

Issue Specific Hearing 1 (ISH1)

Thursday 12 September 2024

Supplementary Agenda Additional Questions

The ExA has decided to hold an early hearing to discuss the draft Development Consent Order (DCO) to gain further understanding and ask questions on the powers sought by the Applicant from its reading of the draft DCO so far.

In preparation for this Hearing, the ExA has a number of questions which it considers require relatively straightforward responses, clarification and/ or the submission of additional information/ evidence. Rather than use the time at the Hearing to get this information verbally, the ExA has listed these questions in the table below and would ask that responses be submitted at **Deadline 1, Tuesday 24 September 2024**. If anyone considers that the ExA need to explore these matters orally, then there will be the opportunity to raise this with the ExA during the Hearing in Item 2 of the agenda.

The questions below are based on the draft DCO version P02 [PD1-005] dated 28 August 2024. Please note that the ExA is required to submit a draft DCO with its report to the Secretary of State regardless of its recommendation. Therefore, the questions and comments below are made on a without prejudice basis.

Unless stated, where drafting in the draft DCO is suggested to be added in the tables these have been shown in **bold** and where drafting has been suggested to be deleted, the relevant text is shown as a ~~strikethrough~~.

Number	Subject	Response by	Question/ Clarification
CONTENTS AND PREAMBLE			
ISH1.C&P.01	Drafting	Applicant	<p>Page 5, second paragraph</p> <ol style="list-style-type: none"> To improve precision, should the following wording be added after 'panel': 'of two members ("the panel")'? To improve precision, should the following wording replace '(appointed by the Secretary of State)': 'appointed by the Secretary of State pursuant to section 61 and 65 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act...'

Number	Subject	Response by	Question/ Clarification
ARTICLES			
Part 1 - Preliminary			
ISH1.A.01	Drafting	Applicant	<p>Article 2 – Interpretation Article 2 provides interpretation for the following documents which would be certified by the Secretary of State under article 41 and listed in Schedule 10. These include the “book of reference”, “crown land plans”; “engineering drawings and sections”; “environmental statement”; “important hedgerow plans”; “the land plans”; “streets, rights of way and access plans”; and “works plans”.</p> <p>Could the precision of the drafting of each of these interpretations be improved by inserting the following wording after ‘for the purposes of this Order’: ‘under article 41 (certification of plans and documents, etc.)’? If so, please amend accordingly or explain why this is not necessary.</p>
ISH1.A.02	Drafting	Applicant	<p>Article 2 – Interpretation ‘Secretary of State’ is referred to numerous times within the Order but is not defined. Should a definition be provided? If not, explain why not.</p>
ISH1.A.03	Clarification	Applicant	<p>Article 2 – “authorised development” What is ‘any other development authorised by this Order’ intended to cover and why is it required for this proposal?</p>
ISH1.A.04	Drafting	Applicant	<p>Article 2 – “book of reference” Should the word ‘and’ be added after ‘(documents to be certified)’?</p>
ISH1.A.05	Drafting	Applicant	<p>Article 2 – “classification of road plans” Should the word ‘and’ be added after ‘(documents to be certified)’?</p>
ISH1.A.06	Clarification	Applicant	<p>Article 2 – “bridleway” Can you explain why ‘includes a right of way on pedal cycles’ has been included?</p>
ISH1.A.07	Drafting	Applicant	<p>Article 2 – “electronic transmission” Should a definition for ‘electronic communications network’ be added, such as the following wording after sub-paragraph (b): ‘and in this definition ‘electronic communications network’ has the same meaning as in section 32(1) (meaning of electronic</p>

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			<p>communications networks and services) (add footnote) of the Communications Act 2003’?</p> <p>If not, why not?</p> <p>If so, should the following footnote also be added: ‘2003 c. 21. Section 32(1) was amended by S.I. 2011/1210’?</p>
ISH1.A.08	Clarification	Applicant	<p>Article 2 – “maintain”</p> <p>Explain what ‘improve’ and ‘reconstruct’ would cover and why this is required given that it could give powers for quite wide-ranging works.</p>
ISH1.A.09	Drafting	Applicant	<p>Article 2 – “relevant planning authority”</p> <p>To improve precision, should the definition be expanded to refer to ‘Bury Metropolitan Borough Council’ (BMBC) as being the relevant planning authority noting that all of the land within the Order Limits is located within BMBC’s area, along with a caveat to cover any potential future name change? If not, explain why not.</p>
ISH1.A.10	Drafting	Applicant	<p>Article 2 – “statutory undertaker”</p> <p>Should this be expanded to also include reference to section 138(4A) of the 2008 Act?</p>
ISH1.A.11	Drafting	Applicant	<p>Article 2 – “trunk road”</p> <p>In criterion (a), are the references to (d) and (e) supposed to refer to footnotes? If so, please add.</p>
ISH1.A.12	Drafting	Applicant	<p>Article 2 – subparagraph (6)</p> <p>To improve precision, should the following wording be added: ‘References in this Order to any statutory body include that body’s successor body or bodies as from time to time having jurisdiction over the authorised development’?</p>
Part 2 – Principal Powers			
ISH1.A.13	Clarification	Applicant	<p>Article 6(1)(a) – Limits of deviation</p> <p>The works plans [AS-006] referred to in paragraph (1)(a) identifies in the ‘Key’ to each of the plans limits of deviation applying to ‘Highway Work’, ‘Scheme Gantry’ and ‘Utility Diversion’. Please clarify, what would ‘Highway Works’ include?</p>

