Response to the London Borough of Southwark 3 March 2014 submission

Doc Ref: APP198.24
1 Response to submission from the London Borough of Southwark

1.1 Introduction

1.1.1 This document addresses matters raised in the submission by the London Borough of Southwark (LB Southwark) (Ref. 10018659) submitted on 3 March 2014. It also considers the further written submission by LB Southwark Councillor Anood Al-Samerai (Ref. 10018646) submitted on 3 March 2014. The majority of this submission reiterates the council’s submission, particularly with regards to Section 106 and non-statutory off-site mitigation, with the exception of a matter relating to additional Section 106 obligations.

1.1.2 LB Southwark’s submission largely restates previous submissions made by the council throughout the examination or raises issues that were addressed in Thames Water’s submission on 3 March 2014. Accordingly, we response to any new issues raised or signpost to where a matter has been addressed in other documentation.

1.2 Structure of this response

1.2.1 This response is set out under the following sections:

a. update on LB Southwark’s position on impacts
b. Non-statutory Off-site Mitigation and Compensation Policy (Doc ref: APP210)
c. ’not environmentally worse than’ (NEWT) commitment
d. use of Control of Pollution Act 1974 Sections 60 and 61
e. Noise Limits Discussion Paper
f. Off-site Mitigation Discussion Paper
g. River Transport Strategy
h. Draft Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order (the ‘Draft DCO’)
i. draft project-wide and site-specific DCO Requirements
j. Code of Construction Practice
k. Section 106 Agreement – London Borough of Southwark (Doc ref: APP119.14)
l. legal submission on alternative drive direction.
1.3 Update on LB Southwark’s position on impacts

Overview

1.3.1 As set out in the *Environmental Statement* and *Environmental Statement Update Report* (Doc ref: APP208.01), we acknowledge that the proposed works at Chambers Wharf and Shad Thames Pumping Station would give rise to some significant effects. We also recognise there would be some non-significant effects.

1.3.2 These potential significant effects would be mitigated through the package of measures included in the application for development consent (the ‘application’) including the *Code of Construction Practice (CoCP)*, DCO Requirements and *Design Principles*. The package of measures provides mitigation at source. Where it may not be possible to mitigate all effects at source, the *Non-statutory Off-site Mitigation and Compensation Policy* would be applied. The *Summary of Additional Mitigation Measures and Revisions to Compensation Policies* (Doc ref: APP185) sets out the additional mitigation measures and provides a summary of the measures we have developed since the examination began.

1.3.3 In recognition of concerns raised throughout the examination and the length of the proposed construction works at the Chambers Wharf site, we submitted a comprehensive package of measures to address potential non-significant effects, including in-combination effects. These include a trigger action plans (TAPs) for Riverside Primary School and residential properties for both sites in LB Southwark and a substantial package of planning obligations in the submitted Section 106 Unilateral Undertaking.

1.3.4 LB Southwark has stated on numerous occasions that the amount of information provided in the application is inadequate and details relating to construction are uncertain. Our *Response to London Borough of Southwark Local Impact Report* (Doc ref: APP30.09, 2 December 2013) refers to the Planning Inspectorate’s advice note 9 Rochdale Envelope, with which our approach has been consistent (see below with regards to comments on the CoCP and DCO Requirements).

1.3.5 It should also be noted that we have provided a significant amount of new or updated information during the examination, which includes substantially more detail on our proposals and the means of controlling any potential effects. We have also provided a significant amount of material in response to written and oral questions during the examination relating to ‘scheme options’ that are not included in the application.

1.4 Chambers Wharf

Noise and vibration

Significance of evening impacts

1.4.1 The *Environmental Statement Update Report* confirms that taking into account the committed onsite mitigation, there would be no significant noise effects, save for:
a. daytime significant effects for four months at Axis Court and Luna House during site set-up (similar effects accepted by the local planning authority for the construction of the consent residential development at the site (Doc refs: APP31.02 and APP102.04)

b. day (and evening) significant indirect effects at Fountain Green Square due to movements of vessels on the river.

1.4.2 These residual significant effects would be avoided by off-site mitigation as secured by legal agreement (Doc ref: APP209.03).

1.4.3 We have set out in oral submissions that our proposals, assessment method and secured mitigation comply with the National Policy Statement for Waste Water (the ‘NPS’) (Written summaries of the cases put orally at the hearings held 20 February 2014 Doc ref: APP157, Section 3.2 and Appendix A).

Lack of clarity in the CoCP (and NEWT) to control noise impacts

1.4.4 The NEWT commitment was clarified in the final CoCP Part A (Doc ref: APP205.01). Our response to request for information question 53.1 (Doc ref: APP163) clarifies how the contractor would be able to access the relevant information for all receptors, on a day-to-day operational basis, to ensure that the NEWT commitment would be adhered to for each parameter in the Environmental Statement. It also explains how compliance would be monitored and enforced.

Lack of assessment of derogations to the River Transport Strategy, particularly on Bevington Road and Chambers Street

1.4.5 Consideration of operational derogations was included in the assessment, as set out in the Environmental Statement Update Report.

1.4.6 No significant indirect effects were identified on either Bevington Street or Chambers Street, (see the Environmental Statement Update Report, Table 9.10.1, APP208.01.26). Any derogation would need to comply with the NEWT commitment (CoCP Part A, Section 2.1). NEWT compliance is set out in our response to request for information question 53.1 (Doc ref: APP167).

Lack of compliance with the NPS

1.4.1 We explained in the application and in oral submissions at a number of hearings how our proposals comply with NPS noise policy (Doc ref: APP102.03, Appendix B and Doc ref: APP157, Appendix A).

Criteria for significant effects and TAPs

1.4.2 We set out in written and oral submissions the justification for significance criteria and trigger values for off-site mitigation, which are consistent with precedent and the relevant British Standard (BS8228:2009+A1:2014) and compliant with NPS noise policy. Our position is summarised in Doc ref: APP102.03, Appendix B and Doc ref: APP157, Section 3.2 and Appendix A.
Single aspect dwellings and lack of ability to open windows in secondary glazed properties

1.4.3 We have set out in submissions that there is relevant and comparable precedent for our proposals at Chambers Wharf including the presence of single aspect dwellings (Doc ref: APP102.04, Appendix A).

1.4.4 We discussed the impact of noise to single dwelling aspects in our response to request for information question 57.7.

1.4.5 We recognise the community’s concern about the effects on single aspect dwellings and this was one reason for ‘pre-triggering’ TAPs for residential receptors around Chambers Wharf (ie, no trigger level now needs to be breached for these properties to qualify for noise insulation or equivalent mitigation).

1.4.6 The assessment took account of substantive incorporated mitigation onsite. Over the course of the examination, we have committed to additional specific onsite mitigation (CoCP Part B, Doc ref: APP178.35) and to the NEWT commitment in the (CoCP Part A, Doc ref: APP178.01, Section 2.1), which is set in terms of the previous Environmental Statement Update Report (Doc ref: APP184.01). These measures provide substantial additional protection for all receptors around Chambers Wharf.

1.4.7 The Environmental Statement Update Report confirms that taking account of the committed onsite mitigation would avoid all significant noise effects, except at Axis Court and Luna House during site setup for a period of four months. Similar effects were accepted by the local planning authority for the construction of the consented residential development at the site (see Doc refs: APP31.02 and APP102.04).

1.4.8 These residual significant observed adverse effects would be avoided by off-site mitigation (see Doc ref: APP210.01) as secured by the legal agreement (Doc ref: APP209.03).

1.4.9 The more detailed proposals in the latest draft example TAP for Luna House, submitted on 11 March 2914 (Doc ref: APP198.34) confirm that any currently operable windows would continue to be operable with the insulation installed. This means that residents would be able to open windows as they do now during the vast majority of the construction period. The proposed onsite mitigation would minimise adverse noise effects and avoid significant noise effects during the night, the evening and for all but four months during the daytime.

Transport Assessment
All by road operation

1.4.10 With regards to LB Southwark’s comments on ‘all by road operation’, the council states: “it remains the council’s position that no foreseeable mitigation is available for any prolonged period of all by road operation. Even the applicant’s revised forecasts would result in an HGV [heavy goods vehicle] movement every 2 minutes on Bevington Street, representing a completely unacceptable scenario. There also remain serious questions as to how such levels of construction traffic would be
managed given site restrictions and poor journey time reliability on the surrounding road network”.

1.4.11 We addressed this issue in our responses to second written questions, in particular question 32.8 (Doc ref: APP59), questions 34.11, 34.12 and 34.13 (Doc ref: APP61) and more recently in the Written Summary of the cases put orally at the hearings held 23 January 2014 (Doc ref: APP102.4, Sections 3.2, 4.5 and 4.6).

1.4.12 In the Transport Assessment in the application, the ‘all by road’ scenario was assessed and determined to be manageable on the local and strategic road network.

