

M25 junction 28 improvement scheme

TR010029

9.77 Applicant's response to TfL's written summary of hearings

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1. Introduction

- 1.1.1 This document provides the comments of the applicant, Highways England, in response to the Transport for London written summary of the hearings held week commencing 1 March 2021 (REP4-038) submitted to the Planning Inspectorate (PINS) on or before deadline 4 (25 February 2021).
- 1.1.2 Highways England has sought to provide comments where it is helpful to the Examination to do so. For instance where a representation includes a request for further information or clarification from Highways England, or where Highways England considers that it would be appropriate for the Examining Authority (ExA) to have Highways England's views in response to a matter raised by an Interested Party in its representations. Where issues raised within a representation have been dealt with previously by Highways England, for instance in response to a question posed by the ExA in its first round of written questions or within one of the application documents submitted to the Examination, a cross reference to that response or document is provided to avoid unnecessary duplication. The information provided in this document should, therefore, be read in conjunction with the material to which cross references are provided.
- 1.1.3 Highways England has not provided comments on every point made within the representation (for instance, Highways England has not responded to comments made about the adequacy of its pre-application consultation given that Highways England has already provided a full report of the consultation it has undertaken as part of its application for the Development Consent Order (DCO)) and the Planning Inspectorate has already confirmed the adequacy of the pre-application consultation undertaken when the application was accepted for Examination. In some cases no comments have been provided, for instance, because the written representation was very short, or because it expressed objections in principle to the Scheme or expressions of opinion without supporting evidence.
- 1.1.4 For the avoidance of doubt, where Highways England has chosen not to comment on matters raised by Interested Parties, this is not an indication Highways England agrees with the point or comment raised or opinion expressed.

2. Transport for London Written summary of oral submissions put at hearings held week commencing 1 March 2021

Response reference:	Representation Issue	Highways England Response
REP4-038-06	<p>Plot 1/1</p> <p>TfL stated at the hearing that it was pleased to see that plot 1/1 has now been split into several plots reducing the nature of the rights being sought over plots 1/1, 1/1b, 1/1c and 1/1d, however concern remains over the extent of the permanent rights sought in plot 1/1a and why the plot and the rights sought extend for such a length of the A12 eastbound carriageway. As TfL is the highway authority here and will remain so following completion of the scheme, the only reason TfL was aware of the potential need for the permanent acquisition of rights in this location was in relation to the Cadent Gas diversion (Work No. 29) which affects only a small part of the plot. Even with the Cadent Gas diversion, it is arguable that rights for this, so far as they affect the highway, could be covered by the rights of undertakers under the New Roads and Street Works Act 1991 (NRSWA) which still applies to works required as part of the scheme albeit amended by the draft DCO.</p>	<p>Refer to response REP4-038-07 below and Highways England's response to the TfL Deadline 3b submission (REP4-011).</p>

Response reference:	Representation Issue	Highways England Response
REP4-038-07	<p>Since the Compulsory Acquisition Hearing, TfL has discussed the rights sought further with the Applicant. The Applicant has advised that the permanent rights sought for plot 1/1a relate to utility diversionary works and drainage. However, it remains unclear why the Applicant needs a permanent right for the diversion of utilities within the existing highway and cannot rely on rights secured pursuant to the NRSWA rather than a permanent property right. TfL further requires clarity on whether it is the intention of the Applicant to transfer the benefit of any permanent rights sought to third party utility providers, and if so to which organisations</p>	<p>Highways England has explained to TfL the need for the extent of plot 1/1a. This plot is required not only for the Cadent gas pipeline diversion but also for drainage works associated with the new loop road (Work No. 6) and to divert existing utility apparatus. Whilst the New Roads and Street Works Act 1991 (NRSWA) does still apply (subject to the provisions in article 10 of the dDCO (REP4-009) and adjustment by the London Permit Scheme made under Part 3 of the Traffic Management Act 2004), the dDCO has been drafted to ensure that any diversions required as a result of the Scheme can be delivered with the necessary rights for those undertakers. This is not an uncommon approach in DCOs and gives the statutory undertakers reassurance that they will have rights for their diverted apparatus without the need to secure further permissions.</p> <p>Highways England can confirm that it does intend to transfer the benefit of any permanent rights sought to third party utility providers and has provided TfL with the information it requested.</p>
REP4-038-08	<p>TfL also notes that the draft DCO submitted at Deadline 3a did not include an update to Schedule 6 to cover the split of plot 1/1 and the original wording of the rights required for plot 1/1 does not refer to utility diversions (other than Cadent Gas) or to rights relating to drainage. The schedules to the DCO need to be updated to reflect</p>	<p>The draft DCO submitted at Deadline 4 (REP4-009) does include updates to Schedule 6 and Schedule 8 (as regards temporary possession rights sought) to reflect the discussions to date with TfL. The amendments are shown on the revised land plan (sheet 1) submitted as part of document REP4-019.</p>

