

# TRANSPORT FOR LONDON

## M25 JUNCTION 28 IMPROVEMENTS – DEADLINE 8 SUBMISSION

9 JUNE 2021

### **I. Introduction**

- I.1 This document sets out TfL's responses to submissions made at Deadline 7.
- I.2 A focus of TfL's response concerns the new A12 eastbound off slip road delivered as part of the M25 Junction 28 scheme. TfL's position remains that it does not believe that it is appropriate or cost effective for TfL to be the highway authority for the new off slip. The reasons for this position are set out in Section 2.2 of this submission. TfL would reluctantly be prepared to accept responsibility for the off slip only if suitable protections in favour of TfL can be secured via the Development Consent Order (DCO) or by way of a side agreement.
- I.3 TfL continues to engage with the Applicant with a view to concluding an agreement to address TfL's concerns. Unfortunately, however, significant areas of dispute remain, and TfL considers it unlikely that an agreement will be reached before the end of the examination.
- I.4 In the circumstances, TfL considers that protective provisions in its favour should be incorporated into the DCO. TfL has reviewed and comments in section 2.3 of this submission on the draft protective provisions proposed by the Applicant at Deadline 7 (examination reference REP7-027). Following this review, TfL's amended form of protective provisions is appended to this submission (Appendix A) with a comparison to the Applicant's proposed form of protective provisions (Appendix B).
- I.5 TfL's proposed amendments to the draft DCO and its comments on the Examining Authority's (ExA's) recommended amendments to the draft DCO (PD-021) are covered in Sections 3 and 4 of this document respectively.
- I.6 Finally, TfL's comments on other documents submitted at Deadline 7 are provided in Section 5 of this document.
- I.7 TfL's response to the ExA's Rule 17 letters on Proposed Scheme Change 8 and the London Plan 2021 is provided in a separate submission.

### **2. Highway authority for the new A12 eastbound off slip road and protective provisions**

#### **2.1 Summary**

- 2.1.1 TfL maintains the position that:
- it does not believe that it is appropriate or cost effective for TfL to be the highway authority for the new A12 eastbound off slip road; and
  - if it were to become the highway authority for the new A12 eastbound off slip then it should be fully protected from the costs and risks associated with that arising from a third party project, in this case, the improvements being made by the Applicant to Junction 28 of the M25.
- 2.1.2 These issues are dealt with in turn in sections 2.2 and 2.3 of this document below.

## 2.2 Highway authority for the new A12 eastbound off slip road

2.2.1 TfL is currently the highway authority for the A12 eastbound off slip road. This is a standalone off slip that links into the roundabout for Junction 28 for which the Applicant is the highway authority.

2.2.2 The existing off slip is to be replaced in its entirety by a new off slip, in a new location, which will:

- be constructed by the Applicant;
- be considerably longer and involve more complex infrastructure than the existing off slip;
- oversail the Applicant's new loop road, with the Applicant proposed to be responsible for the Maylands Bridge on the A12 eastbound off slip that passes over the loop road; and
- involve mitigation for the impacts of the Applicant's scheme on surrounding landowners.

2.2.3 The highway authority for the new off slip needs to be named under the DCO. Simply because TfL was the highway authority for the existing off slip does not mean that the highway authority should be TfL following its replacement. TfL believes that all of the circumstances should be considered in determining who the appropriate highway authority should be for the new off slip. This consideration must take into account the nature of infrastructure and the cost to the public purse. TfL is clear that the public purse would be better served by the Applicant maintaining the new off slip. If the Applicant was to be responsible for the new off slip then:

- A single highway authority would be responsible for the off slip rather than there being complex interfaces where disputes may arise as to responsibility. The boundary of TfL's responsibility under the current proposals remain unclear. Particular issues of concern are interconnected drainage between the loop road and the new off slip, environmental mitigation arising from construction and bridge supports for Maylands Bridge. Plans for the proposed split of responsibility between the Applicant and TfL remain unavailable.
- There would be a single highway authority for the roads surrounding the neighbouring landowners allowing a single point of contact for issues arising and a single highway authority responsible for the mitigation arising from the scheme.
- A single highway authority would be responsible for both the construction and then subsequent operation of the new off slip. This avoids the risk of disputes in relation to defects arising from construction and relates to the issue of latent defects which is covered further in Section 2.3 below.
- The Applicant is already going to be responsible for infrastructure of a very similar nature to that of the new off slip in the vicinity of M25 Junction 28, given that it will already be responsible for all the other attenuation ponds required, several bridge and retained structures, the roundabout, and the A12 eastbound on slip and westbound off slip roads at Junction 28. It would be more cost effective for the Applicant to be responsible for the new A12 eastbound off slip rather than TfL having to apply resources from elsewhere in London, and as necessary additional resources, to deal with infrastructure that is only associated with the new off slip where those resources would otherwise not be required for that area of London.

2.2.4 As outlined further in Section 2.3 of this submission below, TfL's position is further reinforced by the Applicant not offering a commuted sum for the increased cost of maintaining the new off slip, or for any of TfL's costs in providing design input and safety assurance for the new off slip that TfL is being asked to take responsibility for.

## 2.3 Protective provisions

- 2.3.1 As indicated in paragraph 1.4 above, TfL has reviewed the protective provisions supplied by the Applicant at Deadline 7 (REP7-027) and has added its own changes. TfL's amended form of protective provisions is appended to this submission (Appendix A) with a comparison to the Applicant's proposed form of protective provisions submitted at Deadline 7 (Appendix B).
- 2.3.2 The ExA will note that, where possible, TfL has accommodated changes requested by the Applicant (for example, in relation to the provisional and final certificates, road safety audit 4, and the maintenance schedule).
- 2.3.3 However, as will be clear from the form of protective provisions provided by the Applicant and the comparison document in Appendix B of this submission, significant issues remain outstanding and, as they appear to be points of principle, it seems unlikely they will be resolved by the close of the examination. The particularly significant issues are set out in this section.

### *Commuted sum and costs*

- 2.3.4 TfL is reluctantly prepared to accept responsibility for the new A12 eastbound off slip road if it were fully protected from the costs and risks associated with doing so.
- 2.3.5 However, the Applicant is not willing to pay TfL's increased costs either in respect of a commuted sum for the increased costs of maintenance for the new off slip, or in respect of TfL's costs in providing design input or safety assurance for the new off slip for which TfL is proposed to become responsible.
- 2.3.6 The Applicant states in its response to TfL's Deadline 6 submissions (REP7-022 Section 2 table row REP6-044-06 that: "Highways England does not have statutory responsibility for the local highway network and insofar as the Scheme involves TfL incurring greater expense for the management of the TLRN, this is matter between Department for Transport (DfT) and TfL. It would be inappropriate to hand over the entire maintenance of the local highway to Highways England, whose statutory responsibility is to maintain the Strategic Road Network (SRN). Any additional cost that TfL may incur as a result of the relevant section of the A12 being replaced, ought to be considered in the context of, and balanced against, the benefits of the Scheme which will be experienced at local level by the local community and not just on a regional/national basis."
- 2.3.7 There are several significant flaws to this argument:
- It is firstly not agreed that this new piece of road infrastructure should become part of the local highway network, in this case part of the TLRN. As stated in section 2.2 above, TfL believes it could and should become part of the SRN.
  - Why should a local highway authority be responsible for finding the additional funding arising from a third-party scheme whether from the DfT or otherwise? It falls to the promoter of the scheme to ensure that all costs arising from the scheme have been put in place in order to deliver and implement the scheme. As TfL made clear in its Deadline 6 submission (REP6-044 paragraph 2.8), the ExA for the A303 Sparkford to Ilchester Dualling DCO made it clear that a public authority should be recompensed for the additional work occasioned by a development.
  - Payment of additional costs incurred by a local highway authority arising from the scheme is not handing over the entire maintenance of the local highway to Highways England. It is simply covering the additional costs to the local highway authority arising from the scheme.