1.4.13 As stated in our response to second written question 34.13, para. 13.1.3, the sensitivity tests carried out on the Transport Assessment provides an appropriate analysis of the implications of an all by road scenario. We demonstrated that there is no change to the impacts predicted in the Transport Assessment and subsequently in the Environmental Statement and that the mitigation embedded in the final CoCP Part A and Part B remains appropriate.

1.4.14 For an all by road scenario at Chambers Wharf, the number of HGVs assessed is sufficient to maintain the long average drive rate of 80m/week. This clearly emphasises the criticality of the river transportation to the Thames Tideway Tunnel project (the ‘project’), to accommodate for variations in the tunnelling rates.

1.4.15 Our response to second written question 34.13 (Doc ref: APP61) details the requirements for contingency plans in the event that operational derogations are sought to transport materials by road. These comprehensive documents will be developed in conjunction with the contractor, the employer and the local authority.

1.4.16 The contingency plan will ensure that the requirements in the final CoCP Part A and Part B are incorporated in the contractor’s traffic management plan, and that all mitigation measures to reduce both the need and the impact of moving materials by road are considered, including the need for lorry holding areas and timed deliveries. The NEWT test would also be applicable.

1.4.17 As stated in Doc ref: APP61.13.02, any operational derogation and associated effects are anticipated to be short-term only. Further, the location of this site and its access to deep navigable water would reduce the likelihood and severity of any potential operational derogations.

Socio-economic

1.4.18 The Non-statutory Off-site Mitigation Compensation Policy (Doc ref: APP210.01, Section 7) addresses special cases and the provision of additional protection. This off-site mitigation is secured by the legal agreement (Doc ref: APP209.03) and the appended Section 106 Unilateral Undertaking.
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**Archaeology**

1.4.19 Onsite evaluation is currently underway in terms of vibrocore analysis and laser scanning of the foreshore and further evaluation in this part of the site is scheduled to take place in 2014, as discussed with LB Southwark through regular archaeology focused meetings (as set out in our *Response to London Borough of Southwark Local Impact Report*). In terms of trial trenches in the area of the main tunnel shaft on the land-based part of the site, we have issued a site-specific written scheme of investigation to the council. These trenches are planned for the first half of 2014.

1.4.20 Our response to the Local Impact Report states that we consider that the baseline data gathered through the environmental impact assessment and presented in the *Environmental Statement* provides sufficient information to form a decision, without requiring additional fieldwork, in line with NPS para. 4.10.8.

1.4.21 In terms of the possibility of finding remains that would warrant preservation *in situ*, again we point to our response to the Local Impact Report. NPS para. 4.10.13 sets out a presumption in favour of the conservation of designated heritage assets (and undesignated assets of similar significance). The more significant the designated heritage asset, the greater the presumption in favour of its conservation. There are no designated heritage assets within the Chambers Wharf site and while recognising the potentially high significance of prehistoric remains, as explained in the site-specific volume of the *Environmental Statement* (para. 7.8.2), we do not consider that these are of a level of significance warranting permanent *in situ* preservation.

**Drainage**

1.4.22 We note LB Southwark’s agreement with the Environment Agency with regards to the surface water drainage DCO Requirement. To address their concerns, we added site-specific Requirement CHAWF 13 to the revised *Draft DCO* (Doc ref: APP177.02, 3 March 2014).

1.5 **Shad Thames Pumping Station and Earl Pumping Station**

**Noise and vibration**

1.5.1 As stated above, the robust basis for the trigger values in the *Non-statutory Off-site Mitigation and Compensation Policy* (Section 4) and compliance with NPS para. 4.9.9 is set out in Doc ref: APP157 (Section 3.2 and Appendix A) and in the *Off-site Mitigation Paper* (Doc ref: APP187, 3 March 2014).

1.5.2 The qualification procedure for residential buildings is outlined in the *Non-statutory Off-site Mitigation and Compensation Policy*, Section 4. Where no significant effects have been identified at this stage, the residence is protected by the NEWT commitment such that no new significant effect can be generated. Therefore no further residential properties require a
TAP. Special cases are by nature subject to the circumstances of individuals and may be identified at any time and be eligible under the Non-statutory Off-site Mitigation and Compensation Policy (para. 3.1.6).

1.5.3 The Non-statutory Off-site Mitigation and Compensation Policy (Section 4.2) includes trigger values for vibration and provides for mitigation in response to in-combination effects that result in unacceptable disruption.

1.5.4 Where noise insulation is installed, the works must include provision of ventilation in compliance with the Noise Insulation Regulations 1996 (Doc ref: APP210.01, para. 5.1.1) and the relevant building regulations. One of the functions of the Independent Compensation Panel (Doc ref: APP210.01, Section 2.3) is to ensure that mitigation minimises the consequences of adverse impacts, e.g., retaining the ability to open windows despite mitigation with the option to keep them closed to reduce noise intrusion (Doc ref: APP186, para. 2.3.3, item d).

1.6 Blackfriars Bridge Foreshore

1.6.1 The works at Blackfriars Bridge Foreshore to the Blackfriars Millennium Pier would be relatively short term and only take place during the daytime. Given that assessed receptors of similar sensitivity to residential dwellings (City of London Boys School) lie close to these works which will not experience a significant effect (Doc ref: APP208.01.23, update to Environmental Statement Vol 18 Table 9.10.1 and Table 9.10.2), controlling noise and vibration effects to these receptors would ensure that no significant effects would be experienced at Falcon Point.

1.7 Non-statutory Off-site Mitigation and Compensation Policy

1.7.1 Regarding the baseline during construction, noise and vibration monitoring prior to commencing construction is a requirement under the final CoCP Part A, Section 6.6.

1.7.2 We have explained that the baseline has very little connection with off-site mitigation as the trigger values for mitigation are in terms of absolute construction noise and vibration only (Written summaries of the cases put orally at the hearings held on 4 and 5 February 2014, Doc ref: APP115.01 and Doc ref: APP157). In confirming trigger levels and mitigation under the TAPs, the updated Non-statutory Off-site Mitigation and Compensation Policy identifies that measurements will be carried out to update the baseline in particularly noisy conditions where the baseline can define the mitigation trigger values to ensure that the detailed baseline is in place.

1.7.3 With regards to local authority involvement in TAPs, the policy (para. 1.1.11) clarifies that the undertaker shall actively engage with the identified parties including the local authority. The agreement within the TAP is between the undertaker and the beneficiary, with oversight by the Independent Compensation Panel. Involvement of the local authority is sought during the preparation of TAPs (Doc ref: APP210.01, para. 3.1.9), however, the final decision rests with the beneficiary of the TAP or (in case
of disagreement) the panel. Planning, conservation and building control approval will be secured from the local authority as required.

1.8 Trigger action plans

1.8.1 An indicative timescale for the production of TAPs is provided in the Summary of Additional Mitigation Measures and Revisions to Compensation Policies, Doc ref: APP185, Appendix C.

1.8.2 See also the updated draft TAP for Luna House appended to our response to Save Your Riverside’s submission of 3 March (Doc ref: APP198.34, Appendix A).

Suitability of TAPs for delivering mitigation

1.8.3 The updated draft TAP for Luna House clearly demonstrates that mitigation would be practicable and effective. The mitigation under the TAP is secured by the legal agreement and associated Section 106 unilateral undertaking.

1.8.4 See para. 1.5.2 for our response to queries regarding eligibility for TAPs.

Timeframe for delivery and approval of Section 61 consents

1.8.5 The timeframe for delivery and approval of consents under Section 61 of the Control of Pollution Act 1974 is set out in the final CoCP Part A and includes:

a. the requirement for early dialogue between the contractor and local authority

b. the requirement for a draft to be issued to the local authority for discussion and review in advance of any formal application for consent

c. the requirement in the Non-statutory Off-site Mitigation and Compensation Policy to allow lead time to install off-site mitigation

d. the requirement for the contractor to agree the details of control measures to be included in Section 61 applications and draft timetable of applications (using the guidance at CoCP Part A, Appendix A) as part of the noise and vibration management plan, which must be approved by the local authority no later than three months before construction commences.

Qualification and time basis for criteria

1.8.6 We explained in oral submissions that time periods for the qualification of off-site mitigation are as defined in BS5228-1 and are the same as used for all benchmark projects (Doc ref: APP102.02, APP115.01 and APP157).

Vibration and combination effects

1.8.7 Vibration dose value is the indicator defined in BS6472.
Special cases

1.8.8 The Non-statutory Off-site Mitigation and Compensation Policy states that: “those with a medical condition that it is proven could be exacerbated by exposure to noise or vibration” will be treated as special cases.

Further detail: Appendix A

1.8.9 The Non-statutory Off-site Mitigation and Compensation Policy (Section 3, para. 3.1.4) sets out the conditions for selection of properties that are eligible for a TAP. The properties indicated by the council do not meet these criteria as they would not be subject to a significant effect. However, they are protected from becoming significantly affected by the NEWT commitment.

