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Date: 14th September 2017

Re: Application by Transport for London (TfL) (“the Applicant”) for an Order granting Development Consent for the proposed Silvertown Tunnel including user charging on the Blackwell Tunnel (“the Scheme”)

Dear Ms Kopala,

I write further to your correspondence dated 1st September 2017, which invites the London Borough of Newham (“the Council”) as an Interested Party to comment on the responses received pursuant to your letter on the 9th August 2017.

I would also like to take this opportunity to provide a further update on discussions relating to the legal agreement, in response to your letter dated 31st July 2017, and further to my previous letter dated 14th August 2017.

A copy of this correspondence has also been provided directly to the Applicant, to ensure that they have the maximum possible time to respond to the Council’s concerns, prior to a decision being taken on the Development Consent Order.

Implications of the UK Plan for tackling roadside nitrogen dioxide concentrations, including the Zone Plan for the Greater London Area (“UK Air Quality Plan”)

Within your letter on the 9th August 2017, you requested that the applicant set out what impact the Scheme would have on meeting the proposals in the Zone Plan for the Greater London Urban area. You requested that the response provide a further update to the air quality assessment based on the data included in the latest UK Plan for tackling roadside nitrogen dioxide concentrations published on 26th July 2017 and provide details of any further mitigation measures considered necessary to address any significant impacts on air quality.

In general terms, the Council’s position on this matter is broadly aligned with that of the London Borough of Southwark. It is noted that the response provided by the Applicant did not include re-modelling, which would have been beneficial. It is also disappointing to the Council that the Applicant remains of the view that no further mitigation is necessary.

The traffic modelling provided by TfL during the examination shows an increase in vehicular traffic through the borough, and in the case of the Hoola building moves the building from compliant to non-compliant with regard to nitrogen dioxide limits. The UK Air Quality Plan

expects each local authority to delivery air quality mitigation measures to ensure the UK is compliant with the EU Air Quality Directive limit values as soon as possible. With an increase in vehicular traffic and a lack of proposed mitigation (albeit potential mitigation is discussed in the following sections of this statement) the Silvertown Tunnel is likely to make Newham's obligations contained within the UK Air Quality Plan more difficult to meet.

The revised UK Air Quality Plan does highlight the need to meet air quality standards within the shortest possible time, and that it may take longer than previously anticipated to meet air quality standards. This, for the Council, provides additional weight to the argument that mitigation is appropriate and necessary to remedy the identified harm at a borough level, in particular that which is experienced directly (and on TfL's own evidence) at the Hoola building.

Updates on discussions relating to legal agreements

You previously requested that the Council "*provide an update (to the Department) in respect of the discussions relating to the legal agreement / s106 agreement and in particular the following matters:*

- *transitional business support provisions;*
- *a cross river cycle shuttle bus provision; and*
- *a scheme of ventilation at the Hoola building.*

In my letter dated 31st July 2017 I advised you that the Applicant and the Council are continuing discussions in an attempt to resolve matters that relate to the s106 agreement, which includes all obligations in the Deadline 7 draft deed, as submitted, that are pursuant to sections 106 and 106(1A) of the Town and County Planning Act 1990. While this remains the case, I am now in a position to provide the following updates on the specific matters to which your request related:

1. Transitional business support provisions

Attached at Annex 1 is the version of the latest provisions forwarded by the Applicant. A version of this schedule as proposed by the Council is at Annex 2.

On the basis that the Applicant has committed to provide this support until the funds have been exhausted (Paragraph 1.6), the Council is content for the Applicant to be the administrator of such support. Appropriate provision is also provided for the administration of the support to transfer to the Council, where there is agreement with TfL.

In terms of eligibility to receive the transitional support (Paragraph 1.4) some concerns remain that small businesses may be reluctant to participate if they are required to publicise full details of vehicle use and travel patterns.

2. Cross river cycle shuttle bus provision

Attached at Annex 1 is the version of the latest provisions forwarded by the Applicant. A version of this schedule as proposed by the Council is at Annex 2.

Notably, the latest version of the provision drafted by the Applicant includes that TfL is not required to commence the cycle shuttle bus service trial if an *appropriate alternative* (as

determined by TfL, in consultation with the Council) is operational at the time TfL would otherwise have commenced the trial (Paragraph 1.5).

