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Our Ref: TWA/02/APP/03  
Your Ref: 2087/5254/30811886

21 JULY 2005

Dear Sirs,

**TRANSPORT AND WORKS ACT 1992  
TOWN AND COUNTRY PLANNING ACT 1990**

**PROPOSED NEW TYNE CROSSING**

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to the report of the Inspector, Mr J S Nixon BSc (Hons) DipTE CEng MICE MRTPI MIHT, concerning the applications made by your clients, the Tyne and Wear Passenger Transport Authority ("the TWPTA"), for:-

- the River Tyne (Tunnels) Order ("the Order"), to be made under sections 3 and 5 of the Transport and Works Act 1992 ("the TWA"); and
- a direction as to deemed planning permission ("the planning direction") for development provided for in the Order, to be given under section 90(2A) of the Town and Country Planning Act 1990.

2. The Inspector held a public local inquiry into these applications between 4 March and 17 April 2003 and formally closed the inquiry by letter on 31 May 2003. Concurrently with this inquiry, he held public local inquiries into the related applications by the TWPTA for listed building consent ("LBC") for re-siting the statue of Sir Charles Palmer, demolishing the Gaslight Public House and making alterations to the entrances to the Tyne Pedestrian and Cycle Tunnels. The LBC applications fall to be determined by the First Secretary of State. In parallel with this letter the Office of the Deputy Prime Minister is today issuing on behalf of the First Secretary of State a decision letter about the LBC applications.

3. The Order, if made, would authorise the construction of an immersed tube tunnel for road traffic between East Howdon on the north bank of the River Tyne and Jarrow on the south bank, located to the east of the existing road tunnel. It would authorise also "cut and cover" tunnels extending inland from the immersed tube tunnel and new junctions with the A19 trunk road and the local road network. The Order would include, among other things, powers to acquire compulsorily land and rights required for the works and powers to charge tolls for vehicles using the new road tunnel, together with revised tolling arrangements for the existing tunnel.

4. A copy of the Inspector's report of the inquiry (including the concurrent LBC inquiries) is enclosed. The Inspector has provided an overview and summary of his conclusions in paragraphs S.1 to S.20 at the beginning of his report. He has set out in paragraphs 9.1 to 9.78 of the report his conclusions on each of the issues referred to in the Secretary of State's statement of matters for the inquiry. In addition to those conclusions, in section 8 of the report the Inspector has commented on the issues raised by objectors.

### **Summary of the Inspector's recommendations**

5. The Inspector recommended at paragraph R.1 of his report (following the overview and summary of his conclusions) that the Order be made, with modifications, and that the planning direction should be given, subject to conditions. He also recommended at paragraph R.3 that, before making the Order, the Secretary of State should consult the Environment Agency about the arrangements for the excavation, remediation and deposition of material arising from construction works.

### **Summary of the Secretary of State's decisions**

6. Subject to some qualifications referred to later in regard to the terms of the Order and the planning conditions, the Secretary of State agrees with the Inspector's recommendations. In view of this and for the reasons set out in this letter, **the Secretary of State has decided to make the Order, with modifications, and to direct that planning permission be deemed to be granted, subject to the conditions set out in Annex 1 to this letter.** The proposed Order modifications and planning conditions are discussed later in this letter.

7. In the separate decision letter referred to at paragraph 2 above, the First Secretary of State has decided to grant the LBCs applied for, subject to conditions.

### **Post-inquiry representations and amendments to the application**

8. Having considered the Inspector's recommendation at paragraph R.3, the Department wrote on 14 November 2003 to those who had appeared at the inquiry and to the Environment Agency and the North Tyneside and South Tyneside Metropolitan Borough Councils. The letter invited comments on the proposed arrangements for processing materials arising from construction works and how those activities would be controlled. Information was also invited about whether any land that would be subject to compulsory acquisition powers under the Order was open space for the purposes of the Acquisition of Land Act 1981 and whether the proposed use of certain school playing fields for the scheme would require the consent of the Secretary of State for Education and Skills. The responses to this letter were circulated to parties on 19 December 2003 and on 12 March 2004 and an opportunity was given for further comments to be made.

9. On 30 September 2004 the TWPTA proposed amendments to certain of the Order provisions relating to the acquisition of land. The effect of the amendments would be to exclude from compulsory acquisition under the Order the surface of any land which in the opinion of the local planning authority should be regarded as "open space" as defined in the Acquisition of Land Act 1981. The amendments would also modify the provisions for the payment of compensation so as to include those having interests in or over land needed for the scheme which the TWPTA acquired by agreement or appropriation. Notice of these changes was served on all those identified by the TWPTA as the beneficiaries of such interests and was published in local newspapers. The TWPTA also

informed those who had appeared at the inquiry of the proposed amendments to the Order and deposited documents detailing the changes for inspection at public libraries in the locality of the proposed works.

10. On 6 October 2004 the Department wrote again to those who had appeared at the inquiry inviting comments on amendments to the tolling provisions which the TWPTA had proposed following the close of the inquiry. The responses to this letter were circulated to parties on 4 November 2004 and an opportunity was given for further comments to be made.

11. The Secretary of State has received various written representations since the close of the inquiry relating to matters other than those referred to in paragraphs 8 to 10 above. He takes the view that nothing in them constitutes new evidence, or raises a new issue, which needs to be referred to the parties to the inquiry before he proceeds to a decision. They do not cause him to take a different view of the matters before him than he would otherwise have taken based on the evidence before the inquiry.

### **Secretary of State's consideration**

12. Careful consideration has been given to all the arguments put forward by or on behalf of all the parties, including those submitted in the representations referred to in paragraphs 8 to 10 above, and to the Inspector's report. The Secretary of State's consideration of the main issues is set out in the following paragraphs, which generally follow the order in which the Inspector addressed the issues in section 9 of the report. References below to paragraph numbers in brackets are references to paragraphs in the Inspector's report.

### **Overall need for the New Tunnel Crossing: its objectives and policy framework**

#### Objectives

13. The TWPTA stated that the objectives of the scheme were as follows (6.11):-

- i. to address the problems of congestion in the existing Tunnel and on its approaches;
- ii. to improve safety and lower the risk to the travelling public in the existing Tunnel;
- iii. to improve public transport access through the Tunnel crossing and in its vicinity; and
- iv. to promote wider economic benefits in the region.

14. On the first objective, the Inspector accepted that the scheme would address problems of congestion in the existing Tunnel and on its approaches along the A19 for some considerable time. He considered that it would reduce, if not remove, the current levels of congestion during extended morning and evening peak hours (S.4; 9.1).

