



# Department for Transport

Pinsent Masons LLP  
30 Crown Place  
London  
EC2A 4ES

Natasha Kopala  
Head of the TWA Orders Unit  
Department for Transport  
Zone 1/14-18  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Enquiries: 020 7944 2448

E-mail: [transportandworksact@dft.gov.uk](mailto:transportandworksact@dft.gov.uk)

Web Site: [www.gov.uk/dft](http://www.gov.uk/dft)

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Dear Sirs,

## **PLANNING ACT 2008 APPLICATION FOR THE PROPOSED SILVERTOWN TUNNEL DEVELOPMENT CONSENT ORDER**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the Report dated 11 July 2017 of the Examining Authority, a Panel of three examining inspectors consisting of Peter Robottom, Lillian Harrison, and Austin Smyth (“the Panel”) who conducted an examination into the application made by your clients, Transport for London (“the Applicant”) for the Silvertown Tunnel Development Consent Order (“the DCO”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- late representations received by the Secretary of State following the close of the examination; and
- further consultation undertaken by the Secretary of State following the close of the examination in respect of the application.

2. The application was accepted for examination on 31 May 2016 and the examination was completed on 11 April 2017. The examination was conducted on the basis of written and oral submissions submitted to the Panel and by a series of hearings held in the London Borough of Newham (“LBN”) and the Royal Borough of Greenwich (“RBG”). The Panel also undertook a number of accompanied and unaccompanied site inspections.

3. The DCO as applied for would grant development consent for the construction of a twin bore road tunnel providing a new connection between the A102 Blackwall Tunnel Approach on the Greenwich Peninsula in the RBG and the Tidal Basin roundabout junction on the A1020 Lower Lea Crossing/Silvertown Way in the LBN. The tunnel would be approximately 1.4 kilometres long and would be able to accommodate large vehicles, including double decker buses. It would include a dedicated bus, coach and goods vehicle lane, which would enable the Applicant to provide additional cross-river bus routes.

The DCO would also allow for the introduction of free-flow user charging on both the Blackwall Tunnel (the northern portal of which is located in the London Borough of Tower Hamlets (“LBTH”) and on the new Silvertown Tunnel.

4. Published alongside this letter on the Planning Inspectorate’s website is a copy of the Panel’s Report of Findings, Conclusions and Recommendations to the Secretary of State (“the Panel’s Report”). The main features of the proposal and the site are set out in section 2, the Panel’s findings and conclusions are set out in sections 4 to 8, and the Panel’s overall conclusions and recommendation are in section 10.

### **Summary of the Panel’s Recommendations**

5. The main issues considered during the examination on which the Panel reached conclusions on the case for development consent were:

- a) need for the scheme;
- b) traffic and transport;
- c) air quality;
- d) noise and vibration;
- e) other construction impacts;
- f) health impacts;
- g) geology, soils and contaminated land;
- h) surface water, flood risk and hydrology;
- i) dredging and navigation;
- j) climate change mitigation and adaptation;
- k) resources and waste arising;
- l) hazardous substances;
- m) socio-economic impacts;
- n) industrial and commercial impacts;
- o) biodiversity, ecology and geological conservation;
- p) landscape and visual impacts
- q) good design;
- r) historic environment;
- s) security; and
- t) compulsory acquisition.

For the reasons set out in the Panel’s Report, the Panel recommended that the DCO be made in the form set out in Appendix D to the report.

### **Summary of Secretary of State’s Decision**

6. **The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the proposals in this application.** This letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

## **Secretary of State's Consideration**

7. The Secretary of State's consideration of the Panel's Report, the representations, responses to consultations and all other material considerations are set out in the following paragraphs. Not all the main issues set out in paragraph 5 are covered in this letter. Where not stated the Secretary of State can be taken to agree with the Panel's findings, conclusions and recommendations as set out in the Panel's Report and the reasons given for the Secretary of State's decision are those given by the Panel in support of the conclusions and recommendations. All "PR" references are to the specified paragraph in the Panel's Report and references to "requirements" are to those in Schedule 2 of the DCO as recommended by the Panel at Appendix D of the Report.

## **Legal and Policy Context**

8. On 26 June 2012, the Secretary of State for Transport made a direction under section 35 of the 2008 Act that he was satisfied that the Silvertown Tunnel development is "nationally significant". Although currently falling outside the definition of a "nationally significant infrastructure project", as provided for in section 14 of the 2008 Act, he directed that the development, together with any matters associated with it, be treated as development for which development consent is required. The reasons given are set out in PR 1.1.2.

9. Given that the application only falls to be considered under the 2008 Act by virtue of this Direction, the Panel gave careful consideration to the issue of whether it should be considered under section 104 or section 105 of the 2008 Act. Consideration is given under section 104 when a National Policy Statement ("NPS") has effect in relation to the development to which the application relates. In this instance the Secretary of State must have regard to the relevant NPS, any appropriate marine policy documents produced in accordance with section 59 of the Marine and Coastal Access Act 2009, any Local Impact Reports ("LIR") submitted and to any other matters that the Secretary of State considers to be both important and relevant (PR 3.2.1). If section 104 does not apply then the Secretary of State must consider an application under section 105, where the Secretary of State must have regard to any LIRs submitted and to any matters prescribed in relation to development of the description to which the application relates and any other matters that the Secretary of State considers to be both important and relevant (PR 3.2.3). The Secretary of State notes arguments from the Applicant in favour of considering the application under a section 104 and comments from interested parties on this issue (PR 3.3.1-7). The Secretary of State notes the Panel's reasoning and conclusions that the application falls to be considered under section 104 recognising that the same matters will need to be addressed whether the application is considered under section 104 or section 105 (PR 3.3.8-11). The Secretary of State agrees with this approach.

10. Therefore, as required by s104(3) of the 2008 Act, the Secretary of State has considered this application in accordance with the designated National Policy Statement for National Networks ("NPSNN"), (subject to certain exceptions which are not relevant in this case). As for the public sector equality duty referred to at PR 5.13 3, the Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010. He has concluded, in light of the Panel's findings and conclusions as detailed in the Panel's Report that the potential impacts of the proposed development are not likely to result in any significant differential impacts on any of the protected characteristics referred to in section 149. In other respects, the Secretary of State agrees

with the Panel's assessment of the legislation and policy that are relevant and important matters to be taken into account in deciding this application. The Secretary of State confirms that, in considering this application, he has had regard to the legislation and policy referred to by the Panel, including the LIRs submitted by the three host Boroughs (RBG, LBTH and LBN) ("Host Boroughs") as well as by neighbouring Boroughs (London Borough of Southwark, London Borough of Bexley, London Borough of Hackney, London Borough of Lewisham and the London Borough of Redbridge) ("Neighbouring Boroughs") and the Greater London Authority who submitted a LIR in its role as a Planning Authority.

11. The Secretary of State notes that five changes were made to the application by the Applicant during the examination (PR 2.2.5). The Secretary of State agrees with the Panel that each of the five changes can be regarded individually as non-material (PR 2.2.6-7). The Secretary of State also notes that the Applicant made further suggested changes to the DCO in their letter of 11 September 2017, to improve drafting and seek clarity, none of which altered the extent of the powers sought by the Applicant. The Secretary of State is also satisfied that, taking into account the further changes to the DCO recommended by the Panel and himself and discussed later in this letter, the scheme has not changed to the point where it is a different application. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO in the form recommended.

## **Legal Agreements**

12. The Secretary of State notes the separate development consent undertakings and obligations that were due to be put in place between the Applicant and the Host Boroughs, to support the application at PR 1.11. On 31 July 2017, a consultation letter was issued to the Applicant and the Host Boroughs asking for an update on the discussions relating to the legal agreements. At the time of this decision letter, the Secretary of State notes that the Applicant had confirmed in its letter of 6 April 2018 that terms of legal agreements had been executed by the Applicant with RBG and LBTH, but that the agreements were going through the completion formalities at these Boroughs. The Secretary of State notes that the Applicant set out that no agreement had been reached with LBN and that discussions were continuing. The Panel recognised that this was possible and specified those elements of the proposed agreements that in their view were essential and those it considered desirable (PR 9.10.12). The Secretary of State agrees with the Panel's assessment (at PR 9.10.14) as to the essential obligations and, given that none of the agreements with the Host Boroughs have been concluded, further agrees that the amendments to the DCO suggested by the Panel at PR 9.10.20-22 are appropriate. In addition, the Secretary of State has included requirement 21 in the DCO which relates to the transitional business support. Further consideration of each of these matters is covered below.

13. The Secretary of State notes the arguments from the LBN that any agreement with the Applicant should be secured under section 106 of the Town and Country Planning Act 1990. They consider that the key benefit of a Section 106 Agreement is that it would enable provisions to be enforced by the relevant local planning authority not only against the original parties to the agreement but also against successors in title to the land which is bound by the agreement (PR 9.10.2-3). This was reinforced by the LBN in their response to consultations setting out that if mitigation measures could not be secured in the DCO, their second preference was a Section 106 Agreement. The Secretary of State agrees with the Panel that for the reasons set out in 9.10.5, whilst for any future agreement between the Applicant and LBN it would be desirable for the deeds to be made under provisions of a Section 106 Agreement, it is not an absolute necessity (PR 9.10.6).