- It is also not correct to assert that benefits at a local level need to be considered in balancing whether a local highway authority should bear responsibility for additional costs. That may have relevance where the funding package for a proposed development is being put together prior to a scheme being brought forward for consent. However, it is only recently that the Applicant has indicated that it is not willing to pay TfL additional costs arising from the scheme. This did not form part of the consultation for the DCO and consequently there is no funding in place to cover such costs. This leaves a material gap in the funding of the scheme.
- If the increased costs associated with the replacement off slip are not to be covered from the project budget that the Applicant has for this development, then the ExA can have no confidence that TfL will be in a position to apply sufficient resources to work with the Applicant to ensure a suitable detailed design and to safely assure the new off slip, and that following the development the new off slip will be effectively operated. TfL has no budget to deal with those increased costs.

2.3.8 The protective provisions proposed by TfL include provisions to address both costs and a commuted sum and follow the precedent created by the A303 Sparkford to Ilchester Dualling DCO.

#### ***Latent defects***

2.3.9 The defects provision under the Applicant's proposed form of protective provisions lasts for a 12-month period. This is insufficient to deal with latent defects that become apparent after the initial defects period. TfL will not have a contractual relationship with the Applicant's contractor and the works will not be constructed for TfL. As such, without protection from the Applicant for any latent defects that arise, TfL will potentially be exposed to significant remedial costs to repair or replace relevant works arising from latent defects. This represents a significant risk to TfL and is an example of why the structure proposed by the Applicant is not efficient and does not provide value for money to the public purse.

2.3.10 TfL notes that, in the Applicant's introduction to its form of protective provisions for TfL (REP7-027 paragraph I.1.10), the Applicant rejects the inclusion of a latent defects provision on the basis that the earlier provisions provide TfL with sufficient protection. This is incorrect as the earlier provisions only relate to defects identified within the usual 52-week maintenance period. Latent defects may and are more likely to arise several years after opening of the new road to traffic.

2.3.11 The protective provisions proposed by TfL accordingly make specific reference to latent defects to ensure that the Applicant, as the organisation with the relationship with the contractor responsible for the latent defects, is accountable for them.

#### ***Indemnity***

2.3.12 The indemnity proposed by TfL did exclude acts as a result of TfL's negligence or consequential loss. TfL has accepted the wording proposed by the Applicant in relation to the conduct and mitigation of claims, except that TfL cannot agree that it cannot settle claims without the Applicant's consent. This aligns with other indemnities in the draft DCO and is considered to be fair and reasonable by TfL.

#### ***Cadent works***

2.3.13 TfL remains concerned that, pursuant to Article 9(4) of the draft DCO, the Applicant can transfer the benefit of the DCO to Cadent to undertake Work No. 29 (diversion of the gas pipeline under TfL highway) and wishes to ensure that the works are undertaken through cooperation with and approval of TfL. It is particularly important that the works are

designed and carried out with a methodology and timing that does not compromise operation of the A12. Wording has been included in the draft protective provisions proposed by TfL to address this issue.

- 2.3.14 The Applicant states in its introduction to its form of protective provisions for TfL (REP7-027 paragraph I.I.18) that there is no need for a separate provision for the Cadent works but TfL disagrees. The main protective provisions focus on works undertaken by the Applicant to modify existing highway or create new highway. Work No. 29 is different in that it impacts TfL’s existing highway otherwise unaffected by the scheme and which will remain operational during the scheme, including the A12 westbound carriageway and westbound on slip road. It is so significant that it has the potential to adversely impact on the integrity of the existing highway and consequently operation of the existing highway, not only during the carrying out of the works but also post-construction, including future maintenance of both the existing highway and the diverted gas pipeline. As such, a higher degree of scrutiny, approval and oversight is required by TfL as highway authority for the relevant affected highway. It is important to highlight that this would be the case irrespective of whether TfL was responsible for the new A12 eastbound off slip.

### 3. TfL’s proposed amendments to the draft DCO

- 3.1 If the made DCO does not include some or all protective provisions in favour of TfL as TfL has requested, but does require TfL to maintain the new A12 eastbound off slip road or any other features within the scheme, then there are elements of the protective provisions as proposed that should nevertheless be included in the DCO if they are not contained in protective provisions, namely:

- to require the Applicant to agree a maintenance schedule setting out the clear split of maintenance responsibilities;
- to oblige the Applicant to provide TfL with all the necessary land and rights for TfL to effectively manage and maintain the new off slip road; and
- to ensure that TfL approves Work No. 29 involving Cadent Gas.

- 3.2 In addition, TfL proposes the amendments below.

Article I6(l)(b)	<p>To be deleted and replaced with a new Article I6(2):</p> <p><i>Subject to all necessary land and rights having been vested in Transport for London for the future management and maintenance to the reasonable satisfaction of Transport for London, the roads described in Part 2 (Transport for London network) of Schedule 4 (classification of roads, etc.) will be-</i></p> <p style="padding-left: 40px;"><i>(a) GLA Roads as if they had become so by virtue of an order under section I4B (order of the authority changing what are GLA roads) of the 1980 Act specifying that date as the date on which they were to become GLA roads; and</i></p> <p style="padding-left: 40px;"><i>(b) Transport for London will be the highway authority for those roads.</i></p> <p>Consequential amendments to be made to the numbering in the draft DCO as appropriate.</p>
New requirement	<p>To be inserted into Schedule 2:</p> <p><i>No part of that part of the authorised development comprising the A12 Eastbound Off Slip Road is to commence until a maintenance schedule and plan setting out the split of future maintenance responsibility</i></p>

	<i>between the undertaker and Transport for London for the A12 Eastbound Off Slip Road has been submitted to and approved in writing by Transport for London.</i>
New requirement	To be inserted into Schedule 2: <i>No part of Work No. 29 is to commence until approval has been given by Transport for London to the detailed design and specification for the works and Work No. 29 must not be constructed except in accordance with the details so approved.</i>

3.3 TfL further notes that specific reference is to be included in the draft, but as yet not updated, Explanatory Memorandum to the DCO that the Applicant is the appropriate authority for any claims pursuant to Part I of the Land Compensation Act 1973, as confirmed in the written submission of the Applicant’s case put orally at Issue Specific Hearing 3 (REP7-018 paragraph 5.1.19).

#### 4. **Comments on the ExA’s proposed schedule of changes to the draft DCO**

4.1 TfL has reviewed the ExA’s recommended amendments to the draft DCO (PD-021) and wishes to comment on two of the amendments.

##### **No. 21 – Schedule 2, new requirement – Grove Farm**

4.2 TfL has no comments on the wording proposed by the ExA save that the site-specific plan for Grove Farm should also address the future management and maintenance of any planting, visual screening and/or acoustic fence.

##### **No. 23 – Schedule 2, new requirement – Code of Construction Practice**

4.3 TfL is content with the proposed wording of this requirement.

#### 5. **Comments on other Deadline 7 submissions**

##### **5.1 Outline Traffic Management Plan (REP7-017)**

5.1.1 TfL welcomes the updated version of the outline Traffic Management Plan (TMP) submitted by the Applicant at Deadline 7. This has addressed several of the points raised by TfL in its response to the ExA’s Further Written Questions (WQ2) (REP5-070 paragraphs 4.1 to 4.11). The key points where TfL now has sufficient assurance are as follows:

- Information has now been provided throughout the outline TMP covering overnight closures of the A12 eastbound off slip road. Table 2-4 shows more closures of this slip road than TfL expected, with a total of 18 overnight closures and three full day closures listed. This volume of closures demonstrated the need for information about them to be included in the outline TMP.
- Additional information has been provided in paragraphs 2.3.8 and 2.3.9 of the outline TMP which shows how the routes for construction vehicles will be specified and signed, with a method for reporting of any vehicles not using the designated routes.
- Paragraph 2.3.12 now specifies that full road closures will be limited to weekends or overnight – this extra assurance is welcomed by TfL.
- The previous version of the outline TMP stated that narrow lane running on the A12 eastbound carriageway could have caused hazards for pedestrians therefore could potentially require a lane closure instead (REP4-013 paragraph 2.3.14). The Applicant has now clarified that the lane narrowing will be towards the central reservation, away

from the footway, so there is not in fact a risk to pedestrians and this statement has been removed from the updated outline TMP, removing TfL's concern in this area.

