

Appendix A – LEGAL IMPLICATIONS (comments from the Borough Solicitor)

- 1.1 The Council's statutory obligations in relation to highways and traffic aspects are set out at paragraphs 4.11 - 4.15 of the report. Any decision to promote a permanent traffic order in light of this Report should only be made after having had regard to its duties under the Road Traffic Regulation Act 1984 summarised at paragraph 4.11 of the report above. If any permanent Order is promoted (and then later is to be made after following the appropriate procedures), it would be promoted (and made) pursuant to the provisions of RTRA 1984 section 6 as supplemented, in particular, by section 1 and Schedule 1. Any Order could only be made if the Council decided (i) that it would be expedient to make the Order having (ii) first taken account of the report of the inquiry Inspector (if an inquiry is held). The purposes for which a RTO can be promoted (and made) are set out more fully at the end of this Appendix, but embrace (largely) considerations relating to road safety, potential for damage to the road or nearby buildings, facilitating the passage of any class of traffic (including pedestrians), preventing the use by traffic of a kind which is unsuitable having regard to the character of the road or adjoining property, preserving the character of a road where it is specially suitable for horse riders or pedestrians, preserving or improving amenity, and factors relating to the air quality strategy, and related EU obligations and International agreements.
- 1.2 The procedure for making experimental or permanent traffic orders is set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (SI 1996/2489) ("the 1996 Regulations").
- 1.3 Before making a traffic order, the authority must consult any relevant bus operator, Transport for London, the chief officer of the appropriate NHS trust (or foundation trust), the fire and rescue authority, the Freight Transport Association, the Road Haulage Association and "such other organisations (if any) representing persons likely to be affected by any provision in the order as the order-making authority thinks it appropriate to consult".
- 1.4 The authority must also consult with the chief officer of police of any area in which the road in question is situated.
- 1.5 In carrying out its public consultation, officers have gone further than the statutory consultation requirements. Where an authority carries out any consultation, including a non-statutory consultation in advance of publishing proposals to make an Order, the consultation must be properly carried out. This means that the consultation must be undertaken when proposals are still at a formative stage, the authority must give sufficient information/reasons to permit of intelligent consideration of and response to the proposal(s), must allow adequate time for consideration and response, and the results of the consultation must be conscientiously taken into account by the Council in finalising any proposals. The consultation process must be procedurally fair.

- 1.6 The 1996 Regulations also set out a number of procedural requirements such as a requirement to publicise the Council's intention to make the Order before actually making it and making a copy of the proposed order available for inspection, Public notification must also draw attention to the right to object in writing, and to the details of any public inquiry if the Council has already decided that one should be held. There are further publication/notification requirements which come into play if and when an order is made. A permanent Order can only be made after considering the objections and (where relevant) the inquiry Inspector's report.
- 1.7 In coming to any decision Cabinet Members must also comply with their duties under the Equality Act 2010, in particular the public sector equality duty under section 149 and the duty under section 29 not to discriminate when providing a public service and to make reasonable adjustments. Cabinet Members should also bear in mind relevant parts (referred to in more detail in the EIA) of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the United Nations Convention on the Rights of the Child (UNCRC). Some of those parts relate to (as regards persons with disabilities) the physical environment, transportation, personal mobility and sporting and leisure activities (UNCRPD), and (as regards children) self-reliance and active participation in the community of disabled children, standards of health, dangers and risks of environmental pollution, and recreational and leisure activities (UNCRC).
- 1.8 In summary, section 149 of the 2010 Act requires the Council, when exercising its functions, to have 'due regard' to the need to:
1. Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act (which includes conduct prohibited under section 29);
 2. Advance equality of opportunity between people who share a relevant protected characteristic and those who don't share it;
 3. Foster good relations between people who share a relevant protected characteristic and those who do not (which involves having due regard, in particular, to the need to tackle prejudice and promote understanding).
- 1.9 Under the Duty the relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion, sex, and sexual orientation. In respect of the first aim only i.e. reducing discrimination, etc the protected characteristic of marriage and civil partnership is also relevant. Having due regard to the need to 'advance equality of opportunity' between those who share a protected characteristic and those who do not includes having due regard, in particular, to: the need to remove or minimize disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; the need to take steps to meet the needs of persons who share a protected characteristic where those needs are different from the needs of persons who do not share that characteristic, and encourage those who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low. Further, section 149

provides that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities. Compliance with the duties in section 149 may involve treating some persons more favourably than others, but that is not to be taken as permitting conduct that would otherwise be prohibited under the Act (which includes breach of an equality clause or rule, or of a non-discrimination rule).

