

# TRANSPORT FOR LONDON

## M25 JUNCTION 28 IMPROVEMENTS – DEADLINE 9 SUBMISSION

30 JUNE 2021

### **I. Introduction**

- 1.1 This document sets out Transport for London's (TfL's) latest position in relation to amendments sought to the draft Development Consent Order (DCO) and protective provisions for the M25 Junction 28 improvements scheme. It also updates on other outstanding matters.
- 1.2 Section 2 of this response updates on the progress made on a side agreement between the Applicant and TfL, and remaining protective provisions that TfL is seeking to be included in the DCO. These protective provisions are included in the appendix to this submission. The remaining matters are discussed in Section 3.

### **2. Amendments sought to the draft DCO and protective provisions**

#### **2.1 Summary**

- 2.1.1 TfL has been able to agree with the Applicant the majority of provisions that were sought in the protective provisions submitted by TfL at Deadline 8 (REP8-038 Appendix A). TfL and the Applicant are proposing to enter into a side agreement in relation to those provisions that have been agreed. TfL continues to seek protective provisions in relation to those provisions that have not been agreed with the Applicant.
- 2.1.2 In addition, TfL's position remains that it would be most cost effective for the Applicant to maintain and operate the new A12 eastbound off slip road once constructed.
- 2.1.3 These issues are dealt with in turn in sections 2.2 and 2.3 of this document below.
- 2.1.4 Other than:
- a. as set out below in sections 2.2 and 2.3; and
  - b. in relation to any requirement that may be needed in relation to the provision of improved Non Motorised User (NMU) infrastructure which is dealt with in section 3 of this submission;

TfL no longer seeks any amendments to the DCO.

#### **2.2 Protective provisions**

- 2.2.1 TfL and the Applicant have agreed the majority of provisions that were previously sought by TfL through protective provisions in the DCO. In summary they cover:
- the interaction between the works and the TfL Road Network (TLRN);
  - design of the works;
  - safety and assurance;
  - defects;
  - land and rights required; and
  - protection from Work No. 29.

- 2.2.2 The terms of a side agreement between TfL and the Applicant have been agreed in which the matters outlined in paragraph 2.2.1 above will be covered. Accordingly TfL is no longer seeking protective provisions in the DCO in relation to these matters.
- 2.2.3 However TfL and the Applicant have not been able to agree all points on the protective provisions. The payment of a commuted sum and TfL's costs are the outstanding issues. TfL therefore continues to seek protective provisions in relation to a commuted sum and TfL's costs.
- 2.2.4 TfL's reasoning for the need for the payment of a commuted sum and TfL's costs was fully set out in paragraphs 2.3.4 to 2.3.8 of its "Deadline 8 submission - Response to submissions made at Deadline 7" (REP8-038). The key points are summarised here:
- TfL disagrees with the Applicant's position that a local highway authority should be responsible for finding the additional funding arising from a third party scheme, whether from the DfT or elsewhere.
  - 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.
  - The Examining Authority (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, stating at paragraph 16.6.50 of its Recommendation Report: *"The ExA is of the view that is only reasonable that SCC [Somerset County Council] should be recompensed for the additional work which is being occasioned by the Proposed Development. If the Proposed Development was not to take place there would be no additional demand on SCC's services. In this context there is no difference between an Application under the PA2008 [Planning Act 2008] being promoted by a public sector organisation and a private sector one. Nor, as pointed out elsewhere, is there any prohibition on one public sector organisation paying an appropriate charge to another where necessary"*.
  - If the increased costs associated with the new 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.
- 2.2.5 Payment of a commuted sum and costs is a standard position as set out in our previous submissions and to not provide a commuted sum and costs would leave TfL to find funds to pay for a third party development diverting its limited resources away from other much needed operational issues. In the appendix to this submission we attach the revised protective provisions that TfL is seeking in the DCO as a result.
- 2.2.6 Justification for inclusion of protective provisions for a local highway authority in the order was covered in paragraphs 2.4 to 2.6 of TfL's "Deadline 6 submission – response to Examining Authority's Further Written Questions and requests for information" (REP6-044).
- 2.3 Responsibility for new A12 eastbound off slip road**
- 2.3.1 TfL's position remains that the Applicant is best placed to operate and maintain the new A12 eastbound off slip road following its construction. The reasoning for this was set out in section 2.2 of TfL's "Deadline 8 submission - Response to submissions made at Deadline 7" (REP8-038). The submissions made in that document have not been repeated here.
- 2.3.2 The following should be noted in relation to the DCO should the Secretary of State determine that the Applicant should be the highway authority responsible for the new A12 eastbound off slip:

- Article 16(1)(b), Article 16(7) and Part 2 of Schedule 4 would need to be deleted; and
- the protective provisions sought as outlined in section 2.2 above would still be required in relation to the remaining works and changes by the Applicant to the existing A12 main carriageway which will continue to be operated and maintained by TfL.