15. On the second objective, the Inspector agreed with the TWPTA that the overall accident risk would reduce following the introduction of the traffic segregation proposed. In addition the evacuation scenario should improve (S.4; 9.2).

16. With regard to the third objective, the Inspector accepted that there would be an opportunity for improved public transport through the New Tunnel Crossing (“NTC”), whilst noting that the TWPTA’s proposals offered no guarantee that this would be converted into reality. He noted that the best estimate of success was a modal shift to buses through the NTC of 10% (S.5; 9.3). The Inspector nevertheless acknowledged that the removal of congestion, together with the proposed toll by-pass for buses, should improve reliability, and that this would make the Tunnel more attractive to bus operators and passengers (8.29; 9.3).

17. On the fourth objective, the Inspector accepted that the scheme would respond to the needs of existing and allocated land uses along the A19 corridor, especially those delivering employment opportunities, and would act as a catalyst for further employment development within the A19 corridor (S.4). He recognised that the NTC would be a major factor in maintaining and attracting further levels of investment (9.6).

18. The Secretary of State agrees with the Inspector that there is clear evidence that the scheme would meet its first, second and fourth objectives. Whilst the Secretary of State agrees with the Inspector that the evidence in regard to meeting the third objective is less persuasive, he nevertheless considers that the NTC scheme would provide the opportunity for significant and welcome improvement in public transport through the Tunnel. The Secretary of State therefore concludes that the scheme is capable of meeting its stated objectives.

#### The policy framework

19. The Inspector concluded that there was no question that the proposed NTC accorded closely and strongly with regional and local planning and transport policies (S.2; 9.9). Furthermore, he accepted that the latest transport study, TAMMS (the Tyne Area Multi-Modal Study), conducted in accordance with approved government methodology, confirmed the need for the NTC (S.4-5; 9.10). The Inspector concluded that, faced with this, it was difficult to presume other than in favour of a project that accorded with the development plan policies (9.10).

20. The Inspector considered, however, that there was a tension between the regional and local policy framework on the one hand and, on the other hand, the broader strategic objectives, as evinced by PPG13, of reducing the need to travel and placing less reliance on the private car, in order to create and support sustainable communities (9.11; S.3). He agreed with objectors that the NTC would address a predominantly local problem; promote less sustainable development along the A19 employment corridor; increase the length and number of journeys by private car; and do little, if anything, to encourage or effect modal shift (S.6).

21. Despite this tension, the Inspector concluded that as he saw no realistic prospect of a very large modal shift to public and other more sustainable forms of transport, and as he recognised the employment and economic consequences of awaiting new or upgraded public transport infrastructure, the NTC should be accepted in principle (S.9-10; 9.13). He accepted that the local land use allocations in the development plan were already much too far down the line to resile from the A19 employment corridor approach; and that, to avoid the potential for employment and economic stagnation, the only realistic option was for the NTC to proceed (S.20).

22. The Secretary of State has considered the Inspector's comments about the consistency of the NTC with national and regional transport and planning policies. As the Inspector notes, the NTC is fully supported by policies at the regional and local level. These include the Regional Planning Guidance for the North East (RPG1), the draft Regional Transport Strategy, the North and South Tyneside Unitary Development Plans and the Local Transport Plan. The Secretary of State is satisfied that these regional and local policies have properly taken account of the Government's national policy objectives. He considers that it is consistent with national policy objectives for additional road capacity to be provided where this is required to tackle congestion and is delivered as part of integrated transport and land use strategies that balance the needs of motorists with wider scheme impacts.

23. The Secretary of State is satisfied from the evidence that the scheme would make an important contribution to tackling congestion on the A19 corridor, would improve safety and would do much to support the growth of the local and regional economy. He notes, moreover, that despite expressing reservations the Inspector has nevertheless accepted that the scheme presents a realistic solution to current problems and that, without it, there would be the potential for economic and employment stagnation. Therefore, whilst noting the Inspector's concerns about the relationship between the regional and local policies and the overarching objectives of national policy, the Secretary of State is satisfied that this proposal to provide additional road capacity across the Tyne is compatible with national policy as well as enjoying strong support from the relevant regional and local policies.

24. In the light of all the above factors, the Secretary of State agrees with the Inspector that, in principle, the NTC should be accepted. He therefore considers that any adverse environmental or social effects of the scheme, as addressed below, should be assessed against this positive background in its favour.

### **The main alternatives considered**

25. The Inspector could find no supportable reason for an alternative location for a new road crossing across the Tyne. The A19 was where congestion occurred, where the highway infrastructure was already in place, and where the land use allocations within the development plans would derive most benefit. Whilst the construction of a bridge instead of a tunnel had its attractions, the Inspector recognised that the clearance necessary would have massive engineering and cost implications. Furthermore, whilst a bored tunnel rather than the cut and cover proposal would save the listed Gaslight public house, he accepted that the estimated cost was significantly higher, and that the higher toll charges required to offset the cost would act as a disincentive to using the NTC, thereby threatening the economic recovery and regeneration of the area. In conclusion, he could not see any realistic alternative to the present proposal (9.17-9.21).

26. The Secretary of State agrees with the Inspector, for the reasons given, that no better alternative has been advanced to the proposed scheme.

### **Compulsory acquisition powers**

27. The Inspector considered that it was essential to include compulsory acquisition powers in the Order and he was satisfied that, with one caveat, the land subject to those powers was the minimum necessary for the construction of the NTC and ancillary works (S.14, 9.21). His one reservation concerned the land needed to accommodate the toll

plazas, which he thought might be rendered obsolete by future developments in technology for automatic number plate recognition. He concluded, however, that as such an approach was not a firm option at the moment the land needed for toll plazas should not be omitted (S.15, 9.22).

28. The Secretary of State agrees with the Inspector's conclusions. Subject to the exclusion of certain land from compulsory acquisition at the request of the TWPTA since the inquiry closed (paragraph 9 above refers), the Secretary of State is satisfied that all the land that would be subject to compulsory acquisition and temporary possession powers under the Order has been shown to be necessary for the NTC scheme, and that there is a compelling case for giving those powers in the public interest.

### **Funding arrangements and tolling powers**

29. The Inspector foresaw no difficulty in securing a Concessionaire to construct and operate the NTC and he found that the TWPTA's cost estimates were robust (S.13, 8.90). He considered that the proposed mechanism for setting future toll charges was sensible as it would ensure that all increases were justified and would thereby safeguard the public interest (S.19, 8.90). However, he endorsed a revision to the Order proposed by the TWPTA which would allow for the present toll levels on the existing road tunnel to rise in stages before completion of the NTC so that users would not be faced with a large one-off increase (6.41, 9.25).