Response reference:	Representation Issue	Highways England Response
	the updated land Plans being submitted and the rights being sought.	
REP4-038-10	<p>Plot 1/3</p> <p>At the hearing, TfL explained that the second plot TfL has concern over is plot 1/3. The Applicant is seeking a right of permanent acquisition of this plot. Most, if not all, of plot 1/3 will be incorporated into works for the new eastbound A12 off slip road that the Applicant is asking TfL to take responsibility for. If TfL is to take responsibility for the replacement off slip road (a matter discussed in Issue Specific Hearing 2 and covered in Section 4.2 of this submission), then TfL would expect to continue to hold the freehold interest in all land associated with the replacement off slip road and for which TfL would become responsible. TfL therefore does not see why the Applicant requires permanent acquisition of plot 1/3 and a right of temporary possession should suffice.</p>	<p>Highways England has reduced the scope of powers affecting plot 1/3 from permanent acquisition to acquisition of permanent rights. This is reflected in the revisions made to Schedule 6 of the dDCO as at Deadline 4 (REP4-009) and on the revised land plan submitted as part of REP4-019. The reason for Highways England taking the view that permanent rights are required and not just rights of temporary possession is as for plot 1/1a - see the response at REP4-038-07 above.</p> <p>See also response to REP4-038-12.</p>
REP4-038-11	<p>The Applicant acknowledged at the hearing that it was not seeking to obtain rights it does not need and that it could seek permanent rights over plot 1/3 rather than permanent acquisition. The Applicant also noted that part of plot 1/3 included part of the new private means of access for the purpose of maintaining the scheme. Action Point 9 arising from the hearing (reference EV-015) was for the Applicant and TfL to consider the compulsory</p>	<p>Highways England has reduced the scope of powers affecting plot 1/3 from permanent acquisition to acquisition of permanent rights.</p> <p>See also response to REP4-038-12.</p>

Response reference:	Representation Issue	Highways England Response
	acquisition of this plot further and, if necessary, the powers sought for plot 1/3 should be updated from acquisition of the freehold to acquisition of new rights.	
REP4-038-12	In further discussions since the hearing to address Action Point 9, the Applicant has indicated that it now intends to seek permanent rights over this plot [1/3] rather than permanent acquisition in order to seek powers to undertake utility works as well as provision of the private means of access. However, TfL expects that this plot should be split so that permanent acquisition is included for the land required for the private access road towards the western end of the plot. If TfL takes on responsibility for the new A12 eastbound off slip road, TfL does not wish to have ownership of land that is not to be part of the TfL Road Network (TLRN) or land that is not needed for maintenance of the TLRN.	Highways England has reduced the scope of powers affecting plot 1/3 from permanent acquisition to acquisition of permanent rights. Rights need to be acquired permanently in order to secure the appropriate powers to relocate telecommunications utility works in this location as a result of the construction of the A12 off slip. Rights are also required for the proposed private means of access at the western end of this plot i.e. the start of Work No. 19A (insofar as the land needed for the private means of access is not within the TLRN highway boundary). For these reasons, Highways England does not intend splitting this plot as suggested by TfL.
REP4-038-13	In relation to the remainder of plot 1/3, TfL needs to understand the utility works that are referred to (other than the Cadent Gas diversion – Work No. 29) that fall within plot 1/3 and whether these relate to the whole of the remainder of the plot. Similar to plot 1/1a, TfL again needs to understand which organisations the Applicant is proposing to acquire permanent rights for (again presumably by way of an easement). This is because TfL will be subject to those rights once acquired (assuming	See REP3B-008-1 for details of utility works in this location.

Response reference:	Representation Issue	Highways England Response
	<p>TfL is responsible for the new A12 eastbound off slip road) and any rights will be within the highway boundary once it is designated as such. TfL would usually grant such rights subject to necessary conditions to protect the existing highway (and in this case the new highway). If the Applicant acquired those rights through compulsory purchase powers, it may not be possible to impose such conditions on the third parties which would leave the TIRN insufficiently protected.</p>	
<p>REP4-038-20</p>	<p>Agenda Item 2.1 – Traffic and transport: Baseline data presented in the Transport Assessment Report [APP-098] and Transport Assessment Supplementary Information Report submitted by the Applicant at Procedural Deadline B [PDB-003]</p> <p>[...] Some confusion over the journey times presented in the Transport Assessment were also discussed at the hearing, with the Applicant acknowledging in response to questions from the ExA that the descriptions of the data being presented could have been clearer. TfL explained that concerns previously raised in its Written Representation over the delays remaining on the A1023 approach to Brook Street following completion of the scheme (reference REP2-036 paragraph 7.18) had been based on an assumption that the journey time data presented by the Applicant for this route included</p>	<p>Refer to REP4-038-30.</p>

Response reference:	Representation Issue	Highways England Response
	<p>substantial delays at the Junction 28 roundabout. The Applicant explained in its response to Written Representations (reference REP3A-022 table row REP2-036-58) that delays at the roundabout represented less than three minutes of the 23 minutes journey time on the relevant route during the 2037 AM peak period. On this basis, TfL is now satisfied that delays on the A1023 approach to the roundabout are forecast to not be substantial provided an extended inter-green phase is provided at the adjacent traffic signals (see section 3.4 of this submission).</p>	
<p>REP4-038-24</p>	<p>Agenda Item 2.2 – Traffic and transport: Whether an assessment on the Proposed Development at Gallows Corner is required and if so, the likely effects the Proposed Development would cause</p> <p>[...] TfL has raised concerns about the methodology used by the Applicant to assess background growth in the model. The Applicant has based its growth forecasts on the National Trip End Model (NTEM) with an uncertainty log used to include additional developments in the model where they are ‘near certain’ or ‘more than likely’ within close proximity to the DCO boundary. No developments more than 3 km from the DCO boundary are included. TfL has concerns about this approach: as an example Gallows Corner is 3 km from the DCO boundary, so any</p>	<p>Refer to paragraphs 3.1.11 and 3.1.21 of REP4-016.</p>

Response reference:	Representation Issue	Highways England Response
	developments immediately west of Gallows Corner would be excluded from the model.	
REP4-038-25	TfL recognises that deriving growth forecasts from the NTEM is an appropriate approach for forecasting future demand outside London. TfL considers that it would have been more appropriate to base growth within London on the forecasts in the London Plan, which contains adopted policy targets for housing and employment growth. The uncertainty log used by the applicant includes only 13 developments in Havering, almost all of which are employment sites rather than residential; the London Plan would have included a more realistic level of growth.	Refer to paragraphs 3.1.11 and 3.1.21 of REP4-016.
REP4-038-27	The impact of the lower Thames Crossing ('ITC') scheme on traffic flows at M25 Junction 28 was also discussed under this agenda item. While they cannot be directly compared, TfL is concerned that the forecast flows on the M25 reported in the ITC Traffic Forecasting Report published as part of the 2018 Statutory Consultation for that scheme are substantially higher than the equivalent flows in the traffic model for the M25 Junction 28 scheme. This could mean that if the M25 is busier as a result of the ITC scheme, the net traffic impacts of the Proposed Development could be different.	Refer to paragraphs 3.1.24 to 3.1.27 of REP4-016.

