advice in respect of this application?

No LBN submission made at this item.

8.3 Please could HSE provide an update and clarification to the Panel on its advice to the LPA in respect of the Studio 338 application to re-build the night club, recommending that it is refused on public safety grounds?

No LBN submission made at this item.

8.4 Please could the Applicant and HSE provide an update in respect of the licensed explosive storage site at (or near) Thames Wharf. Has agreement now been obtained on this matter, in terms of whether the facility would have to cease operating during construction and/or whether it would be re-located?

No LBN submission made at this item.

## **9. Terrestrial Ecology**

9.1 Please can the Applicant and RB of Greenwich provide an update on progress regarding the proposed s106 agreement that would secure the funds required for providing the offsite ecological mitigation, including its maintenance and management? The Panel notes that the draft s106 was submitted by the Applicant as part of its responses to the Panel's SWQs on DCO matters [REP4-052].

No LBN submission made at this item.

9.2 Further to Natural England (NE)'s response to SWQ TE2.2 [REP4-011], please can the Applicant and NE provide an update regarding whether there is agreement on how ecological mitigation could be retained in-situ on land that is subject to temporary possession and/or off-site, in the long term?

No LBN submission made at this item.

9.3 Further to the Applicant's revised CoCP [REP4-036], please can the host boroughs and NE provide their views on the content and level of detail within the outline ecology management plan (Appendix G to this document)?

No LBN submission made at this item.

## **10. Marine Ecology**

10.1 Further to the EA's response to SWQ ME2.1 [REP4-001], please can the EA provide their views on the adequacy and conclusions of the Tfl report that was submitted to them on 24 February 2017 regarding the likely ecological impacts of the NAABSA refurbishment works?

No LBN submission made at this item.

10.2 Further to NE's response to SWQ ME2.5 [REP4-001] regarding the recommended Marine Conservation Zone (rMCZ), please can the Applicant and NE provide an update regarding the matter of the surveys that would be conducted six months prior to construction commencing, in order to determine the presence of potential suitable habitat for Lagoon Sea Slug? Have these matters now been agreed and if so where are they secured?

No LBN submission made at this item.

10.3 Please can the Applicant and the MMO provide an update on whether there would be a need for additional suspended sediment modelling and whether a scour and accretion monitoring and mitigation strategy would be necessary to be provided/agreed/secured?

No LBN submission made at this item.

## **11. Dredging and Navigation**

11.1 Further to the EA's response to SWQ DN1 [REP4-001], please can the Applicant and the EA provide an update regarding progress on committing to a maximum length of dredge excavation at any one time, and the placing of crushed stone on that section, before moving onto the next section? Where is this secured in the dDCO?

No LBN submission made at this item.

11.2 Please can the Applicant and the EA provide an update regarding whether the investigative work/strengthening work that may be required on the three sections of river wall (zones 3, 6 and 7) have been agreed and secured in the dDCO?

No LBN submission made at this item.

## **12. Surface Water and Flood Risk Assessment**

12.1 Further to the EA's response to SWQ SW2.2 [REP4-001], and the Applicant's responses to SWQs on Surface Water and Flood Risk [REP4-062], which included a summary note on the feasibility and concepts for raising the river walls, please can the EA/Applicant provide an update on whether discussions with the Riparian Owner of Zone 12 of the river wall have resolved issues in relation to the rebuilding of this zone prior to construction work commencing? If so, is this the responsibility of the Applicant or the Riparian Owner?

No LBN submission made at this item.

12.2 Please can the Applicant inform the Panel regarding when the assessment of the 4m stretch of this part of the river wall (that was missing from the river wall survey) will be carried out and made available to the Examination/the EA?

No LBN submission made at this item.

12.3 Further to LB of Newham's D4 response to SWQ SW2.4 [REP4-012], please can LB of Newham give an update to the Panel in respect of the Applicant's proposals in relation to flood risk that do not meet LB of Newham's standards? What matters are not agreed and is an acceptable solution likely to be agreed?

The area where the development is to be undertaken in Newham has variable surface water flood risk levels, some locations are at a high flood risk due to topography and the local drainage discharging to a combined sewer system. This type of system is vulnerable to flood, even in relatively minor rainstorm events, because of its relatively low capacity, having to accommodate both storm and foul waters. It represents the least desirable discharge option where sustainable drainage is considered.

The proposed drainage scheme, aims to maintain its current connections to the existing combined sewer system and limit discharge rates to current 5 year critical rainstorm return period, mitigating against future climate change over applicable scenarios by attenuation storage and flow control. Whilst the proposal as formulated would in principle not increase local flood risk, its detail would need to be checked as to whether meeting minimum requirement set out by Newham flood risk policies (specifically Newham Local Flood Management Strategy) which were not acknowledged in the ES nor their standards that apply to all major development proposal.

TFL submitted a flood risk assessment (FRA) as part of the ES - Environmental Statement Appendix 1 6A (6.3.16.1) - the document does not acknowledge applicable surface water local flood risk policies and their standards in terms of SUDS and runoff-peak discharge:

- Newham Local Flood Risk Management Strategy (LFRMS) - most up to date policy and standards.
- Newham Local Plan: Detailed Sites and Policies DPD ( SC5 1)
- LBN's Surface Water Management Plan (SWMP)

by not framing the proposal in reference to such standards it does not allow the Lead Local Flood Authority (LLFA) to give informed assessment. (The LLFA is part of the Local Authority)

It is therefore not clear from FRA submission whether the proposed drainage scheme (regarding discharging to a combined sewer system) would meet Newham's policy minimum requirements for major development in terms of post development runoff rates

(i.e. not more than 3 times the calculated greenfield peak runoff for events up to and including the 1 in 100 year return period, with an allowance for climate change ) which reflects current guidance. Proposed discharge rates must be specified in reference to the greenfield benchmark to enable assessment.