- TfL also notes the additional information in paragraph 2.3.46 regarding how emergency vehicle access along the A12 eastbound off slip would be provided during any closures.

5.1.2 TfL has reviewed the updates made to Table 2-4 of the outline TMP which covers the length and duration of traffic management. This shows a substantial reduction in the number of off peak lane closures on the eastbound A12 carriageway required for statutory undertakers diversions (from up to 141 to up to a total of 50 days) and a modest increase in the number of days of narrow lane running on the A12 eastbound carriageway (from a total of up to 185 days to a total of up to 210 days). These changes do not cause any significant concern for TfL.

5.1.3 However, a third change does cause concern. The previous version of the outline TMP included closure of Lane 1 on the eastbound A12 for tie-in works for the new slip road for up to 20 nights. The updated outline TMP states that a closure of Lane 1 will be required for a total of up to 35 days. TfL requires more information to specify whether these are all weekend days or if any lane closures are planned on weekdays at peak times. TfL previously raised concerns about whether off peak lane closures of the A12 were modelled in the Transport Assessment Supplementary Information Report (TASIR) (PDB-003), with the Applicant confirming these off peak closures have been modelled (REP6-011 section 2 table row TA 2.4 paragraphs 4.2 and 4.3). If lane closures during weekday peak periods were required, this would potentially cause significant congestion issues due to the higher traffic levels during these periods, with peak period closures presumably having not been modelled in the TASIR. Further clarification is required to provide information on the impacts of the scheme on traffic.

## 5.2 Non-Motorised Users (NMU) route

5.2.1 TfL welcomes the commitments the Applicant has made to upgrading the NMU route between Harold Wood and Brentwood through the Designated Funds scheme, specifically:

- the commitment to fund the full cost of the NMU scheme, regardless of whether that cost is higher or lower than the current estimate of £3.474m, with no funding to be sought from other parties (Applicant's response to action points from Issue Specific Hearing 3 (REP7-019 action point 2));
- the commitment that the Applicant will deliver the whole of the NMU scheme (not just the central section), as set out in the Applicant's response to TfL's Deadline 6 submissions (REP7-022 section 3 table row REP6-045-04);
- the confirmation that the construction of the NMU scheme would be delivered by the Applicant's contractor for the M25 Junction 28 improvements project (REP7-019 action point 2), providing assurance that a holistic approach will be taken to delivering the NMU route upgrade through Junction 28; and
- the commitment to not opening the new loop road until the central section of the NMU route upgrade through Junction 28 has been completed (REP7-019 action point 2), providing assurance that delivery will not be delayed.

5.2.2 The scope of the Designated Funds scheme does not include upgrading the pedestrian route on the north side of the A12, although a new footway will be provided alongside the new A12 eastbound off slip road. TfL accepts that the upgrade of the route on the south side of the A12 addresses the severance issue caused by the Strategic Road Network at this location. However, the route on the north side of the A12 still needs to be safe. TfL has sought confirmation several times from the Applicant that the crossing facilities for the A12 eastbound off slip and A12 westbound on slip do not raise any safety concerns. Most

recently, the Applicant did not address these concerns in its response to TfL’s Deadline 6 submissions, instead focusing on the Designated Funds scheme (REP7-022 section 2 table row REP6-044-21 and section 3 table row REP6-045-07).

5.2.3 Furthermore, TfL is concerned about the comment in the written submission of the Applicant’s case put orally at Issue Specific Hearing 3 stating that “the existing crossing points from the northern side of the A12 at junction 28 would still be maintained, and that the NMU scheme offered a safer alternative” (REP7-018 paragraph 3.1.22). This confirms that the Applicant regards the route via the north side of the A12 as being less safe. TfL requires confirmation that no safety issues for pedestrians have been identified associated with the uncontrolled crossings of the A12 slip roads required to access the pedestrian route on the north side of the A12. If any safety issues have been identified, TfL would expect any such issues to be mitigated as part of the M25 Junction 28 improvements scheme.

### 5.3 Impact on deer movements

5.3.1 TfL welcomes the change to Schedule 2, Requirement I3 of the draft DCO to include that the new A12 eastbound off slip road cannot open to traffic until appropriate measures for the control of deer are in place. This addresses TfL’s concerns over the risk of collisions between traffic and deer during the operational phase of the scheme.

5.3.2 However, TfL’s concern about the construction of the scheme resulting in changes to movements of deer which could increase the risk of collisions has not been addressed. Paragraph 6.1.2 of the written submission of the Applicant’s case put orally at Issue Specific Hearing 3 (REP7-018) states that “Highways England has considered how deer should be controlled during construction and this is set out in the response to action point II from Issue Specific Hearing 3”. However, the response to action point II in this document (REP7-019) refers to the change to Requirement I3 only, which addresses the operational phase of the scheme and not the construction phase.

5.3.3 The Applicant therefore still needs to set out how deer movements will be managed during the construction of the scheme to avoid an increased risk of collisions between deer and traffic, whether this is in the outline Construction Environmental Management Plan or elsewhere.

### 5.4 Schedule 2 Requirement I4

5.4.1 TfL notes the revised wording of Requirement I4 included in the draft DCO by the Applicant, which had previously been discussed with TfL. However, there appears to be an omission of some wording, as TfL understands that the Applicant intends to commit to develop a plan for the roundabout that prevents any increase in delays for traffic on the A1023 Brook Street. The wording currently proposed commits to developing a plan that prevents delays for traffic on the A1023 Brook Street. It would be impractical to prevent all delays.

### 5.5 Maintenance of overhead electricity power cables over the A12

5.5.1 TfL notes issue I.8 in the Statement of Common Ground between the Applicant and National Grid, which states that “Rolling road closures of the slip road off the M25 to A12 and also over the A12 and A12 slip roads may be required in order to allow re-stringing if an engineering solution is no longer possible in light of the Scheme.” The Applicant’s response to this issue is that it would “work with National Grid to when required to ensure that a safe engineering solution to restringing and works to overhead lines can be found. This agreement will be secured in a side agreement between the parties.”



- 5.5.2 TfL requests that the Applicant provides information about the level of confidence that an engineering solution can be found without anything more than night time road closures on the A12 main carriageway and slip roads. While TfL recognises that the need to restring the power cables is presumably very infrequent, it would be a significant concern if the M25 Junction 28 improvements scheme resulted in it not being possible to undertake the maintenance to the high voltage power cables without substantial road closures. TfL also wishes to point out that while this issue may be covered in a side agreement between the Applicant and National Grid, the Applicant is not the highway authority for the A12 main carriageway and, as proposed under the Applicant's draft DCO, not the highway authority for the new A12 eastbound off slip road. TfL will need to be closely involved in any future development of engineering solutions or other measures which impact on the safe operation of the highway network.

## **Appendix A – TfL’s proposed draft Protective Provisions (clean version)**



## PROTECTIVE PROVISIONS

## PART 6

## FOR THE PROTECTION OF TRANSPORT FOR LONDON

54. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Transport for London.

