London Borough of Havering Comments on Draft DCO V2 (Doc 3.1 - AS-038)

INTRODUCTION

1. This note contains the initial views of the London Borough of Havering (LBH) on the draft DCO (dDCO) submitted to the Examining Authority on 19 December 2022. They do not represent final views since it is anticipated that there will be further discussions with National Highways (NH) and, in any event, NH are due to submit a revised dDCO on 18 July 2023 (D1).

2. There are four areas of comment in this document:

   i Comments on some of the articles;
   ii Amendments sought to some of the requirements;
   iii Amendment sought to Schedule 12 (Road User Charging provisions); and
   iv Additional Protective Provisions for the protection of the local highway authority to be included in Schedule 14.

3. This response does not include amendments to requirements or additional requirements which may be required to reflect some of the points made/mitigation identified in the LBH LIR which are currently not captured. This awaits further discussions with NH.

4. The comments are set out in tabular form on the pages that follow. As requested, the comments include a response to issues raised in Annex A of the agenda to ISH 2, where LBH wish to comment.

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i ARTICLES		
Article 2 (10)	This provision states: "In this Order, references to materially new or materially different environmental effects in comparison with those reported in the environmental statement shall not be construed so as to include the avoidance, removal or reduction of an adverse environmental effect that was reported in the environmental statement as a result of the authorised development"	This overarching provision is intended to enable subsequent approval of details even though the likely consequential environmental effects are materially new or materially different from that which was assessed, if the difference is an avoidance, removal or reduction "of an adverse effect". The concern with this provision is that the wording used may not encompass all of the consequences of the material change. Whilst "an adverse effect" might be avoided, removed or reduced that may in itself cause a different effect which has not been assessed and could be sanctioned by this provision. It is suggested that the following wording be added to the end of the existing wording: *"provided that there is no new or materially different adverse environmental effect in comparison with those identified in the environmental statement caused by the avoidance, removal or reduction of such adverse environmental effect"*
Article 5 (1)	Maintenance of drainage works	Part 3 of Schedule 14 contains Protective Provisions for the Protection of Drainage Authorities which contain provisions as to maintenance. It is suggested that the following words are inserted at the beginning of the article to acknowledge this and make it clear that the specific provisions of the protective provisions prevail, as is the case in the drafting of Article 18: *"Subject to the provisions of Schedule 14 (protective provisions)"*
Article 6	Limits of Deviation	In Article 6 (3) a deviation from the LoD is permissible if it is demonstrated to the satisfaction of the Secretary of State, after consultation, that it would not give rise to a new or materially different environmental effect. There are the following concerns with this article:

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		(1) The article is not clear as to whether the consultation will be undertaken by the Secretary of State or the undertaker. That is in contrast to other provisions (such as in the requirements in Sch 2) where the undertaker is identified as being responsible for carrying out the consultation. It would seem sensible to align this article with those other provisions and explicitly require consultation by the undertaker, by the insertion of the words “by the undertaker” after the words “following consultation”. There is then no doubt that, Article 6(4) and paragraph 20 of Sch 2 will apply, and the undertaker will be obliged to apply the process in paragraph 20 to any submission to the Secretary of State under this article. (2) The requirement in Article 6 (3) is to consult with, inter alia, “the relevant local highway authority” and yet there is no definition of that term – in contrast to “the relevant planning authority” which is defined. If a definition of “relevant local highway authority” is included, it should refer to the authority in whose area those works are being carried out and also any adjacent highway authority whose highways may be impacted.
Article 10	Construction and maintenance of streets	As explained later, in section iv of this document, LBH wish to see the insertion of protective provisions for the protection of the local highway authority in relation to construction and maintenance of lengths of highway for which it is responsible. In the event of those protective provisions being included then this article should be expressed as being subject to those protective provisions. An update with regards to LBH and NH discussions on this matter is included in section iv. This article uses the term “local highway authority” and also refers to “highway authority in whose area the street lies”. The term “relevant local highway authority” is used in Article 6. It is suggested the drafting approach should be the same throughout the DCO unless there is intended to be a distinction.