## **User Charging**

14. The Secretary of State notes that a number of concerns were raised with regard to the introduction of free-flow user charging on both the Blackwall Tunnel and the new Silvertown Tunnel (PR 2.1.28-30). The Secretary of State notes the LBN queried whether the Applicant had the power to include user-charging for the existing Blackwall tunnel in a DCO under the 2008 Act and raised concerns that the imposition of charges would place a burden on lower income groups in the LBN (PR 2.1.31-32). The Secretary of State notes the arguments by the Applicant including that the legal powers to charge for both tunnels were intended to play a fundamental role in managing traffic demand, mitigating against adverse environmental impacts and supporting the financing of the construction and operation of the Silvertown tunnel (PR 2.1.33). It was noted that it was not disputed that the Applicant had other powers under the Greater London Authority Act 1999 to impose charges on the Blackwall Tunnel but the Applicant considered that it would be very confusing if the charging proposals for the two tunnels, that have to be considered together for traffic forecasting, were promoted under two distinct legislative provisions and that this would not aid public understanding and would increase complexity with regard to monitoring and mitigation. Like the Panel, the Secretary of State finds the Applicant's arguments persuasive and accepts that to include the totality of the charging provisions in the DCO would not only be appropriate and necessary to manage traffic flows and mitigate environmental impacts, but is lawful and within the powers available to the Secretary of State under the 2008 Act (PR 2.1.36). The Secretary of State's consideration of the impact of charging on lower income groups is set out below.

## **Need for the Proposed Development**

15. The Secretary of State has noted the arguments set out in PR 4.5.1-21 regarding the need for a scheme and the Applicant's objectives for the scheme as set out in PR 4.5.22. The Secretary of State notes that whilst concerns were raised from some interested parties and the Host Boroughs about the extent to which the scheme meets these objectives, there was no challenge to the fact that there are existing problems in relation to the Blackwall Tunnel and its approaches that demonstrate that there is a need to be addressed. The Secretary of State agrees with the Panel at PR 4.5.23 that there are no reasons to disagree with the objectives set by the Applicant for identifying a solution.

16. The Secretary of State agrees with the Panel that paragraphs 2.1, 2.2 and 2.9 provides national policy support for the scheme and that reference in paragraph 2.10 and 2.2 of the NPSNN to there being a compelling need for development of the network should be applied to the highway network in and related to the application site (PR 4.6.6). The Secretary of State also agrees that the scheme conforms with NPSNN policies in relation to relieving congestion, supporting growth and economic development, providing resilience and connectivity (PR 10.1.2-3). The Secretary of State is therefore satisfied that, subject to considering the extent to which the proposed development conforms with the policies and protections set out in the NPSNN, the presumption at paragraph 4.2 of the NPSNN in favour of granting development consent for national networks infrastructure projects is applicable to these proposals.

17. Under 4.27 of the NPSNN all projects are required to be subject to an options appraisal to consider viable model options. The Secretary of State notes the options

appraised and alternatives canvassed (PR 4.6.12-35) and he agrees with the Panel that there has been sufficient assessment of alternatives to satisfy para 4.27 of the NPSNN (PR 4.6.37).

## **Findings and Conclusions in Relation to the Potential Impacts of the Development**

### Traffic and Transport

18. The Secretary of State has considered the Panel's assessment of the impacts of the proposed development on traffic and transport at PR 5.2.1-88. He notes the concerns expressed by interested parties regarding traffic and transport including the approach to transport forecasting and modelling, uncertainties in the traffic forecasting, reliance on the user charging mechanism to manage traffic levels and the links between traffic modelling and the environmental assessments for air quality. He notes that the Panel has undertaken a detailed critique of the Applicant's traffic forecasting work in order to assess the reliability of the results, given that it provides the base for the Applicant's assessment of noise and air quality (PR 5.2.89). The Secretary of State agrees with the Panel that the approach and techniques used by the Applicant in their modelling are in line with the appropriate DfT guidance for the Development (PR 5.2.90). The Secretary of State also agrees with the Panel that there are inevitable significant uncertainties in traffic forecasting and modelling (PR 5.2.90) and that to address this, adequately resourced and independent monitoring needs to be put in place. This is to ensure that mitigation measures can be implemented expeditiously, and on the basis of robust information, should the need arise to effect changes in the user regime or other complementary measures. The Secretary of State agrees with the Panel that this has been adequately secured through changes to the DCO. (PR 5.2.103-104).

19. The Secretary of State also agrees with the Panel that there is no reason to doubt the effectiveness of varying the user charges to control traffic levels (PR 5.2.97) and that the availability of a user charge mechanism would enable any uncertainty and unexpected outcomes that might present themselves to be monitored and mitigated against. He agrees with the Panel that requirement 7 (monitoring and mitigation strategy) ("MMS") along with article 54 (power to charge for use of the tunnels) in the DCO enables the review of the user charge, in consultation with Silvertown Tunnel Implementation Group ("STIG") to provide a suitable, robust and flexible mechanism to adjust the user charging to control traffic levels so that they reflect the assessed case (PR.5.2.95).

20. Overall, in terms of traffic and transport impacts, the Secretary of State agrees with the Panel that once operational with the user charge in place, the scheme should help reduce congestion and provide resilience for vehicles currently using the Blackwall Tunnel (PR 5.2.99 and 5.2.109).

### Air Quality

21. The Secretary of State notes that a number of concerns were raised in relation to air quality by both the Host and Neighbouring Boroughs and interested parties and that changes in air quality arising from the proposed Development was a principle issue for the examination (PR 5.3.104). The Panel's consideration of this matter is set out at PR 5.3. The Secretary of State has also noted the further consultation on this matter and the responses to that consultation.

22. The Secretary of State notes that during the Examination, the Applicant updated their air quality and health assessment (“December 2016 Assessment”), in part to take account of the July 2016 updated air quality modelling tools of the time, including Emissions Factor Toolkit (“EFT”) version 7.0 (issued by the Department for Environment, Food and Rural Affairs (“Defra”) in July 2016) (IR 5.3.36-38). This was based on COPERT 4.11, a computer programme coordinated by the European Environment Agency used to calculate emissions from road transport.

23. As paragraphs PR 5.3.7-9 sets out, the UK government has a statutory obligation to fulfil the requirements of the EU Ambient Air Quality Directive 2008 (“AQD”). This is transposed into domestic law through four sets of regulations<sup>1</sup> (“the Air Quality Regulations”). If a pollutant exceeds any of the relevant limits or target values, the Air Quality Regulations require the relevant competent authority to prepare and implement an Air Quality Plan in their respective area to address the exceedance. Accordingly, a joint air quality plan was prepared by Defra, the Scottish Government, the Welsh Government and Northern Ireland’s Department for the Environment. The plan, entitled “*Improving air quality in the UK: Tackling nitrogen dioxide in our towns and cities*”, was published in December 2015 (“the 2015 AQP”). Following a successful legal challenge by ClientEarth in November 2016 a new joint UK plan, “*The UK plan for tackling roadside nitrogen dioxide concentrations*”, was published on 26 July 2017 (“the Updated AQP”) including a zone plan for the Greater London Urban area (the Secretary of State notes that on 21 February 2018 this plan was also successfully challenged in the High Court by Client Earth but that this does not impact on the Zone Plan for Greater London Urban Area which remains relevant. As this Updated AQP was published after the close of examination, the Updated AQP was not able to be considered as part of the examination. The Panel therefore highlighted that the Updated AQP would need to be taken into account in the Secretary of State’s decision (PR 5.3.22). This AQP utilised COPERT 5 (an updated version of COPERT 4.11), which was launched in September 2016 and included a new set of emission factors for Euro 5 diesel light commercial vehicles (“LCV”) and Euro 6 diesel passenger cars and LCVs. On 13 November 2017 Defra issued updated air quality modelling tools, EFT Version 8 that apply COPERT 5. Following a request from the Secretary of State of 14 November 2017, the Applicant provided on 19 February 2018 an additional Air Quality Assessment that took account of the latest emissions factors (“Updated EFT V8 Assessment”). This is considered below at paragraphs 36 to 49.

24. In addition to the Air Quality Regulations, the Environment Act 1995 requires the production of the National Air Quality Strategy and also requires all local authorities to review and assess air quality within their boroughs. If such an assessment determines that air quality limits are being exceeded or will not be met by the required date, the area is designated as an Air Quality Management Area (“AQMA”) and the relevant local authority must draw up and implement an Air Quality Action Plan (“AQAP”) aimed at reducing levels of the relevant pollutant. AQMAs have been designated within all the Host Boroughs. The relevant annual mean limit for Nitrogen Dioxide (NO<sub>2</sub>) is the same for the AQD and the Environment Act 1995 (40µg/m<sup>3</sup>).

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<sup>1</sup> Air quality is a matter of devolved competence and as such each of the home nations have their own set of regulations which implement the requirements of the AQD: Air Quality Standards Regulations 2010 (SI 2010/1001), Air Quality Standards (Scotland) Regulations 2010 (SSI 2010/204), Air Quality Standards Regulations (Northern Ireland) 2010 (SR 2010 No. 188) and Air Quality Standards (Wales) Regulations 2010 (SI 2010/1433 (W. 126)).