*Definitions*

55. In this Part of this Schedule—

“A12 Eastbound Off Slip Road” means that part of the authorised development comprising the A12 eastbound off slip road shown between points 1/10 and 1/11 on sheet 1 of the streets, rights of way and access plans;

"Commuted Sum" means the sum to be paid by the undertaker to Transport for London for the future maintenance of the Highway Assets not previously forming part of the TLRN which will be transferred to Transport for London, as calculated in accordance with paragraph 80 of this Part;

“Completion Certificate” means a certificate issued by the undertaker to its contractor constructing the authorised development confirming “completion” as defined by the NEC contract between the Undertaker and the contractor;

"Defects Certificate" means a certification issued by the undertaker certifying that defects relating to the works have been remedied;

“Detailed Information” means the following drawings, specifications and other information relating to TfL Roads, which must be in accordance with the detailed design of the authorised development—

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures; and
- (k) landscaping, planting and any boundary features which will form part of the TLRN; (l) utility diversions;

“Detailed Local Operating Agreement” means an agreement made pursuant to paragraph 57 of this Part of this Schedule;

“DMRB” means design Manual for Roads and Bridges as may be replaced or modified by the undertaker;

“Highway Assets” means highway assets which Transport for London will become responsible for maintaining and which incur maintenance costs;

“Maintenance Schedule” means a schedule and plan detailing Highway Assets which are proposed to be the maintenance responsibility of Transport for London under article 11 (construction and maintenance of new, altered or diverted streets and other structures) of the

Order;

“Other Detailed Information” means—

- (a) a schedule of timings for the works, including dates and durations of any closures of any part of the TLRN;
- (b) traffic management proposals, including any diversionary routes and any Detailed Local Operating Agreement;
- (c) a schedule of condition of the affected TLRN within the Order limits; and
- (d) where the TLRN is occupied under this Order in connection with the works but works are not undertaken on, to or under the TLRN, a specification of the condition in which the TLRN will be returned after the occupation has finished;

“Take Over Certificate” means a certificate issued to certify that the works to which the certificate relates have been completed in accordance with this Part of this Schedule and are ready for use for public traffic;

“TfL Road” means any public, vehicular highway which is vested or vests or is intended at the completion of works to vest in or be otherwise maintainable by Transport for London, including for the avoidance of doubt the A12 Eastbound Off Slip Road;

“TLRN” means the Transport for London Road Network comprising highways for which Transport for London is the responsible highway authority; and

“works” means any works authorised by the Order undertaken on, to or under any part of the TLRN or a TfL Road.

#### *Commencement of the works*

**56.** Before commencing the construction of, or the carrying out of any work authorised by this Order the undertaker must provide to Transport for London the Detailed Information relating to those works, and the works must be carried out in accordance with the Detailed Information submitted to Transport for London or as otherwise agreed between the undertaker and Transport for London.

**57.—(1)** Before commencing the construction of, or the carrying out of any work authorised by this Order which involves interference with a TfL Road, the undertaker must use reasonable endeavours to agree with Transport for London a Detailed Local Operating Agreement covering the following—

- (a) communications and customer care – communication with stakeholders and identification of which party is responsible for each activity;
- (b) operational areas, scheme operational areas – definitions and scheme extents for the works areas, zone of influence and "Free Recovery Area";
- (c) asset handover– describing the scheme's assets and activities to be undertaken to enable commencement, completion and handover of works, and the party responsible for each; (d) asset inspection;
- (e) routine maintenance and repair;
- (f) winter maintenance and severe weather;
- (g) continuity of technology;
- (h) occupancy management;
- (i) incidents;
- (j) traffic management – provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of traffic management; and
- (k) (k) claims made by and against the undertaker.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the works or the removal of the undertaker from all TfL Roads, whichever is the earlier.

(3) Where agreement cannot be reached under sub-paragraph (1), the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 54 (arbitration).

**58.**—(1) Before commencing the construction of, or the carrying out of any works the undertaker must provide to Transport for London Other Detailed Information relating to those works.

(2) The undertaker must use reasonable endeavours to agree the Other Detailed Information with Transport for London acting reasonably.

(3) The works must not be constructed except in accordance with the Other Detailed Information as may be agreed in accordance with sub-paragraph (2) or deemed to have been agreed under sub-paragraph (4).

(4) If within 28 days after the Other Detailed Information has been submitted Transport for London has not agreed or disagreed with Other Detailed Information submitted by the undertaker or it has not been otherwise agreed, Transport for London is deemed to have agreed it as submitted.

**59.**—(1) The undertaker will design and construct all works affecting TfL Roads in accordance with standards contained in the appropriate parts of the DMRB.

(2) Subject to sub-paragraph (3), the undertaker must not commence construction of, or the carrying out of, any works that are a departure from the standards contained in the DMRB until the approval has been given by Transport for London acting reasonably.

(3) If within 28 days after the undertaker submitted to Transport for London a request for a departure from the standard in the DMRB in respect of any works as set out in sub-paragraph (2), Transport for London has not approved or disapproved such departure, or it has not been otherwise agreed, Transport for London is deemed to have agreed it as submitted.

**60.**—(1) The undertaker will allow an appropriately qualified person on behalf of Transport for London to participate in the design process for the detailed design of those parts of the authorised development which are TfL Roads, and will have reasonable regard to any views of that person in finalising the detailed design prior to any element reaching design fix or freeze; provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the person will not be an instruction, requirement or authorisation under this Order.

(2) Participation under sub-paragraph (1) will be in the form of invitations to attend design meetings not less than once per calendar month and the provision to Transport for London of such drawings, cross sections and design proposals as are required to allow Transport for London to provide views on detailed design proposals to the undertaker.

#### *Inspection of the works*

**61.**—(1) Any person duly appointed by Transport for London for the purpose may at all reasonable times, on giving to the undertaker not less than two working days' notice and subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which—

(a) is in, over, under or adjacent to any TfL Road, or

(b) may affect any highway or any property of Transport for London, during the carrying out of the works, and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any works affecting TfL Roads must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works).

(3) Transport for London must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable.

(4) Notwithstanding the foregoing, Transport for London may upon giving at least 10 working days' notice to the undertaker, test all or any materials used or proposed to be used in any work to TfL Roads at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must not alter, disturb or in any way interfere with any property of Transport for London on or under the TLRN, or the access thereto except to the extent authorised under the powers conferred by this Order, without the prior written consent of Transport for London.

#### *Safety Audits*

**62.**—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the works including any works to TfL Roads in accordance with DMRB Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to Transport for London.

(2) Transport for London must be invited to participate in the stage 3 and 4 road safety audits conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended works to a TfL Road, the undertaker must use reasonable endeavours to agree with Transport for London which works or alternative proposals require to be implemented, provided that no works may be implemented which would give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement.

(4) Any works which are to be carried out to a TfL Road in accordance with the report of the stage 3 or stage 4 road safety audit must be undertaken by the undertaker.

(5) The undertaker must use reasonable endeavours to agree with Transport for London a programme for any works to be carried out under sub-paragraph (3), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where appropriate.

(6) The carrying out of works under this paragraph 62 are to be taken to be works carried out under this Order.

(7) Where, agreement cannot be reached under this paragraph, the terms of an agreement will be resolved in accordance with paragraph 82.

#### *Carrying out of the works*

**63.**—(1) Provisions must be made in accordance with Transport for London's reasonable requirements at the site of the works to prevent mud and other materials from being carried on to the adjacent highway by vehicles and plant.

(2) The operational highway in the vicinity of the site of the works is to be swept as required to ensure its safe use as a public highway.

**64.** The undertaker must not, except with the consent of Transport for London, erect or retain on or over a TfL Road to which the public continues to have access any scaffolding or other structure which obstructs the TfL Road.

**65.** Except in an emergency or where necessary to secure the safety of the public, no direction or instruction may be given by Transport for London to the contractors, servants or agents of the undertaker regarding any highway operations without the prior consent in writing of the undertaker.

**66.** In exercising the powers conferred by the Order in relation to any TfL Road the undertaker must have regard to the potential disruption of traffic which may be caused, seek to minimise such disruption so far as is reasonably practicable and must at no time prevent or unreasonably impede access by emergency service vehicles to any property.

**67.** The undertaker must, if reasonably required by Transport for London, provide and maintain during such time as the undertaker may occupy any part of a TfL Road for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road traffic.

### *Completion of the works*

**68.**—(1) When the undertaker considers that the works have reached completion it must notify Transport for London and must allow Transport for London the opportunity to inspect the works to identify any defects or incomplete works and the undertaker must give proper consideration to any representations made by Transport for London.

(2) If the works in question were subject to a stage 3 safety audit then the undertaker may not notify Transport for London under sub-paragraph (1) until a stage 3 safety audit has been carried out in respect of the works in question in accordance with GG19 of DMRB and any recommended works identified in the audit and which have been agreed under paragraph 62 should be carried out, have been completed.

