Written summaries of the cases put orally at the hearings held on 27 January 2014

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Compulsory Acquisition Hearings I
Monday – 27.01.14

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1 Introduction

1.1.1 This document contains a written summary of the oral submissions made by Thames Water Utilities Limited (‘Thames Water’) at the issue specific hearing held on 27 January 2014 as part of the examination of the application for development consent (the ‘application’) for the Thames Tideway Tunnel project (the ‘project’). The Examining Authority (the ‘ExA’) in respect of the application set out the agenda for the issue specific hearings relating to traffic and transport by way of a letter dated 17 January 2014 addressed to interested parties. This written summary of Thames Water’s submissions is broadly structured by reference to the items on that Agenda that were addressed at the hearing on 27 January 2014.
2 Agenda item 7 – Article 34

2.1.1 At the compulsory acquisition hearing on 27 January 2014, the ExA asked Thames Water about the scope of the compensation provisions in Article 34(6) (Temporary use of land for carrying out the authorise project) of the Draft Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order (Draft DCO) in the context:

a. where an owner or occupier of land is excluded from beneficial occupation for a temporary, albeit extended, period, and

b. all works to the land are not removed and the land restored, due to one of the factors set out at Art 34(4)/(5).

2.1.2 A submission on this matter from Michael Humphries QC can be found in Appendix C.
3 Agenda item 8 – Albert Embankment Foreshore

3.1 Submissions from Derek Arnold

Site selection

3.1.1 At Albert Embankment Foreshore we will be intercepting two combined sewer overflows (CSOs): the Clapham Storm Relief CSO has a designed flow of 10m³/s for the interception and the Brixton Storm Relief CSO has a flow of 12m³/s, so they’re similar sized sewers. Clapham Storm Relief CSO discharges just to the south (upstream) of Vauxhall Bridge and Brixton Storm Relief CSO discharges just to the north (downstream) of Vauxhall Bridge. In volume terms the Brixton Storm Relief CSO discharge is much larger (base condition volume 279,000m³) than Clapham Storm Relief CSO discharge (base condition volume 14,000m³).

3.1.2 The plan reference 1PL04/SS02497 shows the sites that were long listed for interception of the Clapham Storm Relief CSO is provided in Appendix A. The two sewers run in parallel away from the river until the large road gyratory system near Vauxhall Station where they take completely separate routes: one towards Brixton and one towards Clapham.

3.1.3 In our site selection process we considered a number of sites, but only one site made it through to the final shortlist for interception of the Clapham Storm Relief CSO, which is the foreshore site. The reasons why the other sites were knocked out are given in Volume 15 of the Final Report on Site Selection Process (Doc ref: 7.05).

3.1.4 The plan reference 1PL04/SS02498 shows the sites that were long listed for interception of the Brixton Storm Relief CSO is provided in Appendix A. In our site selection process we considered a number of sites, but only two sites made it through to the final shortlist for interception of the Brixton Storm Relief CSO which are the foreshore site and a site beside the Oval Cricket Ground (C20XH). The reasons why the other sites were knocked out are given in the Final Report on Site Selection Process (Doc ref 7.05, Vol. 15).

3.1.5 We concluded that, since the two sewers discharge in close proximity to each other at the river wall, just either side of the bridge, the best thing we could do would be to intercept them together in the foreshore. In order to avoid putting the drop shaft directly in front of the Vauxhall Cross building, we propose to transfer the flow through a shallow connection culvert to a drop shaft at site C20XS.

3.1.6 There is not an area, apart from the road gyratory system, where the sewers are close enough to feasibly intercept them both in the same place. Site C20XB/C19XC, on the foreshore side of the railway infrastructure and south of the gyratory, was considered at the long list stage for both sites, but discounted at Table 2.2 stage (Final Report on Site Selection Process (Doc ref 7.05), Volume 2: Background Papers,
Appendix A: Site Selection Methodology Paper) because “the site has a very restricted working area and the engineering connection to the sewer would be long and difficult”. Although it is geographically closer to one of the sewers (Brixton Storm Relief sewer) it would be a difficult connection to make and there is no obvious place to make it (see also para. 6.1.2 below).

3.1.7 The ExA asked whether split sites had been considered such as a drop shaft on the foreshore with a connection back to an interception site somewhere inland.

3.1.8 This particular scenario was not considered, but we would have quickly concluded that, because of the buildings in this area, any connection tunnel would have had to follow the line of the road. A scenario, not dissimilar to King Edward Memorial Park and Heckford Street, where you build an interception on one site, build a shallower connection tunnel back to a drop shaft on another site to drop the flows down to the level of the main tunnel.

3.1.9 However, as the ground conditions are better than in the eastern part of the project we can consider deep tunnel to tunnel connections here. Therefore we were focused on finding a site that could intercept a sewer, drop it down and then connect it to the main tunnel more like those we have in the western part of the project such as at Hammersmith Pumping Station, Putney Embankment Foreshore, Barn Elms, etc, where we have tunnel to tunnel connections in London Clay. Post hearing note: The main tunnel in this area will be in the Lambeth Group geology so the extent of tunnelling should still be kept to a minimum.

3.1.10 Thames Water undertook to look at the scenario of intercepting the two sewers inland, with connection tunnel(s) to C20XC and a drop shaft at C20XC.

Access

3.1.11 Construction access to the interception chamber site will be mainly taken via the option B route, with option A only being used for occasional access. Materials brought to site via option B would be lowered down over the side of the drop shaft site cofferdam on to the loading bay (shown on drawing DCO-PP-15X-ALBEF-170031 – Rev 1) and would then be moved along the foreshore to the interception chamber site.

3.1.12 That is the plan for most construction vehicles, but we have come to the view that it would be unwise to rely solely on that access and that it would be necessary to have occasional access through option A. We have a few categories of vehicles that may use option A, for example, one of them is during site servicing of the smaller southern interception chamber site. We think we might have to deliver fuel to that site using option A, going down Lack’s Dock and turning on to the site there for running the cranes and the plant on that site. There may be some larger heavier plant, which needs to go down there to get to the smaller southern site and some excavated material. Although the plan is to take most of the excavated material by river, there may be an occasional need to bring it in that way.
3.1.13 During the stage of the works when the temporary cofferdams have been removed, and we are doing the landscaping and finishing works, there will be a need for some access to both sites through Lack’s Dock.

3.1.14 In response to questions from LDT we confirm that plot 38a is included in the area for permanent acquisition because we propose to build cable ducts connecting the two sites either side of Lack’s Dock.

3.2 Submissions from Stephen Thompson

Albert Embankment Foreshore – access alternates

3.2.1 The ExA requested more details on potential access options and phasing options in particular moving back through the site without the necessity for access option A to be used at all. This includes use of electrical equipment on the southern cofferdam. In addition were there options to bridge between the two areas and how much can be taken by river.

3.2.2 Thames Water clarified the phasing is intended to construct the northern cofferdam first to enable to have a staging area for use of the loading bay and the access ramp to the southern cofferdam. The northern cofferdam area then acts as a marshalling area, from which material can then shuttled across the foreshore by vehicle during inter tidal period.

3.2.3 The majority of the material for the cofferdam is bulk material, and the commitment is to bring this in and out by barge already. Barging is ideal for bulk materials. River transport is not ideal or practical for intermittent requirements of small amounts of material. Typically these are small specialist loads that are required over a long period. The example is mechanical, electrical, instrumentation, control and automation (MEICA) particularly the mechanical and electrical equipment. This is not suitable to shuttling small amounts of plant long distances up and down the river.

3.2.4 The planned use of access A when used in conjunction with access B is low over the works duration. This is one or two movements a week for general items like fuel and emptying portable toilets. The use of electrical plant where practical is confirmed. Other bulk material such as steel reinforcement and all the concrete is intended to be shuttled across between the northern and the southern cofferdam and not to use access A.

3.2.5 The majority of the material that is predicted to be used through access A is when access B is being closed off and works need to be finished. The majority of the material through access A is the completion works, including landscaping as the work is progressing back to permanent work access point.

3.2.6 Over the predicted total construction period of around 165 weeks the average number of lorry movements through access A, Lack’s Dock, is approximately four or five a week.
Albert Embankment Foreshore – permanent access

3.2.7 The ExA requested details of access with regard to post construction for maintenance access. Is access A the intended access route for future maintenance?

3.2.8 Thames Water confirmed that the access for maintenance would be along Lack’s Dock access A. Reviewing the detail after the hearing the following is confirmed. Light routine maintenance to the interception structures on approximately the three-month frequency is proposed to be along the route along the permissive path rather than on the along the intertidal foreshore. The same route is proposed for major 10-yearly maintenance rather than by river. River could be potentially used for any work on the external structure.

Albert Embankment Foreshore – river access

3.2.9 The ExA asked whether with good scheduling, were there reasons why water access could not be utilised as the overall aim of the project is to maximise use of transport from the water.

3.2.10 Thames Water explained that as in previous hearings the project already has committed to a large extent of river use requiring a significant dedicated amount of resources. Adding small amounts of material with intermittent timing requirements for delivery would need different and additional types of barges and resources. They would need flat-top barges to come alongside the structures and a dedicated tug as well.

3.2.11 For the transport strategy as a whole, it is not ideal to have all these additional small items going on at the same time as all the requirements for river transport for the main tunnel drives. It adds to the river traffic and complications on logistics. Bringing in small quantities on a barge is not very effective use of resources in terms of availability, cost and practicalities.

3.2.12 The majority of loads to be moved to the southern cofferdam from access A are small loads which may be one or two tonnes and are needed two or three times a week. Small barges carrying one or two tonne loads, even if used for multiple sites, are not considered practical or economic. When the transport strategy was being developed and reviewed, river transport for large volumes of material at particular sites becomes practical and manageable.

3.2.13 The ExA requested that leaving aside cost, practicality and preference, could what has to be done at this site be done without access A.

3.2.14 Thames Water confirmed it was not impossible. However as explained earlier, the majority of the access down access A is for finishing works when access through access B is not available. A number of the finishing materials are not considered suitable to unload and reload from river transport.

3.2.15 The ExA requested if it was possible in the phasing of the works to retain all required access through option B through staged phasing to enable the removal of access A.
3.2.16 In response Thames Water stated that the access point B is lost during the final phasing. To complete the finishing works it is essential that the temporary cofferdam needs to be removed. During that work, access still needs to be achieved onto the smaller extent of the final northern cofferdam.

3.2.17 There is a need for access through Lack's Dock as there is MEICA and other finishing works that can only be done once the site is in final configuration. It was confirmed that this was primarily work in the site area in front of Camelford House. For the southern works the final finishing including MEICA are to be taken across the foreshore. This can only be done through access A.

3.2.18 This includes elements of hard landscape finishing, handrails, MEICA plant, including pen stocks and control kiosks and pillars. The civil engineering elements need to be complete before the final penstocks and the control equipment are brought in to prevent damage. This is for physical obstacles rather than contractual reasons.

3.2.19 Access for the commissioning phase and then the acceptance period will be through Lack's Dock. This is likely to be small vans and personnel with only small items of equipment. At this stage there is no other access available.

3.2.20 The ExA requested if this could be facilitated by smaller vessels through river-borne access.

3.2.21 Thames Water confirmed it was not impossible but there were issues with health and safety risks as river facilities have been removed including mooring points and for the southern structures permanent protection piles are likely to be installed making access difficult. It would be difficult to lift small loads from vessels to the finished permanent works. It would be difficult to bring vessels alongside the completed structures.

3.2.22 Thames Water confirmed the intention to maximise the time that access option B is available to minimise the use of option A. That would include reviewing timing of the closure of option or access B as late into the programme as possible.

Access along Lack's Dock

3.2.23 The ExA requested details of shared access with London Duck Tours Limited (LDT) along Lack's Dock.

3.2.24 In the hearing it was explained about shared access. Following review of the details after the hearings it is confirmed that for the permanent access is proposed for shared access along Lack's Dock. During construction the access onto the northern cofferdam is along a newly created access route parallel to the existing access to the river. During construction access to the southern cofferdam is through the existing access to the river shared with LDT.

3.2.25 This shared route is used for the permanent works access; the road widens and then the project vehicles take the right-hand side on to the
main northern permanent in river structures, and LDT would continue
down the existing ramp to the river.

3.2.26 For access doing construction along Lack’s Dock the current proposal is to
have a shared access route with LDT. There will be a management plan
to be put into place to manage the movements. We are aware that once
LDT vehicles start down the ramp, they cannot stop, and so our traffic
management plan would be such that we would have to be out of the way
before they commence that movement.

