

M60/M62/M66 Simister Island Interchange

TR010064

7.17 WRITTEN SUBMISSIONS FOLLOWING SEPTEMBER HEARINGS AND RESPONSES TO ACTION POINTS FROM ISH1

APFP Regulation 5(2)(q)

Planning Act 2008

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009

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**The Infrastructure Planning
(Applications: Prescribed Forms and
Procedure) Regulations 2009**

**M60/M62/M66 Simister Island Interchange
Development Consent Order 202[]**

**WRITTEN SUBMISSIONS FOLLOWING SEPTEMBER HEARINGS AND
RESPONSES TO ACTION POINTS FROM ISH1**

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1. Introduction

1.1.1. This document has been prepared to record the Applicant's written responses to the Open Floor Hearing held on Wednesday 11 of September 2024 and Issue Specific Hearing 1 (ISH1) on the draft Development Consent Order held on Thursday 12 September 2024.

1.2. Open Floor Hearing (OFH)

1.2.1. The Applicant notes that the members of the public who attended the OFH and made oral representations committed to submit written summaries of their oral representations at Deadline 1. The Applicant will review those written representations once available and reply, as necessary, at Deadline 2.

1.3. Issue Specific Hearing 1 (ISH1)

1.3.1. The Action Points circulated by the Examining Authority arose directly from the ISH1 agenda. In the circumstances where the identified action points are directly related to and arise from ISH1, the Applicant has incorporated its full written submissions into the Action Points attached at Annex A1.

Annex A1

Applicant Responses to Action Points raised at Issue Specific Hearing 1 (ISH1) on the draft Development Consent Order held on Thursday 12th September 2024

Action	Description	Action by	When	Applicant Response & Summary of Action taken
1	Review of the dDCO to be undertaken by someone not involved with the project.	Applicant	D1	The dDCO has been reviewed and the Applicant has submitted a revised dDCO as part of its Deadline 1 submission.
2	Review of the Explanatory Memorandum to be undertaken to ensure that the inclusion of powers within the dDCO are fully explained and justified.	Applicant	D1	The Applicant has submitted an updated Explanatory Memorandum as part of its Deadline 1 submission.
3	Provide detail of any other Orders using 'significantly adverse' and justify its inclusion within the updated Explanatory Memorandum.	Applicant	D1	<p>For context, the wording 'significant adverse' is used on six occasions within the dDCO (Article 2 'maintain'; Article 6 Limits of deviation; Schedule 1 general works; Requirement 3(1) Detailed design; Requirement 8(3) Surface and foul water drainage; and Requirement 12(3)(c) Applications made under requirements – deemed refusal).</p> <p>Multiple orders permitted by the Secretary of State have included wording intended to clarify that only changes that are detrimental to those likely significant effects that have been assessed as part of the environmental statement are intended to be restricted or require approval from the Secretary of State. The Examining authority is respectfully directed to the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016/547 and the M20 Junction 10a Development Consent Order 2017/1202 which both refer to "materially worse adverse effects" and also the A57 Link Roads Development Consent Order 2022/1206 which cited "materially new or materially worse" environmental effects.</p> <p>The Applicant is also aware of and is closely following the determination of the Lower Thames Crossing Development Consent Order which is currently with the Secretary of State for a decision. The draft DCO submitted with that application includes Article 2(10) (Interpretation) which clarifies that "materially new or materially different" environmental effects are not to be construed as including any steps taken to avoid, remove or reduce an adverse environmental effect that was reported in the environmental statement.</p>

