

## **M25 junction 28 improvement scheme**

**TR010029**

### **9.107 Applicant's proposed Protective Provisions for the protection of TfL**

Rule 8(1)(k)

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010

Volume 9

May 2021

# Infrastructure Planning

## Planning Act 2008

### The Infrastructure Planning (Examination Procedure) Rules 2010

### M25 junction 28 scheme Development Consent Order 202[x ]

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#### 9.107 Applicant's submission of TfL's proposed Protective Provisions

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<b>Rule Number:</b>	Rule 8(1)(k)
<b>Planning Inspectorate Scheme Reference</b>	TR010029
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<b>Author:</b>	M25 junction 28 scheme, Project Team, Highways England

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# 1. Introduction

- 1.1.1 Highways England has reviewed the draft Protective Provisions submitted by Transport for London (“TfL”) at Deadline 4 (REP4-038) (“TfL’s Protective Provisions”) and has provided its comments on those provisions at Deadline 5. Highways England advises that TfL’s Protective Provisions are not agreed.
- 1.1.2 Highways England and TfL are negotiating a side agreement on highway matters. Although negotiations are progressing, there is some uncertainty as to whether the agreement will be completed before the end of the examination. To deal with this uncertainty and as requested by the Examining Authority at the Issue Specific Hearing 3 (SH3) on 12 May 2021, Highways England has prepared a set of protective provisions in favour of TfL in its capacity as a local highway authority (“the Proposed Protective Provisions”) included in Appendix A.
- 1.1.3 In addition to the Proposed Protective Provisions, Highways England has also submitted a comparison between the Proposed Protective Provisions and TfL’s Protective Provisions to highlight the areas of agreement and difference. Please see Appendix B.
- 1.1.4 The Proposed Protective Provisions now submitted by Highways England in respect of the Scheme reflect a number of provisions in the highways side agreement being negotiated by the parties. If that agreement is completed then protective provisions for the protection of TfL would be unnecessary. If that agreement is not completed then the Secretary of State may decide to include them in the DCO as made. For this reason they are not included in the draft DCOs currently before the examining authority.
- 1.1.5 The Proposed Protective Provisions have been drafted on the basis that they would form a new part to Schedule 9 of the DCO, the latest draft version of which has been submitted at Deadline 7 (TR010029/APP/3.1(6)), with the paragraphs numbered accordingly.
- 1.1.6 In Highways England’s opinion, in the absence of an agreement between the parties, the Proposed Protective Provisions submitted by Highways England address the concerns raised by TfL in their previous representations and ensure robust and sufficient protection for TfL as a local highway authority in respect of its network as effected by the Scheme.
- 1.1.7 With regards to the key areas of difference between the Proposed Protective Provisions and the TfL’s Protective Provisions, Highways England wishes to make the following comments:
- Provisions in relation to Provisional and Final Certificates** (Paragraph 15 of the TfL’s Protective Provisions)
- 1.1.8 Highways England considers that more appropriate definitions for Principal and Final Certificates are Take Over and Defects Certificates respectively. This is consistent with NEC terminology and reflects Highway England’s very substantial experience of dealing with local highway authorities in such matters. The Take Over Certificate is issued by Highways England and subject to certain criteria is then “accepted” by a local highway authority.

**Road Safety Audit 4** (Paragraph 16 of the TfL's Protective Provisions)

- 1.1.9 Highways England does not object to an obligation to carry out a Stage 4 Road Safety Audit (RSA4). However, it would not be appropriate for RSA4 to form part of the Final Certification process as this audit relates to operation rather than construction. RSA4 is needed under DMRB and is not required within the 52 week defects period. Indeed, an RSA4 cannot be carried out until the road has been open to traffic for 12 months. Therefore, the timing set out by TfL in paragraph 16 of its proposed protective provisions is not appropriate and would in effect extend the defect liability period and the various liabilities for maintenance and indemnification which TfL is seeking for Highways England to take on to an unknown date in the future. The issuing of the Completion Certificate should not be conditional on RSA4.

**Latent Defect(s)** (Paragraph 18 of the TfL's Protective Provisions)

- 1.1.10 Highways England rejects the inclusion of the latent defects provisions proposed by TfL. The defects provisions in paragraph 17 are based on existing precedent and provide TfL with sufficient protection.