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Article 11	Access to works	This article is very broad and would, as drafted, allow interference with the part of the highway network the responsibility for which lies with LBH, without any prior knowledge of LBH. Where the new or improved access affects highways for which LBH is responsible then LBH should be consulted in advance and the works should be subject to the protective provisions referred to in section iv of this document.
Article 12	Temp closure of streets etc. – deemed consent	This article provides for deemed consent of an application to a street authority for a closure, diversion etc if the street authority has not notified its decision "before the end of the period of 28 days beginning with the date on which the application was made". There are several concerns: (1) The term "application was made" is vague and LBH suggest it is replaced by "application was received by the street authority" – as is the case with the deemed consent provisions in articles 17, 19 and 21. (2) The period of 28 days is considered too short and LBH see no reason why the period of 42 days cannot be inserted instead, which has precedent in the recently approved M25 Junction 28 Development Consent Order 2022 SI No. 573, Article 13. (3) If 42 days is considered too long, then LBH would wish the drafting of the article to be changed so that, for the deemed approval to apply, the deemed consent provisions need to be explicitly drawn to the attention of the street authority on submission of the application. That could be achieved by: - inserting "then, if paragraph (9) applies" before "it is deemed to have granted consent" in paragraph (8); and - inserting a new paragraph (9) stating "This paragraph applies to any application for consent under paragraph (5) which is received by the street authority and is accompanied by a covering letter with the application, which includes a statement that deemed consent provisions under paragraph (8)

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		apply to the application and that failing a response within 28 days of receipt of the application it will be deemed to have been consented” Both (2) and (3) above are precedented in deemed approval provisions included in The West Midlands Rail Freight Interchange Order 2020 SI No. 511. In that DCO the deemed consent in the street works provision referred to a period of 42 days (Article 11). In the case of NH approvals in that DCO, in response to an objection from NH that 28 days was too short a period, a two-stage provision of 28 days plus a further 28 days before consent was deemed to have been given was included (Sch 13, Part 2, Paragraph 15). Alternatively, it would be possible to refer to a deemed refusal instead by replacing the words “granted consent” with “refused consent” at the end of Article 12 (8). The provisions of Article 65 (appeals to the Secretary of State) would then apply, and the undertaker would immediately have a route to a decision.
Article 17, 19,21	Other deemed consents	The same changes are requested for these article as for Article 12.
Article 45	Road User Charging	See comments in Section iii in respect of Schedule 12 below.
Article 53	Disapplication of legislative provisions	Article 53(7) states that “Nothing in this Order is to prejudice the operation of, and the exercise of powers and duties of the undertaker, a statutory undertaker or the Secretary of State under the 1980 Act, the 1991 Act, the 2000 Act …..”. It is not clear why statutory undertakers are in the list of those whose powers are not to be prejudiced and yet local highway authorities are not – who also have duties under the acts mentioned. In the absence of justification LBH would wish to see highway authorities added.

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Article 61	Stakeholder action and commitments	It is not clear what the basis is for the inclusion of commitments in the "stakeholder actions and commitments register" (APP-554) rather than in requirements themselves or other documents referred to in the requirements, such as the Code of Construction Practice. For example, why can the commitments in relation to construction not be included in the Code of Construction Practice, as is the REAC? It seems unnecessarily confusing to have some commitments dealt with in an article and some, of a similar nature, dealt with in the requirements. LBH would like to understand the rationale. It is noted that the Explanatory Memorandum confirms that this is an article with no precedent, so it is important to understand the basis for it. The Explanatory Memorandum (APP-057), at page 63, states that the article is intended to cover commitments "which do not naturally sit within the outline management documents or other control documents secured under Schedule 2." However, there are only four commitments all of which appear to be commitments during construction. Why can these not be included as freestanding requirements or in the Code of Construction Practice? It is noted that NH intends to add a further item to the stakeholder actions and commitments register in relation to a requirement that Ockendon Road be closed for a maximum of 10 months (See NH/LBH SoCG to be submitted at D1 pp 64/65). It is not clear why that cannot be the subject of a requirement, directly or within the CoCP. As regards the drafting of the article itself, the following comments are made: (1) LBH do not believe it appropriate to use the term "take all reasonable steps" when dealing with commitments. Commitments, the performance of is within the gift of NH, should be firm, unqualified, commitments. For example, the commitments dealing with accesses during construction (SACR-003 and SACR-004) are deliverable through the control NH has over its Main Works Contractor – there is no reason for them to be qualified.

