



## Hearing Transcript

<b>Project:</b>	M60/M62/M66 Simister Island
<b>Hearing:</b>	Compulsory Acquisition Hearing 1 (CAH1) – Session 3
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Tue, Nov 26, 2024 3:33PM • 35:34

00:05

Good afternoon, everyone. The time is now two o'clock, and it's time for this compulsory acquisition. Hearing one to resume. So turning now to agenda item six. This first agenda item is probably moving on a bit from what we discussed a little bit earlier, but we want to just discuss the relationship between what's illustrated on the land plans and the powers sought under Schedule five of the draft development consent order, and also in schedule seven, it might be useful for the applicant to display the land plans Again, which is document, ref, rep three, dash 004, you

01:04

if you just scroll along, it doesn't matter which part of the planet is, it's just the key really, in general, if you can just zoom in, so it stays in the land in blue, It says the land plans so it includes the annotation land to be used temporarily and rights to be acquired permanently, and where the applicable land is that identified in blue. Could you just clarify which article and schedule of the DCO would provide that power? Sort

01:41

Tony Weston for the applicant. So land to be used temporarily and rights to be acquired permanently. So the primary focus of the blue plots is the permanent acquisition of new rights, and that would be covered by articles 21 and 24 of the draft DCO. But also, in tandem with that, there would be the ability to temporarily possess that land in order to effectively deliver the scheme and and exercise those new rights for construction purposes. And that would be secured by Article 30 of the draft DCO, the temporary possession power.

02:20

Okay, yes, I thought it might be particularly article 24 two, and is it also schedule five as well that this the blue area relates to,

02:33

yeah, so schedule five sets out the plots of land which are restricted to the permanent acquisition of new rights only, as opposed to the permanent acquisition of all interests in land.

02:51

Okay, so obviously you've got article 24 and article 30, which deals with rights and temporary possession and everything. Can schedule five. It just said the title is, what things confusing is, slightly says land in which only new rights, etc, may be acquired, which sort of implies is only new rights. But

it's obviously it to me, it looks like all of the plots there actually include new rights and temporary possessions. So is it, would it be clear if, etc, if it was actually labeled new rights and temporary possession maybe acquired. Or does the ETC sort of imply that you need to do temporary possession anyway to acquire the right? I think

03:32

you almost need to read them separately. So effectively, you have the power in Article 24 to acquire permanent new rights, and that's a restriction on the power that's in Article 21 to acquire all interests. That makes it clear that permanent acquisition is restricted, restricted to new rights. But then if you look at article 30, which deals with temporary possession, you'll see that that effectively applies to all of the order lands, subject to schedule seven, which restricts the powers of compulsory acquisition to temporary possession only of the plots listed in schedule seven. So if it helps to understand it, then effectively, I guess the position is that in respect of the pink and the blue plots, Article 30 can be exercised over all of those plots.

04:28

Okay? So effectively, you're comfortable that schedule five does actually also include, because it just refers to artists, what's the top of schedule five, it just refers to Article 24 two. And I was wondering, because in the book of reference, I think all of these plots that are identified in schedule five do include temporary possession as well. I'm just wondering whether that's clear because it only refers at the top to schedule five is only engaged by Article 24 two, which is just. Right?

05:02

Yeah, the wording that's in the order does follow the precedents that have been established by other made DCO. So that tends to be how the draft the DCOs are drafted, which effectively is that article 21 gives you wide powers of permanent acquisition that is then limited in scope in respect of the blue plots to Article 24 to just new rights and the imposition of restrictive covenants. And then article 30, in temporary possession, applies to all of the order lands. And then the only addition to that is that the scope of the power in respect to the green plots is further narrowed by Article 30,

05:44

thanks for that explanation. Does anybody want to raise anything on that,

05:49

just because my only question is, how do you deal with those three plots that are just rights? Tony Weston, for the applicant, I don't think you need to, because the the way the order works, although the intention is only to acquire and take new rights over those and we do have the ability to exercise temporary possession powers under Article 30 over those three plots as well, if we chose to do so. But I think what we're saying is that at the present time, we don't propose to take temporary possession of those because we believe that the new permanent rights are going to be sufficient. So if we were to, if you were to say to us, well, given that you've indicated you don't need temporary possession of those free blue plots, you know, we could obviously review that and then decide whether we can narrow the scope of the article 30 powers over those free blue plots, although that wouldn't be the standard

approach, normally you would retain that flexibility in order to take temporary possession of the blue plots as well as the pink plots.