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ISH1.A.14	Drafting	Applicant	Article 8(1)(b) – Consent to transfer benefit of Order The paragraph uses the term ‘the grantee’. In other made DCOs the usual term is ‘the lessee’. Please provide further detail to explain why ‘grantee’ is considered more appropriate drafting or amend drafting to refer to ‘lessee’.
ISH1.A.15	Clarification	Applicant	Article 9 – Planning permission The final part of this article states that the carrying out of such development also ‘does not prevent the remainder of the authorised development from being implemented’. Please update the Explanatory Memorandum to explain the purpose of this addition and why it is required.
Part 3 – Streets			
ISH1.A.16	Drafting	Applicant	Article 10(1)(a) – Street Works Should the sub-paragraph be expanded with the following words to improve precision: ‘Break up or open the street, or any sewer, drain or tunnel within or under it;’? Please clarify and amend accordingly.
ISH1.A.17	Drafting	Applicant	Article 10(3) – Street Works Should the reference to article 13 refer to article 11? If so, please amend accordingly.
ISH1.A.18	Drafting	Applicant	Article 11(1)(b) – Application of the 1991 Act The footnote for (a) refers to section 184 as opposed to section 64 referred to in paragraph (1)(b). Is the wording in footnote (a) correct?
ISH1.A.19	Clarification	Bury Council	Article 11(3) – Application of the 1991 Act Paragraph (3) seeks to disapply several sections of the New Roads and Street Works Act 1991, as amended by the Traffic Management Act 2004. Please clarify if you are satisfied that these sections can be disapplied and if not, why not?
ISH1.A.20	Drafting	Applicant	Article 13(1)(b) – Classification of roads etc. Should the reference to ‘Schedule 3’ instead refer to ‘Schedule 4’? If so, please amend accordingly.

Number	Subject	Response by	Question/ Clarification
ISH1.A.21	Drafting	Applicant	<p>Article 13(2) – Classification of roads etc. To improve precision and for consistency with the approach taken in other paragraphs, such as paragraph (1), should the following wording be added in bold in paragraph (2)? '...described in Part 1 (special roads) and of Schedule 3 (classification of roads, etc.) have been completed and are open to traffic–' If so, please amend accordingly.</p>
ISH1.A.22	Clarification	Applicant	<p>Article 13(3) – Classification of roads etc. Part 2 of Schedule 3 does not identify any unclassified roads on the scheme. Could you therefore explain why the inclusion of this paragraph is necessary?</p>
ISH1.A.23	Drafting	<ol style="list-style-type: none"> Applicant Bury Council 	<p>Article 13(4)(b) – Classification of roads etc.</p> <ol style="list-style-type: none"> In order to improve precision, should the paragraph be altered as follows: 'such date as soon as reasonably practicable after following completion of the construction of the public right of way as may be agreed by between the undertaker and the local highway authority'? If so, please amend accordingly. Do Bury Council consider it necessary for paragraph 4(b) to be expanded by specifying that any agreement should be made in writing by the local highway authority? If so, please explain why and if not, explain why not.
ISH1.A.24	Drafting	Applicant	<p>Article 14(1) – Temporary closure and restriction of use of streets For precision, should paragraph (1)(a) be expanded with the following words added in bold: 'Divert the traffic, or a class of traffic, from the street; and...' If so, please amend accordingly.</p>
ISH1.A.25	Clarification	Applicant	<p>Article 14(4) – Temporary closure and restriction of use of streets</p> <ol style="list-style-type: none"> Clarify which streets the undertaker is the street authority for. Why is the inclusion of 'save as to streets in respect of which the undertaker is the street authority...' necessary given that the paragraph covers streets in which the undertaker is not the street authority and the undertaker would presumably have their own powers to temporarily close, alter, divert or restrict any street under their undertaking?

