

# TRANSPORT FOR LONDON

## M25 JUNCTION 28 IMPROVEMENTS – WRITTEN SUMMARY OF ORAL SUBMISSIONS MADE AT ISSUE SPECIFIC HEARING 3

20 MAY 2021

### **I. Introduction**

- I.1 This document summarises the oral submissions made by Transport for London ('TfL') at Issue Specific Hearing 3 held on 12 May 2021 in relation to the application for development consent by Highways England ('the Applicant') for the M25 Junction 28 improvements scheme ('the scheme').
- I.2 Oral submissions by all parties attending the hearing were made pursuant to the agenda published by the Examining Authority ('ExA'). In setting out TfL's position on the issues raised in the agenda, as submitted orally at the hearings, the format of this submission follows that of the agenda. TfL has also commented on points raised by interested parties or the ExA during the hearing on which TfL did not make oral submissions, where these are relevant to TfL's responsibilities.
- I.3 TfL has reviewed all submissions made at Deadline 6 and is satisfied that any issues of concern to TfL have been addressed at the hearing and in TfL's written summary of its oral submissions. TfL therefore does not wish to make any further comments on documents submitted to the examination at Deadline 6.
- I.3.1 TfL was represented at Issue Specific Hearing 3 by:
- Matthew Rheinberg, Major Projects Manager, TfL
  - Charles Clarke, Principal Lawyer, TfL
  - Toni Weston, Partner, Gowling WLG

### **2. Agenda item 2 – Traffic and access – provision for non-motorised users**

#### **2.1 Agenda items 2.1 to 2.5 – The Designated Funds scheme**

- 2.1.1 The Applicant had submitted a letter to the ExA in advance of the hearing explaining that its bid for Highways England Designated Funds to upgrade the Non-Motorised User (NMU) route for pedestrians and cyclists between Harold Hill and Brentwood had been successful (reference AS-041). TfL was concerned about a lack of clarity provided in this letter about how the upgrade of the NMU route would be secured and the potential for TfL and the other local highway authorities to be exposed to cost risks. However, TfL welcomes the additional commitments provided by the Applicant during the hearing, namely:
- The Applicant explained that the obligation to which it would be committed was that the upgrade of the central part of the NMU route should be completed before the new loop road between the northbound M25 and eastbound A12 opens to traffic. TfL considers this obligation to be appropriate to secure the upgrade of the NMU route.
  - The Applicant also set out that while the upgrade of the NMU route is estimated to cost £3.5m, the Applicant's commitment is to fully fund the upgrade of the route, not just to contribute £3.5m towards the upgrade. If, following further design and procurement of delivery, the final cost is higher (or lower) than the £3.5m estimate, the Applicant is committed to spending the amount required to deliver the scheme. TfL and the other local highway authorities who may be involved in delivering the scheme will

therefore not be exposed to cost risk and having to financially contribute should the final cost of the scheme be higher than expected. TfL welcomes this commitment from the Applicant.

- 2.1.2 Essex County Council raised some concerns about the current design of the upgrade of the NMU route, including the use of shared space for both pedestrians and cyclists. TfL, Essex County Council and the London Borough of Havering will all need to be involved in developing the design of the NMU route upgrade to ensure that it is compliant with each organisation's design standards and policies for pedestrian and cycle facilities.
- 2.1.3 Concerns were also raised at the hearing about the crossings of the new A12 eastbound off slip road and A12 westbound on slip road that would allow pedestrians on the eastbound side of the A12 to traverse to and from the upgraded NMU route around the roundabout towards Brentwood without having to walk via the subway under the A12 at the junction with Petersfield Avenue. TfL requests that the Applicant provides a pedestrian phase for the crossing of the new A12 eastbound off slip road, as this would have no impact on traffic flows since pedestrians would cross while traffic is held on the slip road to allow traffic to circulate on the roundabout anyway. Providing a pedestrian phase would give a clearer indication to pedestrians of when it is safe to cross and would reduce the risk of pedestrians trying to cross just before the signals change to green for traffic on the slip road.
- 2.1.4 TfL notes that the Applicant's proposed approach for securing the upgrade of the NMU route is through an obligation with the London Borough of Havering secured through section 106 of the Town and Country Planning Act 1990. TfL questions whether this is appropriate, particularly given that some of the central part of the NMU route that the Applicant has committed to upgrading is in Essex rather than Havering. TfL's view is that securing the upgrade of the NMU route through a requirement in the DCO would be more appropriate. However, TfL's principal concern is that the upgrade of the central part of the NMU route is secured, with the means of securing it being of less concern. TfL notes the Applicant's commitment for the section 106 obligation to be completed and submitted to the ExA before the end of the examination. To the extent that TfL owns any of the land required for the upgrade of the NMU route and subject to obtaining any internal governance approvals, TfL could be a party to any section 106 agreement.
- 2.1.5 TfL looks forward to working with the Applicant and the other highway authorities to develop the upgrade of the NMU route further.