3.2.27 The ExA raised the issue on works at the top of the ramp to deal with the
levels. Thames Water confirmed that some works are required but these
are not major.

**Alternate connection between cofferdams**

3.2.28 Mr Bigos of LDT had raised in the hearing the proposal made to Thames
Water in a letter on 21 May 2012 for a gantry crane system, from the
Camelford House side to the southern cofferdam potentially moving over
and above the slipway, potentially with a footway, reducing need for
movements on the foreshore.

3.2.29 Thames Water in an e-mail response on 25 June 2012 included the issues
of practicality of designing a system of carrying the loads up to five tonnes
and capable of taking the variety of different load shapes and sizes
including bulk materials, reinforcing steel, shuttering, and formwork for
concrete.

3.2.30 Thames Water confirmed that potential ways of mitigating conflicts in the
movements in the foreshore between the two cofferdams continue to be
reviewed.

3.2.31 Any system needs to consider the small loads moving backwards and
forwards. It would require a large and robust structure, to take the load
and achieve the relatively long span between the two cofferdams. The
height would need to consider the load dimensions and characteristics, the
crane hook depth and the cradle mechanism depth below the structure. It
would require large amounts of structures sitting in front of the Vauxhall
Cross building. There would be a requirement for relatively large
foundations and these may need to be moved or changed for the phasing
of the works.

3.2.32 The current scheme for logistics between the two structures is kept simple
and reliable for the movement of small loads, and the issue is whether it
was reasonable to have such large structures and facilities for relatively
small movements.

3.2.33 Thames Water confirmed that it would consider further and the response
is included in the response section of this document.
4 Agenda item 9 – Update by applicant on discussions and negotiations with affected persons and objectors

4.1 Submissions from Stephen Walker

Capitalstart Ltd

4.1.1 Architect-designed restaurant on the Putney Embankment overlooking the river where the proposed foreshore worksite will be located. The property is not inside the limits of land to be acquired or used (LLAU) but is inside the potential zone of influence around the shaft for ground settlement. There is no compulsory acquisition from this party.

4.1.2 We have received from Capitalstart a relevant representation on 20 May, written representations on 18 September and 1 November, and a Written Summary of oral reps on 26 November.

4.1.3 Thames Water’s response was submitted on 2 December (Response to Written Representation from Capitalstart Limited, Doc ref: APP31.08). This response has dealt with in detail the following matters raised by Capitalstart:

a. engineering alternatives
b. site selection process
c. key consultee responses
d. residential, commercial and community issues
e. heritage
f. St Mary’s Church
g. Putney Pier
h. conservation area
i. compensation
j. odour
k. noise.

4.1.4 Following the recent hearings we invited (on 16 December) further engagement with Capitalstart and having had no response followed this up on 3 January. We eventually had a meeting with the owner and one of the directors of the business on 20 January.

4.1.5 The dialogue was constructive and focused on the revised Non-statutory Off-site Mitigation and Compensation Policy (Doc ref: APP68), the timetable and phasing of the works and some of the protection mechanisms being provided in the Code of Construction Practice (CoCP).

4.1.6 Indications are that the owner would like to enter into a settlement deed and the application form for this has now been sent. The owner also
welcomes our offer to put in place well in advance of the commencement of works a Memorandum of Understanding (MoU) that will set out how an open book approach to the monitoring and assessment of business losses which arise as a direct consequence of the construction activity will operate. This is likely to include provision for interim compensation payments and a schedule of regular meetings where mitigation of impacts and progress of work can be reviewed.

4.1.7 During the meeting the owner explained that he had not given his legal team any further instructions in connection with the pursuit of this objection. Given the stage we are at we therefore anticipate the objection will remain and will not be withdrawn before the close of the examination.

4.1.8 Subject to return by Capitalstart of the settlement deed application form we should be able to provide confirmation that this has been completed before close of the examination.

4.1.9 We are unlikely to commence discussions on the MoU in time for this to be in place before the close of the examination.

**Cory Environmental Holdings Ltd**

4.1.10 Cory Environmental Holdings Ltd ('Cory') holds three interests identified from the land referencing exercise.

4.1.11 Head leaseholder of land north of Cringle Street to the east of Battersea Power Station.

4.1.12 Head leaseholder of Cringle Dock Solid Waste Transfer Station.

4.1.13 Leaseholder occupier in respect of Feathers Wharf, Smugglers Way. This is north of The Causeway east of the River Wandle at Dormay Street.

4.1.14 The only part of its landholding within the LLAU is plot 235 (Land plan no. 26) in the London Borough of Wandsworth. This is a plot where powers are limited to the acquisition of subsoil only and forms part of the main tunnel between Carnwath Road Riverside and Kirtling Street.

4.1.15 Cory’s main representations are set-out in its written representations of 4 November and are clearly rebutted in tabular form in Thames Water’s response of 2 December ([Response to Written Representation from Cory Environmental Limited, Doc ref: APP 31.16](#)).

4.1.16 In addition to cumulative navigational safety concerns, Cory has raised site-specific concerns (all of which are rebutted in detail in APP31.16):

a. Kirtling Street

b. Carnwath Road Riverside

c. Blackfriars Bridge Foreshore.

4.1.17 At Carnwath Road Riverside, Cory has raised navigational safety concerns over Thames Water’s preferred jetty (vs campshed) solution.

4.1.18 At Blackfriars Bridge Foreshore, and in particular in respect of the location and navigation issues arising from the proposed relocation of the Blackfriars Millennium Pier, the ExA asked (second written question
S40.2) for submission of an agreed SoCG between the Port of London Authority (PLA), Cory and Thames Water as to the issues. This was submitted as a draft on 13 January (Thames Water Additional Statement of Common Ground Request - Thames Tideway Tunnel and Cory Environmental and PLA, Doc ref: APP64.2).

4.1.19 Also on 13 January, Cory wrote a letter after Thames Water submitted APP64.2 saying it agreed with the form of the SoCG. This has still to be agreed by the PLA.

4.1.20 Heads of Terms (last mark-up from Cory, 17 January) and main SoCG (last draft from Thames Water updated and sent out on 16 January) are still being negotiated with Cory. Last meeting took place on 24 January 2014.

4.1.21 At this meeting Cory confirmed that it will work towards agreeing and signing a general SoCG by 6 February. It also noted that Thames Water is intending to get them to sign an updated version of the multi-party Blackfriars SoCG (Thames Water Additional Statement of Common Ground Request - Thames Tideway Tunnel and Cory Environmental and PLA, Doc ref: APP64.2) on the same timescale.

Livett’s Launches Ltd

4.1.22 Livetts Launches holds interests in the Book of Reference:

a. in the City of Westminster (plots 14, 18 and 19) as an occupier of a mooring pontoon at Victoria Embankment Foreshore held on a licence from the Crown Estate (the ‘Crown’)

b. in the London Borough of Wandsworth (plots 12a, 14, 14a, 15 and 19a) as the freehold owner of Putney Pier.

4.1.23 Livetts Launches representations are clearly set out in submissions dated 10 May, 9 September and 6 November.

4.1.24 The key points are:

a. The expansion plans for Putney Pier which in its current form will remain in use throughout the works but is within the TTT safeguarded area.

b. The temporary relocation of the riverboat(s) at Putney Pier.

c. The effects of scour around the pier would be more serious than as presented in the Detailed Scour Assessment (Doc ref: APP03.05.01).

d. Effect of new CSO outfall near the moorings and Clipper Services.

e. Design of the new permanent platform at Putney Embankment Foreshore.

f. Lack of detailed navigational risk assessment with a request that Livetts Launches be included in discussions during the assessment when it is completed by the contractor for approval by the PLA.

4.1.25 Thames Water’s detailed response on all these issues is provided in a letter dated 6 November and the response to the written representation
submitted on 2 December (Response to Written Representation from Livett’s Launches, Doc ref: APP31.21).

4.1.26 As part of the continuing engagement there was another meeting on 9 December. At this meeting the proposed changes to the Non-statutory Off-site Mitigation and Compensation Policy was discussed and a commitment given to work towards an acceptable solution for the houseboat occupiers in line with the houseboat compensation policy.

4.1.27 We will continue what has always been constructive dialogue with Livetts Launches although do not anticipate any significant development that might lead to the withdrawal of this objection prior to close of the examination.

4.1.28 The question of Livetts freehold ownership of Putney Pier was raised by the PLA and later outside the examination clarification was provided to satisfy the PLA that the information provided in the Book of Reference is accurate.

The Mercers Company (St Paul’s School)

4.1.29 The Mercers Company holds interests in the Book of Reference (Doc ref: 4.3) in the London Borough of Richmond upon Thames. Its property at this location is the buildings and grounds of St Pauls School.

4.1.30 Within the LLU, the Mercers Company is listed as the beneficiary of plot no. 3 (Land plan sheet 4). The Draft Thames Water Utilities Limited (Thames Tideway Tunnel) Development Consent Order – Revised 13 January 2014 (DCO) seeks powers limited to the acquisition of subsoil only for construction of the main tunnel between Acton Storm Tanks and Carnwath Road Riverside.

4.1.31 There is a long history of dialogue with the school principally through its planning advisers, Nathaniel Lichfield and Partners (NLP), who are retained in connection with extensive redevelopment plans at the school.

4.1.32 Following a series of discussions and meetings during 2012 it was understood that concerns had been addressed to the school’s satisfaction.

4.1.33 There was no relevant representation made by the school or the Mercers Company.

4.1.34 On 4 November 2013, NLP made a written representation identifying the following issues which were asked to be addressed:

   a. If tunnelling disrupted the school’s operation, or caused damage, there would be compensation.

   b. No future restrictions would be imposed on the school’s development proposals.

   c. The school will be informed should ground movement exceed 1 per cent tunnel volume loss.

4.1.35 In its 2 December responses, Thames Water addressed each of these issues in detail (Response to Written Representation from The Mercers
4.1.36 On receipt of the agenda for these hearings and seeing The Mercers Company as being one of the parties for which an update was required I contacted Nick Thompson of NLP.

4.1.37 He and I have spoken and subsequently exchanged email correspondence. As of Friday afternoon he confirmed that he had what he needed and was in contact with his client. We can expect he will be following up his correspondence and that the ExA will hear from NLP again before the close of the examination. I am hopeful that this will provide evidence that the schools concerns have now been addressed.

**Nerita Properties Ltd**

4.1.38 Nerita Properties Ltd holds interests in the *Book of Reference* in the London Borough of Lewisham. Its property at this location is known as Sun Wharf where there is a range of industrial buildings occupied under lease to Jones Furniture and Catering Equipment.

4.1.39 Within the LLAU, Nerita is listed as the freeholder of plot no. 193 (Land plan sheet 47). The *Draft DCO* seeks powers limited to the acquisition of subsoil only for construction of the connection tunnel between Chambers Wharf and Greenwich Pumping Station.

4.1.40 Nerita only registered as an interested party on 23 September 2013. It had been party to all project-wide communications including land referencing questionnaires since September 2010.

4.1.41 Its written representation dated 28 October sets out in detail their main points of concern being:

a. impacts of the Thames Tideway Tunnel project (the 'project') on Sun Wharf
b. traffic
c. noise
d. vibration
e. dust
f. socio-economic effects
g. cumulative effects
h. compulsory acquisition
i. settlement.

4.1.42 In its 2 December responses, Thames Water set out in detail its response on all these points (*Response to Written Representation from Nerita Properties*, Doc ref: APP31.33).

4.1.43 Negotiations with Nerita have resulted in an agreement. This agreement was engrossed by Thames Water late last week and will be with Nerita's lawyers today or tomorrow. The agreement provides that within ten days...
Nerita write to the ExA. This letter will confirm that in terms of their concerns over ground settlement the objection is withdrawn.

4.1.44 This means that in terms of project impacts the written representation remains and in terms of compulsory acquisition its position is reserved. In discussions with Nerita’s advisers, Thames Water has been keen to continue to explore the potential for removing these objections but has not been able to make any more progress in this regard.

4.1.45 On 8 January Nerita’s legal advisers wrote and I quote:

“My client notes the responses given to the issues it raised in its written representation and does not have significant further matters it wishes to raise in respect of these points to merit a meeting.”

4.1.46 It is our understanding that the reason for Nerita maintaining its objection is in connection with the question of site selection and its concerns regarding the cumulative impacts of Deptford Church Street and Greenwich Pumping Station construction sites being in close proximity.