Number	Subject	Response by	Question/ Clarification
ISH1.A.26	Clarification	Bury Council	Article 14(6) – Temporary closure and restriction of use of streets Is the 28 day period specified for issuing a decision of an application for consent a sufficient period of time? If not, explain why not and what you consider an appropriate period of time for issuing a decision would be.
ISH1.A.27	Drafting	Applicant	Article 14 – Temporary closure and restriction of use of streets Should an additional paragraph be added to the end of this article requiring any application submitted under paragraph (4) to be accompanied by a statement advising of the provisions of paragraph (6), similar to that added to Article 17(12)? If not, explain why not. If so, noting that the Secretary of State added a similar provision under Article 16(7) of the recently made M3 Junction 9 DCO, should the same wording used in that article be added to and adapted to the draft DCO, ie: ‘An application for consent under paragraph (4) must be accompanied by a letter informing the street authority— (a) of the period mentioned in paragraph (6); and (b) that if they do not respond before the end of that period, consent will be deemed to have been granted’. If not, explain why not.
ISH1.A.28	Drafting	Applicant	Article 15 – Permanent stopping up, restriction of use of streets, public rights of way and private means of access Is reference to private means of access in the title necessary given that none are identified in schedule 4? If so, please explain why.
ISH1.A.29	Drafting	Applicant	Article 15(1) – Permanent stopping up, restriction of use of streets, public rights of way and private means of access Should paragraph (1) be expanded with the following wording highlighted in bold at the end of the sentence after ‘Schedule’ to improve precision: ‘and identified on the streets, rights of way and access plans’? If so, please amend accordingly or explain why this is not necessary.
ISH1.A.30	Drafting	Applicant	Article 15(3) – Permanent stopping up, restriction of use of streets, public rights of way and private means of access To improve precision, should the paragraph be expanded to include the following wording highlighted in bold:

Number	Subject	Response by	Question/ Clarification
			'(3) Where a street specified in column (1) of Part 1 of Schedule 4 has been stopped up under this article–...'?
ISH1.A.31	Drafting	Applicant	Article 16 – Access to works Should 'layout' be changed to ' lay out ' in the first line? If not, explain why.
ISH1.A.32	Drafting	Applicant	Article 17(12) – Traffic regulation Should the wording in paragraph (12) be amended to conform with that queried in ISH1.A.27 above and used in article 20(12) in the M3 Junction 9 DCO? If not, explain why not.
Part 4 – Supplemental Powers			
ISH1.A.33	Drafting	Applicant	Article 18(4) – Discharge of water Should the following words highlighted in bold be added to paragraph (4) to improve precision: 'The undertaker must not make any opening into any public sewer or drain pursuant to paragraph (1) except–...'? If so, please amend accordingly or explain why this is not necessary.
ISH1.A.34	Drafting	1. Applicant 2. Environment Agency and Bury Council	Article 18(5) – Discharge of water 1. Paragraph 5 refers to 'main river' although no definition is provided as to what this includes. Should the following definition highlighted in bold be added to paragraph (8) after sub-paragraph (b) to improve precision: “main river” means watercourses as defined under section 113(1) of the Water Resources Act 1991 and shown as such on the statutory main river maps held by the Environment Agency and the Department for Environment, Food and Rural Affairs.’? If so, please amend accordingly or explain why this is not necessary. 2. Can the Environment Agency and Bury Council provide any comments on this suggestion?
ISH1.A.35	Clarification	Applicant	Article 18(8)(a) – Discharge of water Please explain why it is necessary to include reference to Homes England, joint planning board and urban development corporation in paragraph (8)(a)?
ISH1.A.36	Clarification	Environmental Agency and Bury Council	Article 18(9) – Discharge of water Is the 28 day period specified for issuing a decision of an application for consent a sufficient period of time? If not, explain why not and what you consider an appropriate period of time for issuing a decision would be.

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ISH1.A.37	Drafting	Applicant	Article 18(10) – Discharge of water Should the wording in paragraph (12) be amended to conform with that queried in ISH1.A.27 above and used in article 21(8) in the M3 Junction 9 DCO? If not, explain why not.
ISH1.A.38	Drafting	Applicant	Article 19(3) – Protective work to buildings To improve precision, should the following wording highlighted in bold be added? 'For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1)...'? If so, please amend accordingly or explain why this is not necessary.
ISH1.A.39	Clarification	Applicant	Article 19(5) – Protective work to buildings In the absence of any reasoning provided in the Explanatory Memorandum [APP-015, paragraph 5.51], please explain why, aside from any precedent in other made DCO's, a 14 day period has been specified for serving notice on owners and occupiers and why this is reasonable?
ISH1.A.40	Clarification	Applicant	Article 20(2) – Authority to survey and investigate the land 1. In the absence of any reasoning provided in the Explanatory Memorandum [APP-015, paragraph 5.52], please explain why, aside from any precedent in other made DCO's, a 14 day period has been specified for serving notice on owners and occupiers and why this is reasonable? 2. In order to improve precision, should 'at least' be replaced with ' no less than '? If so, please amend accordingly or explain why this is not necessary. 3. For precision and reasonableness, should the paragraph be expanded to specify that the notice that is required to be served must provide details of the nature of the survey or investigation that the undertaker intends to carry out? If so, please amend accordingly or explain why this is not necessary.
ISH1.A.41	Drafting	Applicant	Article 20(7) – Authority to survey and investigate the land Should the wording in paragraph (7) be amended to conform with that queried in ISH1.A.27 above and used in article 23(7) in the M3 Junction 9 DCO? If not, explain why not.