## 2.2 **Agenda item 2.6 – The adequacy of the outline Traffic Management Plan (TMP)**

- 2.2.1 TfL explained at the hearing that it had remaining concerns about the outline TMP in four key areas. The Applicant had already committed to addressing some of these concerns in the next version of the outline TMP to be submitted at Deadline 7.
- 2.2.2 Firstly, the outline TMP needs to show the impacts of overnight closures of the eastbound A12 off slip road. TfL's views on this matter were set out in its Deadline 6 submission (reference REP6-044 paragraph 2.18), making clear that as arrangements for overnight closures of other roads have been included in the outline TMP, the arrangements for the A12 eastbound off slip road need to be included as these have been of greatest concern to Interested Parties. TfL noted that the Applicant had committed to updating the outline TMP in this respect in its response to the London Borough of Havering's Deadline 5 submissions (reference REP6-013) regarding Further Written Question TA 2.4. The Applicant confirmed at the hearing that this point would be addressed, including arrangements for escorting emergency services through a closure on the A12 eastbound off slip road should this be necessary.

- 2.2.3 The second point raised by TfL was over the temporary lane closures on the A12 eastbound carriageway set out in the outline TMP, with lane 1 of the eastbound A12 carriageway forecast to be closed for approximately 1.8 km during off peak periods for a total of 141 days over a seven-month period for statutory undertakers diversions (reference REP4-013 Table 2-4). TfL was concerned that the modelling of the construction period set out in the Transport Assessment Supplementary Information Report (TASIR) was inconsistent as the Applicant did not mention that interpeak closures of one lane of the eastbound A12 had been modelled. However, the Applicant made clear in its comments on TfL's responses to the ExA's Further Written Questions (reference REP6-011 question TA 2.4 paragraph 4.2) that the modelling reported in the TASIR had in fact included closures of one lane of the eastbound A12 in modelling for the interpeak period despite this not being specified in the TASIR. On this basis TfL has been reassured on this matter and has no further concerns, as the modelling in the TASIR shows that the off peak lane closure is not forecast to have any substantial adverse impacts on traffic flows or delays.
- 2.2.4 Thirdly, TfL has raised concerns about the narrow lane running required on the A12 eastbound carriageway, and in particular the comment in the outline TMP that the narrow lanes required may increase potential hazards to pedestrians and therefore nearside lane closures of the A12 may be necessary instead (reference REP4-013 paragraph 2.3.14). This would have been of great concern to TfL because lane closures on the A12 carriageway during peak periods would have substantial adverse impacts on traffic flows and delay. The Applicant subsequently set out that the narrowing of lanes would be towards the central reservation and a protective barrier for pedestrians would be provided (reference REP6-011 question TA 2.4 paragraph 4.5) therefore no lane closures of the A12 carriageway would be required at peak times. TfL stated at the hearing that the outline TMP should be updated accordingly to specify that lane closures on the A12 eastbound carriageway at peak times will not be necessary. The Applicant agreed to make this change.
- 2.2.5 The final point TfL raised on the outline TMP was on a related matter, concerning the Applicant's comments on TfL's responses to the ExA's Further Written Questions which specified that the footway along the A12 eastbound off slip will need to be closed for an extended period during construction (reference REP6-011 question TA 2.4 paragraph 4.5). The Applicant explained at the hearing that pedestrians on the north side of the A12 would need to walk west towards London to use the subway under the A12 at the junction with Petersfield Avenue to access the footway on the south side of the A12 during this time. TfL made clear at the hearing that this footway closure would need to be carefully managed with appropriate signage and other measures in place to reduce the risk of pedestrians trying to cross the A12 carriageway at non-designated locations. TfL perceives this to be a risk because of the length of the diversion route for pedestrians. The Applicant stated that it considers this to be a detailed matter for the TMP rather than suitable for inclusion in the outline TMP. TfL considers that while detailed measures to be put in place do not need to be included in the outline TMP, principles about how pedestrian diversions to be managed to reduce safety risks for both pedestrians and traffic should be included.
- 2.3 **Agenda item 2.7 – Following the submission by the Applicant at Deadline 5 of a signposting document: comment on the requirement or otherwise for a Code of Construction Practice (CoCP) to be submitted to the Examination**
- 2.3.1 TfL set out its position on the lack of a CoCP at the hearing. TfL's overall view is that a scheme of this size and nature would benefit from a CoCP so that the standards and procedures that the Applicant and its contractors must adhere to in order to manage the potential impacts in delivering the scheme are all set out in one place, in an accessible way for interested parties, other stakeholders and the general public.