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				The Applicant has included an updated justification in the Explanatory Memorandum as requested.
4	Expand on the need for scope of works in Article 10 in post hearing submission.	Applicant	D1	The Applicant is the street authority for the majority of streets within the Order Limits. The power conferred by Article 10 only relates to those streets within the Order limits which are not trunk roads and for which Bury Council is the street authority. The power to undertake street works is required as part of the 'one stop shop principle' because it prevents the need for the Applicant to obtain a separate licence from Bury Council. By way of illustrative example, works to be undertaken on Mode Hill Lane dovetail with the powers in Article 10. Work No. 29 is concerned with the construction of a new maintenance access track served from Mode Hill Lane and the Applicant will utilise the powers to: break open the street; demolish, remove, replace and relocate street furniture; and execute works to improve sight lines. Similarly, Work No. 52 permits the diversion of low voltage electricity cables and a water main along Mode Hill Lane to service the main site compound. Such work will utilise the powers to: break open the street and any sewer or drain; tunnel or bore under the street; place or keep apparatus in the street; and carry out re-lining and placement of road markings.
5	Provide detail of the permissions / notifications being sought under Article 10 and the provisions under Article 11(5). Applicant to respond D2.	Bury Council & Applicant	D1 / D2	The Applicant will respond to Bury Council's submission at Deadline 2 but has discussed and explained the interaction and operation of the following provisions with Bury Council on the basis that Bury Council is understood to want advance notice of works within the streets for which they are responsible (as the street authority). Article 10(3) confirms that relevant sections of the New Roads and Street Works Act 1991 (NRSWA) still apply and these include the need to give advance notice (s54) and notice of the start date for works (s55). These provisions are not disapplied by Article 11(3) so would continue to apply to works covered by Article 10. Article 11(5) confirms that the requirement to give notice also applies to works for stopping up, alteration or diversion of a street including those of a temporary nature.

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6	Check whether the public rights of way listed in Schedule 3, Part 3 are covered in Article 12(2) and provide any redrafting required. Bury Council to respond at D2.	Applicant & Bury Council	D1 / D2	The Applicant confirms that the three public rights of way listed in Schedule 3, Part 3 are covered by Article 12(2). Specifically, they fall within the definition of a “street” included in Article 2.
7	Review wording of Article 13(4)(a) to incorporate the potential for the authorised development to open in stages.	Applicant	D1	The Applicant has reviewed the wording at Article 13(4) and is content that the wording at Article 13(4)(b) permits the Applicant and the local highway authority (Bury Council) to agree the date when the relevant public right of way (PROW) should be open for use and that flexibility would allow for the delivery of the authorised development and PROWs in phases as necessary.
8	Clarify the extent of Article 13(5) and whether it is intended to cover the maintenance access tracks, the private means of accesses to them or both.	Applicant	D1	The Applicant confirms that Article 13(5) covers both the maintenance access tracks listed in Schedule 3, Part 4 and the private means of access shown with a broken dark green line on the Streets, Rights of Way & Access Plans [APP-008].
9	Explain which part of the Highways Act 1980 the powers sought Article 16 would be equivalent to and why.	Applicant	D1	<p>Article 16 provides powers equivalent to section 129 of the Highways Act 1980 (the “Act”). This article allows means of access to be created within the Order limits. It is anticipated that this article will be relied on by the undertaker to provide temporary accesses as required during the construction period, with all permanent means of access (including private means of access) forming part of the authorised development.</p> <p>The Act allows a highway authority to provide “a new means of access to any premises” where it considers it “necessary or expedient in connection with the construction, improvement or alteration of a highway”. The statutory power is subject to securing the consent of the authority which is, or which will become, the highway authority for that highway. The drafting of Article 16 is considered to be appropriate as it will help to ensure that the authorised development can be carried out expeditiously by allowing the undertaker to create new temporary accesses as and where required, particularly in response to requests from landowners, occupiers and other affected parties.</p>