Number	Subject	Response by	Question/ Clarification
Part 5 – Powers of Acquisition and Possession of Land			
ISH1.A.42	Drafting	Applicant	<p>Article 21(2) – Compulsory acquisition of land</p> <ol style="list-style-type: none"> Should the following words highlighted in bold be added: ‘This article is subject to paragraph (2) of article 24 (compulsory acquisition of rights and imposition of restrictive covenants), paragraph (9) of article 30...’? If so, please amend accordingly. Should reference also be made to articles 22, 23 and 32(1)(a) to improve precision? If not, please explain why not.
ISH1.A.43	Drafting	Applicant	<p>Article 23(1)(a) – Time limit for exercise of authority to acquire land compulsorily</p> <p>Should the following word highlighted in bold be added: ‘Part 1 (compulsory purchase under the Acquisition of Land Act 1946)’...? If so, please amend accordingly.</p>
ISH1.A.44	Drafting	Applicant	<p>Article 24(1) – Compulsory acquisition of rights and imposition of restrictive covenants</p> <ol style="list-style-type: none"> Should the word ‘such’ be added after ‘impose’ in the second line to improve precision ie ‘or impose such restrictive covenants...’? If so, please amend according and if not, please explain why not.
ISH1.A.45	Clarification	Applicant	<p>Article 24(1) and (5) – Compulsory acquisition of rights and imposition of restrictive covenants</p> <p>In the absence of any reasoning provided in the Explanatory Memorandum [APP-015, paragraph 5.60], please explain who ‘any other person’ would extend to and why is it needed?</p>
ISH1.A.46	Clarification	Applicant	<p>Article 24(5) – Compulsory acquisition of rights and imposition of restrictive covenants</p> <p>Please provide justification for the inclusion of this paragraph (particularly if a novel provision), the full extent of what the powers sought would cover, why it is required and why it is necessary. Or signpost to where the above requested information is provided in the Explanatory Memorandum [APP-015].</p>
ISH1.A.47	Drafting	Applicant	<p>Article 25(1), (3) and (4) – Private rights over land</p> <p>Does the wording of these paragraphs need to be expanded to include reference to restrictions as well as private rights ie ‘all private rights and restrictions over land...’?</p>

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ISH1.A.48	Clarification	Applicant	Article 25(7)(a) – Private rights over land For precision, should the word 'it' be replaced with 'the land' in sub-paragraphs (ii), (iii) and (iv)?
ISH1.A.49	Drafting	Applicant	Article 25(8)(b) – Private rights over land For precision, should the word 'it' be replaced with 'the agreement' before 'is effective, ie 'it the agreement is effective in respect of...'?
ISH1.A.50	Drafting	Applicant	Article 26(1) – Modification of Part 1 of the 1965 Act For precision should the title of Part 1 of the Act be quoted in full eg: '(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act...'?
ISH1.A.51	Clarification	Applicant	Article 26(5)(b) – Modification of Part 1 of the 1965 Act Should reference also be made to Article 20 (Authority to survey and investigate the land) in the list of articles referred to under Part 4 Interpretation?
ISH1.A.52	Clarification	Applicant	Article 27(4) – Application of the 1981 Act 1. Please confirm whether paragraph (4) is a bespoke paragraph and whether there is any precedent for its inclusion in other made DCO's? 2. Do paragraphs 5.72 and 5.73 in the Explanatory Memorandum relate to this paragraph?
ISH1.A.53	Clarification	Applicant	Article 30(1)(c) – Temporary use of land for carrying out the authorised development 1. Please clarify whether the referred to 'buildings' and 'structures' would also be temporary? If so, should the word 'temporary' be added for precision? 2. Please explain what buildings or structures are proposed and why inclusion of these references is required / necessary for the Proposed Development?
ISH1.A.54	Clarification and drafting	Applicant	Article 30(1)(d) – Temporary use of land for carrying out the authorised development 1. For precision, should the word 'mentioned' be replaced with 'specified', a comma (,) added after '(authorised development)', and the word 'undertake' added after 'Schedule 7 or...'? 2. Please confirm why reference to both the works in Schedule 1 (authorised development) and also in column (3) of schedule 7 are