25. PR 5.3.17-25 details the NPSNN requirements with regard to air quality. Specifically, PR 5.3.21 sets out paragraph 5.13 of the NPSNN which provides:

*“The Secretary of State should refuse consent where, after taking into account mitigation, the air quality impacts of the scheme will:*

- *result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or*
- *affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.”*

#### *Impact of Construction on Air Quality*

26. The Secretary of State notes the Panel’s assessment of the impact of the construction phase of the Development on air quality set out in PR 5.3.80-85. The Secretary of State notes that concern was raised that the Applicant had not considered the impact of river barges used in the construction phase or air emissions from cruise liners moored at Enderby Wharf. The Secretary of State notes the Panel’s agreement with the Applicant in respect of there being no significant impact on air quality arising from river barges used for the construction phase or cumulative impacts with cruise lines at Enderby Wharf (PR 5.3.157) and has no reason to disagree with this. The Secretary of State agrees with the Inspector that the impact of the construction stage on air quality including dust emissions and odours would be kept to a minimum through implementation of the Code of Construction Practice (CoCP) and the proposed CEMP (PR 5.3.156).

#### *Uncertainties in Air Quality Modelling*

27. The Secretary of State notes that the Host and Neighbouring Boroughs raised concerns throughout the examination regarding the methodology used by the Applicant to assess the impacts upon air quality. This included concerns about the robustness of the modelling, concerns that inherent uncertainties in traffic data could lead to actual traffic levels and the impact on air quality being higher than predicted and concerns about the monitoring locations (PR 5.3.107-118).

28. The Secretary of State’s consideration of traffic modelling on which the air quality assessment is based are set out above in paragraphs 18-20. The Secretary of State notes that the Panel is satisfied that the results of the air quality assessment are robust and valid, as far as the level of traffic considered in the assessed case and the methodology used (PR 5.3.158). The Secretary of State has no reason to disagree with this.

29. The Secretary of State also notes that concern was raised about the Applicant’s use of the Design Manual for Roads and Bridges (“DMRB”) and associated guidance (including various Interim Advice Notices (“IAN”) issued by Highways England) in their air quality assessment rather than a more precautionary approach set out in the Institute of Air Quality Management guidance and that interested parties considered that this had resulted in a detailed air quality assessment not being undertaken on some receptors in their boroughs (PR 5.3.119-5.3.127). The Panel’s consideration of this issue is set out in (PR 5.3.170-172). The Secretary of State agrees with the Panel that the Applicant has complied with the relevant policy and guidance in using DMRB and its associated guidance for the ES (PR 5.3.170), but does recognise the concerns raised. While the Secretary of State does not believe it has been established that the relevant guidance is out of date he considers that a precautionary approach is appropriate. He is of the view that requirement 7 (monitoring and



mitigation) of the DCO, which requires the Applicant to carry out an updated assessment of the likely impacts of the development prior to opening, ongoing monitoring of NO<sub>2</sub> and the implementation of a mitigation strategy to address any worsening of air quality as a result of the development, provides sufficient protection to ensure the development complies with the tests in paragraph 5.13 of the NPSNN.

30. The Secretary of State notes that the Panel accepts concerns expressed by the Host Boroughs regarding the potential for an undefined level of errors in the Assessed Case, which could lead to actual traffic levels to exceed those assessed, thus impacting upon air quality to a greater extent than that predicted (PR 5.3.161), with more receptors experiencing a large change in air quality and a greater number potentially exceeding the Air Quality Directive objective annual mean of 40µg/m<sup>3</sup> for NO<sub>2</sub>. (PR 5.3.162). The Secretary of State however concurs with the Panel that the MMS combined with the requirement in the DCO for monitoring and mitigation (requirement 7) should be sufficient to give the Host Boroughs confidence that the impacts of the Development could be effectively mitigated (PR 5.3.163). The Secretary of State also agrees with the Panel that if actual traffic levels exceed those predicted, being able to vary the user charge could provide a robust mitigation mechanism to manage traffic levels to ensure that the Development's traffic impacts would be no worse than those assessed in the Applicant's Environmental Statement ("ES") (PR 5.3.163). The Secretary of State further agrees that there would be no merit in refusing the application based on uncertainties around traffic modelling, and in turn air quality, as these uncertainties are likely to remain in any new application (PR 5.3.164).

31. The Secretary of State notes the concerns regarding the need for additional monitoring, in particular by the London Borough of Lewisham ("LBL") and the London Borough of Southwark ("LBS"). The Secretary of State notes that the Applicant did not agree to monitor sites where adverse air quality effects were not expected but highlighted that monitoring locations would be reviewed as part of the MMS in consultation with the STIG (PR 5.3.117). The Secretary of State accepts the Panel's view that the Applicant should not be required to monitor air quality on all roads, particularly where the impact is predicted to be small and that the MMS should provide sufficient flexibility that should any adverse impacts resulting from the proposed development be identified in Neighbouring Boroughs, these locations could be added to the monitoring regime (PR 5.3.165-166).

#### *Impact on Specific Receptors*

32. The Secretary of State notes that the Applicant's ES set out that the largest worsening in air quality as a result of the proposed Development was predicted to occur at the ground floors of the westernmost edge of the Hoola development. Whilst it was noted that there were no residential receptors at this level (as it included a reception and a gym) there was predicted to be an impact on air quality on the flats on the first floor. The Applicant noted that this was based on the assessed year of 2021, whilst an opening year of 2023 was now more likely, by which time the Hoola development was not expected to exceed the Air Quality Strategy objective of 40µg/m<sup>3</sup> for annual mean NO<sub>2</sub>. The Applicant therefore considered that further mitigation was not required and not proportionate (PR 5.3.93-5.3.94).

33. LBN raised concerns that if the predicted air quality improvements did not occur in the opening year, it could cause the air quality at the Hoola Development to exceed the NO<sub>2</sub> Air Quality Strategy objective meaning that LBN could be obliged to extend the area covered by its AQMA. This point was reiterated by LBN in their response of 14 September 2017 to the Secretary of State consultation regarding the Updated AQP. LBN therefore maintained

that the potential to retrofit NO<sub>2</sub> filtration measures and air intake improvements should be undertaken prior to commencement of the Development to mitigate this. The Panel concluded that given the potentially significant increases in NO<sub>2</sub> at the affected first floor flats at the Hoola development, and that there is no certainty that the forecast pollution levels will decrease in the vicinity of the Hoola development prior to the Development opening, that the inclusion of mitigation for these properties is welcome (PR 5.3.167).

34. The Secretary of State notes that following the close of the examination, the Applicant's Updated EFT V8 Assessment sets out that NO<sub>2</sub> concentrations at the ground floor level of the Hoola development are now predicted to be below the AQS objective of 40µg/m<sup>3</sup> for annual mean NO<sub>2</sub> in both the Reference and Assessment case (without and with the scheme respectively). LBN responded on 19 March 2018 to highlight that this change was driven by a reduction in the Reference Case Modelled Annual Mean NO<sub>2</sub> being less than in the December 2016 Assessment but that the actual assessed change in NO<sub>2</sub> levels was similar in both cases.

35. The Secretary of State notes that the Updated EFT v8 Assessment does not form part of the Applicant's ES and given the importance of air quality, the impact it can have on health, as well as the level of predicted decrease in air quality as a result of the scheme, the Secretary of State considers that a precautionary approach should be taken in this case. The Secretary of State therefore considers that despite the Updated EFT V8 Assessment indicating NO<sub>2</sub> levels at the Hoola development being below the AQS objective, the assessment provided in the ES is the relevant assessment upon which his decision is based and the opportunity should be taken to mitigate the potential impact of the scheme on air quality at the Hoola development, as indicated in the ES, and therefore agrees with the Panel's conclusion that mitigation would be welcomed and considers that this should be secured. As stated above in paragraph 12 there is no legal agreement in place to address this mitigation the Secretary of State accepts the Panel's proposed modification to the DCO at 5(3)(a) as set out in paragraphs 9.9.15 to ensure this mitigation.

#### *Breaches in Statutory Requirements Concerning AQMA's or Under European Directives*

36. The Applicant considered that there would be no need for local authorities to change the size of existing AQMA's or require designations of any new ones (PR 5.3.143). The Secretary of State notes that the RBG considered that if the Applicant's traffic forecasting was correct, it would have a limited impact on the RBG's AQMA but that if forecasts were exceeded, it could have an impact (PR 5.3.141). LBTH noted that as the whole Borough has been declared an AQMA, any increase in air pollution would be strongly resisted (PR 5.3.142). The Secretary of State has also taken into account LBN's concerns with respect to the Hoola development and the possibility that it may need to declare the area around the Hoola development as an AQMA (as detailed in paragraph 32).

37. The Secretary of State notes the requirements of the NPSNN on air quality set out in paragraph 25. The Secretary of State notes that the Panel considered that there could be a risk that the LBN AQMA may need to be extended to cover the area around the Hoola development in the opening year but that if this did occur, it would likely be limited in extent and duration and it would not rise to a situation described in the NPSNN where the Secretary of State should refuse consent (5.3.169). Whilst the Secretary of State also notes that the Applicant's Updated EFT V8 Assessment indicated that the impact on air quality will be less than that considered by the Panel, the Secretary of State is satisfied that nonetheless mitigation has been secured in the DCO to help mitigate the risk to LBN's AQMA (see

paragraph 35) and concurs with the panel that there is no justification for refusing the consent on that basis (PR 5.3.169). The Secretary of State also considers that if traffic levels and air quality impacts go beyond the Applicant's predicted levels, being able to vary the user charge should provide a mechanism to manage traffic levels to ensure that the impacts are no worse than those assessed in the Applicant's ES.