**69.**—(1) Subject to—

- (a) the works being completed to Transport for London's reasonable satisfaction;
- (b) the undertaker allowing Transport for London to undertake an inspection in accordance with paragraph 68; and
- (c) any further works being completed by the undertaker required to address any safety deficiencies or defects identified as a result of the inspection under paragraph 68,

Transport for London shall issue to the undertaker, on request from the undertaker, a counter-signed Take Over Certificate in relation to any part of the works.

(2) The issue of the Take Over Certificate by the undertaker that has been counter signed by Transport for London will serve as confirmation under article 11(1) and (2) (construction and maintenance of new, altered or diverted streets and other structures) of the Order that the works have been constructed to the reasonable satisfaction of Transport for London as the relevant highway authority.

**70.** No earlier than 52 weeks from the date of issue of the Completion Certificate, the undertaker must issue a Defects Certificate, certifying that all outstanding defects relating to the part of the works in question and which required remediation as agreed by Transport for London, have been so remedied, provided that—

- (a) all identified defects requiring remediation as identified by Transport for London or the undertaker, have been so remedied;
- (b) the undertaker has given Transport for London an opportunity to inspect the works and has given proper consideration to any reasonable representations made by Transport for London;
- (c) the undertaker has transferred to Transport for London any land and rights pursuant to paragraph 74 under this Part;
- (d) all costs, charges, expenses and sums payable to Transport for London pursuant to this Part have been paid;
- (e) the undertaker has provided Transport for London with such detailed information as Transport for London may reasonably require in relation to the Works as built;
- (f) the Maintenance Schedule has been agreed between Transport for London and the undertaker, deemed to have been agreed under paragraph 76(3) or determined in accordance with paragraph 77(4).

### *Defects*

**71.** Where the undertaker carries out any works to any TfL Road it must make good any defects in those works notified to it by Transport for London within the period of 52 weeks after the date of the completion of the works to that area of the TfL Road to the reasonable satisfaction of Transport for London.

72. Where the undertaker carries out any Works to any TfL Road it must make good any latent defects in those Works notified to it by Transport for London within the period of 12 years from the date of the issue of the Defects Certificate and to the reasonable satisfaction of Transport for London.

73. The carrying out of any remedial works required under paragraphs 71 and 72 requires the submission of such items of Detailed Information and Other Detailed Information to Transport for London as the undertaker deems to be reasonable in the circumstances but always including a description of the works to be carried out, a schedule of timings for the works, including dates and durations for any closures of any part of a TfL Road and traffic management proposals.

74.—(1) The undertaker must use reasonable endeavours to complete the works pursuant to paragraphs 71, 72 and 73 on such date or dates that will be notified by the undertaker to Transport for London in writing or as may be agreed between the parties acting reasonably.

(2) Prior to the completion of the Works pursuant to paragraphs 71, 72 and 73 of this Part of this Schedule, and prior to key buried assets being back filled, the undertaker must invite Transport for London to participate in inspection of such works to identify any defects or incomplete works.

#### *Land and Rights*

75. Following the construction of the A12 Eastbound Off Slip Road but prior to the date on which that road becomes a GLA Road under article 16(1)(b), the undertaker must exercise article 25 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and article 32 (modification of the 2017 Regulations) of this Order to directly vest in Transport for London, or otherwise execute and complete a transfer and such other document(s) conferring land and rights as may be necessary to Transport for London, at nil consideration to Transport for London, for the operation and maintenance of the A12 Eastbound Off Slip Road.

#### *Indemnity*

76.—(1) The undertaker will hold Transport for London harmless and indemnified from and against any liability, loss, cost or claim arising out of or incidental to the carrying out of the works provided that no claim can be settled or liability accepted by Transport for London without first obtaining the written approval of the undertaker, such approval not to be unreasonably withheld or delayed.

(2) Notwithstanding provisions of sub-paragraph (1), Highways England will not be liable in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Transport for London; or
- (b) any part of the authorised works carried out by Transport for London in the exercise of any functions conferred by the Order pursuant to a transfer or grant under the Order.

(3) Transport for London must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without first consulting the undertaker and considering their representations.

(4) Transport for London must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) Transport for London must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Transport for London must provide an explanation of how the claim has been minimised.



### *Maintenance Schedule*

77.—(1) Before commencing the construction of, or the carrying out of any works the undertaker must provide to Transport for London the Maintenance Schedule and use reasonable endeavours to agree it with them.

(2) The undertaker must not commence construction of, or the carrying out of the works in question until the Maintenance Schedule has been agreed between the undertaker and Transport for London, deemed to have been agreed under sub-paragraph (3) or determined in accordance with sub-paragraph (4).

(3) If within 28 days after the Maintenance Schedule has been submitted Transport for London has not approved or disapproved it or it has not been otherwise agreed, the Maintenance Schedule is deemed to have been agreed as submitted.

(4) Where the Maintenance Schedule required under sub-paragraph (1) is not agreed, matters of dispute in respect thereof are to be referred to arbitration under article 54 (arbitration).

### *Step In*

78. Nothing in this Part of this Schedule prevents Transport for London from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

### *Costs*

79. The undertaker must pay to Transport for London in respect of the highway works a sum equal to the whole of any costs and expenses which Transport for London reasonably incur in—

(1) the examination or approval of the Detailed Information, the Other Detailed Information, the Maintenance Schedule and the detailed design, specification and programme for Work No.29 under this Part;

(2) including the Highway Assets within its road maintenance framework contracts;

(3) agreeing and operating the Detailed Local Operating Agreement;

(4) participation in road safety audits required under this Part;

(5) inspecting the construction and completion of the works including any remediation works under this Part;

(6) the issue of the Completion Certificate, Defects Certificate and Take Over Certificate;

(7) carrying out any surveys and testing which are reasonably required in connection with the construction of the Works; and

(8) the transfer or vesting in Transport for London pursuant to paragraph 75 any land and rights acquired by the undertaker.

### *Commutated Sum*

80.—(1) The undertaker must use reasonable endeavours to agree which items on the Maintenance Schedule agreed pursuant to paragraph 77 are Highway Assets having regard to the following:

(a) standard Highway Assets include -

(i) carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates) or low noise surfacing;

(ii) carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional);

(iii) footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates);

- (iv) footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional);
  - (v) cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates);
  - (vi) pre-cast concrete kerbing;
  - (vii) gully drainage, connection pipes and gravity draining highway carrier drains;
  - (viii)galvanised pedestrian guard railing;
  - (ix) standard highway lighting layouts, columns and lanterns;
  - (x) standard illuminated and non-illuminated highway signs;
  - (xi) passively safe sign posts where required for road safety;
  - (xii) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;
  - (xiii)road markings;
  - (xiv)grass verges;
- (b) non-standard Highway Assets include -
- (i) any culvert, bridge, retaining wall or other structure;
  - (ii) special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates;
  - (iii) landscaping features such as planting, trees, hedging;
  - (iv) sustainable drainage systems or non-standard highway drainage features such as -
    - (aa) flow control devices and attenuation storage or pond;
    - (bb) SuSDS including maintenance of any landscaping;
    - (cc) oil or petrol interceptors including the disposal of contaminated waste;
    - (dd) pumping stations and their energy charges;
    - (ee) watercourses and swales.

(2) Where the schedule prepared under paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 82.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), Transport for London must prepare a calculation of the Commuted Sum based on the maintenance Transport for London considers to be required for the schedule of Highway Assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by Transport for London under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 82.

(6) The undertaker must pay the Commuted Sum to Transport for London in one instalment within 10 working days of the later of -

(a) the date of completion of the authorised development; or

(b) the date of agreement of the value of the Commuted Sum under sub-paragraph (3) or determination under sub-paragraph (5).

#### *Work No.29*

**81.**—(1) The undertaker must not commence construction of, or the carrying out of Work No.29 until approval has been given by Transport for London to the detailed design and specification for the works and Work No.29 must not be constructed except in accordance with the details so approved.

(2) The undertaker must not transfer the benefit of the Order pursuant to article 9 (consent to transfer the benefit of the Order) to enable Cadent (or a related subsidiary company) unless evidence has been provided to Transport for London's reasonable satisfaction that Cadent (or a related subsidiary company) is obliged to carry out Work No.29 only in accordance with the details approved pursuant to sub-paragraph (1).