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10	Review the wording and the powers sought under Article 36 and Schedule 8 compared to that set out within the Environment Statement. Also review whether table within Schedule 8 should more precisely specify works.	Applicant	D1	The Applicant has included revisions to Schedule 8 in the dDCO submitted at Deadline 1. Revised Schedule 8 incorporates a further column specifying how each hedgerow is affected by the powers permitted by Article 36.
11	Explain whether it is possible and reasonable to include any works to Hedgerows (HG_21 and HG_22) within the scope of Article 36 due to being located outside the order limits and if so, why.	Applicant	D1	The powers in Article 36 permit the felling, lopping and cutting back of roots for hedgerows within or overhanging land within the Order limits. The western end of hedgerow HG_21 falls within the Order limits and is to be removed to facilitate Work No. 44, with the remaining part of the hedgerow unaffected. Hedgerow HG_22 overhangs Griffie Lane being land partly within the Order limits. To the extent that hedgerow HG_22 overhangs that part of Griffie Lane which falls within the Order limits, branches may be managed by cutting back or trimming to facilitate Work No. 44.
12	Explain whether works in Schedule 1 should be expanded to include reference to works to hedgerows where required.	Applicant	D1	The Applicant has included revisions to Schedule 1 in the dDCO submitted at Deadline 1.
13	Clarify extent of land needed as operational land in Article 38 and why in areas located to the north west and south west of M60 junction 18, particularly noting locations within the Green Belt. Bury Council to respond at D2.	Applicant & Bury Council	D1 / D2	The need for and effect of Article 38 is set out in the Explanatory Memorandum [APP-015]. It confirms that land in which the Applicant holds an interest shall be treated as 'operational land of a statutory undertaker' for the purposes of the Town and Country Planning Act 1990. The effect of this is that the Applicant (or any transferee of its powers) will benefit from certain permitted development rights on that operational land in connection with the operation of the Scheme. The article was included in the model provisions as article 36. The Applicant confirms that the provision only applies to land which is used or held by the Applicant (or any transferee of its powers) for the purposes of its undertaking. It will therefore only apply to the land which the Applicant acquires permanently for the purposes of delivering the Scheme (i.e. the maximum extent of which will be the land shown

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				shaded pink on the Lands Plans [AS-005]. It will not apply to that land shown shaded green or blue on the Lands Plans [AS-005], which will include large areas located to the northwest and southwest of M60 Junction 18.
14	Review and update Land Plans (and other plans affected) with respect to the drafting of the Order Limits.	Applicant	D1	<p>The Applicant can confirm that a review of the Order limits has been undertaken and that no changes are required.</p> <p>We note the ExA's observations particularly in respect of plot 1/1a, and the appearance of adjacent property boundaries in the Ordnance Survey base mapping. This is a helpful example to consider. We can confirm that the Order limits for plot 1/1a are drawn to the boundary of the Applicant's ownership, the extent of which is consistent with HM Land Registry title information. The title information is recorded in the Book of Reference and, for this particular example, there are no interests listed in favour of adjacent properties on 'North Circle'.</p>
15	Add reference to viaducts and bridges and additional descriptions to Schedule 1 works for clarity. Applicant to review all work descriptions to see if more detail is required (such as reference to proposed number of lanes) and clarify if Pike Fold Viaduct and Pike Fold Bridge should have separate works numbers. Once reviewed, review the length of 'further works' section.	Applicant	D1	The Applicant has included revisions to Schedule 1 in the dDCO submitted at Deadline 1 for improved clarity and specificity.
16	Provide comment on the inclusion of works to watercourses in Schedule 1 subparagraph g) under 'further development', whether it should be more accurately defined in the work numbers, and whether	Environment Agency	D1	N/A

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	any additional permits or consents would be required for this?			
17	Provide examples of other made Orders for the works covered in the definition for 'commence' under Schedule 2, Part 1 - Requirements.	Applicant	D1	<p>The Applicant confirms that the excluded works listed in the definition of 'commence' are consistent with other made DCOs, including:</p> <ul style="list-style-type: none"> • Archaeological investigations – This is included as an excluded work in the M25 Junction 28 Development Consent Order 2022, the M54 to M6 Link Road Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022. • Ecological surveys - This is included as an excluded work in the M25 Junction 28 Development Consent Order 2022, the M54 to M6 Link Road Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022. • Archaeological mitigation works – This is included as an excluded work in the M54 to M6 Link Road Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022, and as a pre-commencement work in the A428 Black Cat to Caxton Gibbett Development Consent Order 2022. • Ecological mitigation works - This is included as an excluded work in the M54 to M6 Link Road Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022. • Investigations for the purposes of assessing ground conditions - This is included as an excluded work in the M25 Junction 28 Development Consent Order 2022 and the M54 to M6 Link Road Development Consent Order 2022. • Erection of any temporary means of enclosure - This is included as an excluded work in the M54 to M6 Link Road Development Consent Order 2022, the A57 Link Roads Development Consent Order 2022 and the M25 Junction 28 Development Consent Order 2022. • Receipt and erection of construction plant and equipment - This is included as an excluded work in the M54 to M6 Link Road Development Consent Order 2022 and the A57 Link Roads Development Consent Order 2022. • Temporary display of site notices or advertisements - This is included as an excluded work in the M54 to M6 Link Road Development Consent Order