30. Following the Department's letter referred to in paragraph 10 above, representations on the TWPTA's revised tolling provisions were received from the North East Combined Transport Activists' Roundtable ("NECTAR"), the Tyne Crossings Alliance ("the TCA"), the North East Chamber of Commerce and Mr S. Smith of South Shields. All of these considered that the powers in the revised provisions for the TWPTA to determine the level of tolls were not sufficiently constrained. NECTAR and the TCA were concerned, furthermore, that the arrangements would not provide sufficient protection for the tunnel-user and/or the tax-payer should the Concessionaire be unable to meet its financial obligations in constructing and operating the new tunnel. There were mixed views among those who commented on the revised provisions about whether the Order should limit the purposes for which toll revenue and any surpluses could be used.

31. In determining a TWA Order application, the Secretary of State is concerned to establish that there is a reasonable prospect of funds being secured to meet the costs of implementing the scheme and its associated liabilities. He does not, however, expect applicants to have secured the required funds before the application is determined. With this in mind, the Secretary of State is satisfied that the NTC scheme is reasonably capable of attracting the funds necessary to secure its implementation by means of the concession agreement proposed by the TWPTA.

32. The Secretary of State agrees with the Inspector's views on the tolling mechanisms set out in the Order, as revised at the inquiry, subject to the following qualifications. He has considered the further amendments to the tolling provisions proposed by the TWPTA since the close of the inquiry and the comments made on them by other inquiry parties. In the Secretary of State's opinion, none of the proposed amendments would increase the latitude available to the TWPTA in the setting of tolls compared with the arrangements recommended by the Inspector. He is satisfied in particular that the revised arrangements include sufficient controls to protect the interests of tunnel-users while allowing the TWPTA the flexibility which they consider necessary to make the project

financially self-supporting and commercially attractive. He considers also that the provisions in the Order concerning the use of toll revenue – including the power for the TWPTA to use any surplus to support public transport initiatives - are appropriate. The specific changes to the tolling provisions which the Secretary of State intends to make (beyond those recommended by the Inspector), and the reasons for them, are described in paragraph 59 below.

### **Effects on the local and regional economy**

33. The Inspector considered that the NTC would greatly enhance the attraction of the A19 as an employment corridor, with many of the new jobs generated being of benefit to the wider region. In addition, jobs created by the building of the NTC would help to stabilise and expand the local economy. Although he considered that, in terms of generating more sustainable travel and creating and reinforcing sustainable communities, the positive effects of the scheme would be marginal, he was satisfied that without the NTC congestion at the existing tunnel would have a negative effect on the local and regional economy (9.48-52).

34. The Secretary of State agrees with the Inspector that the NTC would help to stimulate the local and regional economy. He notes, in particular, the strong support for the NTC from businesses, local authorities and organisations who regard the NTC as a crucial element in efforts to bring about economic growth in this part of the region, which includes many areas of high unemployment and deprivation (7.2-15, 7.23-26). In this regard, the Secretary of State welcomes the contribution that the NTC could make to reducing social disadvantage in North and South Tyneside by providing both jobs and greater access to jobs.

### **Traffic impacts**

35. The Inspector concluded that the extra capacity released by opening the NTC would largely eliminate present levels of congestion on the A19 for the short to medium term, although the levels of traffic using the A19 and the length of journeys would increase significantly. These higher traffic levels could in turn affect local roads serving as feeder routes, thereby increasing severance and environmental intrusion. The Inspector considered that, as this situation developed, it would be necessary to introduce traffic management measures to ensure that local interests were not unduly affected. He also considered that the NTC scheme would provide the opportunity for improvements to public transport and to access from the surrounding area to the existing pedestrian and cycle tunnels (8.74, 9.28-34).

36. The Secretary of State agrees with the Inspector that the scheme would do much to tackle the present levels of congestion on the A19, with the opportunity for improvement in public transport. Whilst he also agrees with the Inspector that the scheme is likely to lead to significant increases in traffic using the A19, and that the impacts on local roads will need to be monitored, he is nevertheless satisfied that, overall, the NTC will bring very significant improvements in the flow of traffic.

### **Effects on residents and businesses**

37. The Inspector recognised that, during construction of the NTC, those living close to the proposed works would experience considerable disruption to their existing living conditions. In his opinion, the planning conditions (with one addition to those agreed

between the TWPTA and the local planning authorities), the Code of Construction Practice and statutory safeguards should ensure that standards were maintained at a reasonable level (S.16, 9.35-36). His suggested additional condition would provide for the temporary relocation of people with poor health prognosis whose condition would be aggravated by construction works (9.37, 9.71). In summary, the Inspector was satisfied that the adverse effects on residents would not, either individually or cumulatively, be so great as to justify refusing the Order (8.159, 9.40).

38. The Inspector noted that very little, if any, designated public open space would be lost as a result of the scheme and that once the NTC became operational there would be a net gain in open space to the south of the Tyne, while to the north there could be a small loss. With one exception, he was satisfied that the proposed replacement for open space and playing fields would be at least as good as the existing position. The exception was the loss of open space along the Epinay Walk frontage which he considered unfortunate and undesirable. Although he thought that this adverse impact was not capable of satisfactory resolution, when balancing the arguments he did not find it overriding (S.17, 8.161, 9.41-42).

39. The Inspector noted that measures would be in place to accommodate anticipated disturbance and inconvenience to businesses using facilities on the River Tyne, and he was convinced that the adverse effects identified did not constitute a cogent objection to the Order. The relatively few firms with outstanding objections had been in discussions with the TWPTA and where points had not been agreed the compensation code would apply (S.14, 9.43-47).

40. Following the Department's letter of 14 November 2003 referred to in paragraph 8 above and the publication of the TWPTA's proposal, referred to in paragraph 9 above, to exclude open space from compulsory acquisition, representations about the impact of the scheme on open space were received from NECTAR, the TCA, Living Streets and the North East of England Green Party. In addition to concerns about the adverse impact of the scheme on open space, some of those respondents objected to the procedure adopted by the TWPTA of acquiring the open space in question by way of private treaty with South Tyneside Council rather than by compulsory acquisition. They considered that this procedure would side-step proper Parliamentary scrutiny of the proposed acquisition of open space and should have been discussed at the inquiry.