- 1.10 Paragraph 4.17 of the report provides a summary of the EIA, which is attached at Appendix E. A careful consideration of the EIA itself however is one of the key ways in which Members can show that they have carried out their duty personally to have “due regard” to the relevant matters. Members must therefore carefully consider the EIA. In considering the EIA and all other material contained in and appended to this Report, Members must bear in mind all of the parts of the public sector equality duty set out in the previous paragraph, and the duty not to discriminate and to make reasonable adjustments set out in section 29. Further, Members should bear in mind the Convention provisions
- 1.11 Where it is apparent from the analysis of the information that any of the proposed recommendations, should they be agreed, would have an adverse impact on those with protected characteristics, then any adjustments that would avoid or reduce that effect (mitigating steps) should be identified and careful consideration then given to whether and if so how they can be implemented. Members should be aware that the section 149 duty is not to achieve the objectives or take the steps set out in section 149. Rather, the section 149 duty on the authority is to bring these objectives relating to discrimination into proper consideration when carrying out its public functions. There must be a proper appreciation of the potential impact of the decision on the equality objectives set out in section 149 and of the desirability of promoting them. “Due regard” means the regard that is appropriate in all the particular circumstances in which the authority is carrying out its functions. Provided due regard is had in this way, including considering mitigation measures as described above, it is for the authority to decide, taking into account all relevant factors (which may, depending on the circumstances, include the requirement upon the Council to operate within its budget) how much weight to give to the equality implications of the decision.
- 1.12 In exercising its powers as road traffic authority, the Council is exercising a “public function”: Under section 29 of the Equality Act 2010, it must not, when exercising a public function, “do anything that constitutes discrimination, harassment or victimisation” (section 29(6)) and it must make reasonable adjustments (section 29(7)). The duty to make reasonable adjustments arises in relation to disabled persons and under section 20 of, and Schedule 2 to, the Equality Act 2010.

Road Traffic Regulation Act 1984 extracts:

In its capacity as a traffic authority within Greater London, the Council may make a TRO for controlling or regulating vehicular and other traffic (including pedestrians). Such an order may be for any of the purposes or with respect to any of the matters mentioned in Schedule 1 to the RTRA or for any of the purposes mentioned in certain parts of section 1(1) of that Act. The Council would need to be satisfied that it is expedient to make such an order.

In reverse order, the 7 purposes mentioned in s.1(1) of the RTRA are:-

- (a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or*
- (b) for preventing damage to the road or to any building on or near the road, or*
- (c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or*
- (d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or*
- (e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or*
- (f) for preserving or improving the amenities of the area through which the road runs; or*
- (g) for any of the purposes specified in paragraphs (a) to (c) of [s.87(1)] of the Environment Act 1995 (air quality)."*

There are 22 purposes and matters mentioned in Schedule 1 to the RTRA. They are:

- 1. For prescribing the routes to be followed by all classes of traffic, or by any class or classes of traffic, from one specified point to another, either generally or between any specified times.*
- 2. For prescribing streets which are not to be used for traffic by vehicles, or by vehicles of any specified class or classes, either generally or at specified times.*
- 3. For regulating the relative position in the roadway of traffic of differing speeds or types.*
- 4. For prescribing the places where vehicles, or vehicles of any class, may not turn so as to face in the opposite direction to that in which they were proceeding, or where they may only so turn under conditions prescribed by the order.*
- 5. For prescribing the conditions subject to which, and the times at which, articles of exceptionally heavy weight or exceptionally large dimensions may be carried by road.*

6. *For prescribing the number and maximum size and weight of trailers which may be drawn on streets by vehicles, or by vehicles of any class, either generally or on streets of any class or description, and for prescribing that a man should be carried on the trailer or, where more than one trailer is drawn, on the rear trailer for signalling to the driver.*
7. *For prescribing the conditions subject to which, and the times at which, articles may be loaded on to or unloaded from vehicles, or vehicles of any class, on streets.*
8. *For prescribing the conditions subject to which, and the times at which, vehicles, or vehicles of any class, delivering or collecting goods or merchandise, or delivering goods or merchandise of any particular class, may stand in streets, or in streets of any class or description, or in specified streets.*
9. *For prescribing the conditions subject to which, and the times at which, vehicles, or vehicles of any class, may be used on streets for collecting refuse.*
10. *For prescribing rules as to precedence to be observed as between vehicles proceeding in the same direction, in opposite directions, or when crossing.*
11. *For prescribing the conditions subject to which, and the times at which, horses, cattle, sheep and other animals may be led or driven on streets within Greater London.*
12. *For requiring the erection, exhibition or removal of traffic notices, and as to the form, plan and character of such notices.*
13. *Broken down vehicles.*
14. *Vehicles, or vehicles of any class, when unattended.*
15. *Places in streets where vehicles, or vehicles of any class, may, or may not, wait, either generally or at particular times.*
16. *Cabs and hackney carriages not hired and being in a street elsewhere than on a cab rank.*
17. *For restricting the use of vehicles and animals, and sandwichmen and other persons, in streets for the purposes of advertisement of such a nature or in such a manner as is to be likely to be a source of danger or to cause obstruction to traffic.*
18. *The lighting and guarding of street works.*

19. The erection or placing or the removal of any works or objects likely to hinder the free circulation of traffic in any street or likely to cause danger to passengers or vehicles.

20. Queues of persons waiting in streets.

21. Priority of entry to public vehicles.

22. For enabling any police, local or other public authority to do anything which under the order a person ought to have done and has failed to do, and to recover from the person so in default, summarily as a civil debt, the expenses of doing it.