Response reference:	Representation Issue	Highways England Response
REP4-038-28	<p>The Applicant explained at the hearing that the LTC modelling has moved on since the version that was used to inform the modelling of the scheme. The Applicant also stated that it recognised that the M25 over the Junction 28 viaduct will be close to capacity in the future and that it is considering future options for addressing capacity between Junctions 27 and 29 of the M25. In the Applicant's response to Written Representations (reference REP3A-022 table row REP2-036-62a), it stated that some level of future proofing has been included in the design of the scheme to ensure that additional lanes on the M25 or other options to address capacity constraints would not require substantial modifications to Junction 28. This has provided TfL with some reassurance on this matter but TfL would again have expected that the Applicant should have demonstrated more robustly that the environmental impacts of the scheme do not change with higher traffic flows caused by the LTC scheme, beyond the high growth sensitivity test presented in the Transport Assessment Supplementary Information Report (reference PDB-003).</p>	Refer to paragraphs 3.1.24 to 3.1.27 of REP4-016.
REP4-038-29	<p>Agenda Item 2.3 – Traffic and transport: Extended inter-green signalling at Brook Street presented</p>	

Response reference:	Representation Issue	Highways England Response
	within the Transport Assessment Supplementary Information Report [PDB-003]	
REP4-038-30	TfL set out its position at the hearing regarding the extended inter-green time for the traffic signals at the top of the A12 westbound off slip which reduces delays for traffic on the A1023 Brook Street approach to the roundabout but is not currently part of the scheme.	Highways England accepts that a requirement to deal with the operation of the traffic signals on the M25 junction 28 roundabout to mitigate the impacts on Brook Street can be included in the DCO and a draft Requirement (no.14) appears in the draft DCO submitted at Deadline 5 (TR010029/APP3.1(4)).
REP4-038-31	While the A1023 Brook Street approach to the Junction 28 roundabout is not within London, TfL has an interest in congestion and delays on this route because the TfL bus route 498 operates along this corridor. TfL has significant concerns about the substantial forecast future delays on this route and the impact this will have on the performance of the bus route and its attractiveness for passengers.	Refer to section 3 of REP4-016.
REP4-038-32	It is therefore critical to TfL that this improvement in journey times is secured through the DCO. TfL had suggested that this could be secured by incorporating changes to signal timings into the works set out in Schedule 1 of the draft DCO. However, the Applicant disagreed in its response to TfL's Deadline 3a submission (reference REP3B-004 table row REP3A-046-10), stating that placing a statutory requirement on the Applicant	Refer to section 3 of REP4-016.

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	regarding how to manage the Strategic Road Network with regard to signal timings is not appropriate or necessary and could fetter the Applicant's ability to undertake its functions appropriately.	
REP4-038-33	For the avoidance of doubt, TfL is not seeking for precise signal timings to be specified in the DCO, but given the scale of impact that the changes to signal timings provide, the improvement to journey times on the A1023 approach to the roundabout needs to be secured in some way.	Refer to REP4-038-30.
REP4-038-34	The ExA has asked the Applicant and TfL to explore further whether the intergreen signalling should be secured in the DCO or as part of a separate legal agreement in Action Point 2 (reference EV-032). TfL and the Applicant have since discussed this issue and agreed that however this is secured, any wording should focus on the output required, i.e. the scheme not increasing delays on the A1023 Brook Street approach to the roundabout, rather than the method of achieving that outcome.	Refer to REP4-038-30.
REP4-038-35	TfL seeks that this matter be addressed through introduction of a new requirement into Schedule 2 of the DCO. The proposed wording of that requirement is set out in Appendix A of this submission.	Refer to REP4-038-30.

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REP4-038-37	<p>Agenda Item 2.4 – Traffic and transport: The absence of an outline Traffic Management Plan (TA 1.1) and whether sufficient information is contained within the Supplementary Information Reported [PDB-003]</p> <p>TfL welcomes the Applicant's commitment to submit an outline Traffic Management Plan (TMP) at Deadline 4. At the hearing, TfL set out the information TfL would expect to see included in the outline TMP:</p> <ul style="list-style-type: none"> • whether any lane closures or more significant disruption on the A12 is required, given that the Applicant is seeking to secure rights over sections of the A12 carriageway to facilitate utility diversions and other works; • the number and duration of night and weekend closures on the A12 eastbound off slip road, given the disruption these will cause to users of the A12 and local residents; • whether measures will be put in place to ensure escorted passage of emergency vehicles through any closures of the A12 eastbound off slip road; • the diversion routes for general traffic and buses during any such closures; and 	<p>The Outline TMP submitted by Highways England at deadline 4 (REP4-013) covers all the information that TfL has listed. The Outline TMP is however based on a relatively high-level approach to construction commensurate with the current preliminary design being considered at this stage of the Scheme. The temporary traffic arrangements, including those relating to night and weekend closures will therefore be refined as the design of the Scheme and the construction methodology are further developed in more detail.</p>