**Indemnity** (Paragraph 23 of the TfL's Protective Provisions)

- 1.1.11 The indemnity proposed by TfL is too wide as it does not for example exclude acts as a result of TfL's negligence or consequential loss. It also does not include necessary obligations for TfL as to the conduct of any proceedings or settlement(s) under the terms of the indemnity or obligations as to TfL's mitigation of any loss/costs/expenses. Highways England has made changes to the indemnity provision to reflect a reasonable and fair position for both parties.

**Maintenance Schedule** (Paragraph 24 of the TfL's Protective Provisions)

- 1.1.12 Highways England does not object to seeking to agree the scope of the maintenance responsibility which will fall to TfL under the provisions of the Order. The wording of these provisions has been finessed to account for the fact that no commuted sums will be payable.

**Costs** (Paragraph 26 of the TfL's Protective Provisions)

- 1.1.13 Highways England rejects TfL's provisions regarding Highways England's obligation to pay TfL's costs. Highways England should not be responsible to pay for performance of TfL's statutory duties.

**Commuted Sums** (Paragraph 27 of the TfL's Protective Provisions)

- 1.1.14 There are no provisions in relation to commuted sums in the Proposed Protective Provisions. As previously stated, Highways England does not agree to the inclusion of an obligation on Highways England to pay TfL commuted sums. Highways England is a strategic highways company 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 ("SRN").
- 1.1.15 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)). Therefore, as 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 DfT and TfL.

- 1.1.16 Furthermore, as currently drafted, the TfL's Protective Provisions appear to be seeking a commuted sum in respect of the highway assets not previously forming part of the TLRN in relation to both standard and non-standard highway assets. Given that the A12 works will include replacing the relevant section of this road almost in its entirety, the proposed commuted sums could include the entire new A12 eastbound off-slip.
- 1.1.17 It would be inappropriate to hand over the entire maintenance of the local highway to Highways England, whose statutory responsibility is to maintain the 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.

**Design Approval of Cadent Works** (Paragraph 28 of the TfL's Protective Provisions)

- 1.1.18 Given the specialist and technical nature of Work No. 29, Highways England does not agree that its ability to transfer the benefit of the Order to Cadent to carry out this essential work should be beholden to TfL's approval. TfL and Highways England are seeking to address TfL's concerns regarding gas diversion works through a side agreement. If no agreement is reached, then the safeguards in the Proposed Protective Provisions would cover Work No. 29 and ensure that TfL is consulted in respect of the works as defined in the Proposed Protective Provisions. Therefore, no separate provision is needed in this regard.

# Appendices

# Appendix A. Applicant's proposed Protective Provisions for the protection of TfL



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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

## INFRASTRUCTURE PLANNING

The M25 Junction 28 Development Consent Order 202[ ]

*Made* - - - -

202[ ]

*Coming into force* - -

202[ ]

## 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;

“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;

“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;
- (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—

- (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 assets and activities to be undertaken to enable commencement and completion 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) 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 the Detailed Information and the Other Detailed Information relating to those works.

(2) The undertaker must use reasonable endeavours to agree 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) Where, agreement cannot be reached under this paragraph, the terms of an agreement will be resolved by arbitration under article 54 (arbitration).

#### *Carrying out of the works*

**63.**—(1) Provisions must be made 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.

(2) The undertaker may not notify Transport for London under sub-paragraph (1) until either—

- (a) 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

- (b) 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 any further works required to address any safety deficiencies or defects identified as a result of the inspection.

**69.**—(1) Transport for London must 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 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 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) 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(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.** The carrying out of any remedial works required under paragraphs 69 and 70 requires the submission of such items of 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.**—(1) The undertaker must use reasonable endeavours to complete the works pursuant to paragraphs 71 and 72 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 and 72 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*

**74.** 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 to Transport for London, at nil consideration, the land and rights which are necessary for the operation and maintenance of the A12 Eastbound Off Slip Road.

#### *Indemnity*

**75.**—(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;
- (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 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.

(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.**—(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.** 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.