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		(2) In 61(3), if an undertaker submits an application to the Secretary of State to revoke, vary or suspend a commitment the commitment is suspended until that application is determined. It does not seem appropriate for the simple act of making an application to be sufficient to suspend the commitment – such a device could be abused. It is suggested that (3) (a) and (b) should be deleted.
Article 62	Correction of Plans	This article includes a procedure, unsurprisingly not precedented in other DCO, which allows for changes to plans to be agreed by justices rather than through the formal Correction Order (Sch 4 PA 2008) or the process of applying for a non-material or material amendment to the DCO (Sch 6 PA 2008). Article 62 (4) applies this procedure to a plan which "is inaccurate" and Article 62(5) refers to a "wrong description" through "mistake or inadvertence". The way in which changes are to be considered is provided for in the PA2008, as indicated above. A wrong description or inaccuracy can be dealt with immediately after the approval of the Order as a correctable error or, if spotted later, can be dealt with by an application for a non-material amendment to the DCO. The processes involved ensure that the local authorities are made aware of the request for a change and the views of any party that might contest the view that the change requested is merely an inaccuracy will be considered. That is the process intended to apply and it is not appropriate for a DCO to include its own bespoke process which avoids the processes prescribed by the PA 2008 specifically to deal with amendments. The distinction between this provision and the amendments under Sch 4 and 6 referred to in the Explanatory Memorandum is not accepted. The process in Sch 6 is available to make any non-material amendment to a DCO and does not exclude errors arising by mistake or inadvertence. If Article 62 (4) is to remain then it should be a requirement that the relevant authorities are consulted (as they would be for a correctable error under Sch 4) and their views submitted to the magistrates along with the application (similar to paragraph 20 in Sch 2

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		in relation to appeals to the Secretary of State). The relevant authorities and all affected persons should be informed of the progress of any application, including any hearings before the justices.
Article 56	Planning Permission Etc	LBH believe that provision of this nature is highly desirable. - in order to remove any doubt as to the effect of the Hillside judgement; and - to enable a planning permission, issued following the implementation, and in the knowledge, of the DCO, to be implemented without the risk of criminal liability under s.160 of the PA 2008. Similar provisions have been commonly included in DCO.
Article 65	Appeals to the Secretary of State	There are several drafting difficulties with this article: (1) Article 65(2) (b) refers to copies of appeal documentation being referred to "the local authority". There is also reference elsewhere in the article to the local authority. The local authority, however, is not the party responsible for all the refusals which may be subject to the process. For example, an appeal arising from a refusal under article 12 (5) involves the street authority and an appeal under article 17 (2), the traffic authority. It is therefore not sufficient to use that term as a generic term (which may, for example, not include the street authority in question). (2) In article 65 (2)(c) and elsewhere in the article, the expression "the appeal parties" is used but is not defined. (3) Article 65((2)(d) refers to "business days" which is not defined. That term is defined in provisions elsewhere within the DCO (e.g. Sch 2 Para 19 (5)) but expressly only for the purposes of that provision.