#### *Disputes*

**82.** Any difference arising between the undertaker and Transport for London under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be escalated to a more senior level within the Transport for London and the undertaker and if the matters of dispute still cannot be resolved then they will be resolved by arbitration under article 54 (arbitration).

## **Appendix B – Comparison of TfL's draft Protective Provisions and the Protective Provisions proposed by Highways England at Deadline 7 (REP7-027)**



SCHEDULE 9  
PROTECTIVE PROVISIONS

Articles 38 and 39

PART 6  
FOR THE PROTECTION OF TRANSPORT FOR LONDON

54. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Transport for London.

*Definitions*

55. In this Part of this Schedule—

“A12 Eastbound Off Slip Road” means that part of the authorised development comprising the A12 eastbound off slip road shown between points 1/10 and 1/11 on sheet 1 of the streets, rights of way and access plans;

“Committed Sum” means the sum to be paid by the undertaker to Transport for London for the future maintenance of the Highway Assets not previously forming part of the TLRN which will be transferred to Transport for London, as calculated in accordance with paragraph 80 of this Part;

“Completion Certificate” means a certificate issued by the ~~Undertaker~~ undertaker to its contractor constructing the authorised development confirming “completion” as defined by the NEC contract between the Undertaker and the contractor;

“Defects Certificate” means a certification issued by the undertaker certifying that defects relating to the works have been remedied;

“Detailed Information” means the following drawings, specifications and other information relating to TfL Roads, which must be in accordance with the detailed design of the authorised development—

- (a) boundary, environmental and mitigation fencing;
- (b) road restraint systems (vehicle and pedestrian);
- (c) drainage and ducting;
- (d) earthworks;
- (e) road pavements;
- (f) kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) road lighting (including columns and brackets);
- (i) electrical work for road lighting and traffic signs;
- (j) highway structures; and
- (k) landscaping, planting and any boundary features which will form part of the TLRN; (l) utility diversions;
- ~~(m) a schedule of timings for the works, including dates and durations for any closures of any part of the TLRN;~~
- ~~(n) traffic management proposals including any diversionary routes;~~
- ~~(o) a schedule of condition of all TfL Roads within the Order limits; and~~
- ~~(p) where TLRN is occupied under this Order in connection with any works but is not itself subject to works, specification of the condition in which the TLRN will be returned post occupation;~~

“Detailed Local Operating Agreement” means an agreement made pursuant to paragraph 57 of this Part of this Schedule;

“DMRB” means design Manual for Roads and Bridges as may be replaced or modified by the undertaker;

“Highway Assets” means highway assets ~~forming part of the authorised development~~ which Transport for London will become responsible for maintaining ~~under the Order including the following—and which incur maintenance costs:~~

- ~~(a) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;~~
- ~~(b) carriageways;~~
- ~~(c) cycleways;~~
- ~~(d) embankments and earthworks;~~
- ~~(e) footways;~~
- ~~(f) galvanised pedestrian guard railing;~~
- ~~(g) grass verges;~~
- ~~(h) gully drainage, connection pipes and gravity draining highway carrier drains;~~
- ~~(i) landscaping;~~
- ~~(j) passively safe sign posts where required for road safety;~~
- ~~(k) pre-cast concrete kerbing;~~
- ~~(l) road markings;~~
- ~~(m) standard highway lighting layouts, columns and lanterns;~~
- ~~(n) standard illuminated and non-illuminated highway signs;~~
- ~~(o) traffic signals;~~
- ~~(p) culverts, retaining walls;~~
- ~~(q) landscaping features including planting, trees and hedging;~~
- ~~(r) special features including noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails, knee fences and gates;~~
- ~~(s) sustainable drainage systems (“SuDS”) or non-standard highway drainage features such as—~~
  - ~~(i) flow control devices and attenuation storage;~~
  - ~~(ii) SuDS including maintenance of any related landscaping;~~
  - ~~(iii) oil or petrol interceptors including for the disposal of contaminated waste;~~
  - ~~(iv) pumping stations and their energy charges;~~
  - ~~(v) watercourses and swales;~~

“Maintenance Schedule” means a schedule and plan detailing Highway Assets which are proposed to be the maintenance responsibility of Transport for London under article 11 (construction and maintenance of new, altered or diverted streets and other structures) of the Order;

“Other Detailed Information” means—

- (a) a schedule of timings for the works, including dates and durations of any closures of any part of the TLRN;
- (b) traffic management proposals, including any diversionary routes and any Detailed Local Operating Agreement;
- (c) a schedule of condition of the affected TLRN within the Order limits; and
- (d) where the TLRN is occupied under this Order in connection with the works but works are not undertaken on, to or under the TLRN, a specification of the condition in which the TLRN will be returned after the occupation has finished;

“Take Over Certificate” means a certificate issued to certify that the works to which the certificate relates have been completed in accordance with this Part of this Schedule and are ready for use for public traffic;

“TfL Road” means any public, vehicular highway which is vested or vests or is intended at the completion of works to vest in or be otherwise maintainable by Transport for London, including for the avoidance of doubt the A12 Eastbound Off Slip Road;

“TLRN” means the Transport for London Road Network comprising highways for which Transport for London is the responsible highway authority; and

“works” means any works authorised by the Order undertaken on, to or under any part of the TLRN or a TfL Road.

#### *Commencement of the works*

**56.** Before commencing the construction of, or the carrying out of any work authorised by this Order the undertaker must provide to Transport for London the Detailed Information relating to those works, and the works must be carried out in accordance with the Detailed Information submitted to Transport for London or as otherwise agreed between the undertaker and Transport for London.

**57.**—(1) Before commencing the construction of, or the carrying out of any work authorised by this Order which involves interference with a TfL Road (~~including interference with the use by the public of a TfL Road and temporary or permanent stopping up of any part of a TfL Road~~), the undertaker must use reasonable endeavours to agree with Transport for London a Detailed Local Operating Agreement covering the following—

- (a) communications and customer care – communication with stakeholders and identification of which party is responsible for each activity;
- (b) operational areas, scheme operational areas – definitions and scheme extents for the works areas, zone of influence and “Free Recovery Area”;
- (c) asset handover– describing the scheme ~~existing~~’s assets and activities to be undertaken to enable commencement ~~and~~ completion and handover of works, and the party responsible for each; (d) asset inspection;
- (e) routine maintenance and repair;
- (f) winter maintenance and severe weather;
- (g) continuity of technology;
- (h) occupancy management;
- (i) incidents;
- (j) traffic management – provides the key activities to be undertaken with regard to the design, installation, maintenance and removal of ~~Traffic Management~~ traffic management; and
- (j)(k) (k) claims made by and against the undertaker.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the works or the removal of the undertaker from all TfL Roads, whichever is the earlier.

(3) Where agreement cannot be reached under sub-paragraph (1), the terms of the Detailed Local Operating Agreement will be resolved by arbitration under article 54 (arbitration).

~~**58.**~~ ~~(1)~~ **58.**—(1) Before commencing the construction of, or the carrying out of any works the undertaker must provide to Transport for London ~~the Detailed Information and the~~ Other Detailed Information relating to those works.

(2) The undertaker must use reasonable endeavours to agree the Other Detailed Information with Transport for London acting reasonably.

(3) The works must not be constructed except in accordance with the Other Detailed Information as may be agreed in accordance with sub-paragraph (2) or deemed to have been agreed under sub-paragraph (4).

(4) If within 28 days after the Other Detailed Information has been submitted Transport for London has not agreed or disagreed with Other Detailed Information submitted by the undertaker or it has not been otherwise agreed, Transport for London is deemed to have agreed it as submitted.

**59.**—(1) The undertaker will design and construct all works affecting TfL Roads in accordance with standards contained in the appropriate parts of the DMRB.

(2) Subject to sub-paragraph (3), the undertaker must not commence construction of, or the carrying out of, any works that are a departure from the standards contained in the DMRB until the approval has been given by Transport for London acting reasonably.