4.1.47 Otherwise concerns go to compensation, not a matter for the ExA.

Surrey Quays Ltd

4.1.48 Surrey Quays Ltd (SQL) holds interests in the Book of Reference in the London Borough of Southwark. Its property at this location is the Surrey Quays Shopping Centre and the tunnel alignment runs under an area of surface car parking associated with the centre.

4.1.49 Within the LLAU SQL is listed as the freeholder of plot no. 236 (Land plan no. 44). The Draft DCO seeks powers limited to the acquisition of subsoil only for construction of the connection tunnel between Chambers Wharf and Greenwich Pumping Station.

4.1.50 SQL made its relevant representation on 28 May 2013 and a written representation on 19 September.

4.1.51 In its 2 December responses, Thames Water set out in detail its response (Response to Written Representation from Surrey Quays Ltd, Doc ref: APP31.44).

4.1.52 The negotiation of an agreement remains at an advanced stage. You will recall from the appearance of the SQL team at the hearings before Christmas that it sought sight of the developer guidelines referred to in Article 51 of the Draft DCO. Those guidelines were included as part of the 13 January submission (Draft Guide for Developers, Doc ref: APP82) and a copy forwarded to SQL.

4.1.53 The ball has been in their court since 18 December. We did have an acknowledgement from SQL that this was indeed the case with a promise to get back to our lawyers very shortly.

4.1.54 Completion of this agreement will lead to the objection from SQL being withdrawn. We remain more than hopeful that this can be achieved prior to the close of the examination.
The Crown Estate

4.1.55 By way of update on the negotiations with Crown Estate, the ExA will recall my submission confirming the Heads of Terms had been signed and that the Section 135 consent was anticipated in time for the 12 February deadline.

4.1.56 There has been more work associated with the legal agreements to finalise the property agreement with Crown Estate and as a consequence it is now unlikely that the 12 February date will be met. The team are now working towards the 28 February when Crown Estate will need to make the submission to the ExA.

4.1.57 As an interim measure we have agreed the wording of a letter which will be submitted for 12 February. This letter will explain how close the parties are to issue of the Section 135 consent and thereby give some comfort to the ExA that matters will be concluded by the very latest 28 February.

4.2 Submissions from Paul Lidgley

Dr I Hudson

4.2.1 Dr Hudson owns a long leasehold car parking space in the private car park adjacent to the Shad Thames Pumping Station site, within plot 297 in the London Borough of Southwark, shown on Land plan 39. The project has identified a need for temporary use of this parking space during construction, for a period of approximately nine months.

4.2.2 Dr Hudson made a written representation on 19 October 2013, objecting to the use of the parking space.

4.2.3 We have discussed the works proposed at this site with Dr Hudson and explained the need for the temporary use, to provide a working compound during demolition of an existing structure and boundary wall, and during construction of a placement building. We have proposed alternative arrangements including an offer to provide a temporary season ticket for parking in the nearby Gainsford Street car park during the construction period, together with compensation for any incidental expenses incurred.

4.2.4 We confirmed our proposal in a letter to Dr Hudson dated 17 December 2013, which included an offer to record the arrangement by way of a formal agreement, and invited Dr Hudson’s response. As at 27 January 2014 no response had been received. We will follow up the letter by 31 January.

Free Trade Wharf Management Company Limited

4.2.5 Free Trade Wharf Management Company Limited (FTWMCL) holds a leasehold interest in plot 40, shown on Land plan 49, in the London Borough of Tower Hamlets, just downstream from the King Edward Memorial Park Foreshore site. The property comprises the disused Newcastle Jetty. The plot is shown within the limits of deviation for the
main tunnel and a deep subsoil interest would be required for the tunnel. No surface works are identified at this plot.

4.2.6 FTWMCL made both relevant and written representations to the ExA setting out their objection to the proposed use of the King Edward Memorial Park Foreshore site, and to the acquisition of subsoil beneath the Newcastle Jetty. A meeting was held with the company on 10 January 2014 to discuss their representations.

4.2.7 Thames Water and FTWMCL are in discussion on the terms of an asset protection agreement relating to both the Free Trade Wharf building and the Newcastle Jetty, and it was agreed at the meeting that the possible effects of settlement and any surface impact from construction on the jetty would be included in the asset protection agreement. FTWMCL agreed that if the asset protection agreement is concluded the relevant part of their representation could be withdrawn.

4.2.8 Thames Water has agreed to provide comments and further information on a range of technical issues relating to the effects of construction on Free Trade Wharf, and these responses are being prepared. It is possible that if agreement can be reached on these aspects, specific parts of FTWMCL’s representation could be withdrawn, but it is considered unlikely the representation would be withdrawn entirely.

**Jewson Limited/Graham Group Limited**

4.2.9 Jewson Limited (Jewson) has leasehold interests in two plots at the Greenwich Pumping Station site in the Royal Borough of Greenwich, comprising plot 16 (leased from Network Rail Infrastructure Limited) and plot 33 (leased from Halliard Property Company Limited), shown on Land plan 47. Both plots are required for temporary use during construction.

4.2.10 Jewson’s lease from Halliard expired on 29 September 2012, and the company has been holding over in occupation since then in accordance with the provisions of the Landlord and Tenant Act 1954. We understand that to date neither the landlord nor the tenant has served notice under sections 25 or 26 of that Act to bring the tenancy to an end.

4.2.11 The term of Jewson’s lease from Network Rail expires on 8 January 2022. The lease is within the security of tenure provisions of the Landlord and Tenant Act 1954, but contains landlord’s break options for railway operations purposes and for redevelopment.

4.2.12 Discussions have been held with Jewson about the project’s need for the site, the anticipated timing and duration of the temporary use, and the effects on the Jewson builders’ merchant business at this location. It is accepted by both parties that use of the whole of the current Jewson site for the duration of the project’s construction works will effectively extinguish Jewson’s branch operation, and that the project will pay appropriate compensation for business disturbance in accordance with the compensation code.

4.2.13 Thames Water is assisting Jewson in undertaking a search for possible alternative premises in the Greenwich area, providing particulars of
identified sites. It is acknowledged by both parties that there is limited availability of potentially suitable alternatives, in particular due to the competition for sites for mainly residential mixed use redevelopment. It is noted that the freeholder of plot 33, Halliard, has been in discussion with the local planning authority about the prospects for such redevelopment of this site, and if such redevelopment were to proceed it would preclude continuing occupation of the site by Jewson.

4.2.14 It is considered unlikely that a suitable alternative site will be identified prior to the end of the examination, and therefore also unlikely that Jewson’s representation will be withdrawn by that time.

Halliard Property Company Limited

4.2.15 Halliard Property Company Limited is the freeholder of plot 33 in the Royal Borough of Greenwich, shown on Land plan 47. The whole of the plot is let to and occupied by Jewson Limited, and is required by the project for temporary use during construction.

4.2.16 Thames Water has been in discussion with the company and its advisers for over two years, and draft Heads of Terms for a property agreement have been submitted for discussion. A further meeting has been arranged with them for 30 January 2014. We anticipate that agreement will be reached on terms before the end of the examination period, but it is unlikely that a legal agreement will have been completed.

4.2.17 The proposed terms include provision for Thames Water should take an overriding lease of the property, subject to Jewson’s occupation, and that Thames should be responsible for negotiations with Jewson for obtaining vacant possession and for payment of any compensation in that regard.

4.2.18 Halliard has been in discussion with the local planning authority on the possible future redevelopment of the site for mainly residential mixed use.

London Borough of Tower Hamlets

4.2.19 The London Borough of Tower Hamlets is listed as the freeholder of King Edward Memorial Park, part of which comprises plot 30 on Land plan 49. The Draft DCO seeks unrestricted powers to acquire or use the land within plot 30 for construction of the CSO at the King Edward Memorial Park Foreshore site. The land is required for temporary use of parts of the park during construction, the permanent acquisition of land for the control equipment kiosk, for mitigation works within the LLAU, and for permanent rights of access to the permanent works.

4.2.20 The borough is opposed to the proposed King Edward Memorial Park Foreshore site, and prefers an alternative means of intercepting the North East Storm Relief CSO using an intermediate site at Heckford Street with a CSO interception in a different part of the park.

4.2.21 The position on negotiations with the borough remains as previously advised, in that draft Heads of Terms for a property agreement were submitted to the borough on 21 December 2012, meetings were held with the borough’s asset management surveyor in October 2013 and a
financial proposal was submitted by Thames Water on 7 November 2013. There has been no substantive response from the borough.

4.2.22 We have learned that the asset management surveyor has recently left the borough, and although agents have been appointed and a new asset manager takes up employment on 27 January 2014, contact has not yet been made with the project. We have requested a meeting with the new personnel in an attempt to move the negotiations forward.

4.2.23 Progress continues to be made with the borough’s planning department on the terms of a Section 106 agreement, on a without prejudice basis, which includes linkages to the proposed property agreement terms.

4.2.24 In view of the borough’s in principle objection to use of the King Edward Memorial Park Foreshore site it is considered unlikely that the borough’s representation will be withdrawn even if substantive progress is made on property agreement terms.

**Royal London Mutual Insurance Society Limited**

4.2.25 Royal London Mutual Insurance (Royal London) owns the freehold interest in Hurlingham Retail Park in the London Borough of Hammersmith & Fulham. There are two interfaces between the project and the property: one at surface level at the junction of Wandsworth Bridge Road with Carnwath Road (plots 173 to 177 on Land Plan 17), while plots 166 to 169 are within the limits of deviation for the main tunnel subsoil acquisition.

4.2.26 Terms have been agreed with Royal London on a property agreement in respect of the required interests and a draft legal agreement is in circulation between the respective solicitors. We are hopeful that the agreement will have been completed before the close of the examination.

4.2.27 Royal London submitted a planning application for redevelopment of the retail park in mid-2013, and we understand that the London Borough of Hammersmith and Fulham planning committee resolved to grant planning permission for that scheme, subject to completion of a Section 106 agreement, at its January meeting.

**Tattershall Castle**

4.2.28 Tattershall Castle is a ship owned by TCG Bars Limited. The vessel occupies a mooring at the Victoria Embankment Foreshore site in the City of Westminster, covering parts of plot nos. 14, 15, 18 and 19 shown on Land plan 33.

4.2.29 The current lease of the mooring is from the Crown and the PLA, the latter having a minority interest. The mooring is also subject to a PLA River Works Licence in respect of the mooring piles, anchors and access brows, and a further agreement with City of Westminster on the licence to cross the river wall.

4.2.30 Terms have been agreed with the Crown for the transfer of the mooring lease to both the temporary and permanent relocation positions. Negotiations with the PLA on the termination of the minority interest in the existing lease remain to be concluded as part of the overall property
agreement with the Authority. Agreement has been reached in principle with the City of Westminster for the transfer of the river wall licence to the new locations.

4.2.31 Constructive discussions with the owner of the Tattershall Castle on the practical issues relating to the relocation of the vessel are continuing, and although an overall agreement has yet to be reached we are moving in the right direction. We will need to reach agreement with the PLA on issues relating to the move of the vessel.

Duchy of Cornwall

4.2.32 By way of a brief update, terms have been agreed in principle with the Duchy’s agent for the various temporary and permanent rights required over Duchy land at the Albert Embankment Foreshore site. These include terms for the construction access(es), easements for permanent access and for utilities, and the acquisition of a small part of the Lack’s Dock foreshore for the extension to the river wall within plots 38 and 38a shown on Land plan 31.

4.2.33 The Heads of Terms include provision to link the terms agreed with further agreements, if possible, with the lessees and sub-lessees at Albert Embankment, including LDT, with the occupiers of Camelford House, and with the lessee of Tintagel House if access option B is adopted.

4.2.34 Detailed Heads of Terms are to be issued before 31 January 2014, with the intent that a legal agreement with the Duchy should be completed as quickly as possible. The agreed terms include a provision that the Duchy will give consent to the inclusion of the leasehold and sub-leasehold interests in Duchy land within the DCO in accordance with Section 135.

4.2.35 Discussions have been resumed with the leaseholder of Tintagel House on the temporary use of part of the property for access option B and other minor interests required.

4.3 Submissions from Chris Boston

Cemex (UK) Ltd

4.3.1 Kirtling Street Battersea is required in respect of the project requirement for a double drive site on land at Cringle Dock.

4.3.2 The project have been in negotiation with Cemex in respect of a lease and transfer rights on the front 40 per cent of the land at Cringle Dock and the construction of a replacement concrete batching plant on the rear 60 per cent of the two-acre site.