#### *Impact of the Development on the Updated AQP*

38. The Secretary of State notes that the Panel considered that the Applicant's air quality assessment complied with the requirements in paragraph 5.8 of the NPSNN regarding consistency with Defra's future national projections of air quality (PR 5.3.173). The Secretary of State notes that the Panel considered that with the mitigation secured through the DCO, this should be sufficient to ensure that the development would operate at the level of traffic and emissions assessed in the Applicant's ES, and would not give rise to a risk to the UK's ability to comply with the AQD (PR 5.3.174). The Panel further considered that the Development would not hinder meeting the objectives of the then current 2015 AQP for NO<sub>2</sub> (PR 5.3.175). As noted in paragraph 23 above an Updated AQP, including a Zone Plan for the Greater London Urban area was published on 26 July 2017.

39. In a consultation letter dated 1 August 2017 the Secretary of State asked the Applicant to set out what impact the proposed Development would have on meeting the proposals in the Updated AQP, and in particular its Zone Plan for the Greater London Urban area including a further update to their air quality assessment based on the data included in the Updated AQP and details of any further mitigation measures considered necessary to address any significant impacts on air quality.

40. The Applicant's response stated that the Updated AQP provided updated future predicted roadside pollution levels but that no new iterations of the air quality modelling tools, which the Applicant considered would be necessary to undertake any updated air quality modelling, had been released. The Applicant also maintained that it was not necessary to further update its air quality assessment in line with the updated AQP as it had followed Highway England's Interim Advice Note IAN 170/12v.3 in preparing its assessment, which uplifted the modelled concentrations of NO<sub>2</sub> for future years to take account of the underestimation of emissions prevalent in COPERT 4.11. The Applicant did however re-assess the risk of the Development affecting the ability of the Greater London Urban Area to achieve compliance with the EU directive on Ambient Air Quality using the updated future predicted roadside pollution levels included in the Updated AQP and concluded that this updated assessment demonstrated that the Updated AQP did not change the conclusions of their December 2016 Assessment.

41. The Secretary of State then invited views on the Applicant's response to the Secretary of State's letter of 1 August 2017 (which a number of other parties also commented on). A number of comments were received from parties in response to this. Comments included general concerns about the impact of the scheme on traffic and pollution as well as general support for the Development. Friends of the Earth ("FoE") queried whether the applicant's approach was as cautious as COPERT 5 and requested that the updated EFT used to develop the updated AQP (which incorporated COPERT 5 emissions factors) be released by the Government and the Applicant's air quality assessment carried out in line with this. LBS reiterated that: it considered that the Applicant had failed to address the Borough's air quality concerns, and that Silvertown Tunnel, as proposed, would worsen air quality in the Borough; it considered that the Applicant's

methodology used to model traffic and the translation of this information to assess air quality was not reasonable or robust and that the air quality benefits of Silvertown Tunnel had therefore been overestimated; and that a lack of proposed mitigation along the A200 corridor within Southwark would likely move the borough further away from being able to meet its obligations contained within the Updated AQP. The Secretary of State is content that these matters have been considered.

42. LBS also stated that one of the key actions within the Updated AQP is for the Driver and Vehicles Standards Agency to introduce “lorry emissions technology checks at the roadside” to target lorry drivers and operators who try to cheat vehicle emissions and that it should therefore be considered whether such checks can be undertaken as part of the proposed Silvertown Tunnel road layout or in the vicinity of the tunnel or to amend the scheme to accommodate this. The Secretary of State notes the Applicant’s response to this request that there are safety requirements for both operatives and road users which means that testing must be undertaken in a safe location and for this reason such emission testing should not take place within the vicinity of the tunnel. The Secretary of State agrees with this response and does not consider that it would be appropriate to include such checks as part of the DCO.

43. Following the release by Government of updated air quality modelling tools including Emission Factor Toolkit (EFT) Version 8 on 13 November 2017, the Secretary of State asked the Applicant on 14 November 2017 to update their air quality assessment based on the latest available emissions evidence and modelling tools, provide an update to its assessment of the impact the proposed Silvertown Tunnel development would have on meeting the proposals in the Zone plan for the Greater London Urban area and provide details of further mitigation measures considered necessary. The Applicant advised that it would not be possible to remodel the entire scheme within the timeframe set by the Secretary of State, given the complexity of the Development. As such, on 19 February 2018 the Applicant provided the Updated EFT v8 Assessment (mentioned above at paragraph 23), which sought to test the air quality assessment provided as part of the Applicant’s ES to demonstrate that this original assessment was still valid in light of the updated emissions factors set out in COPERT 5 and upon which the Updated AQP was based (see paragraph 23). The Applicant advised that the Updated EFT V8 Assessment did not replace or form part of the ES.

44. The Secretary of State notes that the Applicant concluded that the Updated EFT v8 Assessment demonstrated (as the Applicant had previously stated) that the methodology used by the Applicant in their December 2016 Assessment (which applied advice note IAN 170/12v3) was more conservative than updating the assessment using the latest emission factors. The Applicant also considered that their conclusion following the Updated EFT v8 assessment remained the same as that reached in the December 2016 Assessment. This concluded that the scheme would not lead to a significant impact on air quality and would not impact on the ability of the Greater London Urban Authority to achieve compliance with the Air Quality Directive as the areas experiencing an increase in NO<sub>2</sub> would not exceed the levels predicted at the worst link in the zone. The Applicant also highlighted in both the December 2016 Assessment (IR 5.3.98) and the Updated EFT v8 Assessment that they considered that the proposed development would be largely beneficial with the number of receptors where improvements in air quality would be experienced exceeding the number of deteriorations (although the Secretary of State notes that the number of receptors with improvements in air quality was predicted to be higher in the latter assessment and the number experiencing deteriorations predicted to be lower). The Applicant also reiterated that

the Development would improve air quality in areas of the highest NO<sub>2</sub> concentrations, that is, those being in exceedance of the Air Quality Strategy objectives (and AQD limits) and that in air quality terms the Development would remain beneficial. Accordingly, the Applicant considered that no further mitigation measures (in addition to those already included in the Applicant's proposals) was considered necessary. Overall the Applicant concluded that with regard to the Development that it does not impact upon the Updated AQP achieving compliance with the AQD in the quickest possible time.

45. The Secretary of State invited comments on the Applicant's response from interested parties. Responses included: general concern about the impact of the scheme on air quality; suggestions of alternatives to the scheme; general support for the Development; the need to treat the air quality assessments with caution given their reliance on potentially inadequate traffic forecasting; the need for a sustainable transport fund; and that a cumulative approach to modelling air quality in Greenwich with the cruise terminal should be taken into account. The Secretary of State considers that the majority of points raised during this consultation have already been addressed.

46. The Secretary of State notes that in their letter of 19 March 2018, FoE maintained disagreement with the Applicant's conclusions and restated that they considered that any worsening of air quality over legal limits would be illegal and that they disagreed with the tests in the NPSNN. FoE also stated that they considered that to fulfil the High Court requirement to reduce exposure as quickly as possible it cannot be compatible to allow air pollution to be worsened for some people and that this could not be offset or balanced by improvements in other areas and that the Development should therefore be refused permission. A similar argument was made by Living Streets, 'No to Silvertown Tunnel' and LBS. The Greenwich Green party raised concerns that the Updated EFT v8 Assessment was not comprehensible or legible. LBN reiterated concerns about the predicted impacts on air quality in relation to the Hoola development.

### *Conclusion*

47. The Secretary of State is aware that, as highlighted by the Panel, the proposed Development is in an area already experiencing levels of NO<sub>2</sub> in excess of EU limits that consequentially impact on air quality and health (PR 5.3.160). The Secretary of State notes that whilst the Applicant's Updated EFT V8 Assessment does not form part of the ES, it uses the latest emission factors and demonstrates that the December 2016 Assessment carried out by the Applicant in relation to air quality is robust and a "worst-case scenario" and that the sensitivity test undertaken through the Updated EFT V8 Assessment using the latest emissions factors demonstrates that the negative impacts of the scheme on air quality are unlikely to be as great as initially predicted. The Secretary of State is also satisfied that the Updated EFT V8 Assessment adopts a methodology that Defra agreed was the most appropriate in the given circumstances. The Secretary of State is therefore satisfied with the approach taken and the assessment provided by the Applicant with regard to air quality and how the Development will impact the Updated AQP and the Zone Plan for the Greater London Urban area, which forms part of that Plan.

48. The Secretary of State notes that whilst there might be worsening in air quality of some receptors that are already over the limits for NO<sub>2</sub> the Secretary of State is content that with the mitigation measures secured through the DCO, the Development can operate at the levels of traffic and emissions that were assessed by the Applicant. The Secretary of State is therefore satisfied that the Development will not result in a delay to the Greater

London urban area (which is currently not compliant) being able to achieve compliance with the AQD. The Secretary of State is also content that the Development complies with the Mayor of London's transport strategy and will not impact on the Mayor's wider aspirations of improving air quality in London as set out in his Draft Public Consultation London Environment Strategy published in August 2017 (a point of concern raised by some parties). With regard to air quality the circumstances when the Secretary of State should refuse consent after taking into account mitigation measures, as detailed in the NPSNN, have not been established in respect of the Development.