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				<p>2022, the A57 Link Roads Development Consent Order 2022 and the M25 Junction 28 Development Consent Order 2022.</p> <p>Whilst the Applicant has been unable to find a precedent for the exclusion of the 'treatment of invasive species', the Applicant considers that this is likely because such works would be capable of being carried out as 'ecological mitigation work' for which there is a precedent as set out above. In any event, the treatment of invasive species is considered to be preliminary works which would not be considered a material operation in their own right and which would not be considered to begin the development for which consent is granted (for the purposes of section 155 of the Planning Act 2008).</p>
18	Review wording of the definition of 'commence' under Schedule 2, Part 1 – Requirements to incorporate changes suggested by Environment Agency in respect of 'remedial work' and ensure any mitigation measures required prior to undertaking any of the works excluded from comprising commencement of the development, such as invasive species or works that require any archaeological investigation, would be secured.	Applicant	D1	<p>The Applicant has reviewed and revised the definition of 'commence' in the dDCO which is submitted at Deadline 1. In particular, the words 'remedial work in respect of any contamination or other adverse ground conditions' has been deleted as agreed with the Environment Agency.</p> <p>Any mitigation measures required prior to undertaking any works excluded from comprising commencement are set out in the first iteration EMP [APP-127]. Requirement 4(1) of the dDCO requires all works undertaken as part of the authorised development to be undertaken in compliance with the first iteration EMP.</p>
19	Explain further why it is reasonable for the detailed design in Requirement 3 to be undertaken without discharging authority review, particularly the larger viaduct and bridge structures, noting the referred to plans state "The scheme designs shown	Applicant	D1	<p>The Applicant considers that the dDCO provides sufficient certainty as to the detailed design of the viaduct and bridge structures without the need for further approval from the discharging authority.</p> <p>The structures will be designed in accordance with and comply with the Design Manual for Roads and Bridges (DMRB). Paragraphs 2.5.4 - 2.5.6 of Chapter 2: The Scheme of the Environmental Statement [APP-041] provide a description of the design and materials to be used</p>

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	are illustrative only and will be subject to change as part of detailed design development”.			in the construction of the structures. 3D models are shown which illustrate the form and span of the viaduct and bridge structures. Further details about the form and span are shown on the detailed drawings at sheets 22 and 23 of the Engineering Section Drawings [APP-011]. These drawings are not marked ‘illustrative’ and accurately show the proposed design of the structures. Requirement 3 requires the Applicant to design the Scheme in accordance with these drawings. Further detail about the structures is contained in the Scheme Design Report [APP-151].
20	Requirement 4 - Review if sub-paragraph (1) is necessary and whether it should be replaced by sub-paragraph (4).	Applicant	D1	The Applicant considers that sub-paragraph (1) is required and should be retained. Sub-paragraph (4) of Requirement 4 provides that the second iteration environmental management plan (EMP) must be approved prior to the authorised development being commenced. The term ‘commence’ is defined in Requirement (1) and excludes certain preliminary works, being works which can be undertaken before the second iteration EMP has been approved. Sub-paragraph (1) therefore ensures that any preliminary works undertaken before the second iteration EMP is approved are carried out in compliance with the requirements of the first iteration EMP [APP- 127]. This would include, for example, the Register of Environmental Actions and Commitments (REAC) at Table 3.2 of the first iteration EMP which regulates the way the Principal Contractor will deliver all aspects of the Scheme.
21	Requirement 4 - Provide further clarity on the implications of including construction of new structures in relation to potential 24 hour working and more detail in general in relation to the extent of works that would be subject to night-time working.	Applicant	D1	The Applicant confirms that the anticipated construction programme and phasing is detailed in Chapter 2: The Scheme of the Environment Statement [APP-041]. Details of the proposed working hours are detailed at paragraphs 2.6.37 - 2.6.40. It is explained at paragraph 2.6.39 that certain works will be undertaken outside standard working hours, including night-time, weekend and on public holidays. Advance notice of these would be given to Bury Metropolitan Borough Council. The works which are likely to be carried out outside standard working hours are set out and include demolition of existing and construction of new structures. The reason for including demolition of existing and construction of new structures is that the new structures are, or will be, situated immediately adjacent to live