(3) If within 28 days after the undertaker submitted to Transport for London a request for a departure from the standard in the DMRB in respect of any works as set out in sub-paragraph (2), Transport for London has not approved or disapproved such departure, or it has not been otherwise agreed, Transport for London is deemed to have agreed it as submitted.

**60.**—(1) The undertaker will allow an appropriately qualified person on behalf of Transport for London to participate in the design process for the detailed design of those parts of the authorised development which are TfL Roads, and will have reasonable regard to any views of that person in finalising the detailed design prior to any element reaching design fix or freeze; provided always that it will be the decision of the undertaker whether it implements such views and for the avoidance of doubt any such view shared by the person will not be an instruction, requirement or authorisation under this Order.

(2) Participation under sub-paragraph (1) will be in the form of invitations to attend design meetings not less than once per calendar month and the provision to Transport for London of such drawings, cross sections and design proposals as are required to allow Transport for London to provide views on detailed design proposals to the undertaker.

#### *Inspection of the works*

**61.**—(1) Any person duly appointed by Transport for London for the purpose may at all reasonable times, on giving to the undertaker not less than two working days' notice and subject to any necessary and reasonable health and safety restrictions imposed by the undertaker, enter upon and inspect any part of the authorised development which—

(a) is in, over, under or adjacent to any TfL Road, or

(b) may affect any highway or any property of Transport for London, during the carrying out of the works, and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any works affecting TfL Roads must be carried out at the expense of the undertaker in accordance with the Manual of Contract Documents for Highway Works Appendix 1/5 (Specification for Highway Works).

(3) Transport for London must receive copies of all test certificates and results which have been requested by it in writing as soon as reasonably practicable.

(4) Notwithstanding the foregoing, Transport for London may upon giving at least 10 working days' notice to the undertaker, test all or any materials used or proposed to be used in any work to TfL Roads at its own expense and the undertaker must provide such information and materials as is reasonably necessary to facilitate such testing.

(5) The undertaker must not alter, disturb or in any way interfere with any property of Transport for London on or under the TLRN, or the access thereto except to the extent authorised under the powers conferred by this Order, without the prior written consent of Transport for London.

#### *Safety Audits*



**62.**—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the works including any works to TfL Roads in accordance with DMRB Volume 5 Section 2 Part 2 (GG 119) or any replacement or modification of that standard and must provide copies of the reports of such audits to Transport for London.

(2) Transport for London must be invited to participate in the stage 3 and 4 road safety audits conducted under sub-paragraph (1).

(3) Where the report of the stage 3 and 4 road safety audit identifies any recommended works to a TfL Road, the undertaker must use reasonable endeavours to agree with Transport for London which works or alternative proposals require to be implemented, provided that no works may be implemented which would give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement.

(4) Any works which ~~the undertaker considers~~ are ~~required~~ to be carried out to a TfL Road in accordance with the report of the stage 3 or stage 4 road safety audit, ~~which works may not give rise to any new or materially different environmental effects in comparison with those identified in the environmental statement,~~ must be undertaken by the undertaker.

(5) The undertaker must use reasonable endeavours to agree with Transport for London a programme for any works to be carried out under sub-paragraph (3), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where appropriate.

~~(6)~~ The carrying out of works under this paragraph 62 are to be taken to be works carried out under this Order.

~~(7)~~ Where, agreement cannot be reached under this paragraph, the terms of an agreement will be resolved by arbitration under article 54 (arbitration) in accordance with paragraph 82.

#### *Carrying out of the works*

**63.**—(1) Provisions must be made in accordance with Transport for London's reasonable requirements at the site of the works to prevent mud and other materials from being carried on to the adjacent highway by vehicles and plant.

(2) The operational highway in the vicinity of the site of the works is to be swept as required to ensure its safe use as a public highway.

**64.** The undertaker must not, except with the consent of Transport for London ~~or as authorised by this Order~~, erect or retain on or over a TfL Road to which the public continues to have access any scaffolding or other structure which obstructs the TfL Road.

**65.** Except in an emergency or where necessary to secure the safety of the public, no direction or instruction may be given by Transport for London to the contractors, servants or agents of the undertaker regarding any highway operations without the prior consent in writing of the undertaker.

**66.** In exercising the powers conferred by the Order in relation to any TfL Road the undertaker must have regard to the potential disruption of traffic which may be caused, seek to minimise such disruption so far as is reasonably practicable and must at no time prevent or unreasonably impede access by emergency service vehicles to any property.

**67.** The undertaker must, if reasonably required by Transport for London, provide and maintain during such time as the undertaker may occupy any part of a TfL Road for the purpose of the construction of any part of the authorised development, temporary ramps for vehicular or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road traffic.

#### *Completion of the works*

**68.**—(1) When the undertaker considers that the works have reached completion it must notify Transport for London and must allow Transport for London the opportunity to inspect the works to identify any defects or incomplete works and the undertaker must give proper consideration to any representations made by Transport for London.

(2) ~~The~~ If the works in question were subject to a stage 3 safety audit then the undertaker may not notify Transport for London under sub-paragraph (1) until ~~either—~~

a stage 3 safety audit has been carried out in respect of the works in question in accordance with GG19 of DMRB and ~~in the opinion of the undertaker~~ any recommended works identified in the audit and which ~~the undertaker considers to be necessary, have been completed; or~~ have been agreed under paragraph 62 should be carried out, have been completed.

**69.**—(1) Subject to—

(a) the works being completed to Transport for London's reasonable satisfaction;

(b) the undertaker allowing Transport for London to undertake an inspection in accordance with paragraph 68; and

~~(c) if the works in question were not subject to a safety audit, Transport for London has been provided an opportunity to inspect the works and the undertaker has in its opinion completed—~~ (c) any further works being completed by the undertaker required to address any safety deficiencies or defects identified as a result of the inspection ~~under paragraph 68.~~

**69.**—(1) Transport for London ~~must~~ shall issue to the undertaker, on request from the undertaker ~~a counter-signed Take Over Certificate in relation to any part of the works, after completion of that part of the works once a stage 3 safety audit has been carried out in accordance with paragraph 68~~ (2)(a).

(2) The issue of the Take Over Certificate by the undertaker that has been counter signed by Transport for London will serve as confirmation under article 11(1) and (2) (construction and maintenance of new, altered or diverted streets and other structures) of the Order that the works have been constructed to the reasonable satisfaction of Transport for London as the relevant highway authority.

**70.** No earlier than 52 weeks from the date of issue of the Completion Certificate, the undertaker must issue a Defects Certificate, certifying that all outstanding defects relating to the part of the ~~Works~~ works in question and which required remediation as agreed by Transport for London, have been so remedied, provided that—

(a) all identified defects requiring remediation as ~~agreed by~~ identified by Transport for London ~~or~~ the undertaker, have been so remedied;

(b) the undertaker has given Transport for London an opportunity to inspect the works and has given proper consideration to any reasonable representations made by Transport for London;

(c) the undertaker has transferred to Transport for London any land and rights pursuant to paragraph 74 under this Part;

(d) all costs, charges, expenses and sums payable to Transport for London pursuant to this Part have been paid;

(e) the undertaker has provided Transport for London with such detailed information as Transport for London may reasonably require in relation to the Works as built;

~~(f)~~ (f) the Maintenance Schedule has been agreed between Transport for London and the undertaker, deemed to have been agreed under paragraph 76(3) or determined in accordance with paragraph ~~76~~ 77(4).

*Defects*

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71. Where the undertaker carries out any works to any TfL Road it must make good any defects in those works notified to it by Transport for London within the period of 52 weeks after the date of the completion of the works to that area of the TfL Road to the reasonable satisfaction of Transport for London.

72. Where the undertaker carries out any Works to any TfL Road it must make good any latent defects in those Works notified to it by Transport for London within the period of 12 years from the date of the issue of the Defects Certificate and to the reasonable satisfaction of Transport for London.

~~72-73.~~ The carrying out of any remedial works required under paragraphs ~~69-71~~ and ~~70-72~~ requires the submission of such items of Detailed Information and Other Detailed Information to Transport for London as the undertaker deems to be reasonable in the circumstances but always including a description of the works to be carried out, a schedule of timings for the works, including dates and durations for any closures of any part of a TfL Road and traffic management proposals.