41. The Secretary of State agrees with the Inspector that, with appropriate mitigation measures in place, any residual adverse impacts of the scheme on residents and businesses would not be so great as to justify refusing to make the Order. Furthermore, he considers that the mitigation measures proposed by the TWPTA should be sufficient without the additional planning condition proposed by the Inspector, about which he has particular concerns. The Secretary of State is not persuaded that requiring the TWPTA to produce a scheme for temporarily relocating residents with proven medical conditions that could be aggravated by the works would be reasonable (particularly bearing in mind the Inspector's judgement that air quality levels would not worsen to a significant extent - 9.62). Moreover, he is not convinced that a condition which requires medical judgements to be made about the effects of construction works on the health of local residents would be relevant to planning, would be readily enforceable and would be necessary in view of other environmental legislation dealing with statutory nuisances. For these reasons, the Secretary of State is not satisfied that the Inspector's proposed condition would meet the tests set out in DOE Circular 11/95 on the use of planning conditions.

42. Having considered the representations referred to in paragraph 40 above, the Secretary of State agrees with the Inspector that use of the open space and school playing fields needed for the NTC would be acceptable overall, bearing in mind the TWPTA's proposals for restoring, or providing replacement for, the affected land. He also agrees with the Inspector that while the loss of open space at Epinay Walk would have an adverse impact, the impact would not be of such severity as to justify refusing the Order. As for procedure, the Secretary of State is not persuaded that there is anything improper with the TWPTA's approach of acquiring open space from South Tyneside Council by agreement and he notes that the Council has complied with the publicity requirements under section 123(2A) of the Local Government Act 1972 relating to disposal of open space. He notes also that on 30 November 2004 the Secretary of State for Education and Skills consented to the disposal of part of the playing fields of Jarrow Cross and Dunn Street schools required for the NTC scheme.

### **Environmental effects and mitigation measures**

43. The Inspector considered that, in broad terms, the Environmental Statement ("ES") was sufficiently comprehensive and adequate in establishing baseline conditions and, except in relation to waste management, in identifying effective remediation. He was, accordingly, satisfied that there was no need for the Secretary of State to ask for further baseline information to be provided. However, as mentioned in paragraph 5 above, he recommended that further information be obtained from the Environment Agency about the excavation, remediation and back-filling or disposal of material (8.126, 9.56). The Inspector's conclusions on particular impacts and mitigation measures set out in the ES and examined at the inquiry are summarised below.

44. The Inspector was satisfied that the proposed methodology for the NTC works and associated safeguards should ensure that there would be no significant adverse impacts on water quality and the marine environment (9.58). He considered that there would be no significant effects on ecologically important sites and he was, in particular, satisfied that the arrangements for protection of the Tyne fisheries and the general ecology of the area were adequate (8.187, 9.63).

45. The Inspector accepted from the evidence that the relative increase in noise levels due to the operation of the NTC would not be significant. He recommended, however, that consideration be given to the use of low noise carriageway surfaces to offset the likely increase in ambient noise levels. He was content that the mitigation proposals should minimise the effects of construction noise and that the Code of Construction Practice would provide for individual, focused action should conditions demand (9.60-61).

46. In regard to air quality and the impact of dust, the Inspector was confident that if all the measures required by the Code of Construction Practice were employed expeditiously little adverse effect should be perceived and the risk of a major dust event should be minimised. With other forms of pollution the thresholds of concern would not be breached for any particular contaminant. On the submitted evidence, therefore, air quality levels would not worsen to such an extent as to be judged significant (8.138, 140, 9.62).

47. The Inspector considered that, with the exception of the loss of open space at Epinay Walk, there would be townscape and landscape improvements on completion of the proposed scheme and he anticipated that the reconstruction of Riverside Park would be more user-friendly. During construction, screening should mitigate the effects of visual intrusion (9.64-65).

48. With regard to waste management, the Inspector was concerned that, because of the flexibility that would be allowed the Concessionaire to vary the reference design and construction methodology, very little could be fixed at this stage. While he was satisfied that there were options for achieving satisfactory excavation, remediation and disposal that would not impact significantly on the environment, on the basis of the inquiry evidence he remained to be assured that all foreseeable eventualities could be addressed satisfactorily without prejudicing the integrity of the ES (8.182, 9.66).

49. In summary, the Inspector concluded that, subject to further consultation with the Environment Agency about waste management issues, in environmental terms any harmful impacts of the scheme would not be significant. He was satisfied that the necessary degree of mitigation would be secured and managed through the protective provisions agreed with parties, planning conditions and the Code of Construction Practice (S.16, 9.69).

50. Following the Department's letter referred to in paragraph 8 above, the Environment Agency set out its views on waste management in its letter of 16 December 2003. The Agency explained that, having considered the TWPTA's additional inquiry evidence on spoil generation and disposal, it took the view that the material from the tunnel construction works could in principle be disposed of without unacceptable pollution to the environment or harm to human health. The Agency was satisfied that the need for appropriate licences would ensure that necessary controls were in place to protect the environment and human health. Taking into account the various regimes that would regulate these activities, the Agency did not suggest any additional planning conditions. The Agency appreciated that it was not possible at this stage for the TWPTA to identify definitively specific waste disposal sites as the availability of such sites could not always be predicted so far in advance of works being commenced.

51. Representations about waste management arrangements were also received from Friends of the Earth, NECTAR and the TCA. These objectors took the view that, despite the Environment Agency's explanation of its position, the TWPTA's ES was inadequate in not addressing the impacts of the different maritime and land options for waste disposal. They were concerned about the lack of opportunity to examine the Agency's views at the inquiry and considered it would be crucial for the scheme, if it were to proceed, to be subject to comprehensive control by the Agency to prevent any damage to the environment.

52. The Secretary of State has considered the Inspector's conclusions on these matters and the representations made in response to the Department's letter of 14 November 2003. He is satisfied, firstly, that the TWPTA's ES, taken with the evidence submitted to the inquiry, provides sufficient information to enable him properly to assess the likely impacts of the NTC scheme on the environment. He does not accept that the provision of supplementary environmental information after the Order application invalidated the TWPTA's ES. Rather, he considers that it was legitimate and appropriate as part of the environmental impact assessment process for the TWPTA to produce further information on these matters for examination at the inquiry.

53. Taking into account the Environment Agency's assessment of the TWPTA's ES and inquiry evidence, the Secretary of State is further satisfied that the excavation, treatment and disposal of materials can be carried out without significant harm to the environment and without prejudicing public health and safety. He accepts the Agency's view that the

statutory procedures for regulating these activities, taken with the proposed planning conditions relating to waste management, are sufficient. He accepts also that for the purposes of assessing the effects of the NTC scheme, bearing in mind the available landfill capacity, it is not possible or necessary at this stage to identify exactly which landfill sites or haul routes would be used.