49. The Secretary of State considers that the tests in the NPSNN are valid and that greater weight needs to be placed on the impact of the Development on the zone rather than at individual receptors. The Secretary of States therefore places weight on the fact that whilst some receptors will experience a worsening in air quality as a result of the Development, overall the Development should have a beneficial impact on air quality and that the Development is not predicted to delay compliance with the AQD in the timeframes that the Updated AQP, including the zone plan for the Greater Urban London area, sets out as being the quickest possible time.

### Noise and Vibration

50. The Secretary of State notes that the Applicant's ES identified that there would not be a significant effect upon noise levels as a result of the development during construction or during the operational phase of the Development. The Secretary of State also notes that the Applicant is proposing to use low noise surfacing throughout the order limits and has proposed various noise and vibration mitigation and monitoring measures which are secured through the DCO (PR 5.4.39).

51. The Secretary of State notes the Panel's consideration of the impact of noise and vibration on the Hoola development and possible mitigation (PR 5.4.35-38). Like the Panel, the Secretary of State is satisfied that for any affected residential dwellings in the Hoola development, suitable mitigation could be made available through the Noise and Vibration Management Plan ("NVMP") as part of the CoCP, which would need to be approved by the relevant planning authority under requirement 5(3)(i) (PR 5.4.40).

52. The Secretary of State notes that due to height restrictions, over height vehicles ("OHV") are not currently able to use the northbound Blackwall Tunnel but will be able to use the Silvertown Tunnel. Concerns were raised regarding the existing noise along the A102, being exacerbated by the OHVs that would travel northbound if the Silvertown Tunnel was constructed (PR 5.4.32). It is noted that the Applicant has committed to providing acoustic barriers along Seibert Road to attenuate existing noise from the A102, to be secured as part of a legal agreement with the RBG, although the Westcombe Society requested that this was extended to protect Invicta Primary School (PR 5.4.33-34). The Secretary of State agrees with the Panel that because of the proximity of the A102 to the Seibert Road residential and school receptors, the construction of the proposed Seibert barriers would be essential prior to the construction of the proposed development (PR 5.4.41). As no legal agreement has been reached with the RBG the Secretary of State agrees to the Panel's recommended change to include a new requirement in Schedule 2 to the DCO as set out in PR 9.10.22 to secure this measure.

53. The Secretary of States agrees with the Panel that the range of noise mitigation measures are adequate and sufficient to ensure that a significant noise impact does not

occur at any of the identified noise sensitive receptors and that the proposed mitigation measures would accord with the NPSNN, NPPF and the associated guidance contained in planning policy guidance on noise (PR 5.4.44).

### Health Impacts

54. The Secretary of State notes that a number of interested parties raised concerns about the impact of the Development on human health, in particular in relation to air quality. The Panel's consideration of this matter is set out at in section 5.6 of the Panel's Report. The Secretary of State notes the representation from Public Health England ("PHE") (PR 5.6.20-23) and like the Panel, the Secretary of State takes comfort from their representations in respect of air quality (PR 5.6.27).<sup>2</sup> The Secretary of State notes that PHE encouraged the Applicant to make continued efforts to identify opportunities to improve air quality or opportunities to mitigate adverse impacts and considered that there was scope to implement landscaping/urban greening in the vicinity of the Hoola Development given the growing evidence of the health benefits of access to green space (PR 5.6.21). The Secretary of State agrees with the Panel's acceptance of the Applicant's argument that the Hoola development is outside the Order limits and that there was no scope for this to be provided in the DCO (PR 5.6.27). The Secretary of State notes that the Panel considered that the Applicant had addressed PHE's concerns through mitigation measures secured in the DCO and through the intended legal agreements between the Applicant and host authorities and that such measures would contribute to safeguarding against harmful impacts upon human health (PR 5.6.27-28). Whilst the Secretary of State notes that the legal agreements between the Applicant and Host Boroughs are not yet in place, the Secretary of State is content that measures due to be secured through the legal agreements have been secured in the DCO. The Secretary of State therefore concurs with the Panel that the proposed development would not give rise to any harmful impacts upon human health (PR 5.6.29).

### Surface Water, Flood Risk and Hydrology

55. The Secretary of State notes that the only flood risk matter that was not agreed between the Applicant and the Environment Agency ("EA") at the close of the Examination was the maintenance of the river walls during construction and the protective provisions ("PP") to be included in the DCO to address this (PR 5.8.60-67). However, the Applicant wrote to the Secretary of State after the close of the Examination on 2 October 2017 advising that after further discussions with the EA the PPs had been agreed for the EA's benefit. The EA's letter of 3 October 2017 confirmed its agreement to these PPs as well as confirming, for the purposes of section 150 of the 2008 Act, its consent to the disapplication of legislation set out in article 3(1)(m)-(o) of the DCO. The agreed PPs are now included in Part 5 of Schedule 13 to the DCO.

56. With this agreement in place the Secretary of State, like the Panel is satisfied that the proposed development meets the requirements of NPSNN on flood risk, surface water and drainage and Water Framework Directive matters (PR 5.8.86).

### Resources and Waste Management

57. The Secretary of State notes that at the close of examination there was an outstanding objection from Silvertown Homes Limited ("SHL") who have aspirations to build

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<sup>2</sup> This sentence replaces the sentence that appeared in the original published letter, which has been corrected because of grammatical errors

new homes and had requested the inclusion of a requirement in the DCO for the re-use of tunnelling spoil on their site to facilitate this (PR 5.11.18). The Applicant had refused this requirement (PR 5.11.18). The Secretary of State notes that the Panel recommended a less onerous requirement to maximise the opportunity for suitable excavated material to be re-used for the redevelopment of the riverside area if the relevant local authority considered that this would be appropriate (PR 9.9.22-23). The Secretary of State notes that following the close of examination correspondence was received from SHL on 28 August 2017 confirming that they had withdrawn their objection. The Secretary of State notes that the Panel considered that other projects could receive and put to beneficial use the tunnelling spoil by river transport (PR 5.11.27) and the Secretary of State therefore still accepts that the additional requirement suggested by the Panel is necessary and has included it in the DCO.

58. The Secretary of State notes concerns raised by the Host Boroughs regarding the Applicant's stance in relation to the classification that any spoil used on site for land raising for future regeneration projects would count towards the 'offsite transport by river' target of 55%. LBN viewed this as potentially eroding the amount of material that would need to be truly transported by river, rather than road. RBG also considered that the 55% target should apply per worksite (PR 5.11.15-17). The Secretary of State agrees with the Panel that the Applicant's interpretation would not assist in delivering the Host Boroughs aspirations for ensuring that the maximum amount of waste and materials are transported by river to minimise HGV movements. The Secretary of State also agrees with the Panel that the 55% target should apply to each worksite during the construction phase separately. The Secretary of State therefore supports the Panel's recommendation that the additional wording proposed by LBN at PR.5.11.17 should be added to the DCO to make clear that matters relating to river borne resources and waste transportation would need to be included in the construction material management plan secured under requirement (5)(3)(d) (PR 5.11.25).

59. The Secretary of State agrees with the Panel's overall conclusions at PR 5.11.24 and is content that the Applicant has considered resource use and waste arising from the proposed Development adequately and that the Applicant's approach conforms with the NPSNN.

### **Hazardous Substance Consents**

60. The Secretary of State notes concern raised by the Health and Safety Executive ("HSE") regarding the existence of hazardous substance consents ("HSC") near the site. The Panel's consideration of this issue is set out in PR 5.12. The Secretary of State notes that HSE had advised against the southern tunnel approach due to its proximity to two major accident hazard sites, the East Greenwich Gasholder Station ("EGGS") and Brenntag Chemicals UK ("Brenntag"), and the risk to public safety given the density of traffic that was likely to be present at the proposed transport link (PR 5.12.11-12).

61. The Secretary of State notes that the EGGS site has been decommissioned and that the HSC is due to be revoked by the RBG. In addition an application submitted to RBG in 2012 to modify the HSC for Brenntag (PR 5.12.21) was still to be determined at the time of this decision. HSE, however advised that the current operational status of the land is not taken into account in their advice as it is HSE policy to provide advice on the basis of HSC entitlement (PR 5.12.11).



62. It was noted that the Applicant considered that HSE's position followed the use of overly restrictive methodology which was being applied too narrowly (5.12.36) and this was a point reconfirmed by the Applicant in correspondence to the Secretary of State following the close of the Examination. Similar to the Panel, the Secretary of State takes due regard to the advice from HSE, recognising the importance of HSE's role in these matters relating to public safety (PR 5.12.39-40).

63. Given the uncertainty around the revocation of the HSC relating to the EGGS site and the modification of the HSC relating to Brenntag taking place before the decision on this DCO is issued, HSE recommended a requirement to be included in the DCO. This would enable the DCO to be made subject to, prior to the opening of the Development, the revocation of the HSC relating to the EGGS site, the modification of the HSC relating to the Brenntag site and HSE confirming that they do not advise against the scheme (PR 5.12.27).

64. The Applicant raised concern that the HSC for the EGGS site might not be revoked, and/or the HSC for Brenntag not modified to the satisfaction of HSE, such that HSE could not remove its 'advice against' the development. The Applicant therefore suggested an amendment to HSE's proposed requirement which would require the Secretary of State, following consultation with HSE, to confirm if the tunnel could open (PR 5.12.29). HSE raised concerns with the Applicant's proposed amendments and advised that if this version of the requirement was included, HSE would not want to be consulted (PR 5.12.32). This was reconfirmed in correspondence to the Secretary of State after the close of the Inquiry, following his consultation of 31 July 2017, which confirmed that HSE would not be able to support any challenge to their advice.