Further detail: Appendix C

1.8.10 As noted above and confirmed in the Environmental Statement Update Report (Doc ref APP184.01.35), the houseboat moorings at Downings Roads Moorings do not meet the conditions in Non-statutory Off-site Mitigation and Compensation Policy para. 3.1.4; therefore they are not eligible for a TAP.

1.9 NEWT commitment

1.9.1 The NEWT commitment was clarified in the final CoCP Part A. Our response to request for information question 53.1 (Doc ref: APP163) clarifies how the contractor would be able to access the relevant information for all receptors, on a day-to-day operational basis, to ensure that the commitment will be adhered to for each parameter in the Environmental Statement. It also explains how compliance would be monitored and enforced.

1.9.2 The Environmental Statement considered all receptors within the defined study area (within 300m of the site). The assessment locations and the baseline data are considered to be adequate as explained in our oral submissions to the noise issue specific hearing (Doc refs: APP157, paras. 5.2.26 to 5.2.31, 6.2.4 to 6.2.8 and Section 8.3).

1.9.3 We set out our position with regard to vibration effects associated with cofferdam piling and NEWT compliance in our oral submissions (Doc ref: APP115.01, Section 4.1).

1.10 Use of Control of Pollution Act 1974 Sections 60 and 61

1.10.1 The council correctly states that we are seeking to use the Section 61 consent process as a key part of our construction noise management strategy. This was clarified in our oral evidence at the noise issue specific hearings (Doc ref: APP115.01, paras. 2.1.90 to 2.1.94 and Doc ref: APP157, paras. 5.2.19. to 5.2.25 and Appendix A). We tied the use of Section 61 consents in with the NEWT commitment, which in combination require the contractor to identify and implement any further reasonably
practicable mitigation to minimise levels further within the NEWT envelope.

1.11  **Noise Limits Discussion Paper**

1.11.1 The *Noise Limits Discussion Paper* has been superseded by Doc ref: APP188, *Noise Limits Paper*, which discusses our position on noise limits without prejudice. We have not responded to any comments that are no longer applicable. See also the summary of oral submissions to the hearing on 20 February 2014 (Doc ref: APP157, Appendix A, Section A.4).

1.11.2 The reasoning behind the 5dB increase in noise level between daily and monthly noise level is provided in Section 4 of the *Noise Limits Paper*.

1.11.3 The Examining Authority requested us to consider the imposition of noise limits. The paper explains that there are material risks to the deliverability of the project if limits are imposed at this stage.

1.11.4 Our response to second written question 29.8 (Doc ref: APP56) outlines why we believe that a period of one hour at night-time is appropriate. LB Southwark’s noise specialist supported the use of longer duration LAeq values in the assessment of construction noise (Doc ref: APP115.01, Section 5.3).

1.11.5 We do not consider the example of Hinckley Point C to validate noise limits to be justified in this context as Hinckley Point is not an urban environment (see *Noise Limits Paper*, para. 1.1.3).

1.12  **Off-site Mitigation Discussion Paper**

1.12.1 Our understanding of NPS noise policy, government noise policy and how the *Non-statutory Off-site Mitigation and Compensation Policy* is consistent with this is provided in Doc ref: APP186, Section 4, para. 4.2.5 and in our oral submissions (Doc ref: APP157, Section 3.2 and Appendix A).

1.12.2 The *Noise Limits Paper* discusses our position on off-site noise mitigation without prejudice.

1.13  **River Transport Strategy**

1.13.1 We have submitted a number of versions of the *River Transport Strategy* on 21 January 2014, 12 February 2014 and 3 March 2014. It has been updated following review of written representations provided by LB Southwark and other stakeholders (LB Southwark identifies particular submission dates in its 3 March 2014 submission) and following hearings such as the transport hearing on 24 January 2014 and the DCO hearings on 7 and 21 February 2014.

1.13.2 We do not intend to reiterate our position, however, the points below should be taken into consideration.

1.13.3 LB Southwark continues to refer to the figure 88 per cent in relation to river transport at Chambers Wharf. This figure has been taken out of context.
We committed to transport 100 per cent of the specified materials subject to derogations to the *River Transport Strategy* (Doc ref: APP207.02), with a target of 90 per cent. The figure 88 per cent in relation to Chambers Wharf is based on our response to first written question 16.3, which specifically relates to the ratio of all excavated material at Chambers Wharf to be transported by river and by road, not the ratio of specified materials to be transported by river and road.

1.13.4 The terms of reference and the timescales for decisions for the relevant authority and independent panel will be developed further in agreement with the relevant authority (*River Transport Strategy* Schedule 1, para. 3.2 and Schedule 2, para 3.2). The strategy and therefore the independent panel and relevant authority must have regard to the NPS. So while the strategy does state that independent panel will include a member with environmental expertise, this is a formality as all decisions under the strategy must be made having regard to environmental and social factors.

1.13.5 While it may not be possible to eliminate the use of HGVs as part of all derogations, the processes in the *River Transport Strategy* will prioritise avoiding the use of additional HGVs. The strategy also clearly shows that derogations must be no worse than the significance of effects identified in the *Environmental Statement* (and any updates). The relevant local authority is responsible for making decisions, either through contingency plans or unforeseen derogation requests, to establish what the hierarchy of options should be and the appropriate balance between cost-effectiveness, social and economic factors. It is not possible at this stage in the process to clearly define the hierarchy of options and this will be developed once the contractor is appointed. An overview of the process for minimising HGVs and examples of how it would work is set out in the *Environmental Statement Update Report* (Doc ref: APP208.01.06).

1.13.6 As stated in our 3 March 2014 responses to the request for information, the NPS review is no longer included in the *River Transport Strategy*.

1.14 *Draft Development Consent Order*

1.14.1 The majority of comments in respect of the *Draft DCO* were addressed in the *Draft DCO* submitted on 3 March 2014 and the accompanying drafting note. The following responses are provided with regards to the points raised by LB Southwark:

**Article 2**

1.14.2 The ‘completion of construction’ was addressed in the drafting notes.

1.14.3 We refer to all of our previous submissions with respect to the comments on maintenance.

1.14.4 The distinction between major/minor Requirements was removed from the revised *Draft DCO* of 3 March 2014.

1.14.5 We provided a response with regards to the ‘relevant planning authority’ in the *Statement of Common Ground* submitted on 13 January 2014 (Doc ref: APP84.15) and 12 February 2014 (Doc ref: APP116.14). Project-wide
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Requirement PW1 refers to ‘relevant stakeholder’, which may include LB Southwark as neighbouring local authority in relation to works at Earl Pumping Station and Blackfriars Bridge Foreshore. This would be at the discretion of the City of London Corporation and the London Borough of Lewisham as the relevant local planning authorities.

Article 7

1.14.6 Our position remains as per our previous submissions.

Highway permitting process

1.14.7 We explained our reasons for dis-applying the London Permit Scheme on a number of occasions, both orally and in written summaries of the hearings held on 20 January (Doc ref: APP102.01 Sections 3.2, 3.3 and 5.1), 24 January (Doc ref: APP102.05, Sections 9.1.6 to 9.1.34) and 6 February 2014 (Doc ref: APP115.02, Sections 6.2 and 6.8, paras. 6.1.1, 6.1.2).

1.14.8 In addition, we provided a detailed explanation in our written response to second written question 34.2 (Doc ref: APP61).

1.14.9 We issued a response by way of technical note to LB Southwark on 6 February 2014, followed by a meeting with the council’s traffic manager on 24 February 2014.

Risk of refusal

1.14.10 While we recognise that the council is seeking to assure us that the risk of technical refusal and refusal to allow works to proceed to programme is ‘negligible to nil’, there can be no certainty of delivering the works to programme while such a risk remains. We maintain that the only way of providing this certainty is the disapplication of the London Permit Scheme.

Timing

1.14.11 LB Southwark’s statement that it fully intends to co-operate with us in finalising the requisite permits is welcomed. However, its retention of the power to refuse and direct the timing of the works, although such powers might be exercised “very rarely”, still poses a significant risk that the works could be refused and therefore could impact on the construction programme. We therefore remain of the opinion that the disapplication of the London Permit Scheme is justified.

Detailed discussions to date

1.14.12 We welcome the broad agreement by the council with the principles of the bespoke highways works approvals process. It states that the consideration periods of 28 days for roads not on the strategic road network, and 42 days for roads that are on the strategic road network, is excessive and that under the London Permit Scheme, only one month will suffice for roads on or off the network.

1.14.13 Under the scheme, the minimum notification period for major works is three months, during which time the council must rule within one month of submission of an application for provisional advanced authorisation.
1.14.14 Even if approval is gained one month after submission, at the beginning of the mandatory three-month notice period works cannot commence until a further two months have lapsed; during which time, the risk of an overturn or alteration decision by the council exists.