54. The Secretary of State's overall view on the environmental impact of the NTC scheme, having regard to the Inspector's conclusions and to the post-inquiry representations on waste management, is that with the proposed mitigation measures in place any remaining adverse effects would be acceptable and would be outweighed by the benefits of the scheme. He confirms that, in reaching his decision on the Order, he has complied with the requirements of paragraphs (a) to (c) of section 14(3A) of the TWA about consideration of the ES and of representations relating to it. For the purposes of section 14(3AA) of the TWA, the Secretary of State considers that the main measures to avoid, reduce and, if possible, remedy any major adverse environmental effects are those set out in the attached planning conditions, in the Code of Construction Practice and in the protective provisions agreed with parties.

### **Inspector's overall conclusions and recommendations**

55. The Inspector concluded, overall, that the principle of the NTC should be accepted and that the scheme should proceed, in particular to support the economic regeneration of the A19 corridor. Subject to consideration of the Environment Agency's views on the waste management issues he had raised, he was satisfied that the impact of the scheme on the environment and the reasonable expectations of people living and working in the locality would not be so inordinate as to justify refusing the Order and the planning direction (S.20).

56. The Inspector accordingly recommended that, following consultation with the Environment Agency about the need for further controls on waste management, the Order be made subject to the amendments contained in Inquiry Document 19 and that the planning direction be given subject to the conditions listed in Inquiry Document 18 (R.1, R.3).

### **The Secretary of State's overall conclusions**

57. Having considered the Inspector's report and the other available evidence, the Secretary of State is satisfied that the NTC scheme would be an effective solution to the pressing need for additional capacity for cross Tyne traffic, and he considers that it would do much to support the growth of the local and regional economy. He is satisfied that the NTC can be constructed and operated without significant harm to the environment, while the removal of traffic congestion would result in significant benefits in terms of safety and reduced emissions. Overall, the Secretary of State considers that the benefits of this scheme outweigh significantly any adverse impacts on the local community or on the environment, which should be kept to an acceptable level by the proposed mitigation measures.

58. Furthermore, the Secretary of State is satisfied that the particular powers sought by TWPTA in the Order, subject to certain modifications, are reasonable, appropriate and justified in the public interest. **Accordingly, the Secretary of State has decided to make the Order, subject to the modifications described below and to give the planning direction, subject to the conditions set out in Annex 1 to this letter.** With

regard to section 5(6) of the TWA, the Secretary of State is satisfied that in every instance where the Order will authorise the extinguishment of a public right of way over land, either an alternative right of way has been or will be provided or that the provision of an alternative right of way is not required.

## Changes to the Order

59. The modifications to the Order that the Secretary of State intends to make, in addition to those recommended by the Inspector, are set out below. References to article and schedule numbers are to those numbers in Inquiry Document 19.

- Article 17 (protection of tunnel) The provisions are to be amended at the request of the TWPTA to the effect that their consent to use of the authorised works need not be given in writing and to limit the requirement for the consent of the Port of Tyne Authority to activities which affect works in tidal waters.
- Article 18 (power to acquire land) The compulsory acquisition powers over open space are to be qualified at the request of the TWPTA (see paragraph 9 above) so as to apply only to the subsoil of that land; details of the open space in question are to be included in a new schedule to be inserted after Schedule 5.
- Article 19 (application of Part I of Compulsory Purchase Act 1965) An addition is to be made at the request of the TWPTA (see paragraph 9 above) for the compensation provisions of section 10 of the 1965 Act to apply where land needed for the scheme is acquired by agreement or is appropriated, as well as where land is compulsorily acquired.
- Article 36 (power to charge tolls) The reference in paragraph (1) to charging for the passage of persons through the new and existing tunnels is to be deleted as the TWPTA made no case at the inquiry or subsequently for charging according to the occupancy of vehicles using the tunnels.
- The power in paragraph (10)(i) for the Secretary of State to prescribe new descriptions of vehicles to be exempted from tolls is to be deleted as such a provision would, in his opinion, be outside the powers of the TWA.
- The power in paragraph (11)(h) for the TWPTA to use toll revenue to provide funds for securing the provision of any further river crossing (in addition to the NTC) is to be deleted because the Secretary of State considers that the power would be speculative and premature. He considers also that the power at the end of paragraph (11) for the TWPTA to use toll revenue for any other purposes beyond those specified is inappropriate and should be deleted.
- A new paragraph (12) is to be inserted to give effect to the European Directive on the charging of heavy goods vehicles for use of certain infrastructure.
- Article 37 (powers of disposal) This article is to be amended so as to distinguish more clearly between the power for the TWPTA to make agreements enabling a Concessionaire to exercise the Order powers on its behalf and the power for the TWPTA to transfer the tunnel undertaking and associated powers to another

person. The transfer power is to be subject to the TWPTA obtaining the Secretary of State's consent.

- Schedule 7A (protection of navigation) The provisions in paragraph (2) are to be revised in order to give the Secretary of State more flexible and effective powers for dealing with any tidal works constructed by the TWPTA otherwise than in accordance with plans approved or conditions imposed under this Schedule. The revised provisions would also allow the Secretary of State exceptionally to remove any tidal work where it is considered urgently necessary to do so.
- Schedule 12 (level of tolls) The exercise of the power in paragraph 2 to revise tolls before completion of the NTC is to be restricted to not more than once in any period of 12 months, in order to protect the interests of tunnel-users.
- Paragraph 3(2) is to be amended to provide that any change in the level of tolls before the opening of the NTC would come into effect 28 days after the Secretary of State has made an order confirming the change. Similar amendments are to be made to paragraphs 4(3), 12(2) and 15(2) in relation to introducing toll changes on and after the opening of the NTC. This is to provide a uniform mechanism for bringing into effect toll changes determined by the TWPTA and those which, under the new tolling regime, will remain to be determined by the Secretary of State.
- In paragraph 4(1), the specified time limit for the TWPTA to set the tolls payable from the opening of the NTC is to be changed from 31<sup>st</sup> December 2007 to seven years from the date when the Order comes into force; this is because with the elapse of time since the inquiry the original time limit is now unrealistic.
- Paragraph 14(5) is to be amended to confer on the Secretary of State instead of the TWPTA the discretion to decide in special circumstances not to hold a local inquiry into toll changes above the rate of inflation, in the interests of fairness and transparency.
- In paragraph 17, which amends section 13 of the Tyne and Wear Act 1976, a new subsection 13(2) is to be inserted to provide for the making of orders by the Secretary of State to introduce toll changes determined by the TWPTA; if the TWPTA satisfies the Secretary of State that their determination is in accordance with Schedule 12 to the TWA Order, the Secretary of State is to make an order confirming the toll change within 21 days.