06:58

Thanks for anybody want to add anything on this? No, Okay, moving on to 6.2 and we just want to have a discussion on the powers that are sought for acquiring the right for the benefits of statute undertakers or any other person investing right. So article 24 one allows the undertaker to impose any rights and restricted covenants rights for the benefit of the statutory Undertaker or any other person. Whether that's a fairly standard article, it's really article 24, five that we'd like a little bit more explanation on. And paragraph 5.64 of the updated explanatory memorandum which you submitted at deadline, one explains that the paragraph expressly permits the undertaker to vest right acquired for a statute Undertaker or other body directly in that entity. And this is consistent with the overarching aim of the power, which is namely to reduce the land The Undertaker might otherwise have to acquire in order to grant a right for the benefit of a statue Undertaker or the body. I'm not sure the last sentence really explains why vesting declarations for a statutory Undertaker has been sought or necessary or considered necessary in this particular case, could you just explain further why this is the case?

08:25

Tony Westland, for the applicant, I think it might help to explain that obviously the landing schedules five and seven, a vast majority of the plots are required for utility diversions, and the vast majority of utility diversions will be undertaken by the relevant statutory Undertaker, as opposed to national highways itself. And obviously, there are the powers within the draft DCO, which is the consent to transfer the benefit of the order to statutory undertakers in order for them to undertake the works. And the reason for that, of course, is because they are the specialists, and they're able to undertake those works in a better and more efficient way, because it's works to their own apparatus. But in order to undertake those works that statutory undertakers will need the benefit of the new rights to retake, to install, but also to retain their apparatus on third party land, and also to impose restrictive covenants to protect the apparatus in the future, so things like restrictions on planting trees and building over that kind of thing. So the provisions of articles 24 one and five and article 27 four, which is the other one mentioned on the agenda, together, effectively, they ensure that the applicant can compulsory acquire those rights and impose those restrictive covenants on behalf of and for the benefit of the statutory Undertaker. And so the provisions taken together are not imposing any additional burden on the landowners. They're just ensuring that when rights, when compulsory purchase powers, are exercised and rights are required. Prepared that they are for the benefit of the correct person, which would be the statutory under whose whose apparatus is then been diverted and retained on that land.

10:12

Okay? And presumably that's because, obviously, at this stage, you don't know where statutory undertakers may or may not re divert their apparatus to. So you're wanting a more flexible arrangement for that potentially to happen. We

10:25

know that they will obviously be diverting it within the red line of the scheme footprint, so it will all be with on within pink, blue or green land. I mean, obviously pink land is not an issue, because the land

will vest in national highways, so it will have the ability to grant whatever rights statutory Undertaker requires to it, but new pink, blue plots and green plots are obviously more tricky, so we need the ability to vest those rights for the benefit of the statutory Undertaker, and that's what the provisions seek to achieve.

10:59

Okay in terms of the vesting declarations, because your explanatory memorandum explains there's normally two different approaches that that you can do in the vesting declarations, is by the sound of a more, quicker route. Is there any precedent in other DCOs where that actual process of vesting declarations has been granted for the benefit of statutory undertakers?

11:27

Yes, I believe there are a couple of precedents. It's probably best if I check the exact wording to check that it aligns with what's in our draft eco and perhaps I can come back to you, take that as an action point and come back to you, but I'm certainly aware, for instance, that it's in a couple of main DCOs, and I think it's also features in the in another DCO, which hasn't been consented yet. So yeah, yeah,

11:54

I think that would be useful to us to have a written explanation to see what the present is precedent is, because obviously we know that there's the vesting declarations in in the 1981 ad. But then we'll move on to Article 27 four. Now, which is what you're trying to or you're seeking to to amend. So just just explain in simple terms that the relationship between 20 what's in 27 four, where you're seeking to amend the 1981 act to allow you to do this.

12:26

Tony Weston, for the applicant, it's just a point of clarification, and it is effectively just acknowledging that when we compulsory purchase, invest new rights which relate to statutory Undertaker's apparatus, that they are vested for the benefit of the Undertaker, as opposed to national highways. So the benefit of this is it ensures that we can vest the rights the statutory Undertaker needs for itself, as opposed to a situation where otherwise, in order to have the ability to grant those rights that the statutory Undertaker, we would have had to acquire the land on a permanent basis. So the provision is really about kind of facilitating the narrowing of the scope of the compulsory acquisition to new rights, as opposed to permanent acquisition. So

13:24

I Okay, thanks very much.