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			included as it would appear they cover the same matter? For precision, should reference only be made to column (3) of schedule 7?
ISH1.A.55	Clarification	Applicant	Article 30(2) – Temporary use of land for carrying out the authorised development Aside from precedent in any other made DCO's, please provide justification for the minimum 14 day period specified and why this differs from the 28 day period specified in Article 31(3)?
ISH1.A.56	Drafting	Applicant	Article 30(3) – Temporary use of land for carrying out the authorised development For precision, should the word 'may' be replaced with 'must' in order to avoid any element of ambiguity? If so, please amend accordingly or if not, explain why not.
ISH1.A.57	Clarification	Applicant	Article 30(12) – Temporary use of land for carrying out the authorised development In the absence of any justification in the Explanatory Memorandum, please explain why the undertaker would need to take temporary possession of any land more than once?
ISH1.A.58	Drafting	Applicant	Article 31(9) and (10) – Temporary use of land for maintaining the authorised development Should the reference to paragraph (6) refer to paragraph (8)? If so, please amend accordingly.
ISH1.A.59	Drafting	Applicant	Article 31(9) – Temporary use of land for maintaining the authorised development To improve precision, should the words 'as if it were a dispute' be added after 'is to be determined'?
ISH1.A.60	Drafting	Applicant	Article 33(2)(a) – Apparatus and rights of statutory undertakers in stopped up streets For precision, should the word 'statutory' be added before 'utility'? If so, please amend accordingly.
ISH1.A.61	Drafting	Applicant	Article 34(2) – Crown Rights For precision, should the words 'which is' be added before 'for the time being' ie: '...any Crown land (as defined in the 2008 Act) which is for the time being held...'? If so, please amend accordingly.

Number	Subject	Response by	Question/ Clarification
ISH1.A.62	Drafting	Applicant	Article 34(3) – Crown Rights Should the semi-colon (;) after ‘conditions’ be either removed or replaced with a colon (,)?
ISH1.A.63	Drafting	Applicant	Article 35(3) – Recovery of costs of new connections For precision should the title of Part 3 of the Act be quoted in full eg ‘Part 3 (street works in England and Wales) of the 1991 Act applies’?
ISH1.A.64	Drafting	Applicant	Article 35(4) – Recovery of costs of new connections For precision, should the word ‘paragraph’ be changed to ‘ article ’? If so, please amend accordingly.
Part 6 – Operations			
ISH1.A.65	Drafting	Applicant	Article 36(3) – Felling or lopping of trees and removal of hedgerows Should a full stop (.) be added to the end of the sentence?
Part 7 – Miscellaneous and General			
ISH1.A.66	Drafting	Applicant	Article 41(2) – Certification of plans and documents, etc. For precision, should the word ‘reflect’ be changed to ‘accord with’ ie ‘...set out in Schedule 10 requires to be amended to reflect accord with the terms of...’? If so, please amend accordingly or if not, explain why not.
ISH1.A.67	Clarification	Applicant	Article 45 – Application, disapplication and modification of legislative provisions Whilst this is a standard article in other DCO’s, in this case is reference to ‘application’ needed in the title given that the three proposed provisions appear to either disapply or modify legislative provisions?
ISH1.A.68	Clarification	Applicant	Article 45(2) – Application, disapplication and modification of legislative provisions In the absence of any justification provided in the Explanatory Memorandum [APP-015], can you explain why this paragraph is necessary and clarify what buildings are proposed in the Authorised Development?
ISH1.A.69	Clarification	Applicant	Article 45(3) – Application, disapplication and modification of legislative provisions In the absence of any justification provided in the Explanatory Memorandum [APP-015], can you explain why this power is needed and what it would do?

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Parts 1 to 7 (General Queries)			
ISH1.A.70	Drafting	Applicant	Articles 14(5), 19(11), 20(5), 25(5), 29(4) To improve precision, should the words (highlighted in bold) ' as if it were a dispute ' be added after 'in case of dispute,' where it appears in each article? If so, please amend each article accordingly or explain why this is not necessary.
ISH1.A.71	Clarification	Bury Council	Article 14(6), Article 17(11), Article 20(6) Is the 28 day period stipulated for determination of an application for consent under these paragraphs a sufficient period of time? If not, why not and what would be an appropriate determination period?
ISH1.A.72	Clarification	Applicant	Article 46 Paragraphs 5.111 and 5.112 of the Explanatory Memorandum [APP-015] refers to Article 46 - Amendment of legislation but this has not been included in the draft DCO. Please confirm whether this article should be included and if so, update the draft DCO accordingly. Or signpost to where this article is included.
Schedule 1 – Authorised Development			
ISH1.S1.01	Clarification	Applicant	Work No. 02, 03, 07, 18, 22 and 30 The wording within each of the Work Nos. in Schedule 1 refers to 'Gantry Type 1', 'Gantry Type 4' etc followed by the relevant sheet number although the work plans refers to 'TYPE 1', 'TYPE 3' etc and omits the word 'Gantry'. Should either the Work Plans [AS-006] or the wording in Schedule 1 be updated so that consistent wording is used? If not, why not?
ISH1.S1.02	Drafting	Applicant	Work No. 02, 03, 22, 30 Should reference to 'improvement' be changed to 'widening' or also include 'realignment' as the term improvement could be considered subjective? If this is not required, explain why.
ISH1.S1.03	Drafting	Applicant	Work No. 06 Should this refer to 'sheets 1 and 2' as opposed to just 'sheet 1'?
ISH1.S1.04	Clarification	Applicant	Work No. 07 Should the description be expanded to include the full scope of works required to form the slip road ie number of lanes to carriageways, earthworks required to form the embankment and landscaping to the embankment? If not, why not?