The Secretary of State will also make a number of minor drafting and consequential amendments which do not materially alter the effect of the Order.

60. The Secretary of State considers that none of these modifications, nor those recommended by the Inspector, whether individually or in combination would make a substantial change in the proposals for the purposes of section 13(4) of the TWA. Taking into account also the consultation with interested parties referred to in paragraphs 9 and 10 above about amendments to the Order, he is satisfied that it is not necessary to give those parties further opportunity to make representations on these matters before he determines the Order application.

## Planning direction and conditions

61. As stated above, the Secretary of State has decided to give a direction that planning permission shall be deemed to be granted for the development for which provision is made in the Order, subject to the conditions set out in Annex 1 to this letter. The letter conveying the planning direction will issue shortly, at the same time as the Order is made. This will follow publication of a notice of the determination in the London Gazette. The conditions generally follow those agreed between the TWPTA and the local planning authorities and recommended by the Inspector, subject to the changes detailed in the following paragraph.

62. The main changes to the conditions in Inquiry Document 18, as recommended by the Inspector, are set out below. References to condition numbers are to those numbers in Inquiry Document 18.

- Condition 1 (time limits) has been amended to follow more closely the provisions of section 92 of the Town and Country Planning Act 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004) about the duration of outline planning permissions.
- Condition 2 (strategic documents) has been deleted in part to avoid duplication with the requirements in condition 4 (now 3); the provisions relating to the Phasing Strategy have been moved to condition 3 (now 2).
- Conditions 4 and 5 (Code of Construction Practice) The provisions of these conditions have been merged into a single condition (new condition 3) and re-ordered to follow in a more logical sequence. The final sentence of condition 5, which would have required the developer to ensure that the environmental impacts of the scheme were “no greater than those identified in the ES”, has been deleted. The Secretary of State considers that a provision in these terms is too imprecise and would be unenforceable.
- Condition 13 (protection of items of archaeological or scientific interest) has been revised expressly to require the developer to grant access to an archaeologist nominated by the local planning authority to observe construction works, for the purposes of mainlining a watching brief. The reference to items of “scientific” interest has been deleted because the term is insufficiently precise for the purposes of a planning condition, and therefore unenforceable.

The new condition relating to the storage of dredged arisings endorsed by the Inspector (9.74) is included as condition 15 in Annex 1. In addition, a number of minor drafting amendments have been made to the proposed conditions in the interests of consistency and clarity but which do not materially alter their effect.

## Notice of determination

63. A notice of the Secretary of State's determination given pursuant to section 14(1)(a) of the TWA is enclosed.

## **Challenge to decisions**

64. The circumstances in which the Secretary of State's decisions may be challenged are set out in Annex 2 to this letter.

## **Distribution**

65. Copies of this letter, the section 14(1)(a) notice and the Inspector's conclusions and recommendations are being sent to those who appeared at the inquiry.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Ellis Harvey', written in a cursive style.

**Ellis Harvey**  
Head of TWA Orders Unit

**TRANSPORT AND WORKS ACT 1992  
TOWN AND COUNTRY PLANNING ACT 1990**

**THE PROPOSED RIVER TYNE (TUNNELS) ORDER**

**CONDITIONS TO BE ATTACHED TO THE PROPOSED DIRECTION AS TO DEEMED PLANNING PERMISSION**

In these conditions, unless the context otherwise requires:-

" authorised works" and "deposited plans" have the meanings given in the Order;

"building" includes any structure or erection or any part of a building, structure or erection but does not include any plant or machinery, or any gate, fence, wall or other means of enclosure;

"Code of Construction Practice" means the Code of Construction Practice as referred to in the Environmental Statement and condition 3;

"contractor" means a person employed or acting on behalf of the TWPTA to carry out any part of the development;

"development" means the development deemed to be permitted by this direction;

"Environmental Statement" means the environmental statement submitted with the application for the Order;

"HGV" means -

- (a) an articulated goods vehicle, or
- (b) a motor vehicle which is constructed or adapted to carry or to haul goods and the permissible maximum weight of which exceeds 7.5 tonnes;

"the Order" means the River Tyne (Tunnels) Order 2005;

"phase of the development" means any element of the development, whether defined by reference to a period of time or geographical extent, and identified as such in the Phasing Strategy submitted pursuant to condition 2;

"relevant local planning authority" means North Tyneside Metropolitan Borough Council in the case of development within its area, South Tyneside Metropolitan Borough Council in the case of development within its area, or both Councils in the case of any element of the development that falls within both areas;

"TWPTA" means the Tyne and Wear Passenger Transport Authority or any person authorised pursuant to the Order to carry out the development;

## **Time limits for reserved matter applications and for commencement of development**

1. Applications for approval of any reserved matters set out in condition 7 must be made no later than the expiration of five years from the date on which the Order comes into force and the development shall be begun not later than the expiration of two years from the final approval of the reserved matter(s) or, in the case of approval on different dates, the final approval of the last such reserved matters to be approved.

### **Reason:**

To ensure that the development is carried out in a reasonable time.

## **Phasing Strategy**

2. Prior to the commencement of development, a Phasing Strategy shall be submitted to and approved in writing by the relevant local planning authority. This Strategy shall comprise a written statement and accompanying plans and drawings to include, in relation to each phase of the development, a programme of works and details of the site preparation, excavations, works in the River Tyne, construction and other operations, development and restoration of any constituent phase. Once the Phasing Strategy has been approved, all development shall be carried out in accordance with the approved document, or any subsequent revisions that have been submitted to and approved in writing by the relevant local planning authority, unless otherwise agreed in writing with the relevant local planning authority.

### **Reason:**

To allow for the co-ordination and planned phasing of development and the use of a Phasing Strategy as the basis for reserved matter applications and approvals throughout the period of works.