~~73.-(174.-(1)~~ The undertaker must use reasonable endeavours to complete the works pursuant to paragraphs 71-, ~~72~~ and ~~72-73~~ on such date or dates that will be notified by the undertaker to Transport for London in writing or as may be agreed between the parties acting reasonably.

(2) Prior to the completion of the Works pursuant to paragraphs 71-, ~~72~~ and ~~72-73~~ of this Part of this Schedule, and prior to key buried assets being back filled, the undertaker must invite Transport for London to participate in inspection of such works to identify any defects or incomplete works.

#### *Land and Rights*

~~7475.~~ Following the construction of the A12 Eastbound Off Slip Road but prior to the date on which that road becomes a GLA Road under article 16(1)(b), the undertaker must exercise article 25 (compulsory acquisition of land) and article 28 (compulsory acquisition of rights and imposition of restrictive covenants) as applied by article 31 (application of the 1981 Act) and article 32 (modification of the 2017 Regulations) of this Order to directly vest in Transport for London, or otherwise execute and complete a transfer and such other document(s) conferring land and rights as may be necessary to Transport for London, at nil consideration to Transport for London, the land and rights which are necessary for the operation and maintenance of the A12 Eastbound Off Slip Road.

#### *Indemnity*

~~75.-(176.-(1)~~ The undertaker will hold Transport for London harmless and indemnified from and against any liability, loss, cost or claim arising out of or incidental to the carrying out of the works ~~(other than those arising out of or in consequence of any negligent act, default or omission of Transport for London)~~ provided that no claim can be settled or liability accepted by Transport for London without first obtaining the written approval of the undertaker, such approval not to be unreasonably withheld or delayed.

(2) Notwithstanding provisions of sub-paragraph (1), Highways England will not be liable in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Transport for London; or
- (b) any part of the authorised works carried out by Transport for London in the exercise of any functions conferred by the Order pursuant to a transfer or grant under the Order; ~~or~~
- ~~(c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production or increased cost of working).~~

(3) Transport for London must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must be made without ~~the consent of~~ first consulting the undertaker and, ~~if such consent is withheld, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand considering their representations.~~

(4) Transport for London must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(5) Transport for London must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies and if reasonably requested to do so by the undertaker Transport for London must provide an explanation of how the claim has been minimised.

#### *Maintenance Schedule*

~~76.~~ ~~(177.)~~ (1) Before commencing the construction of, or the carrying out of any works the undertaker must provide to Transport for London the Maintenance Schedule and use reasonable endeavours to agree it with them.

(2) The undertaker must not commence construction of, or the carrying out of the works in question until the Maintenance Schedule has been agreed between the undertaker and Transport for London, deemed to have been agreed under sub-paragraph (3) or determined in accordance with sub-paragraph (4).

(3) If within 28 days after the Maintenance Schedule has been submitted Transport for London has not approved or disapproved it or it has not been otherwise agreed, the Maintenance Schedule is deemed to have been agreed as submitted.

(4) Where the Maintenance Schedule required under sub-paragraph (1) is not agreed, ~~notwithstanding escalation of the matter to a more senior level within the Transport for London and the undertaker~~ matters of dispute in respect thereof are to be referred to arbitration under article 54 (arbitration).

#### *Step In*

~~77.78.~~ Nothing in this Part of this Schedule prevents Transport for London from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public.

#### Costs

79. The undertaker must pay to Transport for London in respect of the highway works a sum equal to the whole of any costs and expenses which Transport for London reasonably incur in—

(1) the examination or approval of the Detailed Information, the Other Detailed Information, the Maintenance Schedule and the detailed design, specification and programme for Work No.29 under this Part;

(2) including the Highway Assets within its road maintenance framework contracts;

(3) agreeing and operating the Detailed Local Operating Agreement;

(4) participation in road safety audits required under this Part;

(5) inspecting the construction and completion of the works including any remediation works under this Part;

(6) the issue of the Completion Certificate, Defects Certificate and Take Over Certificate;

(7) carrying out any surveys and testing which are reasonably required in connection with the construction of the Works; and

(8) the transfer or vesting in Transport for London pursuant to paragraph 75 any land and rights acquired by the undertaker.

#### Commuted Sum

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80.—(1) The undertaker must use reasonable endeavours to agree which items on the Maintenance Schedule agreed pursuant to paragraph 77 are Highway Assets having regard to the following:

(a) standard Highway Assets include -

- (i) carriageways surfaced in concrete asphaltic materials (non-pigmented binder and non-coloured aggregates) or low noise surfacing;
- (ii) carriageways in shared surface roads, courtyards and housing squares surfaced in 200mm x 100mm x 80mm rectangular concrete block paving (optional);
- (iii) footway surfaced in concrete asphaltic materials (non-pigmented binder or coloured aggregates);
- (iv) footways adjacent to block paved carriageways also surfaced in 200mm x 100mm x 65mm thick concrete block paving (optional);
- (v) cycleways surfaced in concrete asphaltic materials (red pigmented binders and/or aggregates);
- (vi) pre-cast concrete kerbing;
- (vii) gully drainage, connection pipes and gravity draining highway carrier drains;
- (viii)galvanised pedestrian guard railing;
- (ix) standard highway lighting layouts, columns and lanterns;
- (x) standard illuminated and non-illuminated highway signs;
- (xi) passively safe sign posts where required for road safety;
- (xii) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;
- (xiii)road markings;
- (xiv)grass verges;

(b) non-standard Highway Assets include -

- (i) any culvert, bridge, retaining wall or other structure;
- (ii) special features such as noise fencing, vehicle restraint barriers, pedestrian guard railing, knee rails and fences, gates;
- (iii) landscaping features such as planting, trees, hedging;
- (iv) sustainable drainage systems or non-standard highway drainage features such as -
  - (aa) flow control devices and attenuation storage or pond;
  - (bb) SuSDS including maintenance of any landscaping;
  - (cc) oil or petrol interceptors including the disposal of contaminated waste;

(dd) pumping stations and their energy charges;

(ee) watercourses and swales.

(2) Where the schedule prepared under paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 82.

(3) Following agreement of the schedule under sub-paragraph (1) or determination under sub-paragraph (2), Transport for London must prepare a calculation of the Commuted Sum based on the maintenance Transport for London considers to be required for the schedule of Highway Assets agreed under sub-paragraph (1) or determined under sub-paragraph (2) and must use reasonable endeavours to agree it with the undertaker.

(4) The undertaker must be provided with a complete breakdown of the calculation of the Commuted Sum by Transport for London under sub-paragraph (3) including any assumptions used.

(5) Where the calculation prepared under sub-paragraph (3) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 82.

(6) The undertaker must pay the Commuted Sum to Transport for London in one instalment within 10 working days of the later of -

(a) the date of completion of the authorised development; or

(b) the date of agreement of the value of the Commuted Sum under sub-paragraph (3) or determination under sub-paragraph (5).

#### Work No.29

81.—(1) The undertaker must not commence construction of, or the carrying out of Work No.29 until approval has been given by Transport for London to the detailed design and specification for the works and Work No.29 must not be constructed except in accordance with the details so approved.

(2) The undertaker must not transfer the benefit of the Order pursuant to article 9 (consent to transfer the benefit of the Order) to enable Cadent (or a related subsidiary company) unless evidence has been provided to Transport for London's reasonable satisfaction that Cadent (or a related subsidiary company) is obliged to carry out Work No.29 only in accordance with the details approved pursuant to sub-paragraph (1).

#### *Disputes*

78.82. Any difference arising between the undertaker and Transport for London under this Part of this Schedule (other than in difference as to the meaning or construction of this Part of this Schedule) shall be escalated to a more senior level within the Transport for London and the undertaker and if the matters of dispute still cannot be resolved then they will be resolved by arbitration under article 54 (arbitration).

#### *Costs*

79. Any participation of Transport for London under the matters in this Part will be at the cost of Transport for London.

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