The Council is accepting of the principle that the cycle shuttle bus provision need not be provided if there is an appropriate alternative operational. Indeed, the Council maintains¹ that a revised fare strategy for the Emirates Airline is preferable, and certainly would represent an “appropriate alternative” under that Schedule.

The Council does not, however, accept that it is appropriate for TfL to determine what would constitute an appropriate alternative, having only consulted the Host Boroughs. The Council considers that the determination of an appropriate alternative as drafted within this Schedule must be by agreement of the Host Boroughs. Giving additional weight to this position is the potential that a cross river ferry from the Isle of the Dogs to North Greenwich could be considered as an alternative². While the benefits and dis-benefits of such a scheme for Newham Residents are not yet known, there is clearly the potential that they may be substantially different to those of the cycle shuttle bus service.

In addition, the Council notes the following concerns with this provision as drafted by the Applicant:

- TfL has amended the requirement to commence the Scheme from within 1 month, to within 3 months of the Silvertown Tunnel opening. The Council sees no reason for this change, or indeed why the service not could on start the same day, or before if it was to run through the Blackwall Tunnel. Indeed, the Council considers that is imperative that travel plans and patterns are influenced early, and that immediate introduction is required to maximise patronage.
- Paragraph 1.3 of TfL’s Schedule includes the requirement for TfL to provide appropriate pick-up and set-down points on both sides of the River Thames and reasonable associated facilities (including bus stands), with the location of those points to be the subject of consultation with the Council before being finalised. The Council maintains that it must be in a position to *approve* the locations, as there needs to be an adequate cycle network in the vicinity of the location, and there may be implications for the operations of the highway, or other planned developments in the area.
- The combined operations of Paragraphs 2.3 and 2.4 provide for TfL to cease the cycle shuttle bus service, having regard to the monitoring report and the results of consultation with Host Boroughs. As the Schedule separately provides for the cessation of the service if an appropriate alternative is operational, the Council does not consider that it should be allowed in any other event. This is important to ensure that (in the absence of other projects) that the Scheme delivers any benefits to cross river cycle and pedestrian movements in the medium to long term.

Wider Implications

While the Council is accepting of the principle that an appropriate alternative could replace the cycle shuttle bus service, it would introduce the likelihood that this Scheme (in isolation) would provide little by way of pedestrian and cycle improvements, relying instead on the delivery of

¹ See in particular the *Statement of the London Borough of Newham, Deadline 6, dated 5th April 2017*.

² As described in the Mayor of London’s Draft Transport Strategy (June 2017)

separate projects in the vicinity of the tunnel portals. It is noteworthy that this position appears at odds with the Mayors Draft Transport Strategy (June 2017), which states the following;

Proposal 1

The Mayor, through TfL and the boroughs, will improve and manage London's public realm that encourages walking and cycling by all Londoners by:

e) Ensuring any scheme being undertaken on London's streets for any reason improves conditions for walking and cycling.

For the Council, this serves to compound its concerns with regard to the potential cycle and pedestrian improvements in the vicinity of the tunnel, which would be the subject of a separate provision within the legal agreement. These schemes comprise potential improvements to;

- The Victoria Dock Road Footbridge
- The North Woolwich Road - Off-Carriageway Cycle Way
- Silvertown Way Underpass
- Tidal Basin Road

At the current time, TfL appears to maintain that a merely a part contribution towards the delivery of the schemes would be appropriate. The Council disagrees. It is maintained by the Council that each of the Schemes are necessary to make the development acceptable in planning terms, and accordingly, TfL should commit to providing for the full cost of providing these works, or to providing the scheme prior to the Silvertown Tunnel being opened for public use.

3. A scheme of ventilation at the Hoola building

The *Silvertown Tunnel Draft Section 106 Agreement* submitted to the Examining Authority by LBN at Deadline 7, included within Part 3 (Environmental Works) that TfL and the Owner covenant;

To use Reasonable Endeavours³ to implement a scheme of ventilation at the Hoola building, to reduce exposure of the first floor residential accommodation to nitrogen dioxide

Unfortunately, the Applicant confirmed to the Council on the 1st September 2017 that its position remains as per its closing statement submitted to the examination, and that it does not consider that such mitigation is proportionate.