## **Code of Construction Practice and related Environmental Management Plans**

3. Prior to the commencement of development, a Code of Construction Practice and related Environmental Management Plans shall be submitted to, and approved in writing by, the relevant local planning authority. The Environmental Management Plans shall generally conform to the principles set out in the Environmental Statement unless otherwise agreed in writing by the relevant local planning authority. The Code of Construction Practice shall employ the means identified in the Environmental Statement for preventing or minimising the effects of construction or development, or such other means as the relevant local planning authority may approve in writing; and it shall detail the methods to be employed and the detailed measures to be taken:

- a. to protect the water and land environments and air quality;
- b. to protect the general public;
- c. to meet health and safety requirements;
- d. to manage the site and works compounds and control working conditions on site;

- e. to demonstrate compliance with the relevant legislation, guidelines and practice notes relating to contaminated land;
- f. to minimise construction noise and vibration, including a monitoring scheme near to sensitive properties;
- g. to manage construction related traffic, including provision of directional and other signage;
- h. to liaise with the relevant authorities and the general public, in the event of any complaints being generated;
- i. to suppress dust generation and migration, and to include a monitoring scheme near to sensitive properties;
- j. to restabilise disturbed land;
- k. to deal with unexpected contamination;
- l. to store spoil, including separation methods and the isolation and redistribution of uncontaminated spoil; and
- m. to minimise waste and manage its disposal.

All development shall be carried out in accordance with the approved Code of Construction Practice and related Environmental Management Plans unless any deviations therefrom have first been submitted to, and approved in writing by, the relevant local planning authority.

**Reason:**

To ensure the satisfactory construction of the development, in a way which protects the environment and preserves local amenity.

**Detailed schemes of works and method statements**

4. Prior to the commencement of any phase of the development, a specific scheme of works and method statement for that phase or for the works as a whole in accordance with the Phasing Strategy and approved Code of Construction Practice shall be submitted to, and approved in writing by, the relevant local planning authority. Any development in any phase shall be in accordance with the approved scheme of works and method statement for that phase or for the scheme as a whole, unless alterations have been submitted to, and approved in writing by, the relevant local planning authority. The method statement shall include details of the following:

- a. the detailed programme of all further site investigations, construction, demolition, working, phasing of operations including the temporary stopping up and diversion of highways and footpaths and final restoration of the site;
- b. timescale for compliance with mitigation measures;

- c. the notification procedures relating to the commencement of works; such notice, which may allow for phased commencement, shall provide at least 14 days' prior notice to the relevant local planning authority or, in the case of a phased commencement, 14 days' prior notice in respect of each separate phase;
- d. all further site investigations and desk top studies, including archaeological, sub-soil and ground condition surveys;
- e. all further site investigations and desk top studies related to contaminated land investigations, together with a Remediation Statement detailing remediation objectives based on a risk assessment, together with proposals for the removal, containment or otherwise rendering harmless of any contamination;
- f. details of existing and proposed site levels;
- g. details relating to all of the existing trees on site (having a stem diameter of 100 millimetres or greater), their location, species, girth, stem diameter, crown spread and an assessment of condition; existing ground levels at the base of the trees (where nearby changes in level, or excavations, are proposed); the trees to be removed in conjunction with the proposed development (being clearly marked as such on a plan); and the positions and details of fencing or hoardings, prohibited areas and other physical means of protecting the trees to remain, during the construction period, together with detailed proposals for their management following completion of the works;
- h. details of all relevant plant, working methods and measures to protect the water and land environments and to mitigate dust generation and migration off site, in accordance with requirements of the Code of Construction Practice and Environmental Statement;
- i. a Noise and Vibration Study identifying all plant and machinery (including power sources) to be used, the proposed provisions for mitigation of the effect of noise and vibration and a scheme for monitoring prior to and during construction;
- j. the proposed site security measures;
- k. details of temporary lighting during the construction;
- l. traffic management measures relating to the movement of local, construction and any other vehicles, cycles and pedestrians including details of agreed HGV routes, to access the site of the development and any of the site compounds and for transport and disposal of excavated and all other waste materials, including advance warning signs;
- m. detailed drawings or other specifications relating to the location of temporary storage of construction spoil and waste and dredged arisings, providing details of the suitability of the underlying land where the deposition is to occur, full details of the exact composition of material to be dredged in

relation to contamination and proposed measures to prevent risk of exposure to humans from the contaminated material on and adjacent to the land and to the watercourse, including special provisions for contaminated waste, odour suppression and control of run-off;

- n. details and programme of works for the final restoration and landscaping of all parts of the phase, including site compounds.

**Reason:**

In order to achieve a satisfactory form of development and to ensure that the works are implemented in a way which protects the land, water and air environment, protects human health and preserves local amenity.

### **Scheme of works for the River Tyne**

5. Prior to the commencement of any phase of the development which includes works within the River Tyne, the TWPTA shall consult with, and obtain all relevant consents and approvals for that phase from, the relevant local planning authority and the Environment Agency. Thereafter any works shall be carried out in accordance with the requirements under those consents or approvals.

**Reason:**

To ensure that all relevant consents and approvals are obtained before any phase is commenced which includes works in the River Tyne.

### **Time limits on dredging in the River Tyne**

6. No dredging works within the main channel of the River Tyne shall take place other than during the period from 1 November to 31 March (inclusive) without the prior written consent of the relevant local planning authority.

**Reason:**

In order to minimise any possible adverse effects of the dredging on the fishery and the water environment in the River Tyne.

### **Reserved matters (all phases)**

7. Prior to the commencement of any phase of the development, details of the following matters shall be submitted to, and approved in writing by, the relevant local planning authority for that phase:

- a. the siting of any temporary and permanent buildings, structures and land uses to the extent that their siting is not approved by the Order;
- b. detailed layouts of the construction sites, showing areas of works, locations of contractors' compounds, site offices, areas for temporary storage of materials and equipment, access arrangements, boundary treatments and site security measures;

- c. details of all contractors' compounds including siting, access, means of enclosure, buildings to be erected, materials to be stored and parking facilities for moveable plant and vehicles; all such parking and material storage areas to be kept available at all times for the purpose identified;
- d. means of temporary and permanent vehicular and pedestrian access to all construction and storage sites and all permanent buildings to be constructed or altered during the works;
- e. a detailed scheme for temporary and permanent planting and landscaping of the development during and following completion of the authorised works, which shall provide for the planting of trees and shrubs, seeding and turfing, the formation of banks and slopes and the provision of fences and other means of enclosure.

No development shall take place other than in accordance with these approved reserved matters unless otherwise agreed in writing by the relevant local planning authority.

**Reason:**

In order to achieve a satisfactory form of development in accordance with this direction and relevant local planning policies.

**Specific matters - North Tyneside**

8. Prior to the commencement of any phase of the development in North Tyneside, details of the design, external appearance, siting (in so far as it is not covered by the Order) and drainage systems (where relevant) for the following new buildings and structures shall be submitted to, and approved in writing by, the relevant local planning authority :-

- a. the new toll plaza vehicular area, including tollbooths and vehicular accesses;
- b. the new administration building;
- c. the works to Howdon Basin and adjacent quays;
- d. any building to be provided within the Order land for the accommodation of owners, lessees and occupiers affected by construction of the authorised works;
- e. all retaining walls and other structures as they appear above ground;
- f. the proposed new road structures as they appear above ground; and
- g. any other item of development not in Appendix 1 to the request for this direction or in Schedule 1 to the Order which is a building or structure.