1.14.15 A subsequent separate application for the permit itself is dependent on this. Therefore, if the council is proposing to alter the London Permit Scheme in this way, then that constitutes a disapplication of the scheme by definition.

1.14.16 We would reiterate that the consideration phases in the bespoke process are consistent with the bespoke Crossrail process and therefore are already familiar to a large number of local authorities.

CoCP Part A, Appendix C

1.14.17 LB Southwark made further comments on CoCP Part A Appendix C, to which we respond as follows:

a. C1.3.(iv): The initial notification of objection by the council to the Thames Water electronic transfer of notice submission can be communicated via the works comment/variation request via electronic transfer of notice/London Works.

b. C1.3(vi): We have no objection to amending the wording to “Street works and associated activities”.

c. C1.3(c)(i): We have no objection to adding “and other requirements raised by parties in the TLG [traffic liaison group].”

d. C1.3(d): We do not agree with the approval periods referred to in the manner suggested by the council. These periods refer to London Permit Scheme stipulations that only account for consideration, not notice. This is especially in relation to major works where, although one month is allowed under the scheme for consideration and approval for a provisional advanced authorisation, a further two months would still be required before works could actually commence. As our bespoke process timescales are consistent with the Crossrail bespoke process, we believe that councils are already aware of works operating under these timescales.

e. We welcome the proposal to reduce the approval periods for minor works (as defined by the London Permit Scheme) to three days to be discussed at the strategic traffic liaison group in May 2014.

f. C1.6: We do not agree to the removal of the word ‘strategic’ from the first part of the escalation process. The strategic traffic liaison group will be the first point of referral in such an event. The sub-regional traffic liaison groups will be the forum where any disputes are first raised and these will be referred to the strategic group by the sub-regional group.

g. We confirm that the escalation process and the entire bespoke process is only applicable until construction is completed.
1.14.18 We do not consider that the CoCP Part A, Appendix C requires amendment and the working aspects and arrangements will be included in the full process.

1.14.19 Regarding Draft DCO Schedule 17, see our previous submissions in particular the Written summaries of the cases put orally at the hearings held on 6, 7 and 21 February 2014 (Doc refs: APP115.02, APP115.03 and APP158).

Draft DCO Requirements

1.14.20 We provided detailed responses to LB Southwark’s comments on the project-wide and site-specific Requirements in the Statement of Common Ground (Doc ref: APP84.15, 13 January 2014 and Doc ref: APP116.14, 12 February 2014). The Update to London Borough of Southwark Statement of Common Ground (Doc ref: APP159.02, 3 March 2014) considered LB Southwark’s 12 February 2014 submissions with respect to the requirements and signposted to where responses were previously provided.

1.14.21 Our position remains as previously stated with regards to project-wide Requirements PW4 (Site specific phasing) and PW8 (Air Management Plan). Requirement PW12 (Interpretation Strategy) was revised on 3 March 2014 to include a reference to the “site specific heritage interpretation strategy” to address this anomaly.

Project-wide Requirements

1.14.22 Following discussion with the Environment Agency, the council no longer requires to be consulted on the details of Requirement PW14 (Groundwater and Dewatering Monitoring and Management).

1.14.23 We provided a detailed response with regards to PW16 (River Transport Strategy) and our positions remains as set out in the Update to LB Southwark Statement of Common Ground (Doc ref: APP159.02, Appendix A, 3 March 2014).

Site-specific Requirements

1.14.24 Our position with respect to the site-specific Requirements for Chambers Wharf remains as set out in the Draft DCO submitted on 3 March 2014. We responded to all of the issues on p. 39 of this submission in previous documents (Doc ref: APP84.15 and APP116.14).

1.14.25 LB Southwark’s proposed Requirement regarding submission of detailed Site works parameter plans raises substantially the same issues to those we have commented on previously in respect of project-wide Requirement PW4 (Site specific phasing). We responded to this issue in Written summaries of the cases put orally at the hearings held on 21 January 2014 (Doc ref: APP102.02, Section 5.1). We have added to Section 4, Site layout, of the CoCP Part B for Chambers Wharf that: “The contractor shall consult the local authority during the development of the site layout in accordance with section 2.7 of the CoCP Part A. This shall be for the following construction phases; site set up, shaft construction, tunnelling, secondary lining and site demobilisation”. Local authority approval of site parameters for each phase of construction is unnecessary and would
introduce unacceptable risks of delay and may compromise construction health and safety.

1.14.26 The Section 61 process would ensure local authority approval of the noise generating aspects of the layout and this, combined with all the guidance and standards in the CoCP, would ensure that impacts are minimised. The contractor would retain some flexibility to lay the site out to suit the selected methods of work, plant and equipment. This is in line with the approach for other major infrastructure projects such as Crossrail and the residential development approved and implemented at Chambers Wharf. In addition, restrictions are imposed through the CoCP Part B relating to site layout, in particular Section 4.

1.14.27 In relation to construction-related Requirements, compliance with the CoCP is secured by way of Requirement PW6 (Part A) and CHAWF1, SHTPS1 (Part B), which is considered an adequate level of enforceability. We have previously provided detailed responses regarding LB Southwark’s request for further detail on site layout (Doc refs: APP84.15 and APP116.14).

1.14.28 LB Southwark requests additional Requirements for Shad Thames Pumping Station and Earl Pumping Station based on the Requirements requested for Chambers Wharf. The submission also refers to comments on Blackfriars Bridge Foreshore, for which no specific comments are provided. Our response to these additional Requirements remains as set out in Doc ref: APP84.15 and APP116.14. The additional detail requested by LB Southwark is either provided in other Requirements and the CoCP, or will be provided once the contractor is appointed. The rationale of this approach has been explained to the council and justified a number of times in written submissions and hearings throughout the examination.

1.14.29 Accordingly, our position regarding DCO Requirements remains as set out in the 3 March 2014 Draft DCO and accompanying drafting notes (Doc ref: APP177).

1.15 **Code of Construction Practice**

**Part A: General Controls**

1.15.1 As detailed in para. 1.9.1 above, based on further comments received at the DCO hearing on 21 February 2014, the final CoCP Part A was updated to provide further clarification with respect to the NEWT commitment.

1.15.2 Subsequent to workshops held on 27 and 28 February 2014 and taking account of comments and feedback received on the highway approval process, the CoCP Part A, Appendix C was further updated (see paras. 1.14.7 to 1.14.16 above).

**Part B: Chambers Wharf**

1.15.3 With respect to comments on the CoCP Part B for Chambers Wharf, LB Southwark continues to state that the mitigation it outlines is too vague. We have engaged with the council on the development of the CoCP since
2010 and have welcomed feedback on drafting and incorporated it wherever appropriate. We do not agree with the council’s statement that the CoCP Part B for Chambers Wharf does not have the certainty, detail or sophistication to deliver of works at Chambers Wharf. Reference should be made to the Written summaries of the cases put orally at the hearings held on 21 February 2015 (Doc ref: APP158, Section 5.1) and updates to the CoCP Part B (Doc ref: APP205.01).

1.15.4 The CoCP Part A is the main control and mitigation document not just for Chambers Wharf but every project site and the Part Bs provide specific mitigation and controls including those determined from the Environmental Statement process.

1.15.5 The level of control and mitigation detailed in the CoCP is appropriate for the project and is considerably more detailed than on comparable projects including Crossrail and the Northern Line Extension. The detail in the London Olympics, Crossrail and London borough codes of construction was used and enhanced for our CoCP.

1.15.6 On 14 January 2014, we met with LB Southwark to review its comments on the CoCP. During this meeting, the council suggested changes to the wording of text, indicating a preference for the CoCP to state: “the contractor will use best endeavours to position required offices and storage containers or structures in the site to serve as noise barriers, having regard to effects on daylight and sunlight”. This was the modified text that the council put forward in these discussions for inclusion.

1.15.7 LB Southwark’s comments regarding noise enclosures are considered unreasonable. The CoCP does not repeat the consequences of non-delivery of requirements throughout. This is clearly outlined at the start of the CoCP Part A and is enforceable through a number of measures detailed therein. Best practicable means is defined in the CoCP and the Control of Pollution Act 1974.

1.16 Section 106 Unilateral Undertaking

Overview

1.16.1 We carefully considered all the Section 106 proposals put forward by LB Southwark and included a number of these proposals where deemed reasonable and in line with the NPS tests. This is in recognition of the possible impacts in the area around Chambers Wharf and a wider area in the borough in a genuine effort to reach an agreement with the council.