- 2.3.2 A Construction Environmental Management Plan (CEMP) usually sets out how the CoCP will be complied with. TfL accepts that the CEMP for this scheme (reference REP5-027) covers in sufficient detail matters that would have been included in a CoCP and the environmental control plans included in the CEMP plus the content of the Register of Environmental Actions and Commitments (REAC, reference REP5-028) set out the standards and procedures to be followed. The signposting document (reference REP5-052) also demonstrates that the necessary environmental control plans are secured by requirements in the DCO. However, it would be far easier and accessible for stakeholders and the public if a CoCP was prepared to record all the necessary information in one place and the Applicant has not provided an explanation of why the approach of producing such a public facing document would not be appropriate.

### **3. Agenda item 4 – The Draft Development Consent Order**

- 3.1 **Agenda item 4.1 - Schedule 2 and how the proposed measures for Grove Farm including additional planting and the appropriate screening as indicated in the REAC Commitment LV 0.6 and Commitment LV I.II [REP5-028] and as the planting is shown on the Engineering Drawings submitted at Deadline 5 [REP5-007] would be secured in the draft DCO [REP6-005]**
- 3.1.1 TfL continues to be concerned that the proposed mitigation measures for Grove Farm could be located on land or highway that TfL is being asked to take responsibility for. This is a particular concern if the visual screening barriers, or noise barriers if these are decided as being required, are difficult or costly to maintain. TfL considers that it would be appropriate for the Applicant to be responsible for the future maintenance of any such barriers. Further, given that part of the barriers will be on the Applicant's highway alongside the M25 northbound on slip road, it would be sensible for the Applicant to maintain the whole barrier rather than for two authorities to be responsible for maintaining different parts of the same structure.
- 3.1.2 The ExA asked the Applicant at the hearing to consider a specific requirement covering mitigation measures to address the impact of the scheme on Grove Farm (Action Point 8). If it is decided that TfL is to be responsible for maintaining any of the environmental mitigation measures for Grove Farm, which TfL objects to, then it is important that the requirement specifies the involvement of TfL as highway authority for matters related to its function so that TfL is consulted on the design of the measures.
- 3.2 **Agenda Item 4.2 – In respect to Part 5, Articles 31 and 32, Transport for London to explain further its concerns as outline in paragraph 2.10 in its Written Representations at Deadline 6 [REP6-044].**
- 3.2.1 TfL set out at the hearing the reasons why it considers Articles 31 (Application of the 1981 Act) and 32 (Modification of the 2017 Regulations) to be insufficient.
- 3.2.2 Firstly, TfL would only want property and rights put into its name (and for which it will become responsible) from the point it is responsible for that land under the DCO, i.e. for the operational phase and not the delivery phase. Under article 31(5), land and rights could vest in TfL prior to or during commencement of construction of the scheme and far in advance of completion of the construction works and handover of the works to TfL. This means that TfL would be the owner of that land and would effectively have liability for that land even though it has no interest or control over it at that time. TfL is concerned about the implications of this if the scheme was delayed or never completed. It is also unclear how the Applicant would have access to that land to deliver the scheme if it has already vested in TfL. The proper approach is for the Applicant to acquire the land, deliver

the scheme and then transfer the land/rights to TfL at the point at which that part of the scheme is opened to traffic.