No development shall take place other than in accordance with approved details, unless otherwise agreed in writing by the relevant local planning authority.

**Reason:**

To enable reasonable and proper control to be exercised over detailed aspects of the development.

**Specific matters - South Tyneside**

9. Prior to the commencement of any phase of the development in South Tyneside, details of the design, external appearance, siting (in so far as it is not covered by the Order) and drainage systems (where relevant) for the following new buildings and structures shall be submitted to, and approved in writing by, the relevant local planning authority :-

- a. the proposed new ventilation building and ventilation stack;
- b. the proposed new road structures as they appear above ground;
- c. all retaining walls and other structures as they appear above ground;
- d. any building to be provided within the Order land for the accommodation of owners, lessees and occupiers affected by construction of the authorised works; and
- e. any other item of development not in Appendix 1 to the request for this direction or in Schedule 1 to the Order which is a building or structure.

No development shall take place other than in accordance with approved details, unless otherwise agreed in writing by the relevant local planning authority.

**Reason:**

To enable reasonable and proper control to be exercised over detailed aspects of the development.

**Protection of surface waters**

10. Prior to the commencement of any works affecting the ponds at Church Bank and Straker Street or affecting the River Don, a scheme detailing further protection measures to be taken, including fencing prior to development commencing and methods to prevent pollution of water bodies caused by the accidental spillage of materials and surface water run-off, shall be submitted to, and approved in writing by, the relevant local planning authority.

**Reason:**

To enable reasonable and proper control to be exercised over detailed aspects of the development.

**Protection of items of archaeological interest**

11. An archaeologist nominated by the relevant local planning authority shall be granted access at all reasonable times to observe construction works in progress and record items or finds of archaeological or historic interest. Any such item discovered during the course of excavations shall be reported to the relevant local planning authority within 2 working days of discovery and the nominated archaeologist may remove it from the site.

**Reason:**

To ensure adequate recording, protection and potential preservation of archaeological remains.

**Protection of trees and shrubs**

12. None of the existing trees or hedgerows on the site shall be lopped, topped or felled without the prior approval in writing of the relevant local planning authority.

**Reason:**

To preserve existing trees and hedgerows.

**Hours of working - general**

13. Unless otherwise agreed in writing by the relevant local planning authority, no land-based operations (other than setting up or closing down operations in periods not exceeding 30 minutes duration at either end of the working day), including site preparation, operation of plant or machinery, construction, engineering works, restoration and HGV movements to, from or within the site, shall be undertaken except between 0800 and 1800 hours on Mondays to Fridays and between 0800 and 1600 hours on Saturdays. There shall be no operations outside these hours or on Sundays or Bank Holidays except -

- a. in such circumstances as may be identified in a method statement or in the Code of Construction Practice; or
- b. in an emergency, provided that the relevant local planning authority is notified as soon as practicable thereafter.

**Reason:**

To safeguard the amenity of nearby residents.

**Hours of working - blasting**

14. No blasting shall take place on the site except in accordance with a scheme that has been submitted to, and approved in writing by, the relevant local planning authority. Such a scheme shall indicate the times of any blasting, the method of warning, methods to minimise the effects of air blast overpressure and ground vibration resulting from blasting (having regard to blast design, methods of initiation and prevailing weather conditions) and measures for monitoring blasts, including peak particle velocity in the vertical and horizontal planes. Thereafter blasting shall only take place in accordance with the approved scheme.

**Reason:**

In the interests of protecting the amenities of the occupants of nearby buildings.

## **Storage of dredged arisings**

15. No storage of dredged arisings from the works in the River Tyne shall take place on plots 208, 210, 211 and 213 shown on the deposited plans until cross-sections and profiles of any mounds of such arisings have been submitted to, and approved in writing by, the relevant local planning authority. The storage of such arisings shall not be carried out except in accordance with the approved cross-sections and profiles.

**Reason:**

To ensure a satisfactory form of storage mounds for dredged arisings and to preserve the amenity of Bede's World.

## **Environmental protection - air quality**

16. Prior to and immediately after the opening to traffic of the new tunnel comprised in the authorised works, air quality monitoring of nitrogen dioxide and particulates shall be carried out at locations and in accordance with an air quality monitoring scheme to be agreed in writing by the relevant local planning authority.

**Reason:**

To monitor the impact of the operation of the new tunnel in relation to National Air Quality objectives.

## **Landscaping**

17. The approved landscaping scheme submitted for any phase of the development pursuant to condition 7(e) shall be completed not later than the first planting season following the completion of the construction works in that phase. Any tree or plant removed, dying or becoming seriously damaged or diseased within a period of five years from the completion of the landscaping scheme shall be replaced not later than the next planting season after the loss or damage has been sustained, by others of similar size and species, unless otherwise agreed in writing by the relevant local planning authority.

**Reason:**

To ensure that the landscaping works will be provided and maintained to preserve local amenity.

## **Remediation validation**

18. Prior to the opening to traffic of the new tunnel comprised in the authorised works, a report validating that the remediation of the site has been carried out in accordance with the Remediation Statement referred to in condition 4(e) shall have been submitted to, and approved in writing by, the relevant local planning authority.

**Reason:**

To protect the environment and ensure that the Order land is remediated to an appropriate standard.

END.

### **RIGHT TO CHALLENGE ORDERS MADE UNDER THE TWA**

Any person who is aggrieved by the making of the Order may challenge its validity, or the validity of any provision in it, on the ground that –

- it is not within the powers of the TWA, or
- any requirement imposed by or under the TWA or the Tribunals and Inquiries Act 1992 has not been complied with.

Any such challenge may be made, by application to the High Court, within the period of 42 days from the day on which notice of this determination is published in the London Gazette as required by section 14(1)(b) of the TWA. This notice is expected to be published within three working days of the date of this decision letter.

### **CHALLENGES TO DEEMED PLANNING PERMISSION GIVEN IN CONNECTION WITH A TWA ORDER**

There is no statutory right to challenge the validity of the Secretary of State's direction that planning permission shall be deemed to be granted for development for which provision is included in the Order. Any person who is aggrieved by the giving of the direction may, however, seek permission of the High Court to challenge the decision by judicial review.

**A person who thinks they may have grounds for challenging the decision to make the Order or the decision to give the direction as to deemed planning permission is advised to seek legal advice before taking any action.**