65. Since the close of examination, HSE advised that in relation to the Brenntag site, they no longer considered that a requirement preventing occupation of the tunnel services buildings at the South Portal comprised in Work No. 12 was necessary but that a requirement was still necessary to prevent the opening of the tunnel to the public before the HSC relating to Brenntag was amended. The Applicant responded on 14 August 2017 and 31 January 2018 stating that they considered that there were sufficient grounds for the Secretary of State to override HSE's advice and that such a requirement relating to Brenntag, even including the amendment they proposed (set out in paragraph 64 above), which would prevent the tunnel opening until the conditions have been satisfied, would present a significant risk to the project and procurement and should not be included in the DCO. A subsequent letter was received by the Secretary of State, from the Applicant, on 26 February 2018 acknowledging that the risks they had previously highlighted related to the timing of the letting of the PFI contract for the Development as they considered that there would be a need to secure the necessary modifications to the Brenntag HSC before contracts were let. The Applicant advised that they were confident the necessary modifications could be made in the near future and that if the Secretary of State was minded to accept HSE's advice they considered that there were a number of legal mechanisms available to ensure the proposed requirement could be met.

66. The Secretary of State considers that public safety is such an important area that every opportunity should be taken to resolve these matters prior to consideration of the opening of the new tunnel. The Secretary of State therefore agrees with the Panel that a requirement is necessary but disagrees with the Panel's recommendation to accept the Applicant's modified requirement and instead accepts the version put forward by HSE. This is because the Secretary of State places great weight on HSE's advice given their expertise with respect to the effective regulation of major hazard industries. The Secretary of State

notes the Panel's consideration that, should the Secretary of State consider this approach more appropriate, that it should not have a bearing on the granting of the DCO but that a situation could arise where the Development could not be opened for use or could be delayed due to compensation issues on the adjoining sites (PR 5.12.45). Given the length of time until the Development is due to open, the Secretary of State does not consider that it is unreasonable to expect that this matter should not be resolved or result in a situation where the Development cannot open. The Secretary of State acknowledges that this matter could result in a delay to the scheme but is content that no evidence has been provided to suggest that such a condition would prevent the scheme from being delivered. The Secretary of State therefore considers that this should not prevent the DCO from being granted.

### Socio-Economic Impacts

67 The Secretary of State notes the Panel's consideration of the socio-economic impacts of the scheme as set out in section 5.13 of the Panel's Report. The Secretary of State notes that the matters raised included concern about the impact of the scheme on certain groups notably lower income groups, the uncertain benefit to local public transport users, the lack of cycling and pedestrian facilities, the impact on local businesses and the equality and fairness between East and West London (river crossings in central and West London being free). The Panel's consideration of these matters and the measures proposed to mitigate the adverse socio-economic impacts, are set out in PR 5.13.74-101. The Applicant had proposed to secure the mitigation measures through legal agreements with the Host Boroughs, and the Panel advised that collectively these measures were of such key importance that unless the agreements were signed and sealed the DCO should not be made (PR 5.13.96 and 9.10.18).

68. The Panel noted that at the level of the individual traveller, the effect of the road user charge would have greatest impact on lower income groups (PR 5.13.80). The Secretary of State notes that a number of the Host and Neighbouring Boroughs considered that to mitigate this there was a need for measures such as a local discount scheme, enhanced bus services and enhanced crossing facilities for pedestrian and cyclists to be implemented.

69. With regard to the request for discounts on user charges for residents in Neighbouring Boroughs, low income residents and concessions for motorcyclists, the Secretary of State notes the Panel's consideration of these matters as set out in section 5.13 of the Panel's Report. The Secretary of State has also considered further representations from the Motorcycle Action Group received after the close of the examination. The Secretary of State notes that one of the reasons the Applicant was concerned about a general residents discount scheme for the Host Boroughs was due to the potentially significant increase in demand for use of the tunnels which would then require user charges to be increased to manage the flow (PR 5.13.87). The Secretary of State agrees with the Panel that Blackwall Tunnel and Silvertown tunnel need to be managed in such a way that does not induce demand but the Secretary of State also recognises that a very small number of low income users are likely to seek to cross the river and that a selective discount scheme is therefore unlikely to materially affect traffic flow (PR 5.13.88). The Secretary of State notes the latest version of the Charging Policies and Procedures, a document to be certified under Schedule 14 to the DCO, grants a 50% discount on charges for qualifying residents of the Host Boroughs, which the Panel welcomed (PR 5.13.89). The Secretary of State concurs with the Panel that concerns regarding whether the discount should be larger than 50% or extended to low income residents of Neighbouring Boroughs are matters that can be best addressed

by STIG when the initial charges come to be set under the Charging Policies and Procedures Document (PR 5.13.91). The Secretary of State also agrees with the Panel that the same consideration needs to be given to concessions for motorcyclists as are given for possibly increasing or widening the local residents discount scheme and that this is a matter that could also be addressed by STIG when initial charges come to be set (PR 5.13.94).

70. With regard to enhanced bus services, the Secretary of State notes the Panel's findings that for a large number of people the bus improvements are essential not only to achieving the wider objectives of the Development but also to offset the dis-benefits for them arising from the introduction of user charges for both tunnels (PR 5.13.83). He further notes that new requirement 13 was inserted by the Applicant to address concerns of the Panel and the Host Boroughs should the proposed bus service not materialise (PR 5.13.84). The Secretary of State agrees with the Panel that the bus service enhancements that were subject to modelling and provided a significant element of the economic benefit needs to be guaranteed to ensure that the wider benefits of the scheme are realised and that the issue of fairness and distribution of benefits are achieved in line with the NPSNN (PR 5.13.83). The Secretary of State concurs with the Host Boroughs' aspiration, supported by the Panel, of a higher level of bus service consistent with the assessed case (PR 5.13.85). The Secretary of State therefore accepts the strengthening of the terms of this requirement (now requirement 14 of the Order as made) in the DCO as set out in PR 9.9.18, which also meets the concerns of the Neighbouring Boroughs.

71. With regard to cycling and pedestrian facilities, the Secretary of State notes that this Development is intended to be seen as part of a wider package of river crossings in East London that would provide for active travellers and sustainable public transport and not just for road vehicles (PR 2.2.3). The Secretary of State also notes the Applicant has proposed introducing an experimental bus cycle-shuttle or other means to assist active sustainable travel across the river as the Development does not include cycle/pedestrian access through the new tunnel (PR 5.13.95). The Secretary of State notes that this was to be included in the legal agreements between the Applicant and each of the Host Boroughs. The Secretary of State considers that this measure is important for ensuring that the socio-economic impacts are mitigated but notes that these agreements have not yet been signed. The Secretary of State agrees that an additional requirement as set out by the Panel in PR 9.10.21 for cross river cycle/pedestrian facilities should therefore be added to the DCO and this has been included as new requirement 15.

72. The Secretary of State notes that concern was raised about the impact of user charges on local businesses. In recognition of this the Applicant is proposing a transitional business support fund to operate within the Host Boroughs to assist small business in adjusting to the user-charges (PR 5.13.95). The Secretary of State notes the Panel's observations that the proposed transitional business support fund is necessary to mitigate adverse socio-economic impacts as required by paragraph 3.3 of the NPSNN (PR 5.13.98). The Panel advised that it was unable to suggest an alternative to a signed agreement between the Applicant and the relevant parties to address this, but noted that if the Panel's suggested amendments to the DCO to secure the other forms of mitigation to the adverse socio-economic impacts were accepted (as set out at PR 9.10.20 to 9.10.22, and which the Secretary of State has accepted), the absence of the small business mitigation would be regrettable but not a sufficient reason to withhold the making of the DCO (PR 9.10.24 and 10.2.5). The Secretary of State agrees with the Panel that such support is important to assist in mitigating the adverse socio-economic impacts relating to local businesses and as such is including a new requirement in Schedule 2 to the DCO that the Applicant must make

available the sum of £1 million for business transitional support, and use all reasonable endeavours to agree the terms of that support with the Host Boroughs prior to the Development being open for use (see new requirement 21 of the Order as made). With the inclusion of this new requirement the Secretary of State is satisfied that socio-economic impacts relating to local businesses will be mitigated as required by paragraph 3.3 of the NPSNN.

73. With regard to the concern about fairness between East and West London, the Secretary of State agrees with the Panel that this is not a matter that can be properly addressed in considering a specific DCO scheme but is a matter that can only be addressed through wider mayoral policy. With regard to this Development, the Secretary of State agrees with the Panel that there are compelling reasons for including user-charges in the DCO in relation to mitigating environmental impacts as well as to secure funding (PR 5.13.75).

74. The Secretary of State agrees with the Panel that with mitigation secured in the DCO, the scheme is consistent with the NPSNN with regard to the socio-economic impact and that the public sector equalities duty would not be breached (PR 5.13.99-100).

#### Industrial and Commercial Impacts

75. The Secretary of State notes the Panel's consideration of issues that arose in relation to the impact of the Development on safeguarded and non-safeguarded wharves (PR 5.14.20 –39 and 5.14.49-54). The Secretary of State notes the concerns expressed by the Port of London Authority ("PLA") on the impact on the proposed development on Keltbray (which handles construction, demolition and excavation waste and construction aggregates) at the safeguarded Thames Wharf site and Tarmac (which handles waterborne aggregates and operate a concrete batching plant) at a non-safeguarded wharf at Dock Entrance Wharf, both of which will be displaced by the Development.

