

## PROPOSED TRAFFIC MODELLING AND MITIGATION REQUIREMENT

### RESPONSE TO REQUEST FOR FURTHER INFORMATION

#### HIGHWAYS ENGLAND RESPONSE

1. On 24 February 2016 the Examining Authority issued a request for further information (the "Request") pursuant to Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010. This is Highways England's response to that Request.
2. The Request invited comments on a proposed requirement on Traffic Modelling and Mitigation (the "TMM Requirement") as follows:

#### *Traffic modelling and mitigation*

- 1) *No part of the authorised development is to commence until the undertaker has:*
  - a) *Agreed the following with Buckinghamshire County Council:*
    - (i) *baseline Manual Classified Count surveys;*
    - (ii) *factored up Manual Classified Counts for 2020, based on Trip End Model Presentation Program (TEMPRO) growth factors and committed development;*
    - (iii) *modelling input assumptions (traffic flows and junction geometric data);*
  - b) *Carried out the agreed baseline Manual Classified Count surveys at the relevant junctions in the earliest neutral month;*
  - c) *Completed junction modelling for forecast year 2020 for the relevant junctions using industry standard software, both with and without any increase in traffic predicted by the assignment model attributable to the authorised development, and agreed the outputs of the junction modelling with Buckinghamshire County Council; and*
  - d) *Undertaken a safety review of the relevant junctions and routes affected, including an assessment of accident records over a relevant 5 year period.*
- 2) *If the junction modelling predicts a material impact on Ratio to Flow Capacity, queue lengths, or safety which is attributable to the authorised development, the undertaker must submit for approval a scheme of appropriate mitigation measures to the Secretary of State, following consultation with Buckinghamshire County Council. The approved scheme of mitigation must be implemented in full prior to the commencement of the authorised development.*
- 3) *In this requirement: "relevant junctions" means:*

#### **A4 Corridor**

- *A4/A4094*
- *A4/Mill Lane – this junction is currently a priority; to be left in as part of the mitigation proposed for the development on Mill Lane*
- *A4/Mill Lane – new roundabout to be installed as part of the mitigation proposed for the development on Mill Lane*
- *A4/Berryhill – temporary traffic lights installed to facilitate gravel extraction*
- *A4/Marsh Lane/Station Road – with and without closure of Marsh Lane*
- *A4/Bishop Centre*
- *A4/Hitcham Road/Hag Hill Lane*
- *A4/Lake End Road – with and without closure of Marsh Lane*

#### **A335 Corridor**

- *A355/Park Road/Farnham Close – double mini-roundabout*
- *A355/One Pin Lane*

#### **412 Corridor**

- A412/Church Lane
- A412/George Green Road
- A412/Coronation Avenue
- A412/Wexham Park Lane
- A412/Black Park Road
- A412/Pinewood/Church Road – mitigation scheme proposed as part of the Pinewood Masterplan

#### **A4007**

- A4007/Bangors Road North/Bangors Road South - double mini roundabout.

3. Highways England's response to the Request is structured as follows:

- 3.1 The need for the TMM Requirement; and
- 3.2 The drafting of the TMM Requirement.

#### ***The principle of imposing a TMM Requirement***

4. Highways England's principal position is that there is no need for the TMM Requirement in the draft Development Consent Order ("DCO"). Furthermore, to impose such a requirement would be inappropriate for other reasons. These reasons are:

- 4.1 The need for the requirement has not been demonstrated. There is no evidence to suggest that modelling/monitoring, far less mitigation, is required;
- 4.2 There are already proposals contained in the CTMP that provide for the matters contained in the TMM Requirement, but with more necessary and appropriate flexibility, which render the requirement otiose;
- 4.3 Existing co-operation duties under the Traffic Management Act 2004 ("TMA 2004") applicable in relation to traffic management address the issue as between highway authorities;
- 4.4 The imposition of the requirement, and paragraph 2) in particular, would establish an inappropriate precedent, enshrined in a statutory instrument, suggesting that highway authorities are not responsible for traffic management in their own areas; and
- 4.5 The NN NPS obligation at paragraph 5.215 to secure mitigation is triggered by the Scheme.