Without repeating the Council's various submissions to the Examining Authority on this point, I would emphasise the following;

- By the Applicants own admission, in accordance with IAN 174/13⁴ there is a large worsening of air quality at the Hoola Development as a result of the scheme.⁵

³ A definition for Reasonable Endeavours is provided separately within the Draft Agreement, and repeated at Appendix 1.

⁴ 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)

⁵ See REP7-035, Paragraph 6.2.15

- Mindful that the UK Air Quality Plan highlights that it may take longer than previously anticipated for London to meet air quality standards, there is the potential for this impact to be worse than that which is already identified by TfL.
- The National Planning Policy Framework (at Paragraph 123) states that: *Planning policies and decisions should aim to mitigate and reduce to a minimum other (than from noise) adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions* (and one can infer obligations).
- In the context of a £1bn Scheme, the Council considers it is entirely proportionate to mitigate a significant adverse local impact by undertaking Reasonable Endeavours to implement a scheme of ventilation at the source of that impact.

For the avoidance of doubt, this letter seeks only to deal with the matters to which an update or a comment from the London Borough of Newham was requested, and should not be taken to be an exhaustive summary of the matters which remain under discussion with the applicant. Wider discussions relating to the legal agreement remain ongoing, and the Council is hopeful that further progress can be made prior to a decision being taken on the Development Consent Order. There is also the outstanding question of whether any such agreement should be entered into pursuant to section 106 of the Town and Country Planning Act, so as to run with the land, or whether purely contractual enforcement against TfL (as proposed by TfL) is satisfactory, bearing in mind the possibility that the whole scheme may ultimately be transferred to a private operator.

This correspondence is considered by the Council 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.

- *Annex 1: Cycle Shuttle Bus & Business Transitional Support provisions as drafted by the Applicant*
- *Annex 2: Cycle Shuttle Bus & Business Transitional Support provisions as drafted by the London Borough of Newham*

Appendix 1:

Definition of Reasonable Endeavours as set out within the Council's *Silvertown Tunnel Draft Section 106 Agreement* submitted to the Examining Authority at Deadline 7.

"Reasonable Endeavours"

means that the Party responsible for the performance must exert itself to take all those reasonable steps which a prudent and determined person acting in their own interests and anxious to achieve the desired objective would take and for the avoidance of doubt includes;

- i. the ability to demonstrate that the relevant Party has taken serious and detailed consideration of its contractual commitment pursuant to this Deed; and*
- ii. has utilised such methods as are likely to achieve the desired result and recognising that such performance is of material importance that the result is achieved;*

ANNEX 1: Cycle Shuttle Bus & Business Transitional Support provisions as drafted by the Applicant

SCHEDULE 4

CYCLE SHUTTLE BUS

1. TRIAL OF A CYCLE SHUTTLE BUS SERVICE

- 1.1 *Subject to paragraphs 1.5 and 1.6, within 3 months of the Silvertown Tunnel opening for public use TfL must commence a 12 month trial of a cycle shuttle bus service in accordance with the provisions of this paragraph 1.*
- 1.2 *The cycle shuttle bus service must provide a service to transport cyclists and their bicycles through either the Blackwall Tunnel or the Silvertown Tunnel or both.*
- 1.3 *TfL must provide appropriate pick-up and set-down points on both sides of the river Thames and reasonable associated facilities (including bus stands), with the location of those points to be the subject of consultation with the Council before being finalised.*
- 1.4 *Subject to paragraph 1.5, TfL must operate the cycle shuttle bus service on weekdays and weekends, at a frequency to be determined by TfL, following consultation with the Council.*
- 1.5 *TfL is not required to commence the cycle shuttle bus service trial to be provided under paragraph 1.1 if an appropriate alternative (as determined by TfL in consultation with the Council) is operational at the time TfL would otherwise have commenced the trial.*
- 1.6 *TfL may cease or alter the cycle shuttle bus service provided under paragraph 1.1:*
 - 1.6.1 *at any time on the grounds of safety; or*
 - 1.6.2 *in the event that there is an appropriate alternative, when that alternative becomes operational (as determined by TfL in consultation with the Council).*