4.3.3 To date, significant progress has been made in respect of the contracts between the parties, which are now in agreed form.

4.3.4 In respect of the planning consent for the replacement concrete plant, the London Borough of Wandsworth planning committee considered the application on 20 January 2014. Accordingly the London Borough Wandsworth planning committee granted consent subject to this being a
‘Draft Decision’ and Section 106 and Section 278 conditions. The planning consent decision is shown in Appendix B.

4.3.5 The tenders for the concrete plant were received on the 5 January 2014. The parties to the contract (Thames Water and Cemex) are considering the detail of the tenders and a decision in respect of the successful tenderer is expected in mid-February.

4.3.6 Both parties are therefore expecting to conclude matters in mid to late March 2014, although it is expected that every effort will be made to conclude matters before the closure of the planning examination so that the Cemex objection can be withdrawn.

London Borough of Hammersmith and Fulham

4.3.7 Thames Water updated the ExA panel in respect of the progress to acquire the freehold of land owned by LB Hammersmith and Fulham (LB Hammersmith and Fulham) at Carnwath Industrial Estate.

4.3.8 It was confirmed that Heads of Terms dated 18 December were in agreed form and that the Heads of Terms included Nortrust Nominees Limited as party to the agreement in respect of their interest as long leaseholder.

4.3.9 Thames Water also outlined that LB Hammersmith and Fulham, while Heads of Terms were in agreed form, was not yet in a position to take matters forwards to contract with their respective lawyers.

4.3.10 Thames Water understands that some progress may have been made in respect of approval of the Heads of Terms and movement towards contract drafting by LB Hammersmith and Fulham, but this cannot as yet be formally confirmed.

4.3.11 Thames Water awaits further decisions from LB Hammersmith and Fulham in this regard.

Nortrust Nominees Limited

4.3.12 Thames Water updated the ExA panel in respect of the progress of the Heads of Terms for the acquisition of the head lease in respect of their interest at Carnwath Industrial Estate.

4.3.13 As with LB Hammersmith and Fulham above, the Heads of Terms are in agreed form as at 18 December 2014.

4.3.14 Because Nortrust cannot contract directly with Thames Water (due to assignment and user clauses in the head lease), Nortrust will have to wait for LB Hammersmith and Fulham to agree that the contracts can be taken forward to a conclusion and exchange of contracts.

4.3.15 Thames Water also updated the ExA panel in respect of the tenants at Carnwath Industrial Estate:

a. Phase 8 have now vacated their industrial unit of their own volition.

b. Vaughan Ltd and Thames Water have agreed Heads of Terms and are moving forward towards exchange of contracts. The basis of the agreement is that Vaughan Ltd will be given as much notice as
possible in respect of the occupational rights which the project requires and an agreed basis of compensation which will not disadvantage Vaughan Ltd in comparison to statutory compensation rights.

c. Howdans have also now entered into negotiation in respect of a similar type of agreement which it is anticipated will be in agreed form during February 2014.

d. Elder Reed and Multi-Tile are being contacted with a view to a similar agreement being progressed as soon as possible.

**Battersea Barge**

4.3.16 Thames Water confirmed that the project had met the owner of Battersea Barge in April, June an October 2013.

4.3.17 Any agreement is subject to the St James Group agreement as it has an interest in the access provision to the Battersea Barge; therefore further meetings need to be held to conclude matters between the parties.

4.3.18 The agreement to move the Battersea Barge seven metres to the west during the project construction phase and relocate thereafter should not be problematic subject to agreed parameters and cost agreement.

4.3.19 Thames Water agreed to take matters forward and within the ExA examination closure timeframe where this is possible.

4.3.20 Battersea Barge will also be subject to the provisions in the projects’ revisions to the compensation and mitigation policy.

**4.4 Submissions from Chris Stratford**

**St James Group**

4.4.1 Thames Water has sought to engage with St James and has had several meetings since September/October until December to discuss outstanding issues relating to both noise and construction access. It was confirmed that St James had submitted their written representations on 4 November and forwarded their draft Heads of Terms on the 9 December to the project for comment. A further meeting was held on the 13 December to discuss the latest Soundplan Noise Modelling Report results, *Environmental Statement* (Doc Ref: 6.2) Noise Assumptions and revised construction access proposals. It was understood that as a result of these meetings, “a large measure of agreement” had been reached between the two parties, which facilitated Thames Water sending out revised Heads of Terms for their comment on the 23 January. Chris Stratford commented that he was unsure if the revised Heads of Terms would be finalised by 12 February, but hoped they would be by the close of the examination on the 12 March 2014.

4.4.2 Jan Bessel sought confirmation of whether the highways and access issues had been resolved with St James, to which Chris Stratford stated that they had been. However, he highlighted that Thames Water and St
James were not the only interested parties. It was described how Thames Water have been an active part of the Vauxhall Nine Elms Partnership Strategy Board and related working groups, which have approved the construction logistics strategy for the area. The Vauxhall Nine Elms Business Partnership is now developing the implementation of the construction logistics strategy, through further consultancy advice, and that process would consider the complicated and detailed issues associated with the Cringle Street and Kirtling Street area. It was highlighted that there are some existing parties using those roads: (CEMEX Concrete Batching Plant and the Western Riverside Waste Authority Waste Transfer Station), but Thames Water and St James also planned to use those roads during construction. The road will also be used by construction vehicles involved with the Battersea Power Station development and future residents. Thames Water are looking resolve these issues with St James in the first instance.

4.4.3 In considering this issue, Jan Bessel asked how the ‘management plan’ required to address this situation would relate to the CoCP and the drafting of the DCO (particularly in regard to disapplications). Thames Water confirmed that there would be an interface between the project’s CoCP and the various Vauxhall Nine Elms Area Construction Charter (VNECC) matters and work was currently underway to marry the two up. Additionally, Chris Stratford thought that most of the construction charter matters had been covered in either the CoCP Part A or Part B (Doc ref: 7.19).

4.4.4 Eleven primary construction logistic measures have been identified as forming the VNECC, derived from the construction logistics strategy. The CoCP has been drafted to take account of these measures and seeks to include similar aspects into its wording, as set out below.

4.4.5 The VNECC encourages developers and contractors to adopt practices whereby they work more closely together on measures and interventions that have a wider impact on construction traffic volumes or its circulation efficiency, eg, a shared, single contract for road cleaning in the proximity of development sites. The results of the construction charter is effectively replicated within the CoCP Part A (Section 5, para. 5.1.6(e)), as this requires details of mitigation measures to reduce impacts on traffic (buses, cyclists and pedestrians), including traffic signal amendments, temporary diversion routes and measures to minimise duration of scheme.

4.4.6 The second measure of ‘site wide signage’ has been placed within the VNECC in order to direct delivery vehicles from the outer edges of London to the local development sites. A unique signage style could be introduced, which incorporates a specific area logo and individual symbols and name for the various developments, although these would need to comply with Department of Transport signage specifications. A similar strategy is proposed within CoCP Part A (Section 5, para. 5.1.5e), which states:

“...local routes to be used by lorries, cranes and abnormal loads generated by construction activity including, where required, the timings of
use of such routes, lorry holding areas, lorry route signing strategy for the routes, means of monitoring lorry use and any routes prohibited’.

4.4.7 The VNECC also promotes the notion of having a single point of contact, thus allowing the general public a clear line of communication to raise issues and concern. Similarly the CoCP Part A of the (Section 3, para. 3.1.17) states that the Employer will maintain a 24-hour freephone helpline service during the construction period to deal with enquiries and concerns from the general public. The service will also act as a first point of contact for information in the event of an emergency. All calls will be logged, together with a record of the responses and action taken. Appropriate contacts and response times will be the subject of a detailed procedure to be agreed prior to commencing construction. Potentially-affected occupiers will be notified of the helpline number and it will be widely advertised.

4.4.8 ‘Worker Bus Transport’ is another key measure described with the VNECC, which the CoCP seeks to duplicate. The VNECC mandates the provision of improved bus services and/ or collaboration between stakeholders for the provision of shuttle services to minimise the impact of contractor parking. This measure is duplicated within the Part A of the CoCP under Section 4, paras. 4.15.1 and 4.15.2, which state that the contractor shall produce a construction workforce travel plan for the project. The plan will be developed in accordance with the Draft Project Framework Travel Plan (Doc ref: 7.11) to encourage the use of public transport by those working on the project. This will be secured by sitespecific Requirements. Similarly, Section D.8.1 of the Draft Project Framework Travel Plan states that the site-specific travel plan will:

a. provide bus, tube and rail timetables, where applicable
b. identify nearest bus and rail stops and their distance to site
c. provide information on travel disruption and delays to be readily available on notice boards prior to shift end
d. provide employee shuttle bus/mini bus where the site is more than 960m away from the closest public transport station.

4.4.9 The VNECC also makes provision for ‘Vehicle Booking System Coordination’. This would involve the different development sites implementing electronic booking systems to control and manage vehicles visiting their sites. Similar systems are often used on large constructions sites as part of the asset management system for loading bays, hoist, cranes, etc. Whilst the CoCP does not currently feature such measures, there may be scope to include similar controls within the traffic management plan, which is referenced in the CoCP Part A (sections 2 and 5) and requires local planning authority approval.

4.4.10 Fleet Operators Recognition Scheme (FORS) is a further measure within the VNECC, which requires developers and contractors to put in place high standard driver training policies. Section 5.2.1(a) of The CoCP Part A (Section 5, para. 5.2.1a) (Lorry management and control) has similar
requirements and promotes membership of the TfL, Fleet Operators Recognition Scheme. This requires that contractors and subcontractors will register, attain bronze membership for the start of construction progressing to silver within 6 months.

4.4.11 Achieving a ‘Coordinated Cycle Safety Campaign’ in another measure of the VNECC which the CoCP seeks to include in its provisions. The CoCP Part A (Section 5, para. 5.2.1b) includes safety measures for cyclists. In addition to this, Thames Water is part of an action group on cycle safety.

4.4.12 The requirement for ‘Coordinated Street Cleaning’ is also replicated in both the VNECC and the CoCP. The CoCP (Section 5, para 5.4 (Road cleanliness)) states that “…All reasonable measures will be put in place to avoid/limit and mitigate the deposition of mud and other debris on the highway. This will also minimise dust generation” and lists a number of measures to ensure compliance is achieved.

4.4.13 The VNECC describes how ‘HGV/LGV holding areas’ will function/operate. Holding areas will be employed to manage the arrival frequency of vehicle arrivals at site, although such measures will require collaboration of land owners and other stakeholders. The CoCP Part A (Section 5, para. 5.2.2) likewise promotes the use of holding areas and states that where necessary, approval of local routes, holding areas and back-up routes to be used by construction lorries will be identified in the applicable traffic management plan.

4.4.14 Consolidation centre feasibility is an aspect of the VNECC that is not yet covered within the CoCP. Further work on this element is proposed by the Vauxhall Nine Elms Business Partnership, which the project will be involved with and if further measures are proposed, would need to be incorporated into the traffic management plan, which is referenced in of the CoCP Part A (section 2 and 5) and requires local planning authority approval.

4.4.15 ‘Air Quality Best Practice’ is a further measure within the VNECC that the CoCP seeks to retain. The CoCP Part A (Section 7, para. 7.1.3) requires that the air quality management plans must include all the appropriate dust and emissions mitigation measures, from The Control of Dust and Emissions from Construction and Demolition best practice guidance published by the Greater London Authority and London Councils in November 2006, for local planning authority approval.

4.5 Submissions from Mark Davey

Lookers

Factual background

4.5.1 Plots: representations relate to 189 and 190.
4.5.2 Acquisition: the land needed is subsoil.
4.5.3 Purpose: the subsoil is needed for the Falconbrook Connection Tunnel.
4.5.4 Work site: Falconbrook PS.
4.5.5 Objector’s interest: Dutton Forshaw Motor Company Ltd is the owner of the freehold interest the VW car dealership, 98 York Road, Battersea. It is this interest which is affected by the proposed acquisition of subsoil.

**Objectors representations (relevant representations and written representations)**

4.5.6 The representations can be summarised as follows:

a. Requests that the limit of deviation is amended such that there will be no possibility of the tunnel encroaching within 6m from the dealership boundary.

b. In the event that the proposed tunnel was to be located within 6m of the dealership site boundary, there would be significant implications upon the ability to deliver full development in accordance with planning policy aspirations.

c. Request that the *Draft DCO* is amended to delete any reference to plots 189 and 190.