Number	Subject	Response by	Question/ Clarification
ISH1.S1.05	Clarification	Applicant	Work No. 13, 21 and 27 Should the description of these works be expanded to include reference to other works required as part of the construction of the ponds, such as that included in Work No. 37?
ISH1.S1.06	Clarification	Applicant	Work No. 25 Should the description of works be more specific about what the proposed 'improvements' to the roundabout are? If not, why not?
ISH1.S1.07	Clarification	Applicant	Work No. 40 Does the netting proposed to the boundary of the golf course need to be more accurately defined, such as details of height, or should the netting be included as a separate work no.?
ISH1.S1.08	Clarification	Applicant	Schedule 1 – Further Development In paragraph (a) under 'further development', reference is made to increasing or reducing the width of any kerb. A kerb is a physical object of set dimensions and so cannot be changed in the same way that a width of a verge or footpath can be changed. Please explain why the inclusion of 'kerb' is necessary.
ISH1.S1.09	Clarification	Applicant	Schedule 1 – Further Development In paragraph (c), why has 'open to all traffic' and 'restricted byways' been included and what would it entail?
ISH1.S1.10	Clarification	Applicant	Schedule 1 – Further Development 'Fencing' is included in both sub-criteria (d) and (f). Explain why it is necessary to include reference to this work twice and if this is not required, should it be removed from one of the sub-criteria?
ISH1.S1.11	Clarification	Applicant	Schedule 1 – Further Development Paragraph (i) appears to be a bespoke paragraph. Please confirm whether this is the case, why it is required and what the works would entail.
ISH1.S1.12	Clarification	Applicant	Schedule 1 – Further Development Explain why paragraph (j) is required, particularly as these works are also included under Article 10(1)(e)?
ISH1.S1.13	Clarification	Applicant	Schedule 1 – Further Development Explain why paragraph (m) is required given the powers sought under Article 36 (Felling of trees and hedgerows)?

Number	Subject	Response by	Question/ Clarification
ISH1.S1.14	Clarification	Applicant	Schedule 1 – Further Development Aside from any precedence in other made DCO's, please provide sufficient justification for the inclusion of 'works of whatever nature' in paragraph (q).
Schedule 2 – Requirements (R)			
ISH1.S2.01	Clarification	Applicant	Requirements – General (parts) The term 'part' is referred to in a number of requirements eg R4, R5, R8, R9 and R10 but does not appear to be defined anywhere. Should a definition be provided in paragraph 1? If not, please explain why not and provide further details on what is meant by 'part'.
ISH1.S2.02	Drafting	Applicant	Requirements – General (matters related to its functions) Several requirements include the phrase 'on matters related to its functions' in relation to where the Secretary of State is required to consult with the relevant planning and/or highway authority and the Environment Agency. Explain why such drafting is necessary and to streamline drafting should it be deleted?
ISH1.S2.03	Clarification	Applicant	Requirements – General (substantially in accordance with) Some requirements eg R4 and R10 refer to certain matters having to be 'substantially in accordance with'. Does a definition need to be provided to help differentiate from other terms referred to, such as 'in accordance with' or 'reflect'? If not, explain why not.
ISH1.S2.04	Clarification	Applicant	Requirement 1 – Interpretation The definition for 'Ecological Clerk of Works' (ECoW) states that it ' <i>has the meaning given in the first iteration EMP</i> '. However, the first iteration of the Environmental Management EMP [APP-127] only sets out the responsibilities for the ECoW on page 11 rather than providing a definition. Please provide a more precision definition.
ISH1.S2.05	Clarification	Applicant	Requirement 3 – Detailed design Reference is made to 'general arrangement plans' although no definition is provided. Please provide a definition or explain why one is not required.
ISH1.S2.06	Clarification	Applicant	Requirement 4(3) – Environmental Management Plan Reference is made to the EMP being written in accordance with 'ISO14001' although no definition is provided. Please provide a definition or explain why one is not required.