- 3.2.3 Secondly, it is unclear what is meant by the term “express authorisation” for the purposes of Article 31 to enable land that has been acquired to automatically vest in TfL. Article 31(5) specifies that subsection (1) of section 4 (execution of declaration) of the 1981 Act should be substituted with: “The acquiring authority may execute in respect of any of the land which they are authorised to acquire by the compulsory purchase order a declaration in the prescribed form vesting the land in themselves, or in the case of land or a right that they are ***expressly authorised*** to acquire for the benefit of a third party in the third party in question, from the end of such period as may be specified in the declaration (not being less than 3 months from the date on which the service of notices required by section 6 below is completed).” It is unclear if such express authorisation is to be obtained from the Secretary of State or whether it is the intention that the DCO will identify where land and rights which are intended to be acquired for third parties.
- 3.2.4 Thirdly, there is no obligation on the Applicant in Articles 31 and 32 to ensure that TfL has the necessary land and rights to operate and maintain the relevant part of the scheme, only that the Applicant may acquire rights in a third party’s name. The wording provides the Applicant with the power to acquire land and rights for a third party but it does not oblige it to do so. It is still unclear how the DCO ensures that the Applicant provides TfL with all necessary land and rights on transfer of any parts of the scheme to TfL.
- 3.2.5 Finally, Articles 31 and 32 will not provide TfL with rights which need to be granted to TfL either over land the Applicant already owns or which the Applicant will acquire but retain for the purposes of the scheme, for example access rights to facilitate maintenance of infrastructure. The power only relates to land which the Applicant does not currently own. Insofar as TfL will require land or rights over the Applicant’s current land, it is unclear when and how those will be provided as the DCO is silent on it.
- 3.2.6 For these reasons, the proposed wording in these articles does not address TfL’s concerns and would in TfL’s view only operate effectively to address TfL’s concerns if Protective Provisions for TfL are required in the DCO or a side agreement between TfL and the Applicant is concluded. The Applicant agreed at the hearing that this is correct. In TfL’s view, paragraph 22 of TfL’s proposed form of Protective Provisions sufficiently addressed this issue (reference REP4-038, App B).
- 3.3 **Agenda Item 4.4 – Schedule 2, Requirement 13(2) and whether Work No 2 should be added**
- 3.3.1 TfL confirmed at the hearing that the Applicant had shared revised wording for Requirement 13 with TfL before the hearing which specifies that no part of the new A12 eastbound off slip road forming Work No. 2 should be opened until appropriate deer fencing has been installed, in addition to this requirement referring to the new loop road (Work No. 6). TfL is satisfied that this revised wording provides the necessary assurance that the western part of the new A12 eastbound off slip (the embankment west of Maylands Bridge) will be protected from incursion by deer once open to traffic.
- 3.4 **Agenda Item 4.5 – Transport for London [REP4-038, App A], [REP6-044] and London Borough of Havering [REP4-029], [REP5-061], and [REP6-035] to update the ExA from their respective written submissions and on outstanding concerns with the draft DCO not discussed above**
- 3.4.1 The ExA ran through the articles, requirements and schedules in the draft DCO over which it was aware that TfL had remaining concerns. In some cases, for example timescales for

consultation, the ExA stated that the position of both TfL and the Applicant had been clearly stated and no further information was required.