*Disputes*

**78.** 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) 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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STATUTORY INSTRUMENTS

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**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The M25 Junction 28 Development Consent Order 202[ ]

**BDB Pitmans LLP**  
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**[Master: 23460967.01 — 19.05.21]**

## **Appendix B. Comparison of Applicant's proposed Protective Provisions with TfL's D4 proposed Protective Provisions**

**202[ ] No. 0000**

**INFRASTRUCTURE PLANNING**

The M25 Junction 28 Development Consent Order 202[ ]

*Made* - - - -

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202[ ]

~~Appendix B~~

SCHEDULE 9

Articles 38 and 39

## TfL's Proposed Protective Provisions

### PROTECTIVE PROVISIONS

#### PART ~~5~~6

#### FOR THE PROTECTION OF TRANSPORT FOR LONDON

~~54.1.~~ 54.1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Transport for London.

#### *Definitions*

~~55.2.~~ 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 ~~as described in Schedule 1 of the Order and~~ 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 27 of this Part of this Schedule but which will exclude any costs recovered under paragraph 26(b) of this Part of this Schedule;~~

~~“Design Detailing” in relation to any Works, means any detailed design or amended detailed design relating to those Works which is approved pursuant to the Order or by the Secretary of State pursuant to requirement 3;~~ 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;

“Detailed Information” means the following drawings, specifications and other information relating to TfL Roads, which must be in accordance with the ~~Design Detailing~~ 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;
- (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~~works but is not itself subject to ~~Works~~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 457 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—

- (a) bollards and markers posts manufactured from plastic derivatives or recycled plastic/rubber;
- (b) carriageways;
- (c) cycleways;
- (d) embankments and ~~which incur maintenance costs;~~ 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 ~~setting out which parts of the authorised development~~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~~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 ~~Worksworks~~ but ~~Worksworks~~ 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;

“~~Provisional~~Take Over Certificate” means a certificate issued to certify that the ~~Worksworks~~ 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 ~~Worksworks~~ 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

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

#### *Commencement of the ~~Worksworks~~*

~~56.3.~~ 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 provide to Transport for London the Detailed Information relating to ~~the interference~~those works, and the ~~Worksworks~~ must ~~not~~ be carried out ~~except~~ in accordance with the Detailed Information submitted to Transport for London or as otherwise agreed between the undertaker and Transport for London.

~~57.4.~~—(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 assets and activities to be undertaken to enable commencement and completion of ~~Worksworks~~, 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) claims made by and against the undertaker.

(2) Any agreement completed under sub-paragraph (1) must continue in force until the completion of the ~~Worksworks~~ 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~~ Detailed Local Operating Agreement will be resolved by arbitration under article 54 (arbitration).

~~58.5.~~—(1) Before commencing the construction of, or the carrying out of any Worksworks the undertaker must provide to Transport for London the ~~Design Detailing~~ Detailed Information and the Other Detailed Information relating to those Worksworks.

(2) The undertaker must ~~not commence construction of, or the carrying out of the Works in question until approval has been given by Transport for London~~ use reasonable endeavours to the agree Other Detailed Information ~~or the Other Detailed Information has otherwise been agreed in writing between the undertaker and~~ with Transport for London acting reasonably.

(3) The Worksworks must not be constructed except in accordance with the Other Detailed Information as may be ~~approved or~~ 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 ~~approved~~ agreed or ~~disapproved it~~ disagreed with Other Detailed Information submitted by the undertaker or it has not been otherwise agreed, Transport for London is deemed to have ~~approved~~ agreed it as submitted.

~~59.6.~~—(1) The undertaker will design and construct all Worksworks affecting TfL Roads in accordance with standards contained in the appropriate parts of the ~~Design Manual for Roads and Bridges~~ (“DMRB”).

(2) ~~The Subject to sub-paragraph (3), the~~ undertaker must not commence construction of, or the carrying out of, any Worksworks 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 ~~and facilitate~~ 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) (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 Worksworks*

~~61.7.~~—(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 Worksworks, and the undertaker must give to such officer all reasonable facilities for such inspection.

(2) The testing of materials used in any ~~Works~~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 ~~has full power to~~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) ~~(3)~~—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*

~~62.8.~~—(1) The undertaker must procure that an appropriately qualified safety auditor undertakes road safety audit stages 3 and 4 on the ~~Works~~works including any ~~Works~~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) (3) Where the report of the stage 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~~environmental statement.