Response reference:	Representation Issue	Highways England Response
	<ul style="list-style-type: none"> whether any co-ordination with other works that may be taking place concurrently on the A12 or A127 is required. 	
REP4-038-40	<p>Agenda Item 2.5 – Traffic and transport: Matters concerning connectivity to non-vehicular traffic and community severance following the Applicant's response to WQ TA 1.11 and TA 1.12</p> <p>TfL stated its agreement with points raised by the London Borough of Havering and Essex County Council at the hearing regarding the need to improve the route for Non Motorised Users (NMUs) through M25 Junction 28. In particular, while TfL acknowledges that the Applicant is seeking funds separately to deliver improvements to the corridor as a whole, the Junction 28 roundabout sits in the middle of this corridor and the Applicant must demonstrate that a safe crossing of the new A12 eastbound off slip road for NMUs is provided, to demonstrate compliance with paragraph 3.17 of the National Policy Statement for National Networks covering the need for applicants to identify opportunities to invest in infrastructure for pedestrians and cyclists in locations where the national road network causes severance.</p>	<p>Highways England's position on this is set out in response to Action 9 in Highways England's response to action points from ISH2 (REP4-026).</p> <p>The existing crossing facilities at junction 28 have seen no accidents involving pedestrians or cyclists in the 10 years from 2011 to 2020. Therefore, there is no evidence that the existing crossings are unsafe in practice. Highways England has previously addressed the severance issue in its response to London Borough of Havering's LIR (17.5.2 to 17.5.4 REP3A-020) and in their written submission of Applicant's case put orally at ISH1 (3.1.48 to 3.1.50 REP4-016).</p>
REP4-038-41	<p>TfL supports the securing of improvements to the NMU route in the DCO.</p>	<p>Highways England's position is that the appropriate approach is to deal with NMUs as part of the wider corridor of upgrades to pedestrian and cycle facilities between Harold Hill and</p>

Response reference:	Representation Issue	Highways England Response
		Brentwood, not as part of the Scheme. The designated funds scheme is specifically aimed at providing these additional benefits alongside Highways England's primary responsibility for the maintenance and upgrade of the SRN. Highways England considers that this is more appropriate and a more efficient use of resources than including isolated improvements for NMUs at junction 28 in the DCO application.
REP4-038-47	<p>Agenda Item 2.6 – Traffic and transport: Suggested alterations to proposed access to and egress from Grove Farm prepared by representatives of the Jones Family submitted at Deadline 2 [REP2-033]</p> <p>[...] Considering these points, TfL is broadly in agreement with the Applicant's concerns about increased road safety risks associated with the Grove Farm access proposal, however it is for the Applicant to consider the overall road safety impacts of the proposal as a whole given this also affects road safety on the M25 northbound on slip</p>	Refer to Highways England's response to Hinson Parry & Company on behalf of Mr and Mrs Jones of Grove Farm's Deadline 5 submission (TR010029/EXAM/9.75).
REP4-038-51	<p>Agenda Item 5.1 – People and communities: The effects of the Proposed Development on the living conditions of the occupiers of Grove Farm</p> <p>During the hearing, measures to reduce the impact of the scheme on Grove Farm were discussed. TfL noted that the proposal to move the egress from Grove Farm onto the new A12 eastbound off slip road further west raised</p>	See response above REP4-038-47.

Response reference:	Representation Issue	Highways England Response
	potential safety concerns, as it would be further from the Junction 28 roundabout and vehicles would therefore be travelling faster. This would need to be assessed in detail if it was proposed for further consideration to determine whether there are any increased safety risks and how these could be mitigated.	
REP4-038-52	TfL also noted the range of mitigation being considered on a section of road that is proposed to be transferred to TfL by the draft DCO. TfL does not agree to take on responsibility for the management and maintenance (including the related costs) of such mitigation measures. This reinforces TfL's position that it would be more appropriate for the Applicant to be responsible for the new slip road because it can then take full responsibility for the mitigation measures provided to address the impacts of its own scheme.	Highways England is currently in ongoing discussions with TfL regarding proposed management and maintenance responsibilities. Highways England will update the Examining Authority on progress as regards these discussions in due course through the Statement of Common Ground between Highways England and TfL (TR010029/EXAM/9.11(2)).
REP4-038-56	Agenda Item 6.1 – Matters for clarification: Whether Interested Parties are generally content with the outline Construction and Environmental Management Plan (CEMP) submitted at Deadline 3A [REP3A-010] and the inclusion of the outline Dust, Noise and Nuisance Management Plan and the outline Surface Water Management Plan, and London Borough of Havering to expand on its comments on those other Environmental	As set out in the written submission case put orally at ISH2 (paragraphs 4.1.9 to 4.1.12, REP4-017), Highways England explained that a number of outline environmental plans (Outline Dust, Noise and Nuisance Management Plan, Outline Surface Water Management Plan, Outline Arboricultural Method Statement and Outline Archaeology Management Plan) have been included in the Outline CEMP (REP3A-010). Highways England explained that producing outlines of all of the plans which would ultimately form part of the final CEMP was not