13:27

Don't think I have any more points. You have any more. Anybody else want to raise any points on this particular No, okay, so yeah, if we could have that as an action point, just to explain a bit more with with precedence and a little bit little bit more explaining as well. You know exactly why. I know you've explained it there, but just have it in writing as well is always very useful. So thank you very much. Okay, moving on to Article 30, and it's paragraph nine, so we did ask an initial question in our first written questions on this particular paragraph, and just sort of trying to understand a little bit more why

it's required and why it was justified. And we noted your response in rep 3023, which, in summary, considers that this provision is necessary because it, and I think I've just just applied a bit of background to those in the room. What my understanding of this article is is Article 30 is seeking temporary possession of land. But under article or sorry paragraph nine of that article, it would not allow you to compulsorily acquire land, but it would give you the option to speak and acquire new rights over any part of that land. So. So your response for why this is necessary is because it would remove the need to acquire land permanently in order to pose rights, and that the applicant is satisfied that the tests in the Planning Act would be met as the land is specified in schedule seven of the draft DCO, which is all of the temporary possession land. For clarity, can you confirm that the intention is for the undertaker to apply permanent or temporary rights over that land that's subject to temporary possession, and it is that that's in schedule seven of what that paragraph is referring to?

15:36

Tony Weston, for the applicant, yes, so article 30 allows us to take temporary possession of land, which includes the green plots which are identified in schedule seven, and then article 39 a specifically provides that we can then take new permanent rights and impose restrictive covenants over The Green plots which are identified in schedule seven, it might be helpful to just explain the rationale for that which is so some of the plots in schedule seven, if you have a look down, you will see that the purpose for which temporary possession is required is for diversion, utility diversion works. And so, for instance, if we I don't know one plot one five A is required for utilities diversions, and those works are then shown as described as work number 49 now obviously, if you take time for possession of land, and you're diverting utility through that land. Then you then need to retain the permanent right to retain that diversion on that land, and also to have the ability to go on and maintain that utility diversion and in the future. And similarly, you need the right to impose those restrictive covenants to protect the apparatus in the future as well. So, so that's the reason for the ability, in Section article 39 A, to acquire new rights over temporary possession.

17:11

Is it needed for all of the plots, though? Because you've mentioned, yes, there are quite a few that are for utility diversions, but there's also quite a lot of plots there that aren't. And if we think back to where an example from this morning, we were looking at the plots that are adjacent to the motorway at the moment. And anybody looking at those plots would reasonably think by being temporarily possessed because they're needed for widening of the hard shoulder and doing the works, but then you've got this provision in the article that would also allow you to impose rights over plots of land like that, and I'm not quite clear at the minute the necessity for all the flexibility that you're seeking for plots like that. So have you been through all of these plots in schedule seven to actually see whether you need or write for some of these. You've mentioned the utility diversions, but what about the other

18:07

plots? Tony

18:08

Weston for the applicant, I think when the draft DCO was first prepared, yes, we did undertake that exercise, but it's probably not an exercise that we've repeated recently, so it's certainly something we

could do. There are a large number of plots of in schedule seven which are part of the public highway. So it may be that actually the relevant statutory Undertaker would have powers in order to install and retain its apparatus on that in the public highway. And so actually, you wouldn't ever need to exercise article 39 A. But as I said, Article 39 A is kind of future proofing and providing that flexibility in in case those rights are required for whatever reason. Okay,

19:00

okay.

19:07

Difficulty I have with this article is, I see what it's saying, but it seems like it's been done for you. Said a future proof, but does that doesn't give me the confidence is actually needed. It seems to be trying to think ahead of something that might happen. And I'm still wondering whether the justification is really there for every single one of those plots. And we've noticed in the decision on the m3 DC, or for example, the Secretary of State removed a similar wording of the article, and it was article 34 eight a in that particular DCO, and their reasoning for this article being removed was without knowing the nature of the new right. It is difficult to see how a judgment can be made on whether there is a compelling case in the public interest for author. Arise in the compulsory acquisition of the new right, because the burden of the right on the landowner and other persons with an interest in the land cannot be understood. And there's another example, the a one burtley to call house roundabout. DCO also had a very similar article removed as well. So don't know whether there's anything you want to say in response to that as to really, given that those decisions, is there anything different in this particular scheme? That is is different to what was decided in those applications? Tony