1.16.2 The progress in negotiating the Section 106 agreement is set out in the Update to London Borough of Southwark Statement of Common Ground (Doc ref: APP159.02, 3 March 2014). The issues raised in the 3 March 2014 submission were subject to these negotiations. In particular, it should be noted that we provided a detailed written response dated 30 January 2014 to the council in advance of the meeting on 31 January 2014 (signed Statement of Common Ground, Doc ref: APP116.14, Appendix D, 12 February 2014). In that response, we explained our position on the council’s latest proposed amendments to the draft
agreement, which reflected a number of the ‘key matters’ raised in the 3 March 2014 submission. LB Southwark’s submission makes no reference to that response. For ease of reference, it is attached to this document (see Appendix A).

1.16.3 The update of the LB Southwark Statement of Common Ground (Doc ref: APP159.02, 3 March 2014) also set out clearly the response to LB Southwark’s issues regarding the discussions on the agreement, the outstanding matters and reasons why the agreement was submitted as a unilateral undertaking.

1.16.4 We did carefully consider the “proposals to attempt to reach agreement” referred to in the council’s submission (even though these were not put to us in writing and the precise basis on which agreement could be achieved was not made entirely clear). We responded to the council on 6 February 2014, following a further review of these proposals as requested by LB Southwark. The response clearly stated that the council’s proposals were not accepted for the reasons previously expressed (see Appendix A).

Community Impact Fund/Schedule 4: Community Enhancement Fund

1.16.5 Our reasons for not accepting the higher level of contribution for the Community Enhancement Fund sought by LB Southwark (ie, £3.5m and later £3m) were provided to the council on 30 January 2014 (see Appendix A). In considering LB Southwark’s proposal, we took into account the information provided in both the council’s Mental Well-Being Impact Assessment: Screening Report and LB Southwark’s December 2013 justification under the heading ‘TTT – LB Southwark - Community Impact Mitigation - Need and Scope’ (included in the 3 March submission). It should be noted that neither of these documents explain the basis on which the contribution sought by LB Southwark was calculated or why the amount we agreed to was considered insufficient.

1.16.6 Furthermore the Community Impact Mitigation: Need and Scope document included as part of the council’s submission acknowledges that: “As well as specific mitigation measures for specified predicted impacts, it is clear that in socio-economic terms, long term major infrastructure projects do generate a wide variety of “intangible”, relatively difficult to quantify, impacts on local communities’ wellbeing and quality of life.”

1.16.7 As presented in numerous written and oral submissions throughout the examination, we do not accept that we have not properly considered or assessed effects on health and wellbeing or cumulative or in-combination effects thereof (see Doc ref: APP168, 3 March 2014).

1.16.8 All measures provided in the Section 106 Unilateral Undertaking submitted on 3 March 2014 were included to address potential effects on the community that were not identified as being potentially significant in the Environment Statement, as verified by the Environment Statement Update Report of 3 March 2014. The Section 106 measures need to be seen in the context of all the mitigation measures that we have committed to, including those in the final CoCP Part A, the Non-statutory Off-site
"Mitigation and Compensation Policy," the legal agreement and Section 106 Unilateral Undertaking.

1.16.9 The duration of the fund as set out in the Section 106 Unilateral Undertaking (Schedule 4, para. 1) is considered appropriate as it is directly related to the possible impacts of the project.

1.16.10 LB Southwark suggests that the entitlement to submit an application for a grant from the Community Enhancement Fund should be determined by distance such that any resident business or organisation located within a 300m radius around the site would be eligible. Under Schedule 4, para. 3, the following are entitled to make applications for grants from the fund:

a. any local residents organisation or local business organisation which the council has notified to the undertaker as a member of the community liaison working group
b. any of the local schools
c. other individuals or organisations invited to the community liaison working group by the undertaker or other members of the group (including the council).

1.16.11 We consider that this provision provides an appropriate scope of eligibility to make applications and indeed gives the council the ability to invite persons it considers ought to be able to make an application for a grant.

1.16.12 LB Southwark’s submission also repeats its position in relation to council resourcing. We made clear our reasons for not accepting the council’s proposed implementation officer in our position papers dated 30 January 2014, as recorded in the Update to the LB Southwark Statement of Common Ground and our 3 March 2014 submission.

1.16.13 Similarly, the reasons why we do not accept employment and skills target and penalty fines, the HGV penalty fines and additional quiet space obligations were explained to the council in the course of negotiations including at various meetings and written responses, eg, Appendix A.

1.16.14 We consider therefore that the obligations included in the submitted Section 106 comply with the NPS, particularly when considered as a package of measures. Furthermore no evidence has been provided to demonstrate what the substantial mitigation this fund would be used for or how this would be directly related to the proposed development.

Community liaison working group

1.16.15 The purpose and role of the community liaison working group included in the Section 106 agreement is clearly defined in para. 2 of Schedule 3. Draft provisions relating to the group were provided to LB Southwark on 3 January 2014. The council provided a mark-up of the Section 106 agreement including certain proposed amendments on 22 January 2014. These provisions were discussed at the meeting on 31 January 2014, although the council’s position on certain aspects of the provisions was not entirely clear to us from those discussions. We had regard to LB Southwark’s proposed amendments to the working group provisions. It should be noted that because an agreement was not possible on the
Section 106 agreement, certain provisions relating to the working group had to be revised for the purposes of drafting the Section 106 Unilateral Undertaking. For example, it is not appropriate to have dispute resolution provisions in a unilateral undertaking.

1.16.16 LB Southwark made a number of specific points about the community liaison working group provisions in its 3 February 2014 submission. A number of the issues raised relate to matters that are adequately dealt with in other legally enforceable documents such as the CoCP for the community liaison plan and Non-statutory Off-site Mitigation and Compensation Policy for a complaints procedure and independent arbitration. These are not included as they would be an unnecessary duplication of these measures.

1.16.17 The primary role of the community liaison working group would be as a means of communicating information to the local community as well as receiving and, where possible, answering any issues raised by the community representatives on the group. In addition, the group would consider applications for projects to be funded by the Community Enhancement Fund contribution. To provide the opportunity for this group to be as effective as possible, its role and purpose as defined in the Section 106 is not too prescriptive so that it may be determined by the group itself and intuitively take account of any necessary changes during the construction works.

1.17 Response to Councillor Al-Samerai

1.17.1 While Cllr Al-Samerai acknowledges that the Section 106 agreement includes a contribution towards the removal of the Lower Road Gyratory, it should be noted that this junction was not assessed as having any significant impacts from construction. Similarly no impacts from project construction traffic on the Rotherhithe roundabout junction were identified in the Transport Assessment. The council’s officers have not identified this as a junction that would need mitigation during construction.

1.17.2 The concern in relation to Fountain Green Square residents’ parking has not been raised by the council’s officers and was not identified in the Transport Assessment. All the neighbouring streets to Chambers Wharf are subject to controlled parking enforceable by the council and the contractor will be required to obtain approval from the council for a site-specific construction workforce travel plan (DCO Requirement CHAWF10) and then comply with this travel plan that will restrict travel of construction workers to public transport only. There are adequate controls, enforceable by the council, to ensure that there is no impact on the parking at Fountain Green Square, and there would be no direct impact from the construction works.

1.17.3 For these reasons, we do not consider that these additional obligations would meet the NPS tests as they are not directly related to the proposed works and are unnecessary in planning terms.
1.18  **Response to legal submissions**

1.18.1  A response to LB Southwark’s legal submission in Section 14 with respect to procedural options available to the Examining Authority and Secretary of State to achieve a switch of drive direction between Chambers Wharf and Abbey Mills Pumping Station is provided in Appendix B.

1.18.2  This response was prepared by Michael Humphries QC.
Appendix A: Our response to LB Southwark’s comments on the draft Section 106 Agreement

A.1 Our response to LB Southwark’s comments on the draft Section 106 agreement

A.1.1 Table A.1 sets out the LB Southwark’s outstanding issues relating to Section 106 obligations, as explained in the email and marked-up version of the draft Section 106 agreement provided by LB Southwark legal services on 22 January 2014 and revised request for Lower Road gyratory dated 8 January 2014. Our response to each of these matters is set out in the table and where a proposed obligation is not accepted, an explanation is provided.

A.1.2 This is not intended as a comprehensive response to all the detailed drafting in the revised draft Section 106 agreement. Detailed drafting points will be addressed at the meeting on 31 January 2014 through solicitors.