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		(4) In addition, Article 65 allows the undertaker 42 days in which to prepare and submit an appeal but provides the local authorities with only 10 business days within which to provide a response. This is insufficient time, and it is suggested that the period of 10 business days should be replaced with 20 business days in Article 65 (d) to ensure that not all relevant staff are absent for the entire period. (5) Article 65 (13) allows the appointed person to make a direction on costs and paragraph (14) requires the appointed person to "have regard to" the guidance on costs. The concern is paragraph (13) does not explicitly confine an award of costs to circumstances of unreasonable behaviour. It should be clear that costs are not awarded except in the case of unreasonable behaviour as provided for in the guidance. (6) The list in 65 (1) (a) should include a refusal of the LPA under para 9 (6) of Sch 2 regarding the LPA refusal to agree details in respect of the investigation and recording of archaeological remains.
ADDITIONAL ARTICLE	Implementation Group	LBH feel that it would be appropriate for NH to establish a group equivalent to the Silvertown Tunnel Implementation Group which would include representatives of relevant public bodies and provide a structure for ongoing consultation and engagement. It would include engagement on the mitigation and monitoring strategy as suggested in the additional requirement in Schedule 2, requested below. A provisional drafting for the new Article is set out in **Appendix A**. It is based on Article 66 (page 50) of the Silvertown Tunnel DCO. It will need further consideration to ensure it captures all the appropriate topics and is very much a starting point. It hoped that NH will see the benefits and include an article such as this in its draft DCO in due course. The article refers to a monitoring and mitigation strategy which it is believed should be capable of being drafted based on the contents of the application documents submitted.

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ii SCHEDULE 2 - REQUIREMENTS		
Para 1	Interpretation	In respect of the definitions of "preliminary works" and the "preliminary works EMP" LBH are in the process of reviewing whether there are adequate safeguards in place for the entirety of the preliminary works, as defined, to proceed in advance of approvals.
Para 2	Time limits	The only time limit imposed by this requirement is a requirement to "begin" the development within 5 years of the date that the Order comes into force. There is no definition of "begin" however it is understood from ISH2 that NH intend to insert one. This will presumably be based on s.155 of the PA which provides that development is taken to begin on the earliest date on which any material operation begins to be carried out. Material operation is defined in s.155 and, currently, includes any operation except for the marking out of a road. As identified in ISH2, the effect of having a separate commencement stage (which is defined) is that all that is required to be started within 5 years is the preliminary works. Accordingly beginning to carry out part of the preliminary works within five years will be sufficient to satisfy Requirement 2. The preliminary works need not be completed, nor do the remainder of the authorised works need to be commenced, within any time period. The relevance, and rigour, of the environmental assessment to which the scheme has been subject will reduce the longer the gap between the baseline conditions, against which impact has been assessed, and the carrying out of the works. It is suggested there should be more rigour in Requirement 2 with it identifying the phases of works and in the event of those phases not having been commenced by a certain date, the undertaker being required to re-visit the environmental assessment, revise if necessary and identify and implement updated mitigation. There is precedence for this approach in Requirement 2 (3) of The York Potash Harbour Facilities Order 2016 which, in the event of the second phase of development not being commenced within a certain period, required the undertaker to reassess the baseline

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		conditions and update the assessment and produce a further environmental report and agree any additional mitigation measures required.
Para 3	Detailed Design	See comments below in section iv with regard to the need for protective provisions which are relevant to the process of agreeing the detailed design. The requirement to consult is limited to "the relevant local planning authority on matters related to its functions". That then excludes consultation on highway matters. The relevant local highway authority should also be consulted.
Para 4	Construction - EMP	With regard to (1) LBH are not content with the level of detail in the preliminary works EMP, in particular with regard to archaeological matters and compounds. In paragraphs (5) – (7) reference is made to EMP3 being developed and completed which includes key long term commitments (sub - para (6)). In contrast to EMP2 this document is not required to be consulted upon or be approved by any party. This document must be subject to scrutiny and should be subject to the same processes as EMP2.
Para 5	Landscape and ecology - LEMP	Whilst the Explanatory Memorandum states that this is a standard provision it bears some consideration. Why is only a reasonable standard for the landscaping required, rather than, say, good? If the point of the article is to secure compliance with the British Standard, then that is what it should say and the words "to a reasonable standard" should be deleted. If the intention is to impose a standard on the quality of landscaping, then it should be "good" rather than "reasonable". See also comments below, in respect of paragraph 10 with regard to the inclusion of the word "substantially" which equally apply here.
Para 6	Contamination	Para 6(2) allows the undertaker alone to determine whether or not remediation of contaminated land not previously identified is required. Only if the undertaker decides unilaterally that remediation is necessary then is anyone else involved. Where such

