

TEXT_A428Blackcat_ISH1_Session3_18082021

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00:07

Good afternoon. Good evening, brother. It's 10 minutes past five. And I will now resume

00:16

session three of this issue specific hearing. Welcome back to everyone. And if the case team can confirm that everyone who wants to be here is here, I understand. Central Bedfordshire Council have left the meeting. But is everyone else back in the meeting? Miss Gregory?

00:38

Yes.

00:41

Thank you very much. Okay, well, don't dive straight into agenda item six.

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And we the intention still is to finish at 5:45pm.

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For agenda item six, a land adjacent to order limits.

01:01

If we can turn to Article four and 23 in the draft decio, please, sorry, just to say that a lot of clarification sought under under item six are from the applicants if I could, if I could probably ask them to join me with their cameras and microphones off. And if I need comments from anyone else, I will give a pause and I will invite it then and indeed if somebody has something to say please raise your hand. So for agenda item 681 and two if you can turn to Article four and 23 in the draft decio.

01:33

There is reference to this reference to land within or adjacent to order limits in Article four and two land which is adjacent to but outside the order limits in Article 23. Can you please explain what is this provision for and what you're seeking with adjacent land and what is the justification for it?

02:01

Absolutely mom, Laura Hendry on behalf of highways England, if I can address agenda point one, sorry, six, a one first, which deals with article four, just to give you a bit of background as to why we've included that provision. So I think the specific article reference you're referring to is article four, sub

paragraph two, or cycle two, which refers to any enactment applying to land with within or adjacent to the order limits has effects subject to the provisions of the order. So essentially, the inclusion of this particular article is there to make it clear to everybody that any enactments that may be sort of existing local enactments or any other enactments that may be existing within the order limits or within the surrounding area, would be subject to the terms of the audit. So if I could give an example that might help to sort of illustrate the point, if there is a local act that talks about our local enactment that talks about a certain area of land that could only be used for a marketplace once a month, that act will remain in force, but it would be subject to the terms of this order, which means that the application of the order wouldn't then be in breach of that act. So what we've done as part of the application preparation process is tried to discover all of the local acts that might be applicable so that we could disapply them. And you'll see an example of that in relation to the reference to the Anglian Water Authority act 1977, which deals with navigation along the river, great news. And we've we've sought to sort of discipline and amend that by including a separate article. But essentially, the purpose of Article four two is to allow the auditor to carry on and not wipe clean any existing enactment that it doesn't need to, but confirm that the order will take precedence.

03:54

So the order will take precedence could imply that the local Act would be disappplied. For the purposes of the order, yes, to the extent needed for the order. Yeah, subject to the order.

04:09

And you said surrounding area, which is a, which is what you've referred to as adjacent land.

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And I suppose what I'm thinking, what what I'm trying to get at is, what is the justification for it, if it is outside the order limits? If there was a need to apply the provisions of the order to land adjacent to the order limits? Why was it not included within the order limits in the first place? Well, I guess it's to capture those enactments that could apply both within the order limits and adjacent to but effect activities within the order limits. So it's just to ensure that there is enough breadth within it. I don't think we're expecting anything significant here. It's just a fairly. It's a fairly standard provision that has precedents in other DC O's that we have seen made.

05:00

But essentially, it's just to capture those that possibility that there are local enactments that we aren't aware of.

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Now, you've used two terms now adjacent land and surrounding area.

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Where is this defined and secured? And how can it be monitored or controlled?

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In our view, it doesn't need to be defined or secured in the in the decio, in the context of Article 42, because the purpose of the provision is simply to just confirm that the order will apply as the order applies. It doesn't give the order any more power. The only powers within the order will be as secured by it. But it's simply to say that any enactment that exists will be subject to the provisions of the order.

05:53

So the provisions of the order are still limited to the order limits.

05:58

Yes. But the order will take precedence in terms of its application and delivery, with respect. So just going by that same example that you've just used to say there was a local market outside the order limits.

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how might that be affected by Article four?

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article four tool? In that instance, if we aren't going to impact that enactment, then it wouldn't be affected by the order, it would just continue on as it currently is. But in what way might you affect that local enactment?

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I'm not sure to be honest, this, I can provide you with an example of how that might work in that scenario.

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May I may I just make a suggestion here, then that you've referred to other DCs where this has become a standard provision.

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If you could provide us with an example where this provision has had an impact on a local enactment,

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that would just help us understand the scope of what it is that this provision is means to adjacent land or surrounding areas or local apartments on adjacent land and surrounding areas. And then that will help us just get an understanding of the scope. And also convince us that this does not need the scope of adjacent land does not need to be defined or indeed secured. And so on. Not a problem. I mean, just to point out that the article does have precedents in the M 20. junction 10 A order as well as the a 14 Cambridge to Huntington improvement scheme or Yeah, as far as whether or not this particular article has ever been kind of enacted, or or used. I will absolutely make inquiries within highways England to see if there we can point to anything, but it may be something that will will give you an update either way, by now how we go. Okay, thank you.