#### ***No evidence of need for TMM Requirement***

5. A meeting was held between Highways England and Buckinghamshire County Council ("BCC") on 25 November 2015 to demonstrate the forecast traffic flows on the A4, A355 and A412, which are routes in relation to which BCC had expressed particular concerns regarding any further traffic loadings. At that meeting, Highways England demonstrated the minimal effects which are anticipated, some of which are in fact reductions in traffic flow, during the initial construction phase (2017) and the opening year of operation (2022) of the Scheme. It was agreed with BCC at the meeting on 25 November 2015 that no further assessment was required

for these years. A copy of the minutes of that meeting is provided at Appendix A to this response.

6. However, for the year 2020, during the second construction phase for the Scheme, the assessments indicated some potential for increased traffic flows on the A4, A355 and A412 caused by traffic diverting from the M4 during construction.
7. BCC alleges that the increased traffic flows in this interim and temporary construction phase would require mitigation to be implemented for the purposes of mitigating the construction effects of the Scheme. However, BCC does not have traffic data for the majority of junctions on these routes with which to demonstrate any adverse effect as on the performance of these junctions, meaning that there is no evidence to contradict the findings of Highways England's modelling and assessments as to the likelihood of effects requiring mitigation.

*Provision already made in CTMP*

8. Nevertheless, as a sensitivity test, it was agreed that Highways England would undertake traffic surveys during the first available neutral month for traffic flows, which is March 2016. These surveys will be used to verify the modelling and assessment undertaken by Highways England. This commitment is secured under section 7.1 of the Outline Construction Traffic Management Plan ("CTMP"), compliance with which is secured pursuant to requirement 18 of Schedule 2 to the DCO.
9. The CTMP requires, at section 7.1.3, that:  
  
*"In the event that the monitoring suggests that traffic diversion from the M4 has occurred, Highways England will undertake a verification assessment to determine whether there has been detriment to the operation of the local road and, where appropriate, bring forward measures in conjunction with the local highway authority to mitigate the impacts."*
10. Those measures are set out at paragraphs 7.4.2 to 7.4.5 of the CTMP. They include:
  - 10.1 the design and installation of traffic management schemes to:
    - 10.1.1 reduce the likelihood of drivers "rat running" through local roads, which may result in adverse impacts upon the local community; and
    - 10.1.2 mitigate impacts on the local road network and communities and to keep delays and disruptions to traffic to a minimum.
  - 10.2 If any verification appraisals predict capacity problems at a particular location, traffic management measures on the M4 will be reviewed by Highways England and implemented to mitigate these issues. This will be carried out in conjunction with a review of temporary signage and traffic management measures on the local road network, which will be agreed through consultation with the relevant local authorities and emergency services.
11. Consequently, the matters addressed the TMM Requirement are already appropriately and sufficiently provided by way of the measures contained in the CTMP, as well as being secured by the DCO.

*Provision made by Traffic Management Act 2004*

12. In addition to the provisions already contained the CTMP, the TMM requirement is also unnecessary in light of the statutory duty that both Highways England is under, as a strategic highways company, and BCC as the local traffic authority<sup>1</sup>, pursuant to s.16 of the TMA 2004, which provides as follows:

***"16 The network management duty***

*(1) It is the duty of a local traffic authority or a strategic highways company ("the network management authority") to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives–*

- (a) securing the expeditious movement of traffic on the authority's road network; and*
- (b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.*

*(2) The action which the authority may take in performing that duty includes, in particular, any action which they consider will contribute to securing–*

- (a) the more efficient use of their road network; or*
- (b) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority;*

*and may involve the exercise of any power to regulate or co-ordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority).*