Response reference:	Representation Issue	Highways England Response
	<p>Plans as listed in the draft Development Consent Order [REP3A-004]</p> <p>[...] TfL is concerned that some of the environmental control plans are not being shared in outline form as part of the DCO examination – this does not give TfL the assurance it needs on certain matters. For example, there are some environmental control plans which may influence the planting in areas that TfL is being asked to maintain, i.e. the Ecological Habitats and Species Plan.</p>	<p>practicable at this preliminary Scheme design stage. The Principal Contractor will produce these other control plans at the detailed design/pre-construction stage and they will reflect the construction methodologies and mitigation required for delivering the Scheme. Provision of the CEMP is secured by Requirement 4 in the draft DCO (REP4-002) and TfL will be consulted on the final CEMP and control plans as outlined in Requirement 4.</p> <p>Highways England have prepared an Outline Landscape and Ecological Management and Monitoring Plan (LEMP) (APP-072) which describes the proposed management and monitoring of the landscape and ecological mitigation and compensation features. The Outline LEMP is secured by Requirement 5 in the draft DCO (REP4-002) and TfL will be consulted on the final LEMP and control plans as outlined in Requirement 5.</p>
REP4-038-57	<p>TfL also considers that it would be helpful if a Code of Construction Practice ('CoCP') was produced. While the Applicant has noted that some of the content of a CoCP is already included in the CEMP, the Register of Environmental Actions and Commitments, and various environmental control plans, TfL considers that it would be more appropriate if all of this information was collated into one document.</p>	<p>As set out in response to the ExA's written questions GQ1.6 REP2-011, Highways England will not be preparing a CoCP for the Scheme as a Construction Environment Management Plan is proposed which is in line with DMRB requirements as is standard for Highways England DCO projects. Of all the Highways England schemes promoted, being both those currently under examination and those decided, only one has a CoCP; the A14 Cambridge to Huntingdon Improvement Scheme.</p>

Response reference:	Representation Issue	Highways England Response
		Highways England has submitted a Signposting document in response to ExAWQ2 GQ2.2, TA2.1 and the London Borough of Havering submission at Deadline 4 that demonstrates the interdependencies between subject matters covered by the Outline Construction Environmental Management Plan (CEMP), Register of Environmental Actions and Commitments (REAC), topic specific management plans and Outline Traffic Management Plan (TMP) (TR010029/EXAM/9.80).
REP4-038-58	3.10.5 TfL also raised a concern regarding the obligation for the Applicant under Requirement 17 when submitting matters for approval under the requirements to the Secretary of State that it must include a summary report setting out the consultation undertaken. TfL's view is that the Applicant should also have an obligation to take into account comments made by consultees rather than just reporting to the Secretary of State what consultees have said.	Requirement 17 (now Requirement 18) requires Highways England to provide in the summary report to the Secretary of State its response to the representations made from consultees; this therefore will show how representations have been taken into account. Requirement 18 has also been updated at Deadline 4 REP4-009] to state that copies of representation made by a consultee must also be sent to the Secretary of State. As such the drafting of Requirement 18 addresses TfL's concerns.
REP4-038-59	Agenda Item 7 – Any other business TfL notes the discussion that took place at the hearing regarding the local deer population and the need to ensure fencing is put in place to reduce the likelihood of deer coming into contact with traffic. TfL seeks clarity on whether any deer fencing is proposed to be provided on	Deer fencing and its location will be considered as part of detailed design. Requirement 13 was amended at Deadline 4 (REP9-004) and states that the relevant highway authority must be consulted. Therefore, TfL will be consulted on any proposed deer fencing.

Response reference:	Representation Issue	Highways England Response
	TfL highway land and therefore whether TfL will be asked to maintain any such fencing.	
REP4-038-60	TfL also seeks clarity on the overall strategy for the deer fencing. At the hearing the Applicant stated that the proposal was to stop deer fencing at the bottom of the new A12 eastbound off slip road. This would create a gap in deer fencing between the bottom of the slip road and Woodstock Avenue. TfL needs to be satisfied that the strategy does not result in deer establishing alternative routes and trying to cross the A12 in any unfenced areas between the bottom of the new off slip road and Woodstock Avenue.	See REP4-038-59.
REP4-038-61	<p>TfL continues to have significant concerns about:</p> <ul style="list-style-type: none"> (a) the proposal for TfL to take on responsibility for the new A12 eastbound off slip road; and (b) the interface of and effect of the scheme on the TIRN. <p>4.2.2 In terms of the new A12 eastbound off slip road, TfL's position remains that it does not wish to take on responsibility for the off slip road and considers that it would be simpler and more efficient if the Applicant maintained it in future. There are a number of reasons for this:</p>	<p>Highways England's position remains that the existing A12 eastbound off-slip is currently part of the TfL network (TLRN), not the strategic road network (SRN) and so Highways England considers it appropriate to replicate the existing position.</p> <p>Article 11 follows drafting precedent in a number of made Highways England DCOs and sets out that the local highway authority will be responsible for new highways that are not trunk or special roads and that Highways England will be responsible for the bridges below the waterproofing membrane of the structure. This does not place responsibility for the bridge structure on TfL save as regards the highway surface. Highways England has DCO schemes across the country being constructed as part of its Roads Investment Scheme and</p>

Response reference:	Representation Issue	Highways England Response
	<p>(a) The new off slip road is a significantly longer and more complex structure than the existing off slip road, the latter being a relatively short slip road on an embankment. TfL is being asked to take on responsibility for structures over and above the existing off slip road including significant embankments, drainage systems, an attenuation pond, a large retaining structure supporting the eastern part of the new off slip road and a complex bridge interface with the new Maylands bridge. The scale of this new infrastructure is demonstrated by the photomontages provided by the Applicant, particularly those for Viewpoint A (reference AS-002 Figure 9.16) and Viewpoint B (reference AS-003 Figure 9.20).</p> <p>(b) In addition, there is some suggestion that the new off slip road may well be associated with a number of mitigation features required by the DCO but unrelated to the new off slip road itself and for which the Applicant, not TfL, should be responsible. This may include noise mitigation measures for Grove Farm and deer fencing along the slip road, as discussed in Sections 3.9 and 3.11 of this submission.</p> <p>(c) The new structures associated with the new off slip road are intrinsically linked with the new loop road between the northbound M25 and eastbound A12. Under the proposed split of responsibility set out in the draft DCO, it will be hard to properly split where responsibility</p>	<p>regularly enters into side agreements with the local highway authority to specify precisely the interface between the SRN and local road network. Entering into such a side agreement will address a number of the concerns TfL has.</p> <p>TfL, like Highways England, has the expertise to maintain the new off slip as the existing off slip forms part of the existing TLRN. TfL also already maintains highways in the area and Highways England disagrees that it would be more cost effective for Highways England to take on responsibility for the off-slip. Highways England has a responsibility to the public to use its funds for maintaining the SRN and is not responsible for the local highway network, which is the responsibility of the local highway authority. Accordingly the additions to the local highway network should properly become the responsibility of the local highway authority. Under Highways England's Licence issued by the Secretary of State, Highways England has statutory responsibility for the strategic road network. In particular, in exercising its functions and duties in relation to the strategic road network, Highways England must act in a manner which it considers is best calculated to ensure efficiency and value for money (paragraph 4.2(d)). Highways England must also demonstrate that it has in place robust internal arrangements to achieve, and to demonstrate how it has achieved, value for money (paragraph 5.12(c)).</p>