20:36

Weston for the applicant, I'm not aware of those two decisions on that particular provision. So I can certainly take that away and have a look at those and understand why the powers weren't allowed on those particular occasions. I think in terms of the rights here, I think it's not so much case of future proofing, which you know, it's really to retain that flexibility. And so for instance, one of the things we focused quite a lot this morning on utility diversions, but one of the other issues that we sometimes find is, obviously, once works commence on the land, you will discover existing apparatus, maybe drainage features or something where you need to amend those in order to deliver the scheme. And again, it's around kind of protecting those and the ability to then ensure that we can do those works and respond to what's on the ground that we discover, and then we can put in place measures and rights to protect that apparatus or those structures in the future. I mean, I do find, I do think it's also for the benefit of the landowner sometimes. So if the landowner is going to be affected by temporary possession powers for utility diversions, then actually it provides the landowner with certainty in the future about the rights and the structures and the apparatus which is on their land. Also it provides them with clarity about kind of, for instance, if there was a lift and shift provision or something like that in the future, or, you know, in terms of, like, perhaps their their responsibilities and the restrictions they operate under, for instance, not planting trees on the root of the apparatus. So, so it can be for the benefit of the landowner, actually, that these rights are fully documented, rather than having apparatus and structures on their land which they which aren't properly documented and could create issues for them in the future. I think the going back to the purposes, I mean, 30 article, 39 a, I appreciate having read it again just now. It is



quite widely drafted, and I certainly would have no objection to narrowing the scope of that provision so that it relates to the acquisition of rights or imposition of restrictive covenants only for the purposes for which temporary possession of the land could be taken. So if, if the purpose for taking temporary possession is diversion of utilities, then the acquisition of rights is narrowed to those diversion works.

23:05

Yeah, I think we would find that useful. If you could review that, because I can see what you're saying about the utility diversions still unclear for the land. That's not utility diversions, it's more that, whether it's clear for any individuals that are having their land potentially temporary possessed, that they're actually fully aware of the implications. Because obviously, you're the reading of schedule seven is it's they're all just for temporary possession. And then you've got this article and this paragraph within an article that that's in the middle of it that potentially actually means those owners of the land could be subject to more rights. So we've jotted down some action points on that. I don't know whether we just want to double check that we've we've listed them correctly. So we've got them, though, yeah. So

23:54

I was, I was going to check the next version of the draft ecos due at deadline five. So would you like this to be deadline five action. And yes, please, that would be very helpful. So you're going to, what I've got is you're going to review the DCO schedule seven with respect to the 39 A, right, and also review the wording position of 39 Yes. Okay, so

24:24

thank you. I think that's all our questions for the time being. Does anybody want to raise any particular comments on this agenda item? Okay, don't there's no hands up. Okay, we'll move on to item seven, which is about sections 120, 738, of the planning acts, which is something that we did touch upon in the last issue specific hearing. But I think it will be useful just to get the most up to date position of where we are with this. So could we ask the applicant to provide an update on the negotiations with the statutory undertakers? And I think it will be useful. If you could walk through these in the same order as a, Appendix B of your updates that you submitted at deadline three, which is documents, rep three, slash, 021, I think Cadent gas is the first one on the list.

25:20

Thank you. Thank you, sir. Richard thurling, on behalf of the applicant, apologies, I didn't have that rep opened, so the note I prepared may not be in the same order, but since you said you wanted to do with cadent gas first, I can, I can go there, essentially. Yeah, we In addition, then to the update that we previously provided in terms of cadent, we're continuing to discuss the protected provisions with them. We understand that the applicant has recently agreed the form of protected provisions on another scheme, which is looking to mirror on this one, we had an exchange with them prior to the hearing today, and we're expecting the wording there to be confirmed and will then we can then check that against the wording that already appears in the draft DCO and see what updating, if any is necessary. Therefore, we're still expecting to be able to provide an update as part of the revisions to the draft eco at deadline five. And

26:36



Is that likely to include some alterations under the provisions for CAD end gas at deadline five.