*(3) In this Part "network management duty", in relation to a network management authority, means their duty under this section."*

13. The arrangements for network management that may be made pursuant to the duty under s.16 of the TMA 2004 are provided for in s.17 of the TMA 2004, which states as follows (emphasis added):

***"17 Arrangements for network management***

*(1) A network management shall make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the network management duty.*

*(2) The arrangements must include provision for the appointment of a person (to be known as the "traffic manager") to perform such tasks as the authority consider will assist them to perform their network management duty.*

*(3) The traffic manager may (but need not) be an employee of the authority.*

*(4) The arrangements must include provision for establishing processes for ensuring (so far as may be reasonably practicable) that the authority–*

- (a) identify things (including future occurrences) which are causing, or which have the potential to cause, road congestion or other disruption to the movement of traffic on their road network; and*
- (b) consider any possible action that could be taken in response to (or in anticipation of) anything so identified;*

*but nothing in this subsection is to be taken to require the identification or consideration of anything appearing to have only an insignificant effect (or potential effect) on the movement of traffic on their road network.*

*(5) The arrangements must include provision for ensuring that the authority–*

- (a) determine specific policies or objectives in relation to different roads or classes of road in their road network;*

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<sup>1</sup> See s. 31 of the TMA 2004 and s.121A(3) of the Road Traffic Regulation Act 1984.

- (b) *monitor the effectiveness of–*
    - (i) *the authority's organisation and decision-making processes; and*
    - (ii) *the implementation of their decisions; and*
  - (c) *assess their performance in managing their road network.*
- (6) *The authority must keep under review the effectiveness of the arrangements they have in place under this section."*

14. Further, it is open to BCC as local highway authority, and Highways England as a strategic highways company to enter into an agreement pursuant to s.8 of the Highways Act 1980 ("HA 1980") *"for or in relation to the construction, reconstruction, alteration, improvement or maintenance of a highway for which any party to the agreement are the highway authority"* to address any issues that may arise following the completion of the verification assessment provided for in the CTMP.

#### *Inappropriate settlement*

15. Furthermore, not only is the TMM Requirement unnecessary in light of the provisions of the CTMP, the TMA 2004 and the HA 1980, but importantly its inclusion in the DCO would set an inappropriate precedent in respect of future highways schemes. This is because it implies that a highway authority should not be considered responsible for the highways in its area.
16. As a general principle, the local highway authority is responsible for the public roads within its area, irrespective of the origin of the traffic that is travelling on those roads. The exception to this principle is where developments which may affect traffic on a highway network are required to contribute financially (typically under s.278 Highways Act 1980) to the improvement of highways affected by the developments in question. Other growth in traffic is the responsibility of the various highways authorities (of which Highways England is one), who must plan ahead and manage their networks based upon predictions from modelling and co-operation under the TMA 2004.
17. The improvement of highways in order to accommodate change in traffic flows is funded by general taxation, except where a s.278 Agreement or similar is in use. In these circumstances, funding is precepted to local highway authorities as part of their funding settlement from central government. Therefore, where works to a highway network of one authority are likely to result in a need to improve highways in an adjacent area, the solution is for the second authority to seek funds from central government by precept, not to seek the funds from its neighbour.
18. Highways England is a highway authority, and its Scheme is designed to improve highway conditions. Overall, this will be the case and other authorities will share in those benefits, without a rebate to Highways England. If the precedent is established that one highway authority is responsible for traffic flows in the area of its neighbour, the result would be that claims would be made by one authority against another. Highways England and all other highway authorities should be protected against such claims.
19. In practice, this should work appropriately in relation to the Scheme. Were works to be required in its area, it is open to BCC to seek an increase in its precept from central government in order to meet the cost. Based upon a year of concern in 2022, it has some six years in which to do so.