A.2 LB Southwark email dated 22 January 2014 relating to noise insulation requests

A.2.1 We acknowledge the request for funding of higher specification double glazing for Wrayburn House from Mr Larry Broomhead (resident of Wrayburn House) forwarded on his behalf by the LB Southwark legal officer. This will need to be dealt with through the procedures under the Non-statutory Off-site Mitigation and Compensation Policy, as detailed in the document issued on 13 January 2014. The panel that will consider applications for compensation is to be set up shortly, as explained to Mr Broomhead and the council at the meeting on 17 January 2014. We would point out, however, that since this meeting and discussions with Mr Broomhead, the Chair of the Dickens Estate Tenants Association has advised us that Mr Broomhead does not represent the association. We therefore met with the Chair on 30 January 2014 to discuss this matter further.
Appendices

Table A.1 Our response to LB Southwark comments on the draft Section 106 agreement

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<td>1.</td>
<td>Employment and skills</td>
<td>In our response issued to the council on 10 December 2013, we provided our reasons for not accepting these provisions and our position remains the same. The detailed consideration of these is set out in the relevant sections below in line with the issues listed in the council's letter dated 22 January 2014. As previously discussed the targets set out in the draft agreement are realistic and achievable based on experience of Crossrail and the Lee Tunnel. We do not accept the principle of penalty fines for not meeting targets. The obligations on the employer and contractor with respect to skills and employment must be consistent with employment and procurement law. We believe that an approach of setting realistic and achievable targets is appropriate in that respect. We note that Southwark’s planning policies are the stated reason for the need for these provisions, although the policies are not specified. There are no obvious adopted policies relating to securing local employment relating solely to construction works. For instance Core Strategy Strategic Policy 10 refers only to existing or new businesses or new development providing employment floorspace or hotel and catering uses and refers to but does not specify targets for associated construction employees for these developments. The Adopted Section 106 supplementary planning document does therefore include potential obligations to be sought for construction employment but none of these include the provisions requested and the guidance relates primarily to new development that creates new employment floorspace or housing which is not applicable to this project. This is therefore consistent with the relevant adopted planning policy that the supplementary planning document supplements. As presented in our written representations to the council, the Examining Authority and at the issue specific hearings, we consider that the provisions in the Section 106 provide adequate and sufficient certainty to the council that the employment and skills obligations</td>
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1.1 | “The Council has reviewed the proposed drafting in respect of the employment provisions and notes that you have incorporated part of the drafting provided by the council, by way of the email circulated by Gordon McCreath on the 9 December 2013. It is noted that several key aspects have been deleted such as the overarching compliance requirement in regards to the Skills and Employment Strategy, employment targets, penalty default targets and apprenticeship provisions. The Council’s position on these matters was clearly reflected in the drafting appended to the email on the 9 December 2013. It therefore maintains its position, that the specified targets and penalties are required in order to provide the council with the comfort that local residents will benefit from the development as required by Southwark planning policies. These obligations are considered necessary to secure employment obligations and have therefore been re-instated, albeit with further amendments.” | |
Appendices

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<td>are secured and will be complied with. The imposition of penalty fines to fund a contribution for unspecified community projects is unreasonable and not directly related to the development proposed. For the reasons above, we do not agree that a mechanism for default penalty payments is required to meet the council's adopted planning policies or the NPS policies and would not meet the tests in the NPS (para. 3.1.7 as not necessary to make the development acceptable in planning terms.</td>
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### 2. Skills and Employment Strategy

#### 2.1 “The Skills And Employment Strategy commitment to safeguarding employment opportunities generated by the scheme for residents of impacted boroughs should be evidenced and translated into tangible targets that can be secured and enforced against should the need to arise. The deletion of the overarching provision for compliance with the Skills and Employment Strategy (SES) can only be agreed if the safeguarding and delivery and operation of the Project Hub and the Local Opportunities and Outreach Group are expressly included in the drafting.”

The revised Section 106 agreement issued on 3 January 2014 that was used as the marked up version with LB Southwark's comments includes specific provision for the Project Hub to be provided at the development site by the contractor.

The types of events LB Southwark proposes for delivery at the project hubs/project offices are consistent with our current expectations, and all except the items listed in sub-para. D) (i) and (viii) of Schedule 1, 4(a) in the marked up version provided by Southwark are already included in the agreement (see the definition of “Project Hub” in clause 3.1).

The adoption of a six-month time limit is unreasonable since efforts to coordinate local skills and employment activities could be accommodated in alternate locations prior to completion of project hubs. Further, there remains the need for flexibility to deliver events in areas accessible to the public, for JCP clients or at local further education institutions and specialist training centres (eg, Tunnelling and Underground Construction Academy), so prescribing the role of these hubs in advance would remove such flexibility to provide better provision in more appropriate locations.

It is our intention to establish the governance structures set out in the Skills and Employment Strategy well in advance of the contract start date, however, the prescription of a six-month time limit is inflexible and does not account for any potential delays in the procurement process or project timetable.

The provisions proposed by the council do not accord with any adopted local plan policy or the NPS and are not considered to meet the NPS tests (para. 3.1.7) as not necessary to make the development acceptable in planning terms.
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<td><strong>3. Sustained employment targets</strong></td>
<td>As stated above, <em>Core Strategy</em> Strategic Policy 10 relates primarily to new employment developments and does not set any targets for local employment. The Section 106 supplementary planning guidance only provides targets for local employment, both for jobs during construction and for the completed employment development, as percentages based on the net increase in employment floorspace. This is clearly not applicable to this project or the works proposed at either of the sites in LB Southwark as no employment floorspace would be created.</td>
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<td>“While it is the council's practice to include quantifiable targets within the Section 106 obligation agreements that trigger this aspect of planning policy, it will agree to commit to at least 10 per cent of FTE jobs (1FTE job being equivalent to one person employed full time for 12 months) being filled by previously unemployed Southwark residents and that these posts are sustained for at least 6 months.”</td>
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<td>4. Default payment</td>
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<td>4.1</td>
<td>“The Council’s default provisions are triggered in the event of under-performance and are required to secure compliance and give the requirement some “teeth” against the Developer/Contractors. These provision[s] form part of the council’s planning policy and are a standard form of obligation routinely applied to all developments to mitigate planning harm. There is no justification put forward to date as to why this scheme should be treated in any different to other large developments that trigger the employment requirement in respect of planning obligations. This obligation has therefore been re-instated [in the LB Southwark issued mark up agreement] and you will note that the previous two sets of training and employment targets have been merged into one set of targets.”</td>
<td>These items are not agreed; see our response in row 1.1 above and previous response issued on 10 December 2013. It is not accepted therefore that we have provided no reasons as to why these provisions are not accepted. The proposed development is a Nationally Significant Infrastructure Project and by definition therefore is different to other developments more routinely dealt with by LB Southwark. As stated above in row 1.1 there are no adopted local plan policies that are specifically relevant to this project in respect of employment opportunities. For the reasons above, and in row 1.1, we do not agree that a mechanism for default penalty payments is required to meet the council’s adopted planning policies or the NPS policies and would not meet the tests in the NPS (para. 3.1.7) as not necessary to make the development acceptable in planning terms.</td>
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<td>5. Apprenticeships</td>
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<td>5.1</td>
<td>“The Council can confirm that 6 month duration for an apprenticeship is unacceptable and that anything less than 12 months devalues the purpose of an apprenticeship. This period must be extended for the duration of a year as an absolute minimum.”</td>
<td>The role of the skills planning group will be to examine skills shortages and training requirements on a project wide basis and work with further education providers, local authorities and others to put in place the necessary training solutions to meet these needs. However, given the broad variety of roles, the dependency on further education colleges delivering courses that meet employers' needs and the contractual requirements on contractors to engage with quality provision it would be premature to pre-empt the nature of those courses, the duration of all apprenticeships, the location of their delivery in</td>
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<td>a single borough of London and therefore the number of residents who might choose to take part at this early stage. The proposed duration of 12 months is not supported by the Section 106 supplementary planning guidance, the Core Strategy policy or the NPS. This is also not consistent with the nature of the varying types of construction jobs within any site or across the project that will be required for this project and there would be no certainty of this being able to be met therefore. This is not therefore considered to meet the NPS tests as not reasonably related in scale and kind to the proposed development having regard to the nature of employment required at worksites.</td>
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6. Education