26:44

I expect so, so, but I'm not expecting wide, sweeping revisions. I'm expecting them to be some finessing of the wording that already appears. Obviously, it's slightly difficult for me to say at the moment because I've not seen it. I um, mercifully, so I've been passed a list whilst speaking which gives me the correct order that I think things were listed in last time. So the second one I believe on the list was electricity Northwest. And in terms of electricity, northwest, we just have the standard wording that already appears in the draft DCO. We're not aware that they require any further bespoke wording. So we're expecting that wording to be at the moment, in its in the final form, to be honest, in relation to national grid, which I believe is the next one on the list. Obviously, the applicant and National Grid have wording that it's previously agreed on other schemes we've exchanged that having recently submitted the wording that national grid has previously agreed with the applicant, so we're waiting for the feedback on that. We understand there may be some updates that national grid are looking for, and when they confirm those to us, we'll then be able to again look to incorporate those into the next iteration of the draft DCO at deadline five. I think it's fair, for the benefit of your note to record that probably will be a separate part that covers the protected provisions for National Grid, as perhaps you've seen on another draft DCOs, and states that wording that we'd be looking to incorporate at deadline five, that the next one was open reach on that list. And in relation to open reach, again, we've got protected provisions in there, generally for telecommunications providers. We've not been received any further request for bespoke drafting beyond what's already in the order. So again, the expectation in the moment is that that wording is in a final form, the next on the list. So the fifth one, I believe, is United Utilities. So in addition to the engagement that we've had between technical representatives at United Utilities and mindful of the I think we've been two representations that have been made into the examination by United Utilities when the applicant submitted the wording that is previously agreed with United Utilities. On another scheme, we've submitted that to them, see if they're then content with that wording, and then obviously, if they are then we'll be able to reach agreement, and would expect them to be able to confirm that into the examination.

29:47

Yeah, because we did notice their deadline, I think it was their deadline to submission. It seems to imply that I can't remember the word off the top of my head, but it seemed to be implying that they wanted to agree. Different wording. So we got the impression that they were seeking different wording from what's in the order. So we'll wait for that deadline. Five update.

30:09

Thank you, sir. Yeah, interesting on behalf of the applicant, yes, indeed. And then the next two, I think there was virgin next one's Virgin Media and tele West. Again, there are protection provisions provided in the in the draft ECA already for telecommunications providers. We expect those to be in the form that have been accepted elsewhere. And again, we're not expecting any updates to that, that wording. And then the final one was Vodafone and cornerstone. And again, they're covered by the Protect provisions in favor of telecommunications provider, and we're not expecting updates to that wording at the present time. I think that covers everything on the list, but please say if I've missed something, I Okay,

31:03

yep, I think that's everything we we had listed. So that's that's a helpful update. Thank you very much. Just finished my notes. I

31:24

Okay, what the next item on the agenda we were going to invite any statutory undertakers, if they if they appear today, what their any outstanding matters that they would have? I don't think we, other than transport for Greater Manchester, I don't think we have any of the statutory undertakers that you've referred to in the room. So what I will do instead, because just for the record, we are keen to start seeing some alternative wording, obviously, realizing that we're nearly halfway through the examination and we haven't obviously seen any alternative wording yet, so it's useful that you've you've given us a summary of where you don't expect to see alternative word into the DC or in those areas where you do, but we will, we will likely probably be pushing some of those united, particularly United Utilities, if they are looking for wording of what that is. So we can, so we don't end up in a situation where it's the last deadline where we start seeing stuff, I think what I'll do now is, because we've got transport for Greater Manchester in the room, I'd like to bring you in just the give her any ex any sort of commentary, whether you need any protected provisions in The draft development consent order, or whether you're satisfied with what's already put in there. TfGM, we're satisfied with what's in the moment all the issues around Metrolink have been clarified and agreed between the parties. And yeah, from a transport perspective, we're supportive of the scheme and its intentions. I thank you very much for that.

33:11

Okay, I think that brings us to the end of agenda item seven, but just before we will move on, I'll just briefly touch upon this because we mentioned it in the last hearing. You're obviously aware of the requirements under Section 127, and 138, of the Act, which would be engaged if we don't have any resolutions. But it's just to reiterate that point for the record, really. So I think that brings us to the end of if there's any other business that anybody wants to raise today. One Don't you think anybody else wants to raise? No, okay, okay, well, there's no other items, no anything to discuss. Can I remind you that the timetable for this examination requires that parties provide any post hearing documents on or before deadline four, which is scheduled for Tuesday the 10th of December? And can I also remind you that the recording of this hearing will be placed on the inspectors website as soon as practicable after this hearing, the next event for this application will be issue specific two which is scheduled for 10 o'clock tomorrow, and that's on environmental issues like today's event, This hearing will also be a blended event. So for those of you who are proposing to attend virtually, the joining conference is from 9:30am for those who are proposing to attend in person, the event will be held in this room, which will be accessible from 9:30am the agenda for this event is available on the project page of the National Insurance national infrastructure website, the. Before we close, we would like to thank all of today's participants for their time and assistance during the course of this hearing, we shall consider all of your responses carefully, and they will inform the examining authority's decision whether further written questions and or further round of hearings will be necessary. So the time is now 25 to three, and this compulsory acquisition hearing for the proposed M, 60 M, 60 2m 66 sinister Island Interchange project is now closed so.