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		contamination is found the undertaker should compile a report stating its response in circumstances both where it considers remediation is not necessary and where it considers it is necessary. That report should be consulted upon and then be the subject of approval by the Secretary of State with paragraph 20 applying.
Para 7	Protected Species	LBH would wish to be consulted in relation to any scheme and would therefore wish consultation with relevant local planning authority in additional to NE.
Para 8	Drainage	The requirement to consult is again limited to "the relevant local planning authority on matters related to its functions". In view of the topic the relevant local highway authority and Lead Local Flood Authority should also be consulted.
Para 9	Historic Environment	LBH are not content that there is an appropriate archaeological management strategy secured in the application documentation. There is insufficient detail in relation to assets likely to be impacted and mitigation. Commitments in this respect need to be added to the various control documents. Para 9 (2) allows for an approved scheme to be amended or dispensed with by agreement with the Secretary of State without any consultation. The mechanism included in Paragraph 8(2) for consulting on amended provisions should apply. Paragraph 9 (5) refers to the service of a notice under paragraph (4) however paragraph (4) does not require the service of any notice. It is suggested that paragraph (4) be amended by relacing "reported" with "notified". In paragraph (5) the words "any notice served" should be replaced by "notification". It is also not appropriate for the pause provision in (5) to be simply set aside by the Secretary of State without consultation or process. The 14 day period within (5) is insufficient and should be changed to 28 day to ensure the relevant personnel are available.

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		The provision in (6), whereby the requirement for local planning authority approval is given with one hand and taken away with the other, by the words "unless otherwise agreed by the Secretary of State", is unacceptable and those words should be deleted. The approval from the local planning authority, if not forthcoming, should be added to the provisions to which the appeal provisions in article 65 apply and therefore added to article 65 (1)(a).
Para 10	Traffic Management	LBH do not believe that the outline traffic management plan for construction is sufficient to appropriately govern the preliminary works or provides a sufficient framework for the subsequent traffic management plans. As mentioned previously, despite the use of the term, there is no definition of relevant highway authority. LBH see no reason why, in sub para (2), the requirement to comply with the outline traffic management plan for construction should be qualified by the word "substantially". The inclusion of that word injects uncertainty and subjectivity into the application of what are supposed to be control documents. LBH would wish this DCO to follow the approach in The M25 Junction 28 Development Order 2022 SI No.573. In that DCO the use of the word substantially in a similar context was specifically considered and adjudicated upon by the Examining Authority and Secretary of State and found not to be appropriate and deleted. (See para 9.3.22 Examining Authority's report and paragraph 135 of the Secretary of State Decision Letter).
Para 11	Construction Travel Plan	LBH do not believe that the framework construction travel plan provides a sufficient framework for the approval of subsequent travel plans.

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		The reference to the undefined term and objection to the insertion of the word "substantially" referred to in respect of paragraph 10 above applies equally to this requirement.
Para 12	Fencing	The requirement to consult is limited to "the relevant local planning authority on matters related to its functions". That then excludes consultation on fencing which may affect and be relevant to the local highway therefore the relevant local highway authority should be consulted.
Para 14	Traffic Monitoring	LBH view the wider network impacts management and monitoring plan as wholly unsatisfactory in addressing impacts arising from the development given that it secures none of the mitigation that it may identify is needed. Notwithstanding that general concern, there are several comments on the drafting of the requirement: (1) The typographical error in line four needs to be corrected and it made clear which highway authority it is referring to – perhaps by use of a defined term of "relevant highway authority", as mentioned above. (2) The use of the word "substantially" is objected to for reasons previously mentioned in relation to paragraph 10. (3) Sub-paragraph (1) only requires submission of an operational traffic impact monitoring scheme prior to the tunnel area being open for traffic. There is no requirement for it to be approved within a certain period or even implemented within a certain period. The requirement should be amended to provide for the scheme to be both approved and operational before the tunnel is open for traffic. (4) The ability, in sub paragraph (3), for the Secretary of State to simply dispense with the implementation of the scheme at any time and for any reason is completely