TfL is aware of our concerns but have currently not responded. In the absence of any further agreement between TfL and ourselves (since there is very little time now available) The Council would wish to see a requirement imposed through the DCO schedule 2 part 1 paragraph 8 requiring TfL to submit further details of the surface water drainage plan that is designed to address applicable local flood risk policies and their standards such as water runoff rate in Newham's surface water drainage. This would require we consider a minor change to the existing condition.

12.4 Further to RB of Greenwich's response to SWQ SW2.4 [REP4-014], regarding the flood risk documents within the ES, please can RB of Greenwich and the Applicant provide an update in respect of the matters that RB of Greenwich identified remained the subject of the queries identified?

12.5 (*PINS numbering corrected*) Please can the Applicant and the EA provide an update in respect of outstanding flood risk matters that have not been agreed?

No LBN submission made at this item.

### **13. Heritage and Townscape**

13.1 Further to RB of Greenwich's response to SWQ HT2.2 [REP4-014], please can RB of Greenwich and the Applicant provide an update on progress regarding the agreement of mitigation triggers for Greenwich Town Centre (including the Greenwich Maritime World Heritage Site) in the event that traffic diverts to the free Rotherhithe tunnel. How would such unforeseen mitigation be funded?

No LBN submission made at this item.

### **14. Any Other Remaining Commercial Issues**

14.1 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 little or no prospect of being relocated onto a similar site with wharf facilities?

No LBN submission made at this item.

14.2 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 installation of other apparatus by third parties (such as wires or cables) through the tunnel, if the Order is made, has been resolved?

No LBN submission made at this item.

2. ISH – Open Floor Hearing 28<sup>th</sup> March 2017

The Council did not attend this hearing.

3. ISH – Compulsory Purchase Orders 29<sup>th</sup> March 2017

The Council did not attend this hearing.

4. ISH – Draft Development Consent Order 29<sup>th</sup> March 2017

**1. Welcome, introductions and arrangements for this Issue Specific hearing.**

**2. The Panel will expect all participants to have studied the revised draft of the DCO submitted by the Applicant for D4 [REP4-026] together with the revised Explanatory Memorandum [REP4-028] and the Applicant’s Document 8.81 Explaining the DCO amendments [REP4-043] and the Applicant’s answers to the Panel’s SWQ on DCO Wording [REP4-052].**

The Panel will therefore invite IPs to confirm that they are content with the amendments made, or if not to indicate why not without straying into the following two agenda items. The Applicant will be given opportunity to respond if necessary, again having regard to the following two agenda items.

**3. The ExA will introduce the further changes suggested by the Panel in the draft DCO issued on 20 March 2017.**

The Applicant and IPs will be given opportunity to respond having regard to the following agenda item.

**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:**

- Environment Agency (EA)
- Port of London Authority (PLA)
- Marine Management Organisation (MMO)
- Host Boroughs
- Other IPs

These IPs and any others will be asked to confirm their agreement and any other IPs will be invited to comment with response as necessary by the Applicant.

The Council has made good progress on many of the issues raised and only a few outstanding items remain as follows:

- Article 58 (Transfer of Benefits) remains of some concern to the Council and further assurances are sought over the transferability of certain elements of the DCO. It has been suggested that this issue could be addressed by the re-definition of “TfL “ in the DCO to include any subsequent successors or appointed contractors – to ensure that any obligations on TfL are also automatically applied to anyone TfL may transfer any aspect of Scheme operation to.
- Requirement 13 – this remains a sticking point for the HB’s and Applicant, and if the proposed wording of Req 13 as suggested in the Council’s Written Statement at

Deadline 6 cannot be agreed, then the Council would wish the ExA to make a ruling on this issue, taking account of the Host Boroughs submissions on this matter.

- Schedule 2, Part 1, Requirement 5. Some issues remain with some aspects of the CoCP, which are detailed in the Council's Issues Tracker V4 document, issued at Deadline 6. However, none of these are considered to be substantive, and agreement is likely to be achieved by Deadline 7.

Issues now resolved from Deadline 5 response include Article 12, where the additional protective provisions are deemed acceptable, land contamination and remediation process is now agreed and Article 68 is now amended to allow approvals of above ground buildings and other ancillary structures.

#### **5. Any other textual changes sought on the face of the DCO.**

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.

No LBN submission made at this item.

#### **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.**

The Panel will invite IPs and the Applicant to draw attention to any changes necessary to supporting documents that would be certified and make any further suggestions arising from the final group of hearings.

No LBN submission made at this item. (Items were covered elsewhere in the ISH agendas on 28<sup>th</sup> and 29<sup>th</sup> March.

#### **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.**

The Panel will invite IPs to comment on the text of the proposed DCO Agreements and the Panel may itself wish to raise additional points with any response as necessary from the Applicant.

The Applicant will be invited to explain how the provisions of the proposed Agreements meet the requisite tests in policy and statute concerning planning agreements.

IPs will be invited to comment on the necessity or otherwise of any further agreements or undertakings.

The Council continues to work with the Applicant over the content of the proposed Legal Agreements. While most items in the Heads of Terms are agreed in principle, disagreement remains over inclusion of a financial contribution towards a Sustainable Transport Fund and the EAL. In addition, exact financial contributions are still to be agreed. These discussions will continue up to Deadline 7.

#### **8. Any other matters relevant to the wording of the DCO.**

No LBN submission made at this item.

**9. Action Points – It should be noted that signed and sealed copies of the proposed s106 undertaking will be required by the Panel before the close of the examination, i.e. preferably by D6 but at the latest D7.**

**10. Close of the ISH on the wording of the DCO and related documents.**