6.1 “Proposed obligations have only partly been accepted in regards to in respect of Riverside Primary School, St Joseph’s RC Primary School and St Michael’s College. Current drafting does not include any contribution for installation of noise, air pollution and disturbance buffer St Michael’s School or St Joseph’s School. S106 also does not contain the temporary air conditioning units or funding of the provision for teaching assistants, or secondary/triple glazing and air conditioning for St Joseph’s and St Michael’s Schools. Noted that this was intended to be covered in Trigger Action Plans (TAP) and further detail in CoCP and Noise Insulation and Re-housing policies. Council has not been provided with sufficient comfort that the draft Unilateral We have provided extensive additional information on the proposed TAPs in material issued to the Examining Authority and in the meeting with the council, the noise consultants for the council and Save Your Riverside and the Temple Group. This matter has been subject to a number of responses to questions and examination at issue specific hearings and was subject to further examination at the noise issue specific hearing on 4 February 2014. It is not accepted therefore that insufficient information has been provided. At the previous meeting with the council on 8 January 2014 to discuss the draft Section 106 agreement, the council accepted that there were not likely to be effects on St Joseph’s School. St Michael’s College, at the meeting also attended by the council, made it clear that there were no possible or practicable means that noise insulation could be provided for the gym and temporary classrooms or feasible means of providing alternative outdoor play areas. As previously advised there are no significant effects identified in our Environmental Statement for either of these schools and it is also not considered likely that there would be effects that would be eligible for a TAP since the new development will provide an effective screen to any perceptible noise or dust from our construction site. In recognition of the sensitivity of schools we have agreed in good faith to provide contributions that relate to all three schools for the Wellbeing Impact Mitigation, Safer Routes to Schools, Bevington Street Play Space and improvements to Chambers Street.
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<td>7.1</td>
<td>&quot;Acknowledge TWUL position regarding not agreeing contribution for King’s Stairs Gardens and Paradise Street and would welcome discussion regarding an alternative location to provide the quiet area&quot;</td>
<td>The response provided on 10 December 2013 clearly set out the reasons why this contribution was not agreed which the council acknowledged at the meeting on 8 January 2014. The position has not changed that there should be an alternative location. The contributions agreed for quiet spaces and landscaping improvements in the area have been agreed as addressing the ‘soft mitigation’ in acknowledgement of the sensitivity and perceived effects. These contributions are all in addition to TAPs for identified properties, the CoCP and all the other measures committed to manage effects from the construction site and construction traffic. It is not considered necessary therefore for any additional contributions as this would not meet the NPS tests in terms of not being fairly and reasonably related in scale and kind to the proposed development or reasonable or necessary to make the development acceptable in planning terms in the light of the measures that are to be provided in excess of the identified significant effects in the Environmental Statement.</td>
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**Appendices**

**7. Creation of quiet spaces**

7.1 “Acknowledge TWUL position regarding not agreeing contribution for King’s Stairs Gardens and Paradise Street and would welcome discussion regarding an alternative location to provide the quiet area”

**8. Penalty scheme for HGV compliance**

8.1 “Council notes justification previously put forward by TWUL in respect of compliance secured through DCO Requirement but remains of the view that a penalty scheme" As LB Southwark has stated this has previously been responded to, both in the paper issued to the council on 10 December 2013 and in the examination hearings. Our position remains the same. The council’s proposed provisions at Part 7 of Schedule 1 would clearly duplicate controls already enshrined in the DCO through the Requirements. It is
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<td>noted that no new issues relating to this matter have been raised by LB Southwark. This is not therefore considered to meet the NPS tests as not necessary to make the development acceptable in planning terms and would not be directly related to the proposed development, as the fines would not be used for mitigating the non-compliance from these works but on unspecified projects in the borough. The provisions would not be reasonable as would not provide more incentive for compliance than through compliance with the relevant DCO.</td>
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9. Community impact fund

9.1 “Note that drafting has replaced with Community Enhancement Fund to be operated through a Community Liaison Working Group to provide a total contribution of £1M which is substantially below the requested £3.5M and is not therefore accepted by the council. The Council is agreeable to this sum being reduced to £3M.”

LB Southwark has provided no basis for the need for or how this sum of money for this contribution is derived, as it does not relate to any identified projects or directly to any identified effects.

We have recognised the sensitivity of lesser effects on amenity and consider that in addition to all the other contributions and committed measures to control these effects. The sum that has been agreed to be provided for the Community Enhancement Fund is fairly and reasonably related in scale and kind to the proposed development. We do not agree that an increase of contribution sought by LB Southwark would meet the NPS tests in that in would not directly relate to the development, be fairly and reasonably related in scale and kind to the proposed development or reasonable in all other respects.

10. Schedules 4 and 5

10.1 “Schedule 4:
- CLWG provisions set out in schedule 4 does not include any form of dispute resolution.
- What requirements will be placed on the PPM, will criteria for appointment be set out in agreement”

The Section 106 agreement includes a dispute resolution provision that is applicable to all the provisions in the agreement.

Requirements and criteria for the regime are a contractual matter however these will have to include the responsibilities for ensuring that all the DCO Requirements and Section 106 obligations are complied with. It is not necessary to prescribe criteria for the contractor’s PPM in the Section 106.

10.2 “Schedule 5: These matters will be discussed at the meeting on 31 January 2014.”
# Appendices

## Responses to third-party submissions on 3 March 2014

No | LB Southwark position | Our response |
--- | --- | --- |
| | • The purpose of the Community Enhancement Fund is not expressed in the original terms proposed by the council which focuses on economic, social or environmental well-being including health and well-being of local residents | |
| | • What additional criteria will be provided to the CLWG in making such decisions, what are the triggers? | |
| | • Do you have a figure in mind for the Normal Maximum Annual Sum cap?” | |

### 11. Council resourcing

#### 11.1 “Council notes that the draft does not include the Implementation Officer post. TWUL has previously expressed that this is considered to duplicate the proposed mitigation and compensation policies. This was discussed at the meeting held on the 8<sup>th</sup> January 2014 and the council thought that the agreement had been reached on this inclusion of this obligation. Can you confirm the position?”

In our response provided on 10 December, and in discussions at the meeting on 8 January we did not accept the inclusion of this obligation.

We have agreed the contribution for a Section 106 obligations monitoring officer, which is in accordance with Southwark’s adopted Section 106 supplementary planning guidance. There is no policy requirement, either in the local plan policies or the guidance or the NPS for the role requested. Any project management or implementation costs should be included as part of the relevant contribution for the projects funded and should not therefore be duplicated as was stated at the meeting on 8 January.

### 12. Transport

#### 12.1 “Lower Road Gyratory contribution request of £850,000 paper dated 8 January sets out LB Southwark’s reasons why the amount of this contribution should be increased to that”

It is not clear from the information in the paper what amount is now being requested. The LB Southwark markup of the draft agreement includes their original requested figure of £850,000; however, the paper appears to conclude on the need for this contribution to implement a specific part of this project which are estimated as £700,000.
Appendices

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<th>LB Southwark position</th>
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<td>requested”</td>
<td>We set out in our response issued on 10 December 2013 the commitment to a contribution of £250,000 toward the plans to remove the Lower Road gyratory as part of wider improvements to provide safer cycle routes in the area, to the extent that those plans relate to the project. The paper provided does not clearly set out why the whole of the £700,000 for the specific works would directly relate to the proposed project. As has been stated in a number of responses to questions, examination at hearings and meetings with the council’s highways officers, we do not accept that there would be any significant effects on any junctions in Southwark as a result of project construction traffic. This is clearly set out in the submitted Transport Assessment and clarified in the various additional information provided during the examination. It is noted that the council acknowledges the driver training and awareness measures in the CoCP as welcome but states that physical works are needed. The ‘normal’ construction works operation would add approximately 11 to 12 HGV movements through this section of Lower Road (north of Plough Way) each hour – six in each direction. This roughly 0.5 per cent of the total traffic flow. In an all by road scenario, if it happened in the peak month at Chambers Wharf, a one month in six year possibility, this would increase to 30 to 35 HGV movements or about 1.5 per cent of total traffic flow. The stated overall gyratory scheme cost is £5m to £7m. 1.5 per cent of that (even if the all by road scenario was a concern) is £75k to £105k. Proportionately, therefore, in relation to the increase in vehicle movements, the appropriate contribution would be approximately £100k. Allowing for the sensitivity and our stated intentions to safety of cyclists, the contribution of £250,000 is considered fairly and reasonably related in scale and kind to the proposed development Any increase as requested would not therefore demonstrably meet the NPS tests as being fairly and reasonably related in kind to the proposed development, would not be directly related to the proposed development or reasonable in any other respect.</td>
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Appendix B: Our response to LB Southwark’s legal submissions

B.1 Our response to Section 14 of LB Southwark’s 3 March 2014 submissions

B.1.1 At Section 14 of the LB Southwark’s further written submission dated 3 March 2014, the council made legal submissions on its proposed alternative direction. This note responds to those legal submissions. The headings in this note correspond to those in Section 14 of the submission for ease of reference.

‘Minded to approve’ letter

Summary

B.1.2 In general it can be said that many of the legal submissions in the ‘minded to approve’ letter section of the LB Southwark submission are entirely consistent with our oral submissions made on 15 November 2013 and written summary (Doc ref: APP32.01, 26 November 2013).

B.1.3 Under the heading ‘summary’, LB Southwark accepts that the Examining Authority will not use its rule 17 powers to require Thames Water to promote an alternative drive strategy as requested by LB Southwark in November 2013. Doc ref: APP32.01 (p. 3) made it clear that rule 17 should not be used to circumvent the requirements of regulation 17 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and that those powers could not be used to force Thames Water to promote an alternative scheme to that it had applied for.

B.1.4 The LB Southwark legal submissions then turn to the procedural precedent for issuing a ‘minded to grant letter’ the effect of which would be to "require the Applicant to amend its application so as to put information before the SoS allowing him to consider (and consent) the Alternative Proposal". Thames Water’s APP32.01 (page 5) made it clear that it was open to the Secretary of State would be to issue a ‘minded to refuse’ letter.