Response reference:	Representation Issue	Highways England Response
	<p>for the new Maylands bridge ends and the new retaining structure for the eastern end of the slip road starts as the two are structurally linked together. As such, it is preferable for one organisation, namely the Applicant, to be responsible for future management and maintenance of both structures.</p> <p>(d) The Applicant has the expertise and is more than able to maintain the new off slip road. The Applicant already maintains the A12 eastbound on slip road and the A12 westbound off slip road which are situated on the east side of the motorway junction. It therefore already maintains two of the four exit and entry points onto the A12 at this junction.</p> <p>(e) The Applicant is already maintaining and will be maintaining further structures of a similar nature in the area including what will now be three additional bridges associated with the new M25 northbound to A12 eastbound loop road. As a result, TfL believes that it will be more cost effective for the Applicant to build, repair and maintain these new structures as part of their Design, Build, Finance and Operate contract for the M25 rather than TfL build them into their highway maintenance contract for the TIRN. In that sense, the public purse will be better served by the Applicant taking responsibility for the new off slip road.</p>	<p>Highways England is currently in ongoing discussions with TfL regarding proposed ownership and maintenance responsibilities. Highways England will update the Examining Authority on progress as regards these discussions in due course.</p>

Response reference:	Representation Issue	Highways England Response
	<p>(f) TfL is not funded to take on the additional cost of the operation and long term repair, maintenance and replacement of the new off slip road and its structures. The Applicant has not offered to compensate TfL in respect of the costs it will incur in taking on responsibility for the new off slip road.</p> <p>(g) Uncertainties around the split of maintenance responsibilities means that there is room for dispute between contractors appointed by the Applicant responsible for remedying construction defects and those contractors appointed by TfL responsible for day to day maintenance.</p> <p>(h) It is not possible to determine from the wording in the draft DCO what features TfL would be taking on responsibility for. The Applicant has not, to date, been able to provide any clarity on this. The draft DCO should not be made while such ambiguity remains.</p>	
REP4-038-65	<p>A response to the heads of terms was received from the Applicant to TfL's proposed heads of terms on 16 March 2021 but TfL has had insufficient time to digest this response prior to making this submission at Deadline 4. However, it appears that there remains disagreement over key principles relating to taking responsibility for the new off slip road. TfL's position therefore continues to be</p>	<p>TfL and Highways England met on 1 April 2021 and discussions continue between the parties to enter into a side agreement to address the concerns raised by TfL and to set out ownership and maintenance responsibilities.</p>

Response reference:	Representation Issue	Highways England Response
	that the new off slip road should be the responsibility of the Applicant and that if responsibility for the new off slip road is imposed on TfL then TfL will require the amendments to the DCO set out in Appendices A and B.	
REP4-038-66	As for the interface of and effect of the scheme on TfL's existing highway network, TfL remains concerned that insufficient progress has been made with the Applicant in addressing operational issues in relation to the construction of the scheme and the impact of the scheme on the TLRN.	TfL and Highways England met on 1 April 2021 and discussions continue between the parties to enter a side agreement to address the concerns raised by TfL and to set out ownership and maintenance responsibilities.
REP4-038-67	TfL indicated at the hearings that it considers that its concerns can be addressed through protections in favour of TfL being built into the draft DCO or through completion of a legal agreement between TfL and the Applicant, together with a commitment from the Applicant and TfL to continuing active ongoing dialogue both prior to and during construction of the scheme. Given the lack of progress made to date on a legal agreement, TfL now considers that the preferred option must be for protections to be built into the draft DCO as it may not be possible to conclude a legal agreement in good time to inform the Examination process.	Highways England considers that an agreement can be entered into in good time to inform the examination process and will update the ExA on progress as regards these discussions in due course.
REP4-038-68	The ExA asked TfL in Action Point 1 from the hearing (reference EV-037) to submit a draft version of the	See REP4-038-67 and Highways England's comments on the issue of protective provisions for Transport for London set out

Response reference:	Representation Issue	Highways England Response
	protective provisions it is seeking into the Examination at Deadline 4. The protective provisions sought by TfL are set out in Appendix B of this submission.	in Highways England's response to ExA Q2 dDCO 2.4 submitted at Deadline 5 (TR010029/EXAM/9.26).
REP4-038-72	Agenda Item 3 – Matters of concern raised with the draft DCO	Please see table in section 3 responding to the points raised.