2. REVIEW OF THE CYCLE SHUTTLE BUS SERVICE

- 2.1 *TfL must collect data from the commencement of, and throughout, the 12 month trial period on:*
 - 2.1.1 *the level of usage of the cycle shuttle bus service;*
 - 2.1.2 *journey times; and*
 - 2.1.3 *other information it considers relevant and appropriate.*
- 2.2 *As soon as practicable following the end of the ninth month of the 12 month trial period (and in any case before the end of that trial period), TfL must publish and make available to the Council and the general public a monitoring report, setting out the results of the data collection undertaken under paragraph 2.1 for the previous nine months.*
- 2.3 *Following the publication of the monitoring report under paragraph 2.2 and prior to the end of the 12 month trial period, TfL must consult the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich on the future of the cycle shuttle bus service.*
- 2.4 *Having undertaken the consultation under paragraph 2.3, TfL must prior to the end of the 12 month trial period, having regard to the monitoring report, the results of the consultation and any other relevant matters, decide whether to:*
 - 2.4.1 *extend the trial period of the cycle shuttle bus service;*
 - 2.4.2 *operate the cycle shuttle bus service on a permanent basis; or*
 - 2.4.3 *cease the cycle shuttle bus service.*

SCHEDULE 5

LOCAL BUSINESS TRANSITIONAL SUPPORT

1. BUSINESS TRANSITIONAL SUPPORT PACKAGE

- 1.1 *TfL will, for a period of one year from the date the Silvertown Tunnel opens for public use, waive the initial annual registration fee payable by businesses (which fulfil the criteria under paragraph 1.4) for an online user charging account for the Blackwall Tunnel and the Silvertown Tunnel.*
- 1.2 *Prior to the Silvertown Tunnel opening for public use, TfL must make available and administer a sum of £1,000,000 (one million pounds) for the purposes of supporting local businesses (which fulfil the criteria under paragraph 1.4) in a manner which TfL considers appropriate and in accordance with the provisions of this Schedule.*
- 1.3 *TfL must publicise, in a manner it considers appropriate, the support being made available under this Schedule.*
- 1.4 *To be eligible to receive support under this Schedule, a business must:*
 - 1.4.1 *be registered to pay business rates in the Council's area or in the London Borough of Tower Hamlets or the Royal Borough of Greenwich;*
 - 1.4.2 *have fewer than 50 employees; and*
 - 1.4.3 *register its details with TfL in a manner to be publicised, including the type of business, vehicle uses and travel patterns.*
- 1.5 *The sum made available by TfL under paragraph 1.2 may fund the following:*
 - 1.5.1 *providing advice to businesses in order to help them adapt to the operation of the Silvertown Tunnel, including on options to increase the use of sustainable transport modes; or*
 - 1.5.2 *any other support mechanism TfL may consider appropriate.*
- 1.6 *TfL will provide the support under paragraph 1.5 until the funds have been exhausted.*
- 1.7 *TfL may agree with the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich, that they will be responsible for providing the support under this Schedule instead of TfL, notwithstanding that TfL will provide the funding for this support and will, at its discretion, decide on the type of support to be funded.*
- 1.8 *TfL may require any business in receipt of support under this Schedule to provide it with data for monitoring purposes which may be made public in the form of monitoring reports (subject to suitable redaction and compliance with all applicable data protection legislation).*
- 1.9 *TfL must consult with the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich:*
 - 1.9.1 *prior to making the £1,000,000 (one million pounds) available under paragraph 1.2; and*
 - 1.9.2 *during the period set out in paragraph 1.6 as it considers appropriate,*

in respect of the proposed support mechanisms to be implemented under paragraph 1.5 and any publicity to be undertaken under paragraph 1.3, and take into account any comments received as part of this consultation when finalising or reviewing its proposals under this Schedule.

Annex 2: Cycle Shuttle Bus & Business Transitional Support provisions as drafted by the London Borough of Newham

SCHEDULE 4

CYCLE SHUTTLE BUS

1. TRIAL OF A CYCLE SHUTTLE BUS SERVICE

- 1.1 Subject to paragraphs 1.5 and 1.6, TfL must on first Operation of the Silvertown Tunnel for public use commence trial of a cycle shuttle bus service in accordance with the provisions of this Schedule.
- 1.2 The cycle shuttle bus service must provide a service to transport cyclists and their bicycles through either the Blackwall Tunnel or the Silvertown Tunnel.
- 1.3 TfL must provide appropriate pick-up and set-down points on both sides of the river Thames and reasonable associated facilities (including bus stands), with the location of those points and associated facilities to be approved in writing by the Council.
- 1.4 Subject to paragraph 1.5, TfL must operate the cycle shuttle bus service on weekdays and weekends, at a frequency to be determined by TfL, following consultation with the Council.
- 1.5 TfL is not required to commence the cycle shuttle bus service trial to be provided under paragraph 1.1 if an appropriate alternative (as agreed with the Council) is operational at the time TfL would otherwise have commenced the trial.
- 1.6 TfL may cease or alter the cycle shuttle bus service provided under paragraph 1.1:
 - 1.6.1 At any time temporarily on the grounds of safety; or
 - 1.6.2 in the event that an appropriate alternative (as agreed with the Council) becomes operational.