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		unacceptable. If such a tailpiece is to remain it should be accompanied by the additional wording in paragraph 8(2).
Additional Requirement	Monitoring and Mitigation Strategy	LBH has set out in its written representation its concerns regarding the lack of mitigation in respect of impacts on the wider road network. LBH would wish consideration to be given to the inclusion of a requirement imposing an effective monitoring <u>and</u> mitigation regime and would refer to requirement 7 of The Silvertown Tunnel Order 2018 SI No. 574 as an appropriate approach. That requirement is set out on page 65 of the approved DCO and in **Appendix B** to this document. That requirement makes reference to a monitoring and mitigation strategy which could be prepared on the basis of the information available with the application. The requirement then sets out the process for determining whether mitigation needs to be delivered after appropriate monitoring and how it is then to be delivered – both in respect of pre-opening and post opening. A draft requirement, based on requirement 7 of The Silvertown Tunnel DCO, should be included in the DCO.
Para 18	Applications to the Secretary of State	Under 18 (3) a deemed refusal applies where the Secretary of State does not determine an application within 8 weeks <u>and</u> the application was accompanied by a report from a consultee to the effect that, if approved, the application would give rise to a materially new or different environmental effect. However, otherwise, under 18(2), if there is no decision within 8 weeks, the Secretary of State is deemed to have granted/approved that application. That would include in circumstances where consultees have objected but without explicitly stating that the application would result in new or materially different environmental effects. Accordingly, there should be another pre-condition to deemed approval with the following added to (3): *(d) the consultees required to be consulted by the undertaker under the requirement were informed in writing when consulted that if they*

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		consider it likely that the subject matter of the application would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement then, in order to prevent the possibility of a deemed consent under this paragraph, they must say so in their consultation response.
Para 20	Details of Consultation	This provision provides for a minimum consultation period of 28 days. In 20 (1)(a) it should be made clear that the 28 day consultation should expire prior to the submission of any application. That is implied by 20 (1) (b) but not required.
iii SCHEDULE 12		
Para 1.	Definition of "local resident"	LBH is concerned as to the area to which the local residents discount scheme applies, as is expanded upon in the LBH LIR. The rationale for the identification of the local residents to benefit from a discount scheme is set out in paragraph 2.2.5 of the Road User Charging Statement (APP-517). The justification is simply based on replicating the Dartford situation whereby it applies only to the residents of boroughs within which the tunnel portals are situated. Whilst LBH in general terms advocate equivalence with the Dartford Crossing charging provisions, it is not logical in the case of the Lower Thames Crossing to confine the discount scheme to residents of the boroughs within which the tunnel portals sit. The works for the Dartford Crossing were confined to the boroughs within which the tunnel portals sit. That is not the case here. At the moment the definition of "local resident" (who are the persons eligible for the local residents' discount scheme) is "a person who permanently resides in the borough of Gravesham or Thurrock". Eligibility is therefore irrespective of proximity to the tunnels or the impacts of the scheme. There are residents of Thurrock who live further away from the tunnel portals than residents of the London Borough of Havering.

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		The definition of "local residents" should therefore be changed to add the London Borough of Havering and other host authorities with similar extent of scheme within their area.
iv	**SCHEDULE 14 – ADDITIONAL PROTECTIVE PROVISIONS**	
		There are extensive interfaces between the authorised works and the local highway network, the latter being the responsibility of LBH as local highway authority. Currently the protection of those assets is wholly inadequate in the DCO. As with other assets owned by bodies with statutory duties LBH would wish its highway assets to be protected by the inclusion of protective provisions which ensure that the local highway network is appropriately considered and protected. There is precedence for such protective provisions, such as those included in The A303 Sparkford to Ilchester Dualling Development Consent Order 2021. That is a DCO applied for by NH which included protective provisions in favour of the local highway authority (Somerset County Council) both in respect of vehicular and non-vehicular highways. A side agreement has been the subject of discussion with NH which contains some of the protective provisions required but not all of them. In LBH's written summary of oral comments made at ISH 1 and 2, submitted at D1, LBH has reported that discussions with NH on protected provisions are ongoing, with further discussions taking place in late July 2023. Subject to these discussions, it is LBH's intention to submit draft protected provisions to the Examining Authority at D2 on the 3rd August 2023.
END		