- 3.4.2 TfL confirmed that most of its remaining concerns about the DCO could be dealt with in either Protective Provisions for TfL or a side agreement with the Applicant. However, TfL requested that a new Article 31 be incorporated into the DCO concerning modification of the Land Compensation Act 1973 to specify that the undertaker should be responsible for any compensation claims arising from the authorised development even if part of the authorised development becomes a GLA Road over which TfL is highway authority. The Applicant suggested that the issue could be dealt with through a clarification to the Explanatory Memorandum to the draft DCO. TfL has since confirmed to the Applicant that a clarification to the Explanatory Memorandum would be acceptable.
- 3.4.3 TfL also noted that the Applicant had shared revised wording for Requirement 14 concerning the operation of the M25 Junction 28 roundabout with TfL before the hearing, which the Applicant proposed to insert into the draft DCO at Deadline 7. TfL has liaised with Essex County Council and the London Borough of Havering over this matter. TfL confirmed at the hearing that it was satisfied that the revised wording provides sufficient assurance that any increase in delays on the A1023 Brook Street approach to the roundabout will be prevented.
- 3.5 **Agenda item 4.6 - Updates on the Schedule 9 Protected Provisions for Cadent Gas, Transport for London and (the removal of) Network Rail with updates to be actioned by Deadline 7, Thursday 20 May 2021**
- 3.5.1 TfL is in ongoing discussions with the Applicant about a side agreement which could provide the necessary protections TfL requires and could therefore negate the need for Protective Provisions in the DCO. However, there is no agreement between the Applicant and TfL on some key issues and TfL therefore considers that, unless the Applicant's position changes, it is unlikely that a side agreement will be concluded before the end of the examination. On this basis, TfL considers that Protective Provisions for TfL need to be included in the draft DCO.
- 3.5.2 TfL welcomes the ExA's view expressed at the hearing that either a side agreement needs to be confirmed between the Applicant and TfL, or Protective Provisions for TfL need to be included in the DCO. The Applicant was asked by the ExA to insert an updated version of TfL's Protective Provisions into the DCO as Action Point 7 from the hearing. TfL will continue to engage with the Applicant over both a potential side agreement and the wording of Protective Provisions.
4. **Agenda item 5 – Matters for clarification**
- 4.1 **Agenda item 5.1 - Biodiversity: Comments from the parties as to the adequacy of the Outline Ecological Habitats and Species Plan (EHSP) and Outline Invasive Species Management Plan (ISMP) submitted at Deadline 6 [REP6-019], having specific regard to Chapter 2 of the EHSP. Confirmation that both documents will be added to the next iteration of the CEMP.**
- 4.1.1 TfL confirmed at the hearing that it had reviewed both the outline EHSP and outline ISMP. TfL noted that Chapter 2 of the EHSP contains no substantive information but was not overly concerned about the information being omitted from the outline version of this document as the information is available in other application documents, primarily the Environmental Statement.

- 4.1.2 However, TfL pointed out that while Requirement 13 discussed in section 3.3 above regarding deer fencing adequately protects the safety of road users during the operational phase of the project, TfL continues to have concerns about the impact of the scheme on deer movements during the construction phase. These concerns were set out in TfL's Deadline 6 submission (reference REP6-044 paragraphs 4.2 and 4.3). TfL considers there to be a substantial risk of the movement patterns of deer changing as a result of the large construction site and loss of grazing land caused by the construction of the scheme, which could encourage larger numbers of deer to attempt to cross or move along the A12 (and potentially other roads), creating safety risks for both vehicles and deer. TfL considers that commitments should be secured from the Applicant in the EHSP, the CEMP and/or the REAC to mitigate the impacts of the scheme on movements of deer during construction.
- 4.2 **Agenda Item 5.4 – People and Communities: Either Luddington Gold Ltd, Glebelands Estates Ltd (or the Applicant on their behalf) to confirm whether Maylands Golf Course will be responding to our Procedural Decision letter [PD-018] response to the Applicants Change Request 7 [REP6-002]. Applicant to confirm whether the tri-party agreement with the Gardens of Peace Muslim Cemetery will be submitted into the Examination.**
- 4.2.1 In response to concerns raised by the Gardens of Peace Muslim Cemetery about the tree belt on the south side of the A12 which provides screening for the cemetery, TfL stated its position. The tree belt is within the boundary of the DCO and TfL is neither the promoter of the DCO nor will be delivering the project. It is therefore for the Applicant to confirm whether or not the tree belt would be affected during the construction phase of the scheme. TfL recommends that the Applicant provide a relevant undertaking or commitment on this matter to provide assurance that the tree belt will not be affected by the project.