### **3. Other matters**

#### **Non-Motorised Users route**

- 3.1 TfL is aware that the Applicant is planning to submit a unilateral obligation to the London Borough of Havering and Brentwood Borough Council under section 106 of the Town and Country Planning Act 1990 to deliver the central section of the NMU route at the M25 Junction 28 roundabout.
- 3.2 TfL remains concerned that, while the Applicant has secured funds to deliver the full NMU route between Harold Hill and Brentwood via its Designated Funds, there is no security in the DCO that the full NMU route will be delivered.
- 3.3 TfL proposes that:
- the Applicant should commit to delivering the full NMU route between Harold Hill and Brentwood as part of its unilateral obligation to the London Borough of Havering and Brentwood Borough Council, for example by a unilateral undertaking restricting the opening of the new M25 Junction 28 loop road (Work No. 6) until delivery of the full NMU route has been secured (using reasonable endeavours); and/or
  - a requirement should be included in the DCO to commit the Applicant to, prior to opening the new M25 Junction 28 loop road (Work No. 6), use reasonable endeavours to enter into agreements to deliver the full NMU route between Harold Hill and Brentwood with the relevant highway authorities (London Borough of Havering, Essex County Council and TfL).
- 3.4 This would provide the necessary surety to TfL and other stakeholders that the Applicant will deliver the full upgrade of the NMU route, working with TfL and the other highway authorities, that it has committed to.

#### **A12 eastbound carriageway lane closures**

- 3.5 TfL raised concerns in paragraph 5.1.3 of its “Deadline 8 submission – Response to submissions made at Deadline 7” (REP8-038) about daytime lane closures on the eastbound A12 main carriageway that the updated outline Traffic Management Plan (REP7-017) indicated may be necessary.
- 3.6 TfL has since received assurance from the Applicant that the proposed temporary closures of lane 1 on the A12 eastbound carriageway will only take place at weekends and overnight and will not be in place during weekday peak or inter-peak periods. On this basis TfL has no remaining concerns about impacts on traffic congestion resulting from these closures.

## **Appendix A – TfL’s proposed draft Protective Provisions (revised 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—

"Commuted Sum" means the sum to be paid by the undertaker to Transport for London for the future maintenance of any highway assets not previously forming part of the TLRN which will be transferred to Transport for London, as calculated in accordance with paragraph 57 of this Part;

"Detailed Local Operating Agreement" means an agreement to be made between the undertaker and Transport for London detailing the traffic management arrangements to be implemented during the carrying out of the authorised development;

"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;

"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.

*Costs*

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

- (a) requests from the undertaker to participate in the design of any part of the authorised development, the examination or approval of design or construction information required for the Works including for the protection of the TLRN and for Work No. 29, and reaching agreement on the schedule of highway assets pursuant to paragraph 57;
- (b) including the schedule of highway assets agreed pursuant to paragraph 57 within its road maintenance framework contracts;
- (c) agreeing and operating a Detailed Local Operating Agreement;
- (d) participation in road safety audits relating to the Works;
- (e) inspecting the construction and completion of the Works including any remediation works;
- (f) the issue of certificates relating to the Works required for the completion, hand over and defects;
- (g) carrying out any surveys and testing which are reasonably required in connection with the construction of the Works; and
- (h) the transfer or vesting in Transport for London of any land and rights acquired by the undertaker.

### *Commuted Sum*

**57.**—(1) The undertaker must use reasonable endeavours to agree with Transport for London a schedule of new highway assets which are proposed to become the maintenance responsibility of Transport for London as a result of the authorised development under article 11 (construction and maintenance of new, altered or diverted streets and other structures) and article 16(1)(b) (classification of roads, etc.) of the Order.

(2) Where the schedule prepared under paragraph (1) cannot be agreed, the matters of dispute shall be determined in accordance with paragraph 58.

(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 58.

(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).

### *Disputes*

**58.** 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 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).