**Progress with negotiations**

4.5.7 Thames Water has now reviewed the limits of deviation. Plot 190 has been removed from the *Draft DCO*. Plot 189 is still within the *Draft DCO*, but it is completely within the Bridges Court highway and it is anticipated that its inclusion should not have any detrimental impact on the car dealership site or its future development.

4.5.8 Further detail of the revised limits of deviation is contained within *Tunnel Limits of Deviation* (Doc ref: APP43), submitted to the ExA on 23 December 2013.

4.5.9 We do not yet know if Lookers will now withdraw its objection.

4.5.10 Post hearing note: we have written to Lookers agent Rapleys on 27 January 2014 stating that Plot 190 has been removed from the area required by the project within the limits of deviation.

**Minerva**

**Factual background**

4.5.11 Acquisition: the land needed is subsoil.

4.5.12 Purpose: the subsoil is needed for the Frogmore Connection Tunnel, which links CSOs at King George’s Park (site 7) and Dormay Street (site 6) and links them to the main tunnel at Carnwath Road Riverside.

4.5.13 Work sites: between King George’s Park and Dormay Street.

4.5.14 Objector’s interest: Minerva is the owner of the freehold interest in the Ram Brewery Development site. However Minerva has now exchanged contracts to sell the site. Completion is thought to be planned for autumn 2014. Minerva is still keen to complete the agreement with TTT.
Compulsory acquisition hearing

4.5.15 At the compulsory acquisition hearing in December, Minerva’s representatives explained that their main concern was the interface between the Frogmore Connection Tunnel and the development of the Ram Brewery site.

Progress with negotiations

4.5.16 Further discussions have taken place between Thames Water and Minerva.

4.5.17 A draft legal agreement was sent to Minerva on 24 January 2014 for their comment.

4.5.18 A list of technical items has been requested by Thames Water to enable the assessment of the interface between the projects to be reviewed and an agreed solution developed.

4.5.19 We anticipate reaching an agreement in the near future.

4.5.20 Post hearing note: Minerva appeared at the hearing on 28 January and complained about:

a. only receiving the draft agreement on 24 January 2014
b. the draft agreement does not cover what was expected
c. Thames Water has asked for information that is not available
d. the need for compensation to cover Minerva’s costs of providing this information.

The relevant people from Thames were not at the hearing as we were not expecting Minerva’s appearance. Derek Arnold stated that Thames Water was not trying to withdraw from the previously discussed solution.
5 Agenda item 10 - Update on progress with parties under Section 127 and Section 138

National Grid

5.1.1 You will recall from the hearings last week that the representatives from National Grid (NG) said that of all the different interests identified in the schedules only National Grid Electricity Transmissions Ltd (NGET) and National Grid Gas (NGG) are the statutory undertakers. Plots relating to Birch Sites Ltd, National Grid plc and National Grid Property Holdings, if owned by those companies will also include an interest of NGET or NGG. NG has agreed to review the schedules and amend as necessary to bring them up to date with current information. There have been email exchanges since the hearing and we anticipate a final schedule will be ready for the 12 February submission.

Port of London Authority

5.1.2 Following exchanges at the last hearings about the accuracy of the land referencing a pilot exercise was carried out in detail on the Book of Reference (Doc ref: 4.3) for the City of London area. Additional geographic information system (GIS) information provided to the PLA from the land referencing team at Thames Water has been helpful to explain the initial queries raised. PLA interests in the City of London schedule has been checked and found to be accurate.

5.1.3 The task of checking all other locations is now ongoing and is likely to take some more time.

5.1.4 Thames Water held a property meeting with the PLA on Friday 24 January at which the accuracy of the Section 127 schedule was addressed. It was confirmed by the PLA that it was making good progress but still working through all the information. It was not able to confirm a timescale to complete.

Canal & River Trust

5.1.5 There was only one change to the original schedule and the Canal & River Trust has now agreed the addition of plot 21 at Abbey Mills. The detail provided in the Section 127 schedule is now being used in the property agreement Heads of Terms. When this is agreed the accuracy and confirmation of the detail set out in our application for certificates will be provided.

Transport for London

5.1.6 Last week representatives from TfL ran through its plots with Thame Water at the hearings and seemed ok but were going to go off and double check. Subsequently Paul Lidgley issued a further amended version of schedule and circulated it around the TfL team on 24 January. In order to
finalise the details a meeting has been arranged between Paul Lidgley and Andy Twyford on 31 January. We anticipate that this will result in an agreement on the detail to provide in the application for certificates and this will be confirmed to the ExA with our 12 February submissions.

Network Rail

5.1.7 Last week representatives from Network Rail ran through its plots with Thame Water at the hearings and all seemed to be in order but subject to a final review and double check. Bob Yorke of Network Rail is now carrying out this checking process – no issues expected but yet to confirm.

Southern Gas

5.1.8 Since the original schedules were issued there have been some Section 138 plots added for new cables as have been informed to the project by representatives of Scottish and Southern Energy. There have been no changes made to the Section 127 schedule. The project’s third party infrastructure team has confirmed the asset and plot locations at the request of Southern Gas (email 15 January 2014). There has been no further comment.

5.1.9 The Thame Water property team has offered to help support Southern Gas in the task of finalising the information in the schedules but so far this has not been taken up.

UK Power Networks

5.1.10 Since the original schedules were issued there have been some Section 138 plots added for cables as Thames Water was informed by representatives of UK Power Networks. There have been no changes made to the Section 127 schedule.

5.1.11 Both schedules have recently been passed to the property surveyor at UK Power Networks responsible for major infrastructure project interfaces. We have received an email from Richard Baker on Friday 24 January confirming the task of checking detail is underway and he would provide an update on Monday to assist the ExA at the hearing.

5.1.12 Mr Baker has confirmed that all assets are held by London Power Networks Plc and that this is the appropriate statutory undertaker in respect of this apparatus. On receipt of the feedback from the rest of Mr Baker’s review our schedules will be amended to reflect the new information. We are confident that confirmed schedules will be provided with the 12 February submission.

British Telecommunications

5.1.13 Since the original schedules were issued there have been some Section 138 plots added due to new information on a comms cable. Our property team had a discussion with the contact at BT who was passing the schedules to a colleague in the real estate team to review and confirm information. That all happened late last week and we now have more
confidence that we will make good progress to further report as part of the 12 February submission.

**NTL (Virgin Media)**

5.1.14 The statutory undertaking is now taken over by Virgin Media. Updated schedules were sent to Virgin Media on 13 January and followed up on the 16 January. We have received no response but the detail is non-contentious and when the protective provisions are agreed we anticipate the detail on our schedule will also be confirmed.

**British Gas**

5.1.15 We now understand the asset which is in the Royal Borough of Greenwich is owned and operated by Southern Gas and that this detail has been picked up from historic and out-of-date documentation. There has been no response from British Gas to any communications from the project and we will seek to confirm the situation with Southern Gas with whom we are also struggling to contact.

5.1.16 It is possible therefore that we obtain no better information prior to the 12 February submission but if we do it will be put before the ExA.

**Colt/Level 3**

5.1.17 There have been no changes made to the schedules that were originally submitted and the detail is believed to be non-contentious. Engagement on the protective provisions is anticipated and when any issues have been resolved in this respect we anticipate the Section 138 detail will be confirmed.

5.1.18 It is possible therefore that we obtain no better information prior to the 12 February submission but if we do it will be put before the ExA.

**Vodafone**

5.1.19 There have been no changes made to the schedules that were originally submitted and the detail is believed to be non-contentious. Engagement on the protective provisions is anticipated and when any issues have been resolved in this respect we anticipate the Section 138 detail will be confirmed.

5.1.20 It is possible therefore that we obtain no better information prior to the 12 February submission but if we do it will be put before the ExA.

**Royal Mail Group**

5.1.21 The application for a certificate has now been withdrawn.
South London & Maudsley NHS

5.1.22 At the hearings I reported that there had been no communication from this statutory undertaker and I agreed to proactively pursue a contact to discuss this issue.

5.1.23 It has now been established that the property to which this certificate application relates is in the London Borough of Lewisham (plot nos. 108 and 111 on Land plan no. 46). Plot 111 is public highway and plot 108 is under part of 6-12 Edward Street, SE8 5HL.

5.1.24 The South London & Maudsley NHS Foundation is not in occupation of the property which is under lease to the South London Family Housing Association.

5.1.25 We hope to report progress in contacting both organisations when we make submissions on 12 February.
6  Responses to issues raised at the hearing

6.1  Inland interception

Issue raised

6.1.1  Thames Water undertook to look at the scenario of intercepting the two sewers inland, with connection tunnel(s) to C20XS and a drop shaft at C20XS.

Response

6.1.2  With reference to plans 1PL04/SS02497 and 1PL04/SS02498 contained in Appendix A, it can be seen that the majority of the inland sites that we assessed during our site selection process are on the opposite side of the railway to Albert Embankment. C19XC/C20XB, which we assessed for interception of both the Clapham Storm Relief CSO and the Brixton Storm Relief CSO, is the only site on the same side of the railway as C20XS. The developers of C19XC/C20XB have since been granted planning consent for two 41-storey and 32-storey residential buildings (London Borough of Lambeth planning consent ref. 10/02060/FUL) and hence is no longer a viable site.

6.1.3  The closest site to C20XS that was assessed for interception of the two CSOs is C19XB/C20XC in Spring Gardens. It was explained to the ExA that to intercept the Clapham Storm Relief CSO at this location would be difficult due to the distance of the sewer from the gardens. To intercept the Brixton Storm Relief CSO in the gardens would be highly disruptive as the sewer runs through the very busy junction of Kennington Lane (A3204), Harleyford Road (A202) and South Lambeth Road (A3036) to the south of the site. To intercept it would be necessary to excavate in this junction and divert the sewer into Spring Gardens. There are a number of utilities that would also require diversion in order to achieve this.

6.1.4  The sites that were assessed for interception of the Brixton Storm Relief CSO are all slightly further north than the sites that were assessed for the interception of the Clapham Storm Relief CSO. This is because the sewers diverge at the Vauxhall Cross gyratory to the east of the Albert Embankment Foreshore site. The sewers are denoted by green dashed lines in Figure 6.1 below, which was included in our Supplementary Site Information Paper produced for our post-phase two consultation (targeted consultation), held between June and July 2012 (please note the red line, denoting the LLAU, has changed since this figure was prepared, but the figure is provided to show the sewer routes).
6.1.5 A connection tunnel or tunnels to connect inland interception sites to the C20XS drop shaft could be constructed in the London Clay like other connection tunnels in the Western and Central areas, with a drop tube built within the drop shaft. Depending on the inland site, the tunnel(s) would vary between approximately 180m and 900m in length. It would be possible to use a sprayed concrete lined (SCL) tunnel over such distances; alternatively a small tunnel boring machine (TBM) could be used. The tunnel alignment(s) would need to pass beneath densely residential areas between most of the inland sites and C20XS, so would need to follow the routes of existing highways (see para. 3.1.8 above). The tunnel(s) would then need to cross beneath the railway, Albert Embankment and beneath or adjacent to the buildings along the embankment itself. Therefore the choice of tunnelling method would be influenced by ground conditions and the potential for settlement and how that would be sufficiently controlled.

6.1.6 At the downstream end of such a connection tunnel(s) near to the C20XS drop shaft, there would however be a number of difficult constraints. To traverse between the drop shaft and Albert Embankment, the tunnel(s) would need to cross beneath tall buildings with deep basements and deep-piled foundations, such as 85 Albert Embankment, Camelford House or Tintagel House. The only other way of crossing this area would be to tunnel beneath the Lack’s Dock slipway and access road, between the aforementioned buildings. To do this would require a very tight turn in the tunnel alignment(s) beneath the foreshore under the slipway to connect to
the drop shaft. This would need to be done using SCL methods, as tunnels constructed with a TBM are not able to turn through tight radii. In this circumstance it might be appropriate for the cofferdam around the C20XS drop shaft to be extended across Lack’s Dock to receive a TBM(s) and to construct an open-cut connection to the drop shaft. This would close Lack’s Dock for a considerable length of time.

6.2 Albert Embankment Foreshore - Alternate connection between cofferdams

Issue raised

6.2.1 During the examination hearing, the LDT raised the consideration of its previous proposal for the use of a crane gantry system to connect the northern and southern coffer dams to transport small loads and possibly a foot gangway.