B.1.5 The difference in emphasis between ‘minded to grant’ and ‘minded to refuse’ is subtle but important. It would seem inappropriate that the Secretary of State could be ‘minded to grant’ an application that was not actually before him, because it needed substantial amendment; it seems rather more appropriate to suggest that he might be ‘minded to refuse’ the application before him unless an amendment in that application were brought forward to remedy any perceived deficiency. The circumstances are clearly different from those that faced the Secretary of State where he issued a ‘minded to grant’ letter on the Able Marine Energy Park development, in that all that was required in that case was additional information on the application before the Secretary of State (see below).

B.1.6 The conclusion to be reached appears to be that LB Southwark accepts that Thames Water cannot be forced to make a substantial amendment to
its application, but can be informed that the current application may be refused unless amended; that reflects our position at the issue specific hearing on 15 November 2013 and in APP32.01.

**Capacity**

B.1.7 LB Southwark submits that the Secretary of State has the ‘legal capacity’ to grant development consent on terms different to those on which it was applied for. This is clearly correct and is entirely consistent with our oral submissions on 15 November 2013 and its written summary in Doc ref: APP32.01 (p. 1), which stated that “It is absolutely clear that, under section 114 of the Planning Act 2008 (‘the 2008 Act’), the Secretary of State has power to make a development consent on terms that are other than those contained in the draft development consent order applied for.”

B.1.8 It is argued that “whether to accept such changes would be up to the decision-maker on a case-by-case basis and subject to the principles of fairness and reasonableness”. That is correct and, again, clearly consistent with our previous submissions.

**Procedure applying**

B.1.9 LB Southwark recognises that, on any substantial amendment to the application, there would need to be an addendum to the Environmental Statement and the potential need to follow the procedure in the Infrastructure Planning (Compulsory Acquisition) Regulations 2010. Once again, this appears simply to reflect the points made in our oral submissions on 15 November 2013 and its written summary in Doc ref: APP32.01.

B.1.10 What the LB Southwark submissions do not tackle, or indeed challenge, is our evidence that the process of amending the application to allow for proper consultation, environmental impact assessment and land referencing, etc, would take approximately 20 to 24 months. It should be emphasised that this is not the delay until a determination could be made, but the delay until we could bring forward any amendment. Any period for the consideration and determination of an amended application by the Secretary of State would, therefore, be in addition to the 20 to 24 months. This is important in the context of the clear advice in the NPS that Department for Environment, Food and Rural Affairs concluded that “Thames Water should be asked to proceed urgently with a tunnel-based solution to resolve the problems in London” (para 2.6.24) and that “Given the urgency of need for infrastructure of the types covered by this NPS, set out in Part 2 of this NPS, the decision maker should start with a presumption in favour of granting consent to applications for waste water NSIPs.” (para 3.1.2).

B.1.11 The LB Southwark submission states that a written process requiring consultation on the information we provided on the ‘alternative proposal’ could be followed. Reference is then made to paras. 55 to 57 of the Secretary of State’s letter on the Able Marine Energy Park proposal. It needs to be recognised, however, that the Secretary of State’s ‘minded to grant’ letter referred to in the LB Southwark submission related to additional information on (i) the ‘substantial risk’ identified by Natural
England that ecological compensation measures would not work and (ii) assurances from the applicant that the project would not jeopardise future operations of the Killingholme Branch railway (see paras. 56 and 6). The additional information required by the Secretary of State in respect of that application, before he felt able to grant development consent, is therefore very different from the circumstances put forward by LB Southwark where a substantial amendment to the application itself is contemplated requiring reconsultation, environmental impact assessment and additional land-take. Although there is no prescribed procedure for such a post-examination (pre-consent) amendment, it is simply not clear whether parties would be afforded some additional opportunity to make oral representation in relation to the amended application. If they were, then this would further add to the delay already identified.

**Requirement for consent for the alternative proposal**

B.1.12 This part of LB Southwark's legal submissions contemplates circumstances where the Secretary of State does not wish to issue a 'minded to grant' letter or to refuse, and suggests that the Secretary of State could, instead, grant development consent, "subject to a project-wide Requirement in the DCO compelling the applicant to obtain consent for the Alternative Proposal 'prior to commencement of the authorised development'."

B.1.13 It is not absolutely clear from the LB Southwark submission whether the tunnel between Chambers Wharf and Abbey Mills Pumping Station is to be granted development (in whole or in part) under this suggestion, subject to the 'suspensive' Requirement, or whether that part of the tunnel is to be refused development consent entirely. In other words, it is not clear what works would remain in Schedule 1 of the Draft DCO and what works would be excluded. The exclusion of some part of the project from the authorised development set out in Schedule 1 to the Draft DCO is what we referred to, in Doc ref: APP32.01, as the grant of development consent with a 'gap'.

B.1.14 The legal authority referred to in the LB Southwark legal submissions – Kent County Council v Secretary of State – in support of a partial grant of development consent relates to completely different circumstances. That case involved an application for planning permission comprising a number of separate and divisible elements; namely, the construction of an oil refinery, the provision of road and rail terminals, the construction of a pipeline and the construction of an access road. The Secretary of State refused permission for the access road, but granted planning permission for the other elements subject to conditions (including one on deliveries of oil and oil products). On a challenge by the local planning authority the High Court held that "where an application consists of a number of separate and divisible elements it is lawful for them to be separately dealt with, as was done in this case." It would, however, ultimately be a matter for the Secretary of State to decide, having regard to the nature of any proposed 'gap' in the Draft DCO, whether the project could properly be consented in part only with a 'suspensive' requirement that no part of the development be constructed before the 'gap' is filled. It is difficult,
therefore, to comment on whether development consent could be granted for part only of the development without knowing what ‘gap’ was to be left out. What can be said, however, is that any such decision would have very significant time consequences for the eventual delivery of the tunnel.

B.1.15 The LB Southwark submissions propose a draft ‘requirement’ to achieve its objective of ‘compelling’ Thames Water to reverse its drive strategy by amending the application to seek consent for a main tunnel drive site at Abbey Mills Pumping Station and a main tunnel reception site at Chambers Wharf; what it calls ‘the alternative proposal’. Such a requirement, however, prejudges the decision about which tunnel drive strategy should be granted development consent without the Secretary of State having that information before him and without directly affected parties being consulted. As we have made clear on more than one occasion, the communities around the Abbey Mills Pumping Station have not appeared at the examination to object to a main tunnel drive shaft at that site, as none is proposed, and full environmental impact assessment of such an option was not presented for that tunnel drive strategy; thus the Examining Authority and Secretary of State have not had full information before them on ‘the alternative proposal’. Any such requirement ‘compelling’ Thames Water to seek consent for that proposal would, therefore, be very obviously open to challenge from objectors to a main tunnel drive site at Abbey Mills Pumping Station. In such circumstances, if the Secretary of State was minded to grant development consent with a ‘gap’ it is difficult to see how he could be prescriptive about how that ‘gap’ should be filled.

B.1.16 The LB Southwark submission then advocates that a new drive strategy be brought forward as a ‘change’ to the DCO granted by the Secretary of State under the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011. Any such change would not fall within Part 1 of the Regulations (Application for a change, which is not material, to a development consent order) and would, therefore, presumably have to be brought under Part 2. Any such change promoted under Part 2 of the Regulations would require consultation, environmental impact assessment and land referencing in a manner similar to an application for development consent made under Part 5 of the Planning Act 2008 itself. Such a change would be subject to examination and, where appropriate, issue specific and other hearings. Any such change would, therefore, impose significant delays on the project, which could not even start construction elsewhere because of the terms of LB Southwark’s proposed pre-commencement requirement. Indeed, impacts at other shaft sites could materially change in the meantime due, for example, to the construction of new residential developments near work sites such that updated environmental information was required for those sites too, or even that their selection then became subject to fresh objections.

Refusal of the DCO as applied for

B.1.17 As we made clear in our 15 November 2013 oral submissions and written summary (Doc ref: APP32.01), it is, of course, open to the Secretary of State to refuse the application, but any such determination should be
made in the context of section 114 of the Planning Act 2008. As we made clear in Doc ref: APP32.02 (p. 5) – its note on the approach to alternatives – the Section 104 balance is one that has to be applied to the whole project. The note states that “the approach is whether the adverse effects of the project as a whole outweigh its policy need and its benefits; recognising, of course, that those adverse impacts will be an aggregation of various individual impacts at each of the sites and along the tunnel. The ‘balance’ is, however, not a site-by-site balance; section 104 is clearly to be approached on a project-wide basis.”

B.1.18 It is clearly our case that the proposed project is in accordance with the policy framework in the NPS and that the need for, and benefits of, the proposed development clearly outweigh its adverse impacts when assessed against the “factors for examination and determination of applications” set out in the NPS.
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