Number	Subject	Response by	Question/ Clarification
ISH1.S2.07	Drafting	Applicant	<p>Requirement 4(3)(a) – Environmental Management Plan</p> <p>The current drafting requires the second iteration EMP to ‘reflect the mitigation measures set out in the REAC...’. Such drafting is not precise. Please delete ‘reflect’ and replace with either ‘incorporate’ or ‘incorporate and where necessary update the mitigation measures...’ to improve precision or explain why this would not be appropriate.</p>
ISH1.S2.08	Drafting	Applicant	<p>Requirement 5(2) – Landscaping</p> <ol style="list-style-type: none"> 1. To improve precision, should ‘landscaped’ be changed to either ‘implemented’ or ‘planted’? 2. To improve the structure of the requirement as drafted, should sub-paragraph (2) be moved to follow sub-paragraph (4)?
ISH1.S2.09	Drafting	Applicant	<p>Requirement 5(3) – Landscaping</p> <ol style="list-style-type: none"> 1. For precision, should the words ‘prepared under sub-paragraph (1)’ be added after ‘The landscaping scheme...’? 2. The current drafting requires the landscaping scheme to ‘reflect the mitigation measures set out in the REAC...’. Such drafting is not precise. Please delete ‘reflecting’ and replace with either ‘incorporate’ or ‘be in accordance with’ to improve precision or explain why this would not be appropriate. 3. Given the size of the environmental statement, provide a more precise reference for the illustrative environmental masterplan referred to.
ISH1.S2.10	Clarification and drafting	Applicant and Bury Council	<p>Requirement 5(4) – Landscaping</p> <ol style="list-style-type: none"> 1. As diverted Public Rights of Way and maintenance tracks are proposed and potentially boundary treatment, does an additional criterion need to be added requiring details of hard landscaping and materials including colour, boundary treatment of any fences and walls, structures and street furniture? 2. In criterion (c), does reference need to be made for the scheme to be in accordance with the Arboricultural Impact Assessment [APP-086]? 3. Landscaping can often require significant earthworks and changes to levels. Therefore, should the list in criterion (d) be expanded to incorporate details to show this, such as (but not limited to) details of changes to existing land levels, gradients for areas of permanent

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			<p>earthworks (such as sides of northern loop), and/or cross sections to illustrate slope profiles where embankments are formed?</p> <p>4. Should criterion (e) be reworded and expanded to include reference to 'maintenance' ie 'timetables for the implementation and maintenance for all landscaping works'?</p>
ISH1.S2.11	Drafting	Applicant	<p>Requirement 5(5) – Landscaping</p> <p>1. 'Landscape and Ecological Management and Monitoring Plan' is referred to but does not appear to be defined. Please add a definition or signpost to where this is included.</p> <p>2. As currently drafted the paragraph would allow the undertaker to use either the British Standards (BS) or other recognised codes of good practice ie work could be carried out under codes of good practice but not comply with the relevant BS. Please replace 'or' with 'and' to accord with the content of paragraph N.5.11 of the outline LEMP [APP-141].</p>
ISH1.S2.12	Clarification	Bury Council and any other Interested Parties.	<p>Requirement 5(6) – Landscaping</p> <p>Are parties satisfied with the 5 year period specified? If not, what would a sufficient period of time be and why?</p>
ISH1.S2.13	Clarification	Applicant and Bury Council	<p>Requirement 5 – Landscaping</p> <p>Does an additional sub-paragraph need to be added requiring the authorised development being operated and maintained in accordance with the Third Iteration EMP to ensure that the contents of paragraphs N.1.5 and N.6.3 of Appendix N Outline Landscape and Ecology Management Plan of the First Iteration EMP [APP-141] would be secured? If not, why not?</p>
ISH1.S2.14	Drafting	Applicant	<p>Requirement 6(3) – Contaminated land and groundwater</p> <p>To improve precision, should the sub-paragraph be altered with the following wording deleted and added as follows:</p> <p>'Remediation must be carried out in accordance with the approved written scheme approved under sub-paragraph (2)'?</p>
ISH1.S2.15	Clarification	Applicant, Bury Council and Natural England	<p>Requirement 7 – Protected species</p> <p>1. Paragraph N.3.8 of Appendix N Outline Landscape and Ecology Management Plan of the First Iteration EMP [APP-141] states that pre-construction surveys for protected species are required by R7 of the dDCO yet the wording of R7 does not include this. Should an additional</p>