6.2.2 The ExA requested for the potential system to be reviewed. The following questions were raised:

a. Consideration of a gantry or bridging system, for walkway and movement of materials – between the CSO out fall points and the main work site.

b. The height above the existing ground level of the permitted footway.

c. The height relative to the solid boundary wall of the Vauxhall Cross building, having regard to the height differential of the top of the cofferdam on the main works site.

d. The types of materials, the maximum limits on such materials and whether it is the only option for getting the materials across.

Response

6.2.3 The construction works on the Albert Embankment Foreshore involve the construction of two temporary coffer dams, one either side of the existing Lack’s Dock.

6.2.4 The southern coffer dam will be used to construct the interception chambers to collect the overflows from the Brixton and Clapham storm relief CSOs. The northern cofferdam will be used to construct the CSO drop shaft, low-level connection to the main tunnel and a high-level short connection tunnel, driven under the foreshore to the interception chamber in the south cofferdam.

6.2.5 The details within the application have a loading bay by the northern cofferdam and an access ramp to southern cofferdam. The intention is transfer the majority of materials for the southern structures from the northern cofferdam by vehicle on the foreshore in the intertidal periods, where practical materials would be taken direct to the southern cofferdam by barge. This is complicated by the navigational constraints and archaeological exclusion zone in the foreshore.
6.2.6 An outline design has been developed for a potential alternate gantry system connection to transfer material between the two cofferdams for assessment. This is shown in the following figures.

Figure 6.2 Illustration of gantry system connection – plan

[Diagram of gantry system connection – plan]

Figure 6.3 Illustration of gantry system connection – elevation

[Diagram of gantry system connection – elevation]

Outline details

6.2.7 Type of crane. We have considered a 5-tonne ‘safe working load’ overhead crane, in which a central rail supported by ‘goal post’ frames carries an under slung hoist mechanism. This is a simple arrangement with as few moving parts as practical.
6.2.8 There is no need for lateral movement of the load so a travelling gantry crane would not be required.

6.2.9 Height of structure. Based on the need to transfer concrete formwork panels 2.4m x 1.2m in area:
   a. 8.2m above the existing river wall level
   b. 10m above high water level
   c. 9.6m above cofferdam fill level
   d. 9.6m above Thames Path
   e. 7.6m above the Vauxhall Cross boundary wall running parallel to Lack’s Dock. This assumes the wall is 2m above the level of the Thames Path.

6.2.10 Length of structure. The total length will need to be in excess of 80m. The illustrated design would have a cantilevered section at the ends to enable it be kept in operation during cofferdam phases.

6.2.11 Structure spans. A clear span of 23m over Lack’s Dock is required. Spans for other sections depend on design with the balance between span, structural size, frequency of foundations and foundation size.

6.2.12 Types of materials to be transported:
   a. it is assumed that concrete can be transported from the north cofferdam via a pump line attached to the gantry crane structure.
   b. steel reinforcement in bundles up to five tonnes.
   c. timber and formwork materials.
   d. bagged and palleted cement and grout material.
   e. scaffolding and falsework equipment up to one tonne in weight. Special cradles will be required for items such as long tubes and proprietary connection.
   f. small tools and plant up to one tonne.
   g. pumps and hoses up to two tonnes.
   h. general electrical and lighting equipment up to one tonne.

6.2.13 A worker access route could be provided along the top of the structure with access by ladders.

Assessment

6.2.14 Typical travel rates of overhead cranes are slow and with the crane having to travel 80m from the south to the north, this would result in very slow delivery rates.

6.2.15 An overhead crane would require a larger foot print, outside the current proposed access ramp to provide stable support for runway beam. The tall structure would require a wider base and sufficient width to ensure that plant using the access ramp does not strike the gantry structures.
6.2.16 The foreshore foundation works would be either side of the ramp, bringing them closer to sensitive archaeology located between Vauxhall Bridge and Lack’s dock, as described in the CoCP Part B Albert Embankment Foreshore Revised (Doc ref: 9.22.13).

6.2.17 The number of supports and foundations required would be subject to final design. The structure supports would require foundations. The design would need to balance the required clear span and foundations sizes. Larger spans require less support foundations but these need to be larger. The foundations would need to consider and avoid the interception connection tunnel below. Foundations likely to be tubular steel piles or plunge column foundations.

6.2.18 The structure is large and in the foreshore directly in front of the Vauxhall Cross building.

6.2.19 There are additional cost and programme impacts in building the structure.

6.2.20 Formwork panels offer a large sail area and transporting them will be restricted during high winds.

6.2.21 Transporting fuel via the gantry crane will pose a particular safety and environmental risk. Refuelling and general servicing to the south cofferdam will need to access via Lack’s Dock along with larger plant.

6.2.22 There are some advantages of the alternate system including enabling longer operational period through the day as it does not rely on tidal window in the foreshore.

Assessment summary

6.2.23 Details of a potential gantry system to transfer between the two sites have been reviewed. The system needs to have sufficient clearance over the high water to meet any general requirements from the PLA and the clearance to the LDT vessels.

6.2.24 The operating procedure for safety would still require that there are no movements of material above a LDT vessel entering or exiting the river.

6.2.25 The current proposals for transfer between the cofferdams by vehicle using a loading bay in the intertidal window are simple and reliable. The potential conflicts with the LDT movements at this location would still need to be managed.

6.2.26 The system would not eliminate the need for the limited number of vehicle movements along Lack’s Dock including larger items of plant, and during the completion and MEICA works.

6.2.27 The assessment will be shared with the Port of London Authority and LDT.
Appendix A: Plans

A.1.1 The two plans referred to in paras. 3.1.2 and 3.1.4 are provided below.
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Written summary of compulsory acquisition hearings

Figure A.2 Brixton Storm Relief CSO
Appendix B: Draft decision notice

Wandsworth Council
Environment and Community Services
The Town Hall  Wandsworth High Street
London SW18 2PU

Telephone: 020 8871 7959
Fax: 020 8871 6003
Minicom: 020 8871 8403 (Service for Deaf People)
Email: planningapplications@wandsworth.gov.uk
www.wandsworth.gov.uk

Our ref: 2013/4545

Date: 27 January 2014

Town and Country Planning Act 1990

PERMISSION FOR DEVELOPMENT

The Council, in pursuance of its planning powers, hereby permits the development referred to in the schedule below in accordance with the plans submitted and subject to the conditions set out therein.

Your attention is drawn to the General Information and to the Statement of Applicant's Rights enclosed.

SCHEDULE

APPLICATION NUMBER: 2013/4545

LOCATION: Concrete Batching Plant Cemex Battersea Plant Cringle Street SW8

DESCRIPTION: Demolition of existing ready-mix concrete batching plant and associated structures; and provision of new ready-mix concrete batching plant (29m high x 18m long x 10m wide), aggregate storage bins (29m high x 41m long x 12m wide) on the western boundary and feed conveyor, 6 x 100 tonne cement storage silos, 2 x 500 tonne cement storage silos (25m high x 6m long x 13m wide), and ancillary facilities and structures, including recycled water and fresh water storage tanks, washout and recycling bays, two-storey office accommodation and car parking. (The application is accompanied by an Environmental Statement).

DRAWING NOS: P2/1506/3D, 4D, 7C, 8C, 10A; and the following documents:
Environmental Statement Volume 2: Main Technical Studies (August 2013) Chapter E (Air Quality) and Chapter (Noise and Vibration)

CONDITIONS AND REASONS:
This development shall be begun within 3 years from the date of this permission. To comply with Section 91 of the Town and Country Planning Act 1990.

Details of those parts of the site not covered by plant and buildings, including any parking areas, access ways, landscaping and surface treatment (including the provision of a hard surface across the site that is capable of being kept clean), shall be submitted to and approved by the local planning authority in writing before the development begins. The development shall be implemented in accordance with the approved details. To ensure a high quality of development, and in the interests of the local environment and air quality, in compliance with DMPD policy DMS1.

Notwithstanding that shown on the submitted drawings, details of all the pre-fabricated office/welfare buildings proposed on site; including height, dimensions and materials, shall be submitted to and approved by the local planning authority in writing before they are implemented. In order to assess the suitability of the proposed buildings, in the interests of the appearance of the locality, in accordance with DMPD policy DMS1.

The site shall operate in accordance with the noise mitigation measures proposed in the Environmental Statement Chapter F, Table F6.1, and shall include that while barge off-loading is occurring during night time (between 23:00 and 07:00) the following activities would not occur: aggregate load out from storage bins; use of the cement blowing shed on the jetty, and the operation of the loading shovel. The noise mitigation measures shall include that the loading shovel and mixer lorries based at the site should be fitted with "smart" reversing alarm systems which have an audible white noise alarm rather than a standard tonal alarm (and are set at an appropriate agreed level); and the new concrete batching plant and aggregate processing facilities adopt best practices. To protect the existing and future occupiers of surrounding sites, and to safeguard the amenities of the area, in accordance with DMPD policy DMS1.

The site shall be constructed and operated in accordance with the air quality mitigation measures detailed in the Air Quality Chapter (E) of the Environmental Statement (2013), including the dust suppression measures. The air quality mitigation measures shall be retained throughout the operation of the replacement plant. To protect the existing and future occupiers of surrounding sites, and to safeguard the amenities of the area, in accordance with DMPD policy DMS1.

Notwithstanding that submitted with the application, a Dust and Particulate Management Plan, including dust suppression measures, shall be submitted to and approved by the local planning authority in writing prior to the commencement of the development. The Plan shall include details of the prevention of material being tracked out on to the highway; the use of dust suppressants; the full enclosure of all aggregate feed conveyors; the installation of a dust suppression system in the vicinity of the exit from the site; and the use of a road sweeper to clean the local roads. The dust and particulate suppression and mitigation measures shall be carried out in accordance with the approved Dust and Particulate Management Plan. To protect the existing and future occupiers of surrounding sites, and to safeguard the amenities of the area, in accordance with DMPD policy DMS1.
Notwithstanding that submitted with the application, a Construction Logistics Plan, shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The Plan shall include a construction vehicle routing plan based on the wider geographical area of Wandsworth, a site management plan including the location of wheel washing facilities, timed deliveries, an undertaking to sweep the adjoining roads daily, and an undertaking to have procedures to discipline drivers not complying with the slot time or the agreed routing plan from the site. The works shall be carried out in line with the approved Construction Logistics Plan. To ensure construction works and traffic impacts are minimised in relation to the effects of the construction of the development in accordance with Core Strategy policy IS4, and DMPD policies DMS1 and DMS3.

Notwithstanding that submitted with the application, a Delivery and Servicing Plan, shall be submitted to and approved in writing by the local planning authority prior to occupation of the site. The Plan shall include an emphasis on the increased use of the river to import aggregates and cement; the volumes and types of materials imported and exported; and the capping of the annual HGV movements at 50,000. The applicant shall provide details of the annual HGV movements for each calendar year to allow the Council to monitor the number of movements per annum. The site shall be operated in accordance with the approved Delivery and Servicing Plan. To ensure that traffic impacts are minimised in relation to the operation, and to encourage the use of the river for the transportation of materials, in accordance with Core Strategy policy IS4, and DMPD policies DMS1 and DMS3 and DMT1.

A construction phase environmental management plan shall be submitted for the approval of the local planning authority prior to the commencement of the enabling works and shall include: measures to protect controlled waters and measures to minimise cross contamination on site. To prevent any pollution in accordance with Core Strategy policy IS4.

No development approved by this planning permission shall take place until such time as a scheme to manage the surface water runoff from the site has been submitted to and approved in writing by the local planning authority. The details shall include the provision of a suitable means of surface water drainage (including water reclamation system), so that water does not pond on site. The development shall be implemented in accordance with the approved surface water runoff scheme. To prevent flooding by ensuring the satisfactory management of surface water runoff from the site.

Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed. The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community.

Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority.
authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details. The site overlies a secondary aquifer and this may provide baseflow to the adjacent river and local abstractions.

13 If, during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority in this regard. The remediation strategy shall be implemented as approved. The site overlies a secondary aquifer and this may provide baseflow to the adjacent river and local abstractions.

14 No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme for investigation which has been submitted by the applicant and approved in writing by the local planning authority. The development shall only take place in accordance with the detailed scheme pursuant to this condition. The archaeological works shall be carried out by a suitably qualified investigating body acceptable to the Local Planning Authority. In order that the archaeological remains that may exist on the site can be investigated and that suitable arrangements for recording and preservation are made as appropriate, pursuant to DMPD policy DMS2.