76. With regard to Keltbray, PLA set out that there are no readily available options for Keltbray to be relocated to another safeguarded wharf noting that whilst the safeguarded nature of the wharf would remain after the construction phase, if Keltbray did re-locate, the Development could result in their permanent loss from Thames Wharf (PR 5.14.22). With regard to Tarmac, the Secretary of State notes that, current access to their site would be severed but that the site itself is not needed as part of the Development. Tarmac considered minor changes to the proposed development would allow access to their Dock Road plant to be retained throughout the construction phase (PR 5.14.36). PLA explained that wharf operators were obliged to accept leases on a rolling basis because of the Development but that businesses were looking to be left undisturbed or re-accommodated (PR 5.14.20). PLA therefore noted that they considered that Keltbray and Tarmac would be adversely affected by the Development due to the short term nature of the leases.

77. The Secretary of State accepts, like the Panel, that paragraph 143 of the NPPF requires local planning authorities to safeguard concrete batching plants in their local plan (PR 5.14.50) and that paragraph 4.3 of the NPSNN requires decision-makers to take into account when considering any proposed development its potential adverse impacts, including any longer-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts (15.14.7). The Secretary of State notes the Panel's consideration that in view of the policy requirements in relation to both safeguarded and non-safeguarded wharves and the safeguarding of concrete plants the

Applicant could have taken responsibility for ensuring suitable arrangement for the re-location of Keltbray and continuation of Tarmac (PR 5.14.51). However, the Secretary of State notes as understood by the Panel, that these businesses are/were on a short term lease that the panel had no remedies open to it in terms of changes to the DCO (PR 5.14.52). The Secretary of State agrees with this assessment and also agrees with the Panel that the need for the Development is sufficient to outweigh the significant impacts upon Keltbray's and Tarmac's operations during the construction phase (PR 5.14.53).

78. The Secretary of State notes that the PLA is reactivating Peruvian Wharf in accordance with planning policy for river-borne cargo handling operations. PLA therefore considered that it was imperative that the proposed development maintained appropriate road access to and from Peruvian Wharf (PR 5.14.26). The Secretary of State notes that differences remained between PLA and the Applicant at the close of the examination with regard to this point (PR 15.14.31). However, the Panel noted that the proposed new access to Peruvian Wharf is outside the Order limits and that any new proposed access road is a matter between the PLA, the developers and LBN as planning and Highway Authority to agree (PR 8.5.101). The Secretary of State has no reason to disagree with this conclusion.

79. The Secretary of State notes that the safeguarded Thames Wharf is directly impacted by the proposed development (5.14.9-10) and that the London Plan and the Mayor's Safeguarded Wharves Review, sets out that safeguarded wharves should only be used for waterborne freight handling use and that the London Mayor is to be consulted before planning permission for non-river based development on a safeguarded wharf is granted. The Secretary of State agrees with the Panel that the return of Thames Wharf (to its current owner) after the construction phase would meet the Applicant's obligations towards the London Plan safeguarded wharves policy (PR 15.14.54).

80. The Secretary of State notes that there is an outstanding objection from AnSCO in relation to user charging after 19:00 hours, which it considers would be detrimental to night time business at the O<sub>2</sub>. The Secretary of State agrees with the Panel's conclusion that the charging mechanisms proposed by the Applicant are sufficiently flexible to be able to accommodate changes to time charging periods, should AnSCO be able to identify significant impacts upon its business prior to or following the opening of the proposed development (PR 5.14.56).

81. The Secretary of State notes London City Airport's ("LCY") objections and that it wishes to be part of STIG (PR 15.14.45-46). The Secretary of State agrees with the reasons set out by the Panel that LCY should not be a member of STIG as the role of STIG is one for local authorities and that LCY's business objective would be better served by participating in the community liaison group (PR 5.14.58).

### Biodiversity, Ecology and Geological Conservation

82. The Secretary of State notes that at the end of the examination it had not been agreed how much weight should be given to the recommended marine conservation zone (rMCZ) (PR 5.15.35-37) The Secretary of State agrees with the Panel that it would not materially change the conclusions of the marine ecology assessment and that there would not be a significant impact on the rMCZ from the Development (PR 5.15.41).

83. The Secretary of State notes the RBG raised concerns about securing the funds for biodiversity offsetting (outside the Order limits) to offset habitat loss, including its

maintenance and management (PR 5.15.31). The Secretary of State notes that this was due to be secured through a legal agreement between the Applicant and RBG but that this has not yet been finalised. The Secretary of State therefore notes and accepts the suggested amendment to requirement 6(2)(a) recommended by the Panel if this agreement was not in place (PR 9.10.20).

### Historic Environment

84. The Panel considered whether risks to the World Heritage Site (“WHS”) at Greenwich would arise from traffic congestion, as a result of the scheme. The RBG did not agree with the Applicant that the impact on Greenwich Town centre would be minimal and explained that the preferred method of mitigation for the WHS would be a sustainable transport fund (PR 5.18.19). In addition they would wish to see the implementation of user charges at adjacent crossings if required, including the Woolwich Ferry.

85. With regard to the sustainable transport fund, it is noted that the Applicant considered that there was no need for this matter to be referenced in a legal agreement as they considered that it could be addressed through the MMS (PR 5.18.20). The Panel considered that the RBG’s concerns over the wording in the MMS were valid and that it did not provide a commitment for the Applicant to implement and make available funds to RBG (PR 15.18.29). The Panel considered that the Secretary of State may wish to ensure that the mechanism for providing this fund to the local authority is included within the legal agreement between the Applicant and RGB prior to making the DCO (PR 5.18.30). As mentioned above in paragraph 12 no legal agreement has yet been signed. However, the Secretary of State also notes the Panel’s view that a sustainable transport fund appears to be desirable rather than essential (PR 9.10.13). He agrees with the Panel that the mitigation secured through requirement 7, together with the MMS is sufficient to mitigate against any adverse impacts on the WHS at Greenwich should they occur (PR 5.18.33). The Secretary of State also concurs with the Panel that the Applicant has sufficient powers to implement user charging at adjacent crossings, should these be found necessary (PR 5.18.30).

86. The Secretary of State has considered the Panel’s reasoning and conclusions set out in PR 5.18.28-34 and he agrees with the Panel’s findings that the Applicant’s assessment of impacts of the Development upon nearby cultural heritage assets meets regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 and complies with the NPSNN.

### **Habitats Regulations**

87. The Secretary of State for Transport is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (“the Habitats Regulations”) which transpose the Habitats Directive (92/43/EEC) into UK law for transport applications submitted under the 2008 Act. The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an appropriate assessment must be undertaken by the Secretary of State pursuant to regulation 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives or imperative reasons of overriding public interest apply.

88. The Secretary of State has considered the Panel's assessment at section 6 of the Panel's Report of the likely significant effects of the scheme on the nine European sites potentially affected by the scheme. The Secretary of State notes the Panel concluded that, taking into account the views of Natural England, sufficient information had been provided by the Applicant to allow the Secretary of State to conclude that the Development would have no likely significant effects, either alone or in-combination with other projects and plans, on any European site (PR 6.4.3). Therefore it is not necessary to carry out an appropriate assessment. The Secretary of State agrees with this view and that it is unnecessary for him to carry out an appropriate assessment under the Habitats Regulations.

### **Overall Conclusions on the Case for Development Consent**

89 The Secretary of State notes in reaching its overall conclusions for the granting of development consent the Panel have taken regard of the NPSNN, the development plan, the NPPF and LIRs and all other matters which it considers to be both important and relevant. The Secretary of State notes that the Ministry of Housing, Communities and Local Government are currently consulting on an update to the NPPF and has regard to this when considering this scheme. The Panel considers that if the Secretary of State makes the DCO recommended by them as set out in appendix D to the Panel's Report there would not be a breach any of its European obligations or any other applicable legislation (PR 7.5.10). The Secretary concurs with the Panel on this issue.

90. The Secretary of State agrees that that for all the reasons given by the Panel, development consent should be granted, subject to the changes which the Panel has incorporated in the Order at Appendix D to the PR, and to the further changes referred to in this letter.

### **Compulsory Acquisition and Related Matters**

91. The Secretary of State has considered the compulsory acquisition ("CA") powers sought by the Applicant in accordance with sections 122, 123, 127, 131, 132 and 138 of the 2008 Act, the Human Rights Act 1998 and relevant guidance. In doing so, he has taken into account the cases of the Applicant and the affected persons as set out at PR 8.4.11-8.5.157.

92. The Secretary of State notes that a planning application to reinstate a fire damaged nightclub, Studio 338, was initially rejected by RBG but that the matter has now gone to appeal and still to be decided at the time of this decision. The Secretary of State also notes the discussion that took place around the impact of CA powers on this site should it be reinstated. The Panel's consideration of this matter is set out at PR 8.5.70-83. The Secretary of State notes that the Applicant has interest in plot 01-056 for widening of the A102 and that this would have the effect of removing access from the fire escape on the northern side of the Studio 338 (should Studio 338 be reinstated as previously existing). The Applicant submitted a proposal for an escape route around the premises to reach the south west corner. This would involve the compulsory purchase of plots (01-058, 01-058a, 01-058b, and 01-058c) and temporary possession of plots (01-047a, 01-047 (part only adjoining 01-058) and 01-060a) of the adjoining property owners (PR 8.5.53). The bodies interested in Studio 338 considered that the original fire escape would still be required to support their aspiration to reinstate Studio 338 to its previous use as before the fire damage (PR 8.5.77). Objection to this was raised as it was considered that any reconstruction of Studio 338

should require it to make provisions for a fire escape within its own site having regard to the Development (PR 8.5.78).