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			<p>paragraph be added at the beginning of the requirement to secure this? If not, explain why not.</p> <p>2. If a paragraph is inserted to incorporate the above, should the wording in sub-paragraph (1) be expanded to include the following: ‘In the event that the pre-construction survey prepared under sub-paragraph (1) identified the presence of protected species, or any protected species which were not previously identified in the environmental statement...’</p>
ISH1.S2.16	Drafting	Applicant and Bury Council	<p>Requirement 7(2) – Protected species</p> <p>1. Applicant: For precision, should the word ‘after’ be changed to ‘following’ before ‘consultation with Natural England’?</p> <p>2. Do Bury Council also wish to be consulted on the written scheme of protection and mitigation measures? If so, explain why.</p>
ISH1.S2.17	Drafting	Applicant	<p>Requirement 7(4) – Protected species</p> <p>For precision, should the word ‘prepared’ be changed to ‘approved’ after ‘written scheme’?</p>
ISH1.S2.18	Clarification	Applicant	<p>Requirement 8(1) – Surface and foul water drainage</p> <p>1. Clarify if any provision for foul drainage is proposed and if not, why is reference to it required?</p> <p>2. If a foul drainage system is required, should the relevant sewerage undertaker also be included as a consultee? If not, explain why not.</p> <p>3. As currently drafted, this includes the phrase ‘reflecting the mitigation measures set out in the REAC...’. Such drafting is not precise. Please delete ‘reflecting’ and replace with ‘incorporating’ or ‘in accordance with’ or explain why this would not be appropriate.</p> <p>4. ‘Drainage strategy report’ is referred to but does not appear to be defined. Please add a definition or signpost to where this is included.</p>
ISH1.S2.19	Drafting	Applicant	<p>Requirement 8(2) – Surface and foul water drainage</p> <p>For precision and consistency with requirements 5, 9 and 10, should the wording ‘must be constructed with’ be replaced with ‘must be carried out in accordance with’? If not explain why not.</p>
ISH1.S2.20	Drafting	Applicant	<p>Requirement 9(1) – Archaeological remains</p> <p>1. The word ‘potential’ implies some ambiguity. Please remove or if this term is necessary to include, explain why.</p>

Number	Subject	Response by	Question/ Clarification
			2. For precision, after 'archaeological interest', should the following wording be added: '...archaeological interest, incorporating the mitigation measures set out in the environmental statement and the REAC , has been submitted...'?
ISH1.S2.21	Drafting	Applicant	Requirement 9(2) – Archaeological remains For precision, should the words 'referred to in' be substituted with ' approved under '?
ISH1.S2.22	Drafting	Applicant	Requirement 10(1) – Traffic management For precision, after the words 'traffic management plan, should the following be added ', which is substantially in accordance with the outline traffic management plan for that part of the authorised development,...'
ISH1.S2.23	Drafting	Applicant	Requirement 10(2) – Traffic management For precision, should the words 'referred to in' be substituted with ' approved under '?
ISH1.S2.24	Clarification	Bury Council and other relevant statutory bodies	Requirement 12(1) Applications made under requirements As currently drafted this requirement would give deemed approval for the discharge of any application, subject to a number of caveats, if no decision is made by the Secretary of State within 8 weeks from submission of those details. Is this time period appropriate? If not, please advise what an appropriate time period would be and why.
ISH1.S2.25	Drafting	Applicant	Requirement 12(1) Applications made under requirements To improve precision should the drafting be amended as follows: (c) such longer period as may be agreed between the parties undertaker and the Secretary of State . If not, explain why.
ISH1.S2.26	Drafting	Applicant	Requirement 13(2) – Further information Should the sentence beginning with 'In the event...' form a new sub-paragraph to conform with section 9 of PINS advice note 15?
ISH1.S2.27	Drafting	Applicant	Requirement 13(2) – Further information For precision, should the reference to 'paragraph 15 (anticipatory steps towards compliance with any requirement' be replaced with ' paragraph 12 (applications made under requirements) '?

Number	Subject	Response by	Question/ Clarification
ISH1.S2.28	Drafting	Applicant	Requirement 15 – Anticipatory steps towards compliance with any requirement For precision, should a comma (,) be added after 'If' and before 'the' in the first line?
ISH1.S2.29	Drafting	Applicant and relevant Interested Parties	Requirements – General query (matters related to its functions) Several requirements include the phrase 'on matters related to its functions' in relation to where the Secretary of State is required to consult with the relevant planning and/or highway authority and the Environment Agency. Explain why such drafting is necessary and to streamline drafting should it be deleted?
Schedule 4 – Permanent stopping up of streets and public rights of way			
ISH1.S4.01	Drafting	Applicant	Part 2 To replicate the approach taken in Part 1, should the words 'to be' be added between 'is' and 'provided' in the title ie '...which a substitute is to be provided'?
Schedule 6 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants			
ISH1.S6.01	Drafting	Applicant	Paragraph (2)(2)(a) For precision and consistency where this approach has been taken elsewhere in the draft DCO, should the words ' (powers of entry) ' be added after 'section 11(1)'?
ISH1.S6.02	Drafting	Applicant	Paragraph (4) For precision, should the following words highlighted in bold be added to the title above paragraph 4 read 'Application of Part 1 of the 1965 Act'?
Schedule 9 – Protective provisions			
ISH1.S9.01	Drafting	Applicant	Article 46 is referred to at the top of the page beside the title which does not exist. Please update accordingly depending the response to ISH1.A.72.
Schedule 10 – Certification of plans and documents, etc			
ISH1.S10.01	Drafting	Applicant	Land Plans and Work Plans These version numbers referred to in column (3) have been updated to P02 following the submission of [AS-005] and [AS-006]. Please amend accordingly and ensure that the Schedule is updated throughout the Examination to account for any future changes to any of the documents listed.