APPENDIX A – NEW ARTICLE - LTC IMPLEMENTATION GROUP

[ ] (1) The undertaker must establish and fund the reasonable secretarial and administrative costs of a consultative body to be known as the LTC Implementation Group (in this Order known as "LIG").

(2) LIG will comprise one representative of each of the following bodies -

(a) The undertaker
(b) Transport for London
(c) Thurrock Borough Council
(d) London Borough of Havering
(e) Gravesham
(f) [other local authorities]
(g) any other person which is for the time being the traffic authority for the Lower Thames Crossing
(h) any other person which is for the time being the traffic authority for the Dartford river crossings between Dartford ,Kent, and Thurrock, Essex

(3) Each body mentioned in paragraph 2 (b) to (h) above must notify the undertaker of the identity of its nominated representative from time to time

(4) If any person nominated under paragraph (3) cannot attend a meeting of LIG the nominating body may nominate a person (on an occasional or standing basis, as it determines) to act as the nominating body's substitute representative at the meeting.

(5) LIG must consult the other members of LIG on the following matters relating to the implementation of the authorised development –

(a) the extent, nature and duration of monitoring to be implemented in accordance with the monitoring and mitigation strategy
(b) the proposals for the initial bus services that will operate through the tunnels when the Lower Thames Crossing opens for public use;
(c) The monitoring reports produced in accordance with the monitoring and mitigation strategy
(d) Any proposed revisions to the charging policy under article [45] (road user charging) or charging arrangements set out in Schedule [12]
(e) [ETC?]

(6) In taking any decisions in respect of any of the matters set out in paragraph (5) the undertaker must have regard to any recommendations or representations made by a member of LIG in response to the consultation carried out under that paragraph.

(7) Unless otherwise agreed by LIG the undertaker must convene a meeting of LIG, chaired by a representative elected by the members of LIG at least twice a year on a date to be determined by the undertaker and also on each occasion that the undertaker publishes a monitoring report in accordance with the mitigation and monitoring strategy

(8) The first meeting of LIG must be held within six months of the approval of this Order

(9) Part VA (access to meetings and documents of certain authorities, committees and subcommittees) of the Local Government Act 1972 and the Public Bodies (Admission to Meetings) Act 1960 do not apply to LIG or its meetings or proceedings

(10) The undertaker must publish on its website agendas, reports, minutes and other relevant documents relating to the operation and role of LIG as soon as reasonably practicable after they become available.

APPENDIX B – REQUIREMENT FROM SILVERTOWN TUNNEL APPROVED ORDER

Monitoring and mitigation strategy

7.—(1) The provisions of this requirement must be carried out in accordance with the monitoring and mitigation strategy and TfL must otherwise comply with the obligations set out in that document.
(2) If the statutory powers vested in TfL in relation to highways and road traffic in Greater London are not sufficient to enable TfL to implement any mitigation measure which it is obliged to implement under this requirement, TfL must either—
(a) seek to agree with the council of the relevant London borough that TfL may implement that measure on behalf of the council; or
(b) if such an agreement cannot be reached, pay to that council a sum equivalent to—
(i) the estimated cost of the council implementing that measure, which the council must use for that purpose; or
(ii) the costs reasonably incurred by the council in implementing an alternative measure in the same location which the council determines will mitigate the adverse impact attributable to the authorised development,
whichever is less.
(3) In this paragraph, "relevant air quality authority" means the council of a London Borough for an area in relation to which the expert review carried out under sub-paragraph (14) concludes that the authorised development has materially worsened air quality.
Pre-opening traffic measures
(4) Before the Silvertown Tunnel opens for public use TfL must carry out an updated assessment of the likely impacts of the authorised development on the performance of the highway network and must consult the members of STIG on a proposed scheme of mitigation which identifies—
(a) the locations on the highway network where the assessment demonstrates there is likely to be a material worsening of traffic conditions as a result of the operation of the authorised development;
(b) the measures which TfL proposes to mitigate the impacts of such a worsening of traffic conditions; and
(c) the proposed programme for implementation of those measures.
(5) TfL must have regard to any consultation responses received from STIG members and before finalising the scheme of mitigation must liaise further with the council of any London