3. Response to Appendix A Amendments to the Draft DCO (as submitted at Deadline 3a)

Article	Amendment sought by TfL	Reasons	HE response
Article 2(1)	Insert new definition: "the 1973 Act" means the Land Compensation Act 1973	Connected with proposed new Article 31	See response below.
Article 11(4)	Insertion of reference to the exact split of responsibility on either side of any bridge – in the case of Maylands Bridge this could be by reference to a plan	To provide clarity that the Applicant will be responsible for any structure either side of the bridge which is supporting any bridge (i.e. Maylands Bridge)	This level of detail will form part of the side agreement. The drafting of article 11(4) is well preceded in Highways England DCOs with the detail suggested picked up through side agreements.
Article 16(1)(b)	Requirement for division of responsibility between the Applicant and TfL to be agreed by reference to a plan and schedule	<p>To clarify the extent of the responsibility of the Applicant and/or TfL</p> <p>Reference to points on the streets, rights of way and access plans does not adequately define the split and scope of responsibility for features connected with the new A12 eastbound off slip road outside</p>	It is not explained why the references of the street, rights of way and access plans are not sufficiently clear for the classification of roads. Article 16(b) simply seeks to classify the new off-slip as part of the TLRN. This level of detail can be further expanded as part of the side agreement.

Article	Amendment sought by TfL	Reasons	HE response
		the new highway surface itself, e.g. structures and attenuation ponds	
Article 16(1)(b)	Requirement for TfL to become responsible for the A12 Eastbound Off Slip Road to be conditional on the Applicant transferring or granting to TfL the necessary Land interests and rights to operate and maintain the same including access	To ensure that responsibility does not pass to TfL without TfL having what it requires to operate and maintain the road.	Discussions with regards to the ownership and maintenance responsibilities of the A12 Eastbound off-slip are ongoing and will form part of the side agreement with TfL.
Article 18(11)	Change 28 days to 56 days	To ensure that the traffic authority has sufficient time to review the details and make a decision	Article 18(5) sets out minimum timescales for Highways England to serve notice of its proposals to the traffic authority which, for provisions intended to have permanent effect, is 12 weeks and, for temporary provisions, is 4 weeks. Further, these notice periods follow consultation on the proposals under article 18(4) and the traffic authority's consent is needed (not to be unreasonably withheld). As such, TfL will be

Article	Amendment sought by TfL	Reasons	HE response
			<p>aware of the proposals as a result of consultation. Any concerns over timing can be raised in consultation with Highways England as part of providing consent.</p> <p>For nationally significant infrastructure projects it is necessary and appropriate to have deemed consent so as to prevent a third party from unnecessarily or unreasonably delaying the scheme. Highways England has proposed a reasonable period of time for TfL or others to determine such requests for approval- 28 days</p> <p>The principle of 'deemed consent' is a well precededented for this article at 28 days including the latest Highways England DCOs being the A1 Birtley to Coal House DCO</p>

Article	Amendment sought by TfL	Reasons	HE response
			<p>(2021) and the A38 Derby Junctions DCO (2021).</p> <p>Highways England is a public body and if responses are delayed this can be costly to public purse and can interrupt planned outages for diversions such as that for Cadent Gas Limited. There is also environmental impact of having to demobilise and then resume work.</p>
Article 19(9)	Change 28 days to 56 days	To ensure that there is sufficient time to review details and give consent	As with Highways England's response above. The timescales included within article 19(9) are well precedented and Highways England considers them to be appropriate for the proposed Scheme.
Article 22(2)	Change 14 days to 28 days	To ensure that access requirements can be accommodated	Article 16(2) of the Silvertown Order promoted by TfL has the same time frames Highways

Article	Amendment sought by TfL	Reasons	HE response
			<p>England is proposing – 14 days’ notice.</p> <p>These activities are needed to inform the development of the design and progress of construction activities, as well as ensure safe operation of the Scheme and required maintenance. Imposing longer timescales for survey and investigations imposes unnecessary delay onto the Scheme construction or to maintenance that may be required.</p> <p>Article 22(4) makes it clear that no trial holes or boreholes can be located in highway land without the local highway authority’s consent and article 22(6) make it clear that local highway authorities have 28 days in which to grant that consent. Therefore, for the more intrusive investigations and</p>

Article	Amendment sought by TfL	Reasons	HE response
			<p>surveys TfL is afforded the 28 days it requests.</p> <p>This provision is well precededented including in the recently made A38 Derby Junctions DCO 2021 and the A1 Birtley to Coal House DCO 2021</p>
Article 35(2)	Change 14 days to 28 days	To provide ample notice and to ensure that possession can be accommodated	<p>The timescales proposed are appropriate and well precededented in a number of Highways England and non-Highways England schemes including article 29(5) of the Silvertown Tunnel DCO which TfL promoted. TfL has not justified its request for a longer period. In addition, this article works alongside the other articles in the dDCO and there is a requirement under article 13 that Highways England can only temporarily close, alter, divert and restrict the use of streets with consent of the street</p>

Article	Amendment sought by TfL	Reasons	HE response
			<p>authority (such as TfL) and this has a 28 day consent period in article 13(6).</p> <p>This provision is well preceded including in the recently made A38 Derby Junctions DCO 2021 and the A1 Birtley to Coal House DCO 2021</p>
New article 31	<p>Insert new article:</p> <p>Modification of Part 1 of the 1973 Act</p> <p>31 Part 1 of the 1973 Act insofar as it applies to the authorised development shall have effect as if “the appropriate highway authority” means the undertaker and “public works” means the authorised development</p>	<p>To ensure that the undertaker is responsible for compensation claims under Part 1 of the Land Compensation Act 1973 relating to the authorised development despite part of the authorised development becoming a GLA Road on completion</p>	<p>It is not necessary to include this provision in the dDCO. Section 19 of the 1973 Act provides that:</p> <p><i>“the appropriate highway authority” means—</i></p> <p><i>(a) except where paragraph (b) below applies, the highway authority who constructed the highway to which the claim relates [or any other authority to which the functions of that authority in relation to that highway are transferred by virtue of the Local Government Act 1985] 1 [or the Local Government (Wales) Act 1994 ;</i></p>

Article	Amendment sought by TfL	Reasons	HE response
			<p><i>(b) if and so far as the claim relates to depreciation that would not have been caused but for alterations to the carriageway of a highway, the highway authority who carried out the alterations or any other authority to which the functions of that authority in relation to that highway are transferred by virtue of either of those Acts”.</i></p> <p>Highways England would therefore be the “appropriate highway authority” under Part 1 in any event as it would be the “highway authority” that carried out the construction / alteration of that road.</p>
Schedule 2 Part 1 Requirement 3(1)	TfL to be consulted on matters relating to its function or in respect of assets which TfL is required to take responsibility for	To protect TfL as highway authority and to ensure that TfL has input into the design of the assets for which it will be responsible	Included in the dDCO at Deadline 5.