~~(5) (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~~environmental statement, must be undertaken by ~~and at the expense of the undertaker to the reasonable satisfaction of Transport for London.~~

~~(6) (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 ~~(5)~~(3), which programme must include timing of any closures of any part of the highway, traffic management arrangements, signage and diversion routes where ~~required.~~

~~(7) (6) The carrying out of works under sub-paragraph (5) are to be taken to be works carried under this Order~~appropriate.

~~(8) (7)~~—Where, agreement cannot be reached under this paragraph, the terms of an agreement will be resolved by arbitration under article 54 (arbitration).

#### *Carrying out of the ~~Works~~works*

~~63.~~—(1) Provisions must be made with Transport for London's reasonable requirements at the site of the ~~Works~~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~~works is to be swept as required to ensure its safe use as a public highway.

~~64.9.~~ 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.

~~65.10.~~ 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.

~~66.11.~~ 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.

~~67.12.~~ 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~~works*

~~68.13.~~—(1) When the undertaker considers that the ~~Works~~works have reached completion it must notify Transport for London and must allow Transport for London the opportunity to inspect the ~~Works and the undertaker must give proper consideration~~works to identify any ~~representations that are made by Transport for London~~defects or incomplete works.

(2) The undertaker may not notify Transport for London under sub-paragraph (1) until either—

- (a) a stage 3 safety audit has been carried out in respect of the ~~Works~~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
- (b) if the ~~Works~~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 any further works required to address any safety deficiencies or defects identified as a result of the inspection.

~~69.14.~~—(1) Transport for London must issue to the undertaker ~~a Provisional~~, on request from the undertaker a counter-signed Take Over Certificate in relation to any part of the ~~Works~~works, after completion of that part of the ~~Works if Transport for London is satisfied that the Works have~~works once a stage 3 safety audit has been ~~completed~~carried out in accordance with ~~this Part of this Schedule~~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.

~~70.15.~~ No earlier than 52 weeks from the date of issue of the ~~Provisional~~Completion Certificate, ~~Transport for London~~the undertaker must issue a ~~Final~~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 agreed by the undertaker, have been so remedied ~~such that Transport for London consider the Final Certificate may be issued;~~
- (b) ~~(b) — a stage 4 safety audit has been carried out (if a stage 4 safety audit is required in accordance with GG19 of DMRB in connection with the Works), and following proper consideration of the representations of Transport for London, any additional works,~~

~~alterations or amendments to the Works as a result of the stage 4 safety audit have been completed to the reasonable satisfaction of Transport for London;~~

- ~~(c)~~ (e) the undertaker has given Transport for London an opportunity to inspect the ~~Works~~works and has given proper consideration to any reasonable representations made by Transport for London;
- ~~(d)~~ (d) the undertaker has transferred to Transport for London any land and rights pursuant to paragraph ~~22~~74 under this Part;
- ~~(e)~~ the undertaker has paid to Transport for London any Commuted Sum due in relation to the part of the TfL Road to which the Provisional Certificate relates;
- ~~(f)~~ 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;
- ~~(e)~~ (g) the Maintenance Schedule has been ~~approved by~~agreed between Transport for London; and
- (f) ~~(h) — all costs charges, expenses payable to Transport for London pursuant to this Part have been paid. the undertaker, deemed to have been agreed under paragraph 76(3) or determined in accordance with paragraph 76(4).~~

#### *Defects*

~~71.16.~~ Where the undertaker carries out any Worksworks to any TfL Road it must make good any defects in those Worksworks notified to it by Transport for London within the period of 52 weeks after the date of the completion of the Worksworks to that area of the TfL Road to the reasonable satisfaction of Transport for London.

~~17. 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 Provisional Certificate to the reasonable satisfaction of Transport for London.~~

~~72.18.~~ The carrying out of any remedial works required under paragraphs ~~15~~69 and ~~16~~are to be regarded as works carried out under this Order.

~~73.19.~~ The carrying out of any remedial works required under paragraphs ~~15 and 16~~70 requires the submission of such items of 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.