2. REVIEW OF THE CYCLE SHUTTLE BUS SERVICE

- 2.1 TfL must collect data from the commencement of, and throughout the trial period on the:
 - 2.1.1 the level of usage of the cycle shuttle bus service;
 - 2.1.2 journey times; and
 - 2.1.3 other information it or the Council considers relevant and appropriate.
- 2.2 As soon as practicable following the end of the ninth month of the trial period (and in any case before the end of the twelfth month), TfL must publish and make available to the Council and the general public a monitoring report, setting out the results of the data collection undertaken under paragraph 2.1 for the previous nine months.
- 2.3 Following the publication of the monitoring report under paragraph 2.2, TfL must make a recommendation to the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich on the future of the cycle shuttle bus service.
- 2.4 Having received a recommendation under paragraph 2.3, the Council, the London Borough of Tower Hamlets and Royal Borough of Greenwich must have regard to the monitoring report, TfL's recommendation, and any other relevant matters, decide whether to:

- 2.4.1 extend the trial period of the cycle shuttle bus service for an additional 12 months;
- 2.4.2 operate the cycle shuttle bus service on a permanent basis (with the agreement of TfL); or
- 2.4.3 cease the cycle shuttle bus service.
- 2.5 If in the event it is determined by the Parties that the cycle bus service trial period is extended under paragraph 2.4.1, the review of the extended cycle shuttle period shall take place in accordance with paragraphs 2.1 to 2.4 above.

SCHEDULE 5

LOCAL BUSINESS TRANSITIONAL SUPPORT

1. BUSINESS TRANSITIONAL SUPPORT PACKAGE

- 1.1 TfL will, for a period of one year from the date the Silvertown Tunnel opens for public use, waive the initial annual registration fee payable by businesses (which fulfil the criteria under paragraph 1.4) for an online user charging account for the Blackwall Tunnel and the Silvertown Tunnel.
- 1.2 Prior to the Silvertown Tunnel opening for public use, TfL must make available and administer a sum of £1,000,000 (one million pounds) for the purposes of supporting local businesses (which fulfil the criteria under paragraph 1.4) in the manner prescribed under paragraph 1.5.
- 1.3 TfL must publicise, to the satisfaction of the Council, the support available under this Schedule in order to enable as wider a participation in the Business Transitional Support Package as possible and ensure that such publication reaches all eligible businesses.
- 1.4 To be eligible to receive support under this Schedule, a business must:
 - 1.4.1 be registered to pay business rates in the Council's area or in the London Borough of Tower Hamlets or the Royal Borough of Greenwich or the Council; and
 - 1.4.2 have fewer than 50 employees;
- 1.5 The sum made available by TfL under paragraph 1.2 may fund, but is not limited to the following:
 - 1.5.1 provision of support to businesses in order to assist the business and its employees to adapt to the operation of the Silvertown Tunnel, and the Blackwell Tunnel;
 - 1.5.2 provision of options to increase the use of sustainable transport modes; 1.5.3 any other support mechanism that is considered appropriate, in accordance with Paragraph 1.9.
- 1.6 TfL will provide the support under paragraph 1.5 until the funds have been exhausted, at which time notice and evidence of spending will be served to the London Borough of Tower Hamlets, the Royal Borough of Greenwich and the Council.
- 1.7 TfL may agree with the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich, that they will be responsible for providing the support under this Schedule instead of TfL, notwithstanding that TfL will provide the funding for this support.
- 1.8 TfL may request any business in receipt of support under this Schedule to provide data for monitoring purposes which may be made public in the form of monitoring reports (subject to suitable redaction and compliance with all applicable data protection legislation).
- 1.9 TfL must consult agree support options with the Council, the London Borough of Tower Hamlets and the Royal Borough of Greenwich.