15 Details of a parking scheme for the provision of three active and one passive electric vehicle charging points, and the provision of two spaces for people with disabilities, shall be submitted to the local planning authority for approval prior to their implementation. The parking scheme shall be implemented in accordance with the approved details. To ensure there is an adequate on-site parking scheme, in accordance with Council policy DMT2.

16 Notwithstanding that submitted with the application, an Energy Statement shall be submitted to and shall be approved in writing by the local planning authority before the development commences. The statement shall include details of the measures to reduce carbon emissions from the site. The development shall be implemented and operated in accordance with the approved sustainability and energy measures. To ensure the scheme is consistent with London Plan policies 5.2 and 5.6.

17 Details of the riverside walk, including any means of enclosure and a minimum safeguarded area of 2m wide, shall be submitted to and approved in writing by the local planning authority before this part of the development is implemented. The riverside walk shall be wider than 2m where allowable with regard to any permanent TTT infrastructure, or Cemex's operational requirements. The development shall be implemented in accordance with the approved details. To secure the provision of a riverside walk, in accordance with DMPD policies DMO6.

18 Details of lighting on site shall be submitted to and approved in writing by the local planning authority before their implementation. The development shall be implemented and operated in accordance with the approved details.
To ensure the scheme does not harm navigation on the River Thames.

Details of the proposed treatment to the plant hereby approved, including mitigation for the visual impact of the plant, shall be submitted to and approved in writing by the local planning authority before the development commences. The details should include the potential use of green walls to clad the aggregate storage bins, and the finish to all the on site plant. The development shall be implemented and operated in accordance with the approved details. To ensure a high quality of development, and in the interests of the amenity of the area, in compliance with DMPD policy DMS1.

Details of the proposed boundary treatment, including any planting or landscaping, shall be submitted to and approved in writing by the local planning authority, and constructed, before occupation of the development. The fences/walls to the site shall be of a solid construction to prevent re-suspended dust from passing over the site boundary, except where they are required to be of an open construction to ensure highways safety at access/egress points.

Details of the proposed boundary treatment, including any planting or landscaping, shall be submitted to and approved in writing by the local planning authority, and constructed, before occupation of the development. The fences/walls to the site shall be of a solid construction to prevent re-suspended dust from passing over the site boundary, except where they are required to be of an open construction to ensure highways safety at access/egress points.

To ensure a high quality of development, and in the interests of the local environment and air quality, and highways safety, in accordance with DMPD policies DMS1 & DMT1.

A visual condition survey of the river wall shall be undertaken to ensure the flood defence is of a standard that is equivalent to the lifetime of the development. Any necessary remedial works to the river wall and flood defences should be undertaken before development commences. All vegetation should be cleared and any defects in the walls such as a cracking or loss of fill must be repaired or replaced.

To ensure that the flood defences are of the appropriate standard to defend the site and third party land, in accordance with policy DMS5.

INFORMATIVE: Under the terms of the Water Resources Act 1991, and the Thames Region Land Drainage Byelaws 1981, the prior written consent of the Environment Agency is required for any proposed works or structures, in, under, over or within sixteen metres of the top of the bank/foreshore of the River Thames, which is designated a 'main river'/sea defence.

INFORMATIVE: You are reminded with regards to submission of details in relation to condition 2 that a hard surface should be provided across the site that is capable of being kept clean.

INFORMATIVE: You are reminded that a suitable and sufficient means of surface water drainage (including water reclamation system) should be provided so that water does not pond on the site. It is recommended that petrol/ oil interceptors be fitted in all car parking/washing/repair facilities. Failure to enforce the effective use of petrol/oil interceptors could result in oil-polluted discharges entering local watercourses.

INFORMATIVE: Thames Water will aim to provide customers with a minimum pressure of 10m head (approx 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

INFORMATIVE: You are reminded that an Environmental Permit will be required in order to allow the additional plant to operate.
INFORMATIVE: Please note Environment Agency guidance on piling techniques.

INFORMATIVE: The development of this site is likely to damage archaeological remains. The applicant should therefore submit detailed proposals in the form of an archaeological project design. The design should be in accordance with appropriate English Heritage guidelines.

In dealing with this application the Council has implemented the requirement in the National Planning Policy Framework to work with the applicant in a positive and proactive manner and the Council has, as far as practicable, sought solutions to problems arising in relation to dealing with the planning application. We have made available detailed advice in the form of our statutory policies in the Local Plan consisting of the Core Strategy, Development Management Policies Document, Supplementary Planning Documents and where appropriate the Site Specific Allocations Document as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In addition, where appropriate, further guidance was offered to the applicant during the processing of the application.

The Council has had regard to local development plan policies, to any representations received and to other material planning considerations. The following policies were considered relevant to the grant of planning permission:

National Planning Policy Framework (March 2012)

London Plan (Adopted July 2011), and Revised Early Minor Alterations (October 2013):
1.1 - Delivering the strategic vision and objectives for London; 2.1 - London in its global, European and United Kingdom context; 2.2 - London and the wider metropolitan area; 2.9 - Inner London; 2.10 - Central Activities Zone – strategic priorities; 2.11 - Central Activities Zone – strategic functions; 2.12 - Central Activities Zone – predominantly local activities; 2.13 - Opportunity Areas and Intensification Areas; 2.14 - Areas for regeneration; 2.18 - Green infrastructure: the network of open and green spaces; 4.1 - Developing London's economy; 4.11 - Encouraging a connected economy; 4.12 - Improving opportunities for all; 5.1 - Climate change mitigation; 5.2 - Minimising carbon dioxide emissions; 5.3 - Sustainable design and construction; 5.6 – Decentralised Energy in Development Proposals; 5.7 - Renewable energy; 5.8 - Innovative energy technologies; 5.9 - Overheating and cooling; 5.10 - Urban greening; 5.11 - Green roofs and development site environs; 5.12 - Flood risk management; 5.13 - Sustainable drainage; 5.14 - Water quality and wastewater infrastructure; 5.15 - Water use and supplies; 5.16 - Waste self-sufficiency; 5.20 – Aggregates; 6.2 - Providing public transport capacity and safeguarding land for transport; 6.3 - Assessing effects of development on transport capacity; 6.4 - Enhancing London's transport connectivity; 6.7 - Better streets and surface transport; 6.9 – Cycling; 6.10 - Walking; 6.11 - Smoothing traffic flow and tackling congestion; 6.12 - Road network capacity; 6.13 – Parking; 7.1 - Building London’s neighbourhoods and communities; 7.2 - An inclusive environment; 7.3 - Designing out crime; 7.4 - Local character; 7.5 - Public realm; 7.6 – Architecture; 7.7 - Location and design of tall and large buildings; 7.8 – Heritage Assets and Archaeology; 7.9 - Heritage-led regeneration; 7.10 – World Heritage Sites; 7.11 - London View Management Framework; 7.12 -
Implementing the London View Management Framework; 7.13 - Safety, security and resilience to emergency; 7.14 - Improving air quality; 7.15 - Reducing noise and enhancing soundscapes; 7.19 - Biodiversity and access to nature; 7.21 – Trees and woodlands; 7.24 - Blue Ribbon Network; 7.25 - Increasing the use of the Blue Ribbon Network for passengers and tourism; 7.26 - Increasing the use of the Blue Ribbon Network for freight transport; 7.27 - Blue Ribbon Network: supporting infrastructure and recreational use; 7.28 - Restoration of the Blue Ribbon Network; 7.29 - The River Thames

Core Strategy (Adopted October 2010):
PL1 – Promoting attractive and distinctive neighbourhoods and regeneration initiatives; PL2 – Assessing and managing flood risk; PL3 – Supporting and promoting improvements to transport; PL4 – Protection and enhancement of open space and the natural environment; PL6 – Meeting the needs of the local economy; PL7 - Land for industry and waste; PL9 - River Thames and the riverside; PL11 - Nine Elms and the adjoining area in north-east Battersea; IS1 – Supporting measures to promote sustainable development; IS2 – Sustainable design, low carbon development and renewable energy; IS3 – Promoting good quality design and townscape; IS4 – Protecting and enhancing environmental quality; IS6 – Protection and enhancement of community services and the provision of infrastructure; IS7 - Planning Obligations

DMS1 – Development criteria for sustainable urban design and the quality of the urban environment; DMS2 – Managing the historic environment; DMS3 – Promoting sustainable design and low carbon energy; DMS4 – Locational and development criteria for tall buildings; DMS5 – Management of flood risk; DMS6 – Development criteria for Sustainable Drainage Systems; DMS7 – Requirement to consult with Environment Agency for development adjacent to Rivers Thames and Wandle; DMI3 - Thames Policy Area; DMI5 – Allocated sites for waste management facilities; DMO4 – Nature Conservation; DMO6 – Development criteria for riverside development; DMO7 – Criteria for development in the river and on the foreshore; DMT1 – Assessing transport impacts of development; DMT2 – Parking and servicing requirements; DMT3 – Riverside walking and cycling route requirements; DMT4 - Land for transport functions

Vauxhall Nine Elms Battersea Opportunity Area Planning Framework (OAPF) (Published March 2012)

Site Specific Allocations Document (SSAD) (Adopted February 2012)

Mayor of London Supplementary Planning Guidance:
Safeguarded Wharves Review (March 2013) - This document reviews the suitability of maintaining the safeguarding of wharves. Cringle Dock and Kirtling Wharf – retain sites in active use; GLA and PLA working with relevant stakeholders to ensure redevelopment of VNEB provides suitable road network to service these wharves and do not reduce their viability; Middle Wharf – retain site may be required by Thames Water for the Thames Tideway Tunnel for the medium term.

London View Management Framework (March 2012) - policies 7.11 and 7.12 of the London Plan establish the London View Management Framework which seeks to designate, protect and manage 27 views of London and some of its
major landmarks. This document explains in greater detail the policy approach so that boroughs, applicants and statutory authorities can assess a proposal’s compliance with the London Plan Sustainable Design and Construction (May 2008) - provides additional information to support implementation of the London Plan.

**Planning Obligations SPD (adopted May 2013)**

**DRAFT REASONS FOR GRANTING PLANNING PERMISSION:**

The land use and proposal are acceptable in principle. The proposal would assist in the implementation of the Thames Tideway Tunnel (TTT), and would not result in the unacceptable loss of safeguarded wharf facilities, in accordance with the objections of the London Plan (July 2011), Vauxhall Nine Elms Battersea Opportunity Area Policy Framework (VNEB OAPF), and the aims of the Site Specific Allocations Document (February 2012) (SSAD). The design, townscape and visual impacts of the new facility are considered to be acceptable. It is not considered that the proposal would have a significantly detrimental impact on the future development of surrounding sites, including with regard to the safeguarded wharf status of the site. The proposal would not have a significantly detrimental impact on the amenity of the area, including through noise and vibration, and air quality. The transportation impacts of the proposal are considered to be acceptable, and would not have a significantly detrimental impact on the surrounding highways network, while the greater use of the river for the transportation of materials is welcomed. The sustainability mitigation measures proposed are considered to be acceptable. It is considered that with appropriate mitigation the proposal would not have a significantly detrimental impact on the water environment or biodiversity. The proposal would not have a significantly detrimental impact on the character and setting of the impact on the local heritage assets, including archaeology.

In conclusion, when assessing the above issues, it was considered that on balance the adverse impacts and issues arising from the scheme would be outweighed by the considerable benefits and positive impacts that would accrue and that planning permission should be granted.

This is a substantial development scheme and one that falls to be determined as an Environmental Impact Assessment (EIA) application. The applicants submitted an Environmental Statement (ES) with the application and have provided additional and further information as appropriate, during the course of the application process. Consultation took place with statutory and other consultees prior to the production of the ES which informed its content. The ES, and its addendums, have appropriately considered the likely significant environmental impacts of the development project, and the report to the Planning Applications Committee was produced and drafted taking the environmental information into consideration.

Seema Manchanda  
Assistant Director (Planning and Environmental Services)
Appendix C: Response to ExA question about Article 34 compensation

RESPONSE TO EXAMINING AUTHORITY QUESTION ABOUT ART 34 COMPENSATION

Introduction

As the CA hearing on 27 January 2014, the ExA asked Thames Water about the scope of the compensation provisions in Art 34(6) (Temporary use of land for carrying out the authorise project) of the draft DCO in the context:

1. where an owner or occupier of land is excluded from beneficial occupation for a temporary, albeit extended, period; and
2. all works to the land are not removed and the land restored, due to one of the factors set out at Art 34(4)/(5).

The compensation provision at Art 34(6) provides as follows:

“The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.”