Article	Amendment sought by TfL	Reasons	HE response
Schedule 2 Part 1 Requirement 4(2)	Add Code of Construction Practice	To require the Applicant to prepare a Code as part of the CEMP to collate the necessary information in one document	See response to REP4-038-57 above.
Schedule 2 Part 1 Requirement 4(4)	TfL to be consulted on matters relating to its function or in respect of assets which TfL is required to take responsibility for	To ensure that TfL has input into the maintenance of the assets for which it will be responsible	Amendment has been made to the outline CEMP at Deadline 5 (TR010029/APP/7.2(3)) to make it clear TfL as relevant highway authority will be consulted in the preparation of the HEMP in so far as relates to its functions.
Schedule 2 Part 1 Requirement 5(1)	TfL to be consulted on matters relating to its function or in respect of Land/assets which TfL is required to take responsibility for	To protect TfL as highway authority and to ensure that TfL has input into the design of the Land/assets for which it will be responsible	Included in dDCO at Deadline 5
Schedule 2 Part 1 Requirement 6(1)	TfL to be consulted on matters relating to its function or in respect of Land/assets which TfL is required to take responsibility for	To protect TfL as highway authority and to ensure that TfL has input into the design of the Land/assets for which it will be responsible	Included in dDCO at Deadline 5

Article	Amendment sought by TfL	Reasons	HE response
Schedule 2 Part 1 Requirement 8(1)	TfL to be consulted on matters relating to its function or in respect of Land/assets which TfL is required to take responsibility for	To protect TfL as highway authority and to ensure that TfL has input into the design of the Land/assets for which it will be responsible	Included in dDCO at Deadline 5
Schedule 2 Part 1 Requirement 10(1)	Reference to the traffic management plan being in accordance with the outline traffic management plan	TfL understands that an outline traffic management plan is to be submitted into the Examination by the Applicant. It is therefore expected that the final traffic management plan will be based on the outline	Included in dDCO at Deadline 5
Schedule 2 Part 1 Requirement 12	TfL to be consulted on departures from the Manual of Contract Documents for Highway Works where such fencing relates to its function or in respect of Land/assets which TfL is required to take responsibility for	To protect TfL as highway authority and to ensure that TfL has input into the design of the Land/assets for which it will be responsible	Included in dDCO at Deadline 5
Schedule 2 Part 2 Paragraph 15	Certified documents should also be made available on the register	To ensure that all relevant information is publicly available	Included in dDCO at Deadline 5

Article	Amendment sought by TfL	Reasons	HE response
Schedule 2 Part 2 Paragraph 17	<p>Consultation to be no less than 28 days</p> <p>Additional wording to be added to require the undertaker to have regard to the consultation responses received</p>	To ensure that there is sufficient time to provide a meaningful response and to ensure that responses are taken into account	28 days included in dDCO at Deadline 4 (REP4-009). As the requirement (then requirement 17, now requirement 18) text already stated that the summary report to the Secretary of State must include " <i>the undertaker's response to that consultation</i> " the requirement does already require Highways England to have regard to the consultation responses received, although the wording in renumbered requirement 18 has been adjusted to refer to the " <i>undertaker's response to those representations</i> ".
Schedule 2 Part 2	Insertion of a new requirement to read: (1) No part of the authorised development is to open to traffic until an operating plan for the M25 Junction 28 roundabout has been submitted to and approved in writing by the Secretary of	To ensure that delays to traffic on the A1023 Brook Street approach to the M25 Junction 28 roundabout do not increase as a result of the scheme	New requirement (number 14) included in dDCO at Deadline 5 to address the issue.

Article	Amendment sought by TfL	Reasons	HE response
	<p>State, following consultation with the Local highway authorities, such plan to include details of the proposed operation of traffic signals timings or such other measures as may be necessary to secure that delays to traffic on the A1023 Brook Street approach to the M25 Junction 28 roundabout do not increase as a result of the authorised development.</p> <p>(2) The authorised development must be operated in accordance with the approved operating plan referred to in sub-paragraph (1) or such amended plan as may be agreed with the Local highway authorities.</p>		
Schedule 4 Part 2	The first Line of the table should be deleted	TfL is already the highway authority for the A12 eastbound, and it does not therefore need to be designated	Included in dDCO at Deadline 4

Article	Amendment sought by TfL	Reasons	HE response
Schedule 4 Part 2	Requirement for division of responsibility between the Applicant and TfL to be agreed by reference to a plan and schedule	Reference to points on the streets, rights of way and access plans does not adequately define the split and scope of responsibility between TfL and the Applicant for features connected with the new A12 Eastbound Off Slip Road outside the new highway surface itself, e.g. structures and attenuation ponds	Highways England has discussed with TfL that the scope of responsibility will be defined, and this level of detail will form part of the side agreement. Accordingly, a separate requirement is not needed.
Schedule 6	To be updated to reflect the updated Land plans and Book of Reference	To ensure that the DCO, Land plans and Book of Reference are consistent	Included in dDCO at Deadline 4.

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