93. The Secretary of State notes that objections have been submitted in relation to the application to re-instate Studio 338 and that the certainty of the future of Studio 338 may not be resolved for some time (PR 8.5.79). The Secretary of State agrees with the Panel that there is sufficient uncertainty as to the need for the relevant plots for compulsorily acquisition or temporary possession powers. The Secretary of State notes that the Panel considered that should permission for reinstatement be granted, that alternative options for redirecting the fire escape could be available and if not this would become an issue for compensation (PR 8.5.79). The Secretary of State therefore accepts the Panel's recommendation that CA powers for plots 01-058, 01-58a, 01-058b and 01-58c not be granted and that temporary possession powers for 01-47a, 01-047 (part only adjoining 01-058) and 01-60a not be approved (PR 8.5.83). The Secretary of State does not consider that removal of these plots will impact the delivery or operation of the Development and has therefore removed them from the Book of Reference and Schedule 7 to the DCO.

94. The Secretary of State notes that a letter from the Applicant dated 2 October 2017 set out that an agreement regarding parking and access between themselves, Waterfront Studios Limited (subsequently Newable Properties Limited) and LBN had not yet been reached. The Secretary of State, like the Panel, is satisfied that convenient alternative car parking and access should be available during and following construction and the relevant plots should be included for compulsory acquisition. (PR 8.5.91-92).

#### Statutory Undertakers' Land

95. The Secretary of State notes that at the close of Examination the Panel noted that in relation to section 127 there was only one objection from a statutory undertaker outstanding, that from Thames Water, and that this was in relation to temporary possession rather than CA powers (PR 8.7.29). The Secretary of State however notes that this objection was withdrawn following a letter from Berwin, Leighton Paisner LLP on behalf of Thames Water to the Secretary of State dated 19 July 2017.

96. With regard to those statutory undertakers whose rights and apparatus will be interfered with by the Development, the Secretary of State agrees with the Panel, and is satisfied that in accordance with section 138(4) of the 2008 Act, that the extinguishment of the relevant rights or the removal of the relevant apparatus is necessary to carry out the Development (PR 8.7.30).

#### Common land and open space

97. The Secretary of State notes that with respect to common land and open space, the Applicant is only seeking CA powers to acquire the subsoil beneath two areas of open space and rights over and under it, rather than the open space itself. The Secretary of State is therefore satisfied that the open space protections in section 131 of the Act do not apply. The Secretary of State also notes that the imposition of rights sought over an open space are solely for the protection of the proposed underground structures and that the continued use of the open space will not be affected. The Secretary of State therefore agrees with the Applicant that the use would be exempted from the protection for open space which section 132 of the 2008 Act confers by virtue of the application of exception on section 123(3) (PR 8.4.32-33).



### Temporary possession

98. With the exception of the plots set out above at paragraph 93, the Secretary of State agrees with the Panel that the temporary possession powers sought by the Applicant are necessary and justified for the reasons given by the Panel in order to secure construction and maintenance of the Development (PR 8.7.32).

### Conclusion

99. The Secretary of State agrees with the Panel's conclusions on the case for granting compulsory acquisition powers for the reasons set out in section 8.7 of the Panel's Report. In particular, the Secretary of State agrees with the Panel that—

- any interference with human rights is proportionate in so far as the public benefit of the proposed Development will outweigh any private losses after allowance for compensation that will be payable (PR 8.7.9);
- sufficient funding will be available to cover all costs of the scheme including CA, payments for temporary possession and any subsequent claims for compensation (PR 8.7.17);
- the land for which CA, CA of rights or CA of subsoil is sought is all required for the development to which the Development Consent sought relates or is to facilitate or is incidental to that development save in relation to the plots relating to Studio 338 set out above; and
- there is a compelling case in the public interest in that the public benefit to be derived from CA would outweigh the private loss by those against whom rights are to be acquired for all plots except those set out above in relation to Studio 338.

The Secretary of State is satisfied that, subject to amending the DCO and book of reference to reflect the changes referred to at paragraphs 101-102, there is a compelling case in the public interest to grant the compulsory acquisition and temporary possession powers sought by the Applicant.

### **Late Representations (outside formal consultation)**

100. The Secretary of State has received various items of correspondence relating to this application since the examination closed, in addition to the formal consultation that was undertaken, including correspondence referred to in this letter. The Secretary of State does not consider that anything in the correspondence constitutes new evidence, or raises a new issue, which needs to be referred to interested parties before he proceeds to a decision. It does not cause him to take a different view on the matters before him than he would otherwise have taken based on the Panel's report.

### **Draft DCO and Related Matters**

101. The Secretary of State has considered the Panel's assessment of the DCO in section 9 of the Panel's Report. He is satisfied that, subject to the qualifications referred to in this letter, the changes made by the Applicant in its letter of 11 September 2017 for drafting clarifications and improvements and the changes made by the Secretary of State in the paragraph below, the DCO as set out at Appendix D to the Panel's Report is appropriate

and acceptable for the purposes of the Development. (References to article numbers in the following paragraphs are to the articles as numbered in the Order as made.)

102. The modifications which the Secretary of State has decided to make to the Order are as follows:

- all references to “approximately” with respect to distances, directions and lengths have been removed as this is already accounted for in article 2(4);
- article 16(1)(b)(v) has been omitted as there is already authority to enter the relevant land for the purposes in paragraphs (i)-(iv) provided within the article;
- in article 17(10), “regularly” has been changed to “materially”, this is because in the Secretary of State’s view an impact which is regular will be material, however a one-off impact may be material but not regular; however the Secretary of State believes that owners of vessels or structures should always be advised if the impact is material, even if it might not be regular;
- amendments to Part 3 (powers of acquisition and possession of land) and Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights) to reflect the coming into force of the Housing and Planning Act 2016 – the Secretary of State notes that the Order as provided with the Panel’s Report did take account of the Housing and Planning Act 2016, however it was submitted prior to the Secretary of State’s decision with respect to the M20 Junction 10a in which the Secretary of State set out the amendments to the compulsory acquisition provisions contained in development consent orders he has determined are necessary to take account of the Housing and Planning Act 2016 modifications; further amendments have been made to the Silvertown DCO to reflect the Secretary of State’s view which is consistent with the corresponding provisions in the M20 Junction 10a Development Consent Order 2018;
- amendment to requirement 6(2)(a) (landscaping scheme) of Schedule 2 (requirements) to secure biodiversity offsetting to offset habitat loss in light of this not having been secured via legal agreements with the Host Boroughs, as per Panel recommendation at PR 9.10.20 and discussed in paragraph 83;
- a new provision (new sub-paragraph (9)) has been added to requirement 7 (monitoring and mitigation strategy) of Schedule 2 which allows the Secretary of State to delegate the functions with respect to pre-opening traffic measures to the Mayor of London, with the Mayor’s consent, as the Secretary of State considers that the monitoring and mitigation strategy may fit better with the Mayor’s responsibilities;
- new requirement 13 (Siebert Road and Westcombe Hill area noise barriers) added to Schedule 2 to ensure that noise barriers are installed in the Siebert Road area, as per Panel recommendation at PR 9.10.22 and discussed in paragraph 52;
- new requirement 15 (cross-river/cycle pedestrian facilities) added to Schedule 2 relating to cross river cycle/pedestrian facilities to ensure mitigation of socio-economic impacts, as per Panel recommendation at PR 9.10.21 and discussed in paragraph 71;
- amendment of requirement 18 and 19 (hazardous substances) of Schedule 2 to address concerns by the HSE, as discussed in paragraphs 60 – 66;
- new requirement 21 (local business transitional support) added to Schedule 2 to ensure support is provided to local businesses to assist in mitigating the adverse socio-economic impacts of the Development, in light of such support

not having been secured by legal agreements with the Host Boroughs, as discussed in paragraph 72; and

- modification to Part 5 (for the protection of the Environment Agency) of Schedule 13 (Protective Provisions) to update those provisions as per advice from the Environment Agency in its correspondence of 3 October 2017.”

103. The Secretary of State is making a number of other minor textual amendments to the DCO set out in Appendix D to the Panel’s Report in the interests of clarity, consistency and precision. He considers that none of these changes, either individually or taken together, materially alter the effect of the DCO.

### **Secretary of State’s overall conclusions and decision**

104. For all the reasons given in this letter, the Secretary of State considers that there is a clear justification for authorising the proposed development and has therefore decided to accept the Panel’s recommendation at section 10.2 of the Panel’s Report and is today making the Silvertown Tunnel Development Consent Order, subject to the changes referred to above. He is satisfied that none of these changes, constitute a material change. He is therefore satisfied that it is within the powers of section 114 of the 2008 Act for him to make the DCO as now proposed.

### **Challenge to decision**

105. The circumstances in which the Secretary of State’s decision may be challenged are set out in the note attached at the Annex to this letter.

### **Publicity for decision**

106. The Secretary of State’s decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully,

Natasha Kopala

**LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Silvertown Tunnel Development Consent Order 2017 (as made) is being published on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/london/silvertown-tunnel/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).**