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				<p>carriageways. Where construction work needs to be carried out adjacent to the live carriageway, this in most cases will be outside of standard working hours. One example of this would be the construction of the central piers to the new Pike Fold Viaduct. For a number of reasons, it will always be the Applicant's preference to carry out works during the daytime where establishing a safe working environment is practicable. There are a number of elements to any new structure that may need to be constructed at different stages of the construction programme, for example, later in the construction programme traffic may have been switched on to new carriageways, immediately adjacent to elements of a structure which need to be accessed to complete the construction.</p> <p>The extent of other works which are likely to be subject to night-time working are set out in Table 2.9 of Chapter 2: The Scheme of the Environmental Statement [APP-041]. The Applicant recognises the potential impact that 24 hour and night working can have on the local community and has endeavoured to provide as full details as possible. Certain works are only be carried out at night-time due to the nature of them. Other works are best undertaken at night-time to minimise the disruption that would be caused were they to be undertaken entirely during the day.</p>
22	Requirement 4 - Provide further clarity on the scope of activities that would be allowed under subparagraph (c)(xi) for the use of compounds and whether more explicit reference is required in the drafting to any information provided in the ES.	Applicant	D1	The Applicant confirms that Requirement 4(c)(xi) permits the use of compounds to facilitate off-peaking working. This would include the use of the compounds for the key activities set out in Appendix I section 3 of the first iteration Environmental Management Plan (EMP) [APP-136]. Requirement 4 para 4(1)(d) lists the management plans which must be included in the second iteration EMP and that these plans must be substantially in accordance with the first iteration EMP.
23	Agree with Bury Council what the method of agreement would be under	Applicant & Bury Council	D1	The Applicant has liaised with Bury Council, and it has been agreed that Requirement 4(c)(iv) should be amended to add "in writing" at the end. This change has been made to the dDCO submitted at Deadline 1. This retains flexibility so that, as the Scheme develops, the Applicant and Bury Council can

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	Requirement 4(c)(xiii) and whether it can be more accurately defined in the drafting.			agree suitable methods and lines of communication to agree any changes to working hours amongst other things.
24	Amend heading for Requirement 6 to clarify that it relates to 'previously unidentified contaminated land and groundwater'.	Applicant	D1	The Applicant has made this change to the dDCO submitted at Deadline 1.
25	Confirm whether reference to stopping works in the event of any unidentified contamination being found should be included in Requirement 6(1) or reference to any similar measures contained in the second iteration EMP and provide any update drafting to the dDCO.	Applicant	D1	The Applicant confirms that the Outline Contaminated Land Management Plan [APP- 137] provides at paragraph J.3.6 that if unexpected contamination is encountered then the work area will be made safe and secure, and measures to control contamination will be implemented in accordance with the Construction Industry Research and Information Association (CIRIA) publication 'Environmental Good Practice (fourth edition)'. The principal contractor will quantify the extent of the potential risk from the contamination and follow a risk-based approach in accordance with the Land Contamination Risk Management (LCRM) guidance (Agency 2020). This would include stopping works immediately as set out in paragraph J.4.2 of the Outline Contaminated Land Management Plan. The Outline Contaminated Land Management Plan will be further developed pursuant to Requirement 4(3)(d)(x) of the dDCO which makes provision for a Contaminated Land Management Plan to be prepared as part of the Second Iteration EMP. The authorised development must be carried out substantially in accordance with the approved Second Iteration EMP (Requirement 4(5)). Given the above, the Applicant does not consider it necessary to change Requirement 6 of the dDCO. The Applicant confirms that the wording of Requirement 6 is in the same form as previously made DCOs including the M42 Junction 6 Development Consent Order 2020 and the M54 to M6 Link Road Development Consent Order 2022.
26	Review how the operation and maintenance measures stated in Section	Applicant	D1	The Applicant confirms that Requirement 8 of the dDCO does not secure the operation and maintenance of the measures set out in Section 9.2 of the