20. This can be distinguished from the circumstances where a commercial developer proposes a project that would alter traffic flows, or where a scheme such as HS2 would affect traffic on a network for which it is not a responsible authority (unlike a highway authority). That is the proper operation of the system of highway authority funding in England; the alternative would be chaotic.

*No policy need for TMM Requirement*

21. Finally, the provisions in the TMM Requirement go beyond the requirements of the National Policy Statement for National Networks ("NPS NN"), which states at paragraph 5.215 that "*mitigation measures for schemes should be proportionate and reasonable, focussed on promoting sustainable development*" (emphasis added).
22. As is noted above at paragraph 5, the effects of the Scheme (such as they may be) are predicted to be small, for a temporary, interim period and limited in scope. In the absence of contradictory evidence from BCC, the effects are also uncertain. As such, it would not be appropriate to impose the TMM Requirement since there is no evidence of adverse effect, far less the need for mitigation.

*The drafting of the TMM Requirement*

23. Highways England submits that (insofar as it is appropriate and acceptable at all – which is not accepted) the wording of sub-paragraph (2) of the TMM Requirement should be as follows:

*"(2) If the junction modelling predicts a material impact on Ratio to Flow Capacity, queue lengths, or safety which is attributable to **the construction of the authorised development**, the undertaker must submit for approval a scheme of appropriate mitigation measures, **and a programme for its implementation, that are reasonable, practicable and appropriate having regard to the temporary duration of the construction works** to the Secretary of State, following consultation with Buckinghamshire County Council. The approved scheme of mitigation must be **implemented in full in accordance with the programme to be approved as part of the approved scheme of the authorised development, unless otherwise approved by the Secretary of State following consultation with Buckinghamshire County Council.**"*

24. The amendments shown in **bold** above are required for the following reasons:
- 24.1 **‘the construction of’** – this wording has been added as the impacts of concern to BCC, as set out in their representations to the Examination, only relate to the construction period of the Scheme and not operation.
- 24.2 **‘that are reasonable, practicable and appropriate having regard to the temporary duration of the construction works’** – as the mitigation is required only to address impacts arising during the period of construction, the mitigation should be proportionate to the temporary duration of the impacts of concern to BCC, particularly having regard to the provisions of the NN NPS. Highways England should not be subject to mitigation that provides a long-term benefit to BCC post construction, for the reasons explained in paragraph 16-20 above.
- 24.3 **‘implemented in full prior to the commencement of’** - the requirement to implement the works prior to construction of the authorised development has been removed. This is an unduly onerous requirement, which relates to the entire 52 km length of the Scheme, when the only concerns raised by BCC relate to that area of

the Scheme within Buckinghamshire. Consequently, Highways England proposes that a programme for the implementation of the mitigation measures should be agreed as part of approval of the scheme of mitigation. As such, the words '**and a programme for its implementation**' and '**in accordance with the programme to be approved as part of the approved scheme**' have been included in the wording above.

- 24.4 '**unless otherwise approved by the Secretary of State following consultation with Buckinghamshire County Council**' - the approved scheme should be capable of amendment, if approved by the Secretary of State following consultation with Buckinghamshire County Council, in order to accommodate any change in circumstances that may occur.

### ***Section 2 - Safety Review***

25. At section 2 of the Request, the Examining Authority has sought views on the interpretation of clause 1(d) of the TMM Requirement and on when the '5 year period' should begin.
26. A review of the safety record of the local highway network is a generally accepted part of a development Transport Assessment. This ensures that any identified cause of a local accident problem (such as speed, poor surface, inadequate lighting, poor sightlines etc) is not exacerbated by generated traffic and the opportunity is taken to mitigate as part of the off-site works.
27. The usual period to cover as part of the review is 5 years in order to identify statistically significant problems, i.e. a recurring issue. It is usual to base the review on the preceding 5-year period at the time the assessment is undertaken. On the basis that Highways England would undertake the assessment in 2016, the review should cover the preceding 5 full years, i.e. 2011 to 2015 inclusive.