

# TRANSPORT FOR LONDON

## M25 JUNCTION 28 IMPROVEMENTS – RESPONSE TO SECRETARY OF STATE’S REQUESTS FOR INFORMATION

28 OCTOBER 2021

### **1. Introduction**

- 1.1 This document sets out Transport for London’s (TfL’s) response to the Secretary of State for Transport’s letter of 14 October 2021 seeking further clarification and information regarding the draft Development Consent Order (DCO) for the M25 Junction 28 improvements scheme.
- 1.2 There are two matters on which the Secretary of State is seeking information from TfL: the route for non-motorised users and the status of the side agreement between the Applicant and TfL. An update is provided on each of these matters in the following two sections.

### **2. New route for Non-Motorised Users**

- 2.1 TfL has separately submitted a joint response with the London Borough of Havering and Essex County Council to the Secretary of State on this matter.
- 2.2 In summary, there have been no significant changes to the position on the NMU route since the end of the examination, so delivery of the full route remains uncertain. TfL recommends that to secure delivery of the full NMU route, the Secretary of State could include a requirement in the DCO for the Applicant to enter into a Unilateral Undertaking with the local planning authorities to deliver the full NMU route by March 2025, which is the timescale for which the funding to deliver the route is available. TfL considers it would not be unreasonable to require the Applicant to deliver the full NMU route by March 2025, given the length of time available to secure the necessary agreements with the highway authorities, who strongly support the delivery of the NMU route.
- 2.3 However, if the Secretary of State considers that this is not reasonable then the second option proposed in TfL’s Deadline 9 submission (examination reference REP9-082 paragraph 3.3) recognises the Applicant’s concerns about deliverability not being entirely in its control. TfL proposes that an alternative option is to include a requirement in the DCO to commit the Applicant to, prior to the opening of the new loop road (Work No. 6), use best endeavours to enter into agreements with the relevant highway authorities (London Borough of Havering, Essex County Council and TfL) to deliver the full NMU route. This would ensure that the delivery of the M25 Junction 28 improvements scheme is undoubtedly within the Applicant’s control, as the requirement would not prevent the opening of the new loop road unless the Applicant had failed to use best endeavours to agree the delivery of the full NMU route.

### **3. Status of side agreement between the Applicant and TfL**

- 3.1 TfL can confirm that a side agreement was reached and signed by the Applicant and TfL on 6 July 2021, prior to the end of the DCO examination. This agreement includes most issues which TfL had sought to be covered in its proposed Protective Provisions submitted at Deadline 8 of the examination (reference REP8-038 Appendix A), namely 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.

- 3.2 However, there are two key points which remain outstanding and are not covered by the agreement:
- a. operation and maintenance of the new A12 eastbound off slip road and payment of a commuted sum in the event TfL is to be responsible; and
  - b. TfL’s costs associated with the delivery of the scheme whether or not TfL is responsible for the new A12 off slip.

3.3 TfL and the Applicant have been unable to agree these points of principle. A decision by the Secretary of State is therefore required on these points.

#### Operation and maintenance of the new A12 eastbound off slip road

3.4 The agreement does not cover ownership of the new A12 eastbound off slip road forming Work No. 2. 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 full reasoning for this was set out in TfL’s Deadline 8 submission (reference REP8-038 Section 2.2). In summary, TfL believes that all circumstances need to be considered in determining which organisation should be the highway authority for the new slip road, not just the fact that TfL is the highway authority for the existing slip road. If the Applicant was to be responsible for the new off slip then:

- complex interfaces would be removed and there would be clear boundaries of responsibility, particularly with regard to interconnected drainage, environmental mitigation and bridge supports for Maylands Bridge;
- there would be a single point of contact for all landowners if issues arise and a single highway authority responsible for the mitigation arising;
- a single highway authority would be responsible for both construction and operation, avoiding the risk of disputes in relation to defects; and
- as the Applicant will already be responsible for similar infrastructure being delivered by the scheme, particularly attenuation ponds, bridges and retained structures, it would be more cost effective for a single highway authority to be responsible for all the new infrastructure.

3.5 The Applicant is also already responsible for the A12 eastbound on slip and A12 westbound off slip on the other side of the junction.

3.6 TfL’s position is further reinforced by the Applicant not offering a commuted sum for the increased cost of maintaining the new off slip. The additional cost of maintaining a much more complex off slip which may also include significant mitigation features for adjoining landowners is not to be covered by the Applicant under its proposals. Instead, the Applicant is asking TfL to find funds to cover such costs within its existing budgets which will mean the diversion of resources from other parts of the TfL network.

#### Payment of TfL’s costs associated with the scheme

3.7 TfL and the Applicant did not reach agreement on the provisions in relation to TfL’s costs associated with the delivery of the scheme. These were set out in paragraph 56 of TfL’s proposed protective provisions submitted at Deadline 9 (reference REP9-082 Appendix A). TfL’s costs include but are not limited to:

- providing design input and safety assurance for the new A12 eastbound off slip that TfL is being asked to take responsibility for;
- approvals required for other parts of the scheme affecting TfL’s road network;
- supporting the delivery of the scheme including those elements on TfL’s road network;
- incorporating the new assets into TfL’s road maintenance framework contracts; and

- provision of a commuted sum should TfL be required to take responsibility for the new A12 eastbound off slip.
- 3.8 TfL therefore continues to seek protective provisions in relation to a commuted sum and TfL’s costs. TfL’s reasoning for this was fully set out in paragraphs 2.3.4 to 2.3.8 of its Deadline 8 submission (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 Secretary of State 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.
- 3.9 Regarding this final point above, since the close of the examination TfL welcomes the detailed engagement the Applicant and its contractors have held with TfL over design matters. However, TfL has found it difficult to respond to requests for reviewing and approving documents and designs in a timely manner without any dedicated budget and therefore resources to do so. This demonstrates that the lack of funding from the Applicant to cover TfL’s costs already risks impacting on delivery of the scheme. TfL is not in a position to reallocate funding from other operational budgets or from other projects to the M25 Junction 28 scheme.
- 3.10 Payment of a commuted sum and costs is a standard position as set out in TfL’s submissions to the examination 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.
- 3.11 Given the position set out above, TfL requests that the Secretary of State includes protective provisions in the DCO covering a commuted sum and costs for TfL. TfL’s proposed protective provisions covering these specific matters were included in its Deadline 9 submission (REP9-082 Appendix A).
- 3.12 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).

3.13 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 paragraphs 3.7 and 3.8 above, and TfL’s Deadline 9 submission (REP9-082 Appendix A), 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.