This article is in identical terms to that at Model Provision 28 in the (now technically lapsed) Infrastructure Planning (Model Provisions)(England and Wales) Order 2009.

It is important to note, at the outset, three component parts of the compensation provision being:

1. “loss or damage”;
2. “arising from”; and
3. “the exercise ... of any power conferred by this article”.

This note will consider these concepts.
The concept of ‘loss or damage’ in other temporary use powers
The compensation provision in Article 34 (and indeed in Model Provision 28) has been used in a number of other similar provisions over many years. For example,

In the British Railways Act 1992 a power of temporary use of land is granted to the British Railways Board in respect of various railway works in the following terms (Sch 1 para 2):

“In connection with the construction of the authorised works the Board may—
(1) establish and maintain a working site on each of the station lands;
(2) after giving to the owners and occupiers of the relevant lands not less than 28 days’ notice in writing stating the purpose for which it is required—
(a) take possession of, and establish and maintain a working site on, the works land, remove such structures or vegetation on the land as may be necessary for the purpose so stated and construct on the land such temporary works or structures as they may require for that purpose; and
(b) use the access lands for access for purposes connected with the construction of the authorised works.”

It can be seen that this is not a compulsory acquisition power as Sch 1 para 3 provides that:

“The Board shall not by reason of the exercise of the powers of this Part of this schedule be required to purchase any part of any relevant lands.”

Compensation for the exercise of the Sch 1 para 2 power is expressed in the following terms (Sch 1 para 6):
“(a) The Board shall compensate the owners and occupiers of the relevant lands for any loss or damage which may result to them by reason of the powers of this Part of this schedule.

(b) Nothing in this section shall relieve the Board from liability to compensate under section 6 or 43 of the Act of 1845 or section 10(2) of the Act of 1965, as incorporated with or applied by this Act, or under any other enactment, in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (a) above.”

Whilst not in identical terms, it can be seen that the concepts of ‘loss or damage’, ‘which may result to them’ and ‘by reason of the powers’ are very similar to the three concepts occurring in Article 34 (above).

The Cattewater Reclamation Act 1992 has the following temporary use power:

“(1) In this section “the specified lands” means the lands delineated on the deposited plan and thereon numbered 4, 5, 6 and 7 in the city.

(2) The Company in connection with the construction of the works and after giving to the owners and occupiers of the specified lands not less than 28 days’ previous notice in writing, may use the specified lands for the purpose of obtaining access from and to the works.

(3) On the exercise of the powers conferred by this section the Company shall not be empowered to purchase compulsorily or be required to purchase any part of the specified lands.

(4) On the exercise of the powers conferred by this section, the following provisions shall have effect:

(a) the Company shall compensate the owners and occupiers of the specified lands for any loss or damage which may result to them by reason of the exercise of the powers of this section;

(b) nothing in this section shall relieve the Company from liability to compensate under section 10(2) of the Act of 1965, as incorporated with or applied by this Act, or under any other enactment, in respect of loss or
damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (a) above; (c) any dispute as to a person's entitlement to compensation under paragraph (a) above or as to the amount thereof shall be determined by the tribunal.”

Section 12(4)(a) can be seen to be in very similar terms to the corresponding provision in the British Railways Act 1992.

From the early 1990s the enactment of the Transport and Works Act 1992 meant that transport and inland waterways projects were brought forward under that legislation.

Thus, for example, the Leicestershire County Council (Ashley de la Zouche Canal Extension) Order 2005 (2005 SI 2786), a Transport and Works Act Order, provides (Article 19) that:

“(1) The undertaker may, in connection with the carrying out of the authorised works—
(a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 for the purpose specified in column (3) of that Schedule;
(b) remove any buildings and vegetation from that land; and
(c) construct temporary works on that land including—
(i) the provision of means of access; and
(ii) buildings.
(2) Not less than 28 days before entering upon and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
(3) The undertaker shall not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one
year beginning with the date of completion of the work or works specified in relation to that land in column (4) of Schedule 8.

(4) Subject to paragraph (5), before giving up possession of land under paragraph (3), the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of any owner or occupier of the land.

(5) Paragraph (4) shall not be taken to require the undertaker to replace a building removed under paragraph (1)(b).

(6) The undertaker shall pay compensation to the owners and occupiers of land for any loss or damage incurred by them as a consequence of the exercise of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part I of the 1961 Act.

(8) Without prejudice to article 35, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works.

(9) Subject to paragraph (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(10) Paragraph (9) shall not apply in relation to rights created under article 18.

(11) Where the undertaker takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(12) In this article “building” includes structure or any other erection.”

Article 19(6) again reflects, in slightly different terms (‘loss or damage’, ‘incurred by them as a consequence of’ and ‘the exercise of the powers conferred by this article’), the three concepts in Article 34 above.

This general pattern has continued in more recent development consent orders. Thus the Galloper Wind Farm Order 2013 (2013 SI 1203) provides (Article 23) that:
“(1) The undertaker may, in connection with the carrying out of the authorised project—

(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;

(b) remove any buildings and vegetation from that land; and

(c) construct temporary works (including the provision of means of access) and buildings on that land.

(2) In the case of the land numbered 141, 142, 143, 161, 163, 165, 167, 170 and 171 in column (2) of Schedule 5, the power conferred by paragraph (1) shall be limited to entering in and taking temporary possession of the airspace over the land for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 5.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.

(6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

(a) acquiring new rights over any part of that land under article 18 (compulsory acquisition of rights); or

(b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 21 (acquisition of subsoil only).

(10) In relation to the land specified in paragraph (2), the powers conferred by paragraph (9), shall be limited to the airspace over the land and that paragraph shall not authorise the undertaker to acquire any part of the subsoil or rights in the subsoil of that land.

(11) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).”

The compensation provision at Article 23(6) is in identical terms to that in Article 34 (above) and both follow Model Provision 28.

The concept of 'loss or damage' in non-temporary use powers

The Water Industry Act 1991 provides (Sch 11 para 8) as follows in respect of compensation for the exercise of non-compulsory purchase powers:
“(1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the person entitled to that interest shall be entitled to compensation from the applicant for the order of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an interest in any relevant land sustains loss or damage which—

(a) is attributable to so much of any compulsory works order as—

(i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(ii) grants authority for the carrying out of the operations;

(b) does not consist in depreciation of the value of that interest; and

(c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,

he shall be entitled to compensation from the applicant for the order in respect of that loss or damage, in addition to compensation under subparagraph (1) above.

(3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—

(a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and

(b) grants authority for the carrying out of the operations,

the applicant for the order shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
(4) A person who sustains any loss or damage which is attributable to any discharge of water made by a water undertaker in pursuance of a compulsory works order shall be entitled to recover compensation from the undertaker in respect of the loss or damage.

(5) For the purposes of sub-paragraph (4) above any extra expenditure—
(a) which it becomes reasonably necessary for any water undertaker or public authority (other than the undertaker making the discharge) to incur for the purpose of properly carrying out any statutory functions; and
(b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,
shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.

(6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the [Upper Tribunal] 1; and in relation to the determination of any such compensation the provisions of [section 4 of the Land Compensation Act 1961] 2 shall apply, subject to any necessary modifications.

(7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

...”

Paragraph 8(2)(b) above relates to circumstances where a person is entitled to an interest in any relevant land and sustains “loss or damage which - ... (b) does not consist in depreciation of the value of that interest”; thus it is clear that the concept of ‘loss or damage’ is wider than ‘depreciation’ in the value of the land and thus could be excluded from the wider concept. [NB depreciation in the value of land is excluded from paragraph 8(2) because it is covered in paragraph 8(1).]
Article 34, by contrast, does not exclude ‘depreciation’ in the value of land from the expression ‘loss or damage’. It is Thames Water’s submission, therefore, that, as a matter of approach, the concept of ‘loss or damage’ is wide enough to cover ‘depreciation’ in the value of land.

Paragraph 8(2)(c) (above) makes it clear that the concept of ‘loss or damage’ is also wide enough to cover “compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act in pursuance of a notice to treat served on the date on which the order comes into force”. Again, this confirms the proposition that the legal concept of ‘loss or damage’ is a wide one that also encompasses what would be termed ‘disturbance’ compensation in the event of compulsory acquisition of land.

The use of the term ‘loss or damage’ in the Planning Act 2008 is consistent with the above analysis.

Schedule 6 to the Planning Act 2008 deals with changes to, and revocation of, orders granting development consent. Paragraph 7 of the schedule relates to ‘compensation for depreciation’ and defines this as “compensation payable under paragraph 6 in respect of loss or damage consisting of the depreciation in the value of an interest in land”. Again, therefore, it is make clear that the concept of ‘loss or damage’ is wide enough to include the depreciation in the value of land.

Case law on ‘loss or damage’

There is very little case law on the concept of ‘loss or damage’ in the context of temporary use of land or, indeed, the use of that term in Acts relating to the powers of statutory undertakers. Those few cases that have been reported, however, do not indicate that the term ‘loss or damage’ has been defined in a restrictive way so as to exclude either a depreciation in the value of land or ‘consequential loss’ (i.e. what in the context of compulsory purchase would be called ‘disturbance’).
The concept of ‘arising from’

The requirement that the loss or damage should ‘arise from’ the exercise of the power clearly imports the well understood legal concept of ‘causation’; that is that there must be a causal connection between the event that gives rise to the claim for compensation, in this case the exercise of the Article 34 power, and the ‘loss or damage’ suffered.

It is reasonable to assume, however, that in considering any claim for compensation under Article 34 the Upper Tribunal (Lands Chamber) (see Article 34(7)) would have regard to all three of the ‘three conditions’ established in relation to ‘disturbance’ compensation in the Privy Council decision in Director of Buildings and Lands v Shun Fung Ironworks Ltd [1995] 2 A.C. 111, namely (i) there must be a causal connection, (ii) the loss must not be too remote, and (iii) the claimant must have behaved reasonably (see Lord Nicholls at page 126). All three of these conditions goes to Lord Nicholls’s general principle of “fair and adequate compensation” (see, again, page 126).

Thus it is Thames Waters submission that, in the event of dispute about compensation, any claimant would have to establish that (i) its loss or damage had been caused by the exercise of the Article 34 power, (ii) that the loss or damage was not too remote, and (iii) that the claimant had behaved reasonably, and that would include reasonably seeking to mitigate the loss or damage.

The expression “the exercise … of any power conferred by this article”

The third element of Article 34 highlighted at the start of this note is that the loss or damage may arise from “the exercise … of any power conferred by this article”. This is clearly drafted in the widest possible terms and makes it clear that the ‘cause’ of the ‘loss or damage’ does not relate to the exercise of any particular part of the article, but “any power” conferred by the article. That would include
both the power to take temporary possession and the power not to fully restore
the land to its previous state; whether by demolishing and not rebuilding
buildings on the land, or by leaving certain limited apparatus or ground
strengthening works in the land.

The questions raised by the Examining Authority

The Examining Authority asked Thames Water about the scope of the
compensation provisions in Art 34(6) (Temporary use of land for carrying out
the authorise project) of the draft DCO in the context:

1. where an owner or occupier of land is excluded from beneficial occupation for a
temporary, albeit extended, period; and
2. all works to the land are not removed and the land restored, due to one of the
factors set out at Art 34(4)/(5).

It can be seen from the above analysis that an owner or occupier of land subject
to Article 34 powers would be able to claim compensation for any
1. depreciation in the value of the land, and / or
2. consequential loss
in the two circumstances raised in the Examining Authority's question, subject to
the ‘three conditions’ of fair and adequate compensation raised by Lord Nicholls
in Shun Fung above.

Human Rights

Section 15 of the Applicant's Revised Statement of Reasons (APP79.1) and the
response to the Examining Authority's First Written Question 4.31(e) (see
section 31.7) sets out Thames Water's submissions generally on the compliance
of the 2008 Act regime in general, and the current application for development
consent in particular, with regard to the European Convention on Human Rights
With regard to Article 34 of the draft DCO, Thames Water submits that (i) those potential affected by the exercise of the power have been consulted and given an opportunity to make representations before the power is granted, and (ii) as discussed above, any owner or occupier whose land is subject to the exercise of the Article 34 power will have the opportunity to claim compensation for loss or damage arising from the exercise of the power.

It is Thames Water’s submission that in these circumstances the inclusion of Article 34 within the DCO does not breach the human rights of any affected owner or occupier as set out in Article 6, Article 8 and Article 1 of the First Protocol of the European Convention of Human Rights.

**Michael Humphries QC**

31 January 2014