Borough on the detail of mitigation measures which it proposes to implement on roads in that Borough. TfL must then submit the scheme of mitigation to the Secretary of State for approval.
(6) The scheme of mitigation submitted to the Secretary of State for approval must include—
(a) details and locations of the proposed mitigation measures;
(b) responses to the consultation and further liaison carried out under sub-paragraphs (4) and (5);
(c) the estimated cost of implementing each measure; and
(d) the proposed programme for the implementation of those measures.
(7) The Silvertown Tunnel must not open for public use until the scheme of mitigation has been approved by the Secretary of State. If the Secretary of State proposes to approve the scheme of mitigation with material modifications, the Secretary of State must consult the members of STIG on the proposed modifications and have regard to any responses received when deciding whether to approve the scheme.
(8) TfL must implement or secure the implementation of the measures approved by the Secretary of State in accordance with the approved programme.
(9) The Secretary of State may, with the consent of the Mayor of London, delegate their functions under this paragraph to the Mayor of London.
Post-opening monitoring and mitigation
(10) For the duration of the monitoring period, TfL must—
(a) implement a monitoring programme in consultation with the members of STIG;
(b) prepare—
(i) quarterly monitoring reports for a period of one year from the Silvertown Tunnel opening for public use; and
(ii) annual monitoring reports thereafter,
derived from that monitoring, and submit them for consideration by the members of STIG;
(c) identify in consultation with the members of STIG appropriate thresholds for changes on the highway network which require TfL to investigate whether mitigation measures are necessary;
(d) develop in consultation with the relevant highway authority any measures which are necessary to mitigate adverse impacts on the highway network which are attributable to the operation of the authorised development; and
(e) implement or secure the implementation of the necessary mitigation measures.
(11) In sub-paragraph (10) "the monitoring period" means a period commencing not less than three years before the Silvertown Tunnel is expected to open for public use and continuing for not less than three years after the Silvertown Tunnel opens for public use.
Air quality monitoring and mitigation

(12) Not less than three years before the Silvertown Tunnel is expected to open for public use TfL must install Nitrogen Dioxide (“NO2”) monitors at locations determined in accordance with paragraph 3.7.4 of the monitoring and mitigation strategy.
(13) The NO2 monitors must remain in place for the period specified in paragraph 3.7.5 of the monitoring and mitigation strategy.
(14) The monitoring data within each annual monitoring report referred to in sub-paragraph (10) must be reviewed as soon as reasonably practicable by a firm of independent air quality experts appointed by TfL in consultation with the members of STIG. The annual review undertaken by the firm of experts must determine in accordance with the criteria set out in the monitoring and mitigation strategy whether or not there has been a material worsening of air quality as a result of the authorised development beyond the likely impacts reported within the environmental statement at locations where there are (whether as a result of the authorised development of otherwise) exceedances of national air quality objectives.
(15) If the review demonstrates in the opinion of the appointed firm of experts that the authorised development has materially worsened air quality in the manner described in subparagraph (14), TfL must—
(a) within three months of the conclusion of the expert review consult any relevant air quality authority on a preliminary scheme of mitigation including a programme for its implementation; and
(b) following that consultation submit a detailed scheme of mitigation to the Mayor of London for approval.
(16) Before considering whether to approve the scheme of mitigation, the Mayor of London must consult any relevant air quality authority and take into consideration any responses received.
(17) TfL must implement or secure the implementation of the scheme of mitigation approved by the Mayor of London in accordance with the programme contained in the approved scheme of mitigation.