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	9.2 of ES Appendix 13.7 [APP-122] would be secured within Requirement 8 and provide any update drafting to the dDCO.			Environmental Statement Appendix 13.7 [APP-122]. The requirement relates only to details of the surface and foul water drainage which will be provided as part of the authorised development. The reason for this is that it is not necessary for the dDCO to secure these measures. As set out in Chapter 1: Introduction of the Environmental Statement [APP-040], the Applicant is the highway authority for the strategic road network (SRN) and is responsible for the operation and maintenance of the SRN. The drainage works delivered as part of the Scheme will be incorporated into the SRN and the Applicant will become responsible for their operation and maintenance of them as the highway authority responsible for the same pursuant to its duties set out in section 41 of the Highways Act 1980.
27	Clarify if a new Requirement is required to more accurately define how consultation with parties would be undertaken prior to submission of details to the Secretary of State and provide any update drafting to the dDCO.	Applicant	D1	The Applicant has revised the wording in Part 2 of the Requirements at Schedule 2 of the dDCO submitted at Deadline 1 to include a new Article 13 which provides clarity on how the consultation will be undertaken.
28	Provide written updates regarding the progression of protective provisions agreements/discussions with Statutory Undertakers – National Grid, United Utilities and Cadent Gas.	Applicant	D1	<p><u>National Grid Electricity Transmission</u> The Applicant has included protective provisions in the dDCO in favour of electricity undertakers. The Applicant is however in correspondence with the solicitors acting for NGET with a view to agreeing the form of wording before the end of the examination period.</p> <p><u>United Utilities</u> The Applicant has included protective provisions in the dDCO in favour of water undertakers. The Applicant is however in correspondence with the in-house legal team for United Utilities with a view to agreeing the form of wording before the end of the examination period.</p> <p><u>Cadent Gas</u></p>

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				<p>The has included protective provisions in the dDCO in favour of Cadent Gas, which utilise the form that has been incorporated into other made DCOs. The Applicant is in correspondence with the solicitors acting for Cadent Gas with a view to agreeing the final form of wording before the end of the examination period.</p>
29	<p>Provide details of discussions with Transport for Greater Manchester in respect of need for any protective provisions.</p>	Applicant	D1	<p>The Applicant can confirm that we are not currently progressing protective provisions specifically in favour of Transport for Greater Manchester. The Applicant met with Transport for Greater Manchester to discuss the preliminary design of the scheme in October 2021. This meeting was attended by legal, consents and engineering planning representatives. It was concluded at that time that no further meetings were required. The scheme and potential interfaces with Transport for Greater Manchester assets has not changed since these discussions.</p> <p>Following Section 42 consultation, a legal representative from Transport for Greater Manchester responded seeking further information relating to the Order limits where the Metro crosses the M60. Following a review of the title information in this area, the Order limits were amended to remove two small areas of land where Transport for Greater Manchester have a freehold interest in the M60 highway verges. Confirmation of the removal of these areas was provided to Transport for Greater Manchester in July 2023. No further correspondence has been received.</p>