~~74.20.~~—(1) The Worksundertaker must use reasonable endeavours to complete the works pursuant to ~~Paragraphs 17 and 18 of this Schedule must all be completed~~paragraphs 71 and 72 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 17~~paragraphs 71 and ~~18~~72 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*

~~75.21. The undertaker must, prior to the date on which~~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), ~~execute and complete a transfer and such other document(s) conferring property rights as may be necessary to Transport for London of any land and rights compulsorily acquired by the undertaker pursuant to articles~~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 to Transport for London, at nil consideration, the land and rights which are necessary for the operation and maintenance of the A12 Eastbound Off Slip Road, ~~at nil consideration.~~

#### *Indemnity*

~~76.22.~~—(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~~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;
- (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 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.

(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*

~~77.23.~~—(1) Before commencing the construction of, or the carrying out of any ~~Works~~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~~works in question until ~~approval~~the Maintenance Schedule has been ~~given by~~agreed between the undertaker and Transport for London, deemed to the Maintenance Schedule 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, ~~Transport for London~~the Maintenance Schedule is deemed to have ~~approved it~~been agreed as submitted.

~~24. Subject to paragraphs 17 to 21 of this Part of this Schedule, Transport for London shall become responsible for the future management and maintenance of those parts of the authorised development described in the Maintenance Schedule on a date agreed between the undertaker and Transport for London following completion of the Works pursuant to this Part of this Schedule.~~

### *Costs*

~~25. 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—~~

- ~~(a) participating in the design process under paragraph 6;~~
- ~~(b) getting the Highway Assets included within its road maintenance framework contracts;~~
- ~~(c) agreeing and operating the Detailed Local Operating Agreement;~~
- ~~(d) the examination or approval of the Detailed Information, Other Detailed Information, the Maintenance Schedule and the detailed design, specification and programme of Work No. 29 under this Part;~~
- ~~(e) participation in road safety audits required under this Part;~~
- ~~(f) inspecting the construction and completion of the Works including any works required by Transport for London under this Part;~~
- ~~(g) issuing the Provisional Certificate and Final Certificate required under this Part;~~
- ~~(h) carrying out any surveys which are reasonably required in connection with the construction of the Works; and~~
- ~~(i) the transfer and grant of land and rights pursuant to paragraph 22 to Transport for London.~~

### *Commuted Sum*

~~26. The undertaker must prepare a list of assets not previously forming part of the TfL Roads for which Transport for London will be responsible for maintenance following completion of the Works.~~

~~(1) The undertaker must use reasonable endeavours to agree a schedule of items on the list agreed under sub-paragraph (1) which 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, ditches, 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 signposts 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 fencing features such as noise fencing, knee rails and fences, gates;~~
- ~~(iii) barriers such as vehicle restraint barriers, pedestrian guard railing;~~
- ~~(iv) landscaping features such as planting, trees, hedging;~~
- ~~(v) sustainable drainage systems or non-standard highway drainage features such as—~~
  - ~~(aa) attenuation pond;~~
  - ~~(bb) flow control devices and attenuation storage;~~
  - ~~(cc) SuSDS including maintenance of any landscaping;~~
  - ~~(dd) oil or petrol interceptors including the disposal of contaminated waste;~~
  - ~~(ee) pumping stations and their energy charges;~~
  - ~~(ff) watercourses and swales.~~

~~(4) (2) Where the schedule prepared~~Maintenance Schedule required under sub-paragraph (2) ~~cannot be~~is not agreed, ~~the determination of the schedule will~~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).

~~(3) Following agreement of the schedule under sub-paragraph (2) or determination under sub-paragraph (3), 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 (2) or determined under sub-paragraph (3) 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 (4) including any assumptions used.~~

~~(5) Where the calculation prepared under sub-paragraph (4) cannot be agreed, the determination of the Commuted Sum will be referred to arbitration under article 54 (arbitration).~~

~~(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 (4) or determination under sub-paragraph (6).~~

#### *Work No. 29*

~~27.—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, specification and programme for such work.~~

~~(1) Work No. 29 must not be constructed except in accordance with the details as approved in accordance with sub-paragraph (1).~~

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

#### *Step In*

~~78.28.~~ 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.

#### *Disputes*

~~79.29.~~ 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) will be resolved by arbitration under article 54 (arbitration).

#### *Costs*

~~80.~~ 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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STATUTORY INSTRUMENTS

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202[ ] No. 0000

INFRASTRUCTURE PLANNING

The M25 Junction 28 Development Consent Order 202[ ]

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