08:11

And then article 23, which refers to, and this is the article, which is about surveying of land, which is adjacent to but outside order limits. Yeah. And I think this one is a little easier to kind of picture in our minds how that how it might be applicable. So essentially, what article 23 allows is for the applicant to

08:35

were reasonably necessary, in order to carry out a defined list of activities, enter onto land that is adjacent to the order limits. So if we look at the defined list of activities, we're talking about things like environmental surveys, boreholes, that sort of thing. Now, the way that environmental surveys are the way that species operate, they don't necessarily,

08:59

they don't necessarily stick to order limits. So it may be reasonably necessary for us to go outside of the order limits in order to ensure that we have the full information, or we can understand the impact of the scheme on that particular species.

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The other thing I would note in relation to this particular provision is that there's a similar power contained within section 172 of the housing and Planning Act 2016. And in that provision, it allows an authorized a person authorized by an acquiring authority to enter onto land, including land adjacent to land being acquired to survey and value land. So again, it's it's that point of sometimes you need that little extra information in order to fully understand the impacts are fought in order to fully understand. Yeah, misandry. I understand that. And I understand that you need that extra information from surrounding area. But why do you need to secure that in

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In the DCR, what additional powers is or what what additional provision is the decio, giving the applicant or the undertaker, which they would not typically have,

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by negotiating with surrounding landowners

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outside of the provisions of the DCR. The purpose of the decio is to ensure that the applicant has all of the powers it needs, so that it isn't prevented from carrying out the surveys that it needs in order to say, provider apply for a species license, for example. So what we can't have is a situation where the applicant is prevented from carrying out that additional survey work, because we are unable to secure landowner consent, for example, in that situation, so by having all of the powers within the order, we're ensuring that the applicant can can bring forward the authorized development in a timely manner, and gain all the information that it needs.

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So just to just to

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clarify, with this provision,

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the applicant cannot be prevented from doing a survey on a piece of land outside of the order limits.

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So this provision is subject to 14 days notice. So the the noticed is required in order to ensure and it's also subject to compensation provisions. So as I understand it, and I will happily report back if I'm in correct, I don't believe it is possible for a landowner to prevent the applicant from using this power to enter onto and survey land subject to the notice period and the compensation provisions.

11:58

Okay.

12:01

So if you if if there is if it, if the point is any different than it'll be helpful to have that update. I think this is a point where we may have further questions. But But I'm happy to move on from that now. So we've covered one, we've covered 6162. And we've sort of covered 63, as well, because I asked you about the definition and scope. And you said that you don't necessarily need to define the scope. Again, I think on 63, if you have further questions, we will come back to it. All of these points are included in written questions. So so you know, a comprehensive response in line with what you've said right now would be very helpful. If I could just add, particularly in relation to

12:45

agenda, point six, a three, the scope of I mean, this, this article is drafted slightly differently to Article four to in that the

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drafting itself sort of defines the scope or the application of the use of that power. So it has to be adjacent to and it has to be reasonably necessary in order to carry out those activities. So just to sort of, so you're seeing article 23, has to be reasonably necessary. And I'm just looking at the I'm looking at both the decio and the explanatory memorandum for the term reasonably necessary.

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So if you look at particular article 23, one, B.

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Yeah, that's where reasonably necessary any land, which is adjacent to but outside of the order limits.

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Fine. Okay, that's very helpful. Was there anything else that you'd like to point out? Oh, yeah. Okay, thank you. Alright, I can move on then.

13:51

The next point was about pre commencement, and if the definition of pre commencement should be in Article two,

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and indeed, if details about pre commencement works should be included in the first iteration environmental management plan, so I'm covering both B one and two.

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I mean, the first thing I would note probably just for the benefit of the room, if nothing else, is the way that the definition of commence works within the Arctic within article two of the draft decio is to list a is to say that a material operation as defined under the Town and Country Planning Act will be a operation and that will commence the authorized development and therefore, trigger or bring into play all those requirements that need to be done either in or by that stage. What it then goes on to do is it excludes a number of activities that might otherwise be considered material operations from from that trigger point. So what you end up with is a list within

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The definition of commencement that would ultimately be your pre commencement activities. That's right. So within. So taking that sort of one step further, if you were to sort of go on to define your pre commencement activities, you would

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most likely be burnt bringing that back to the definition of commencement, simply to say that a pre commencement activity is an activity excluded from the definition of commence, which would be all the activities that are included, which are being excluded or thrown away from

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forming part of it other than operations consisting of archaeological investigation. So starting from that point.

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Those those are the works that would then be included in pre commencement. That's right.

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And I'm sorry, and your point is that there's no value in doing that, because that's kind of implicit in the definition of commence. That's my view. Yes. Yes.

16:03

Is there? Is there any?

16:08

Is there any harm in doing that? I can't see any harm immediately. And if the preference of of yourself and the panel is is for a definition, then we can definitely look into drafting that so that it is clear that

there they are connected and sort of one, you know, it relates to the other. And we can propose some drafting to that.

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To that extent, yes. And I think the answer to that is related to however you answer too far a six B two, which is that if pre commencement works are things that could potentially happen before that trigger point of commencement

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are substantial, there is a reasonable list there. Isn't it reasonable to have more details and indeed, even a plan in the first iteration environmental management plan now? This is one where I would like to draw, I would ask a local authorities to comment on but I'd like to hear from you first, that details about pre commencement works, then Shouldn't they be included in the first iteration EMP. So our view of the applicant is that the

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activities excluded under the definition of commands are of a nature that do not require the added controls from the first iteration EMP. Now, I say that with the added information that what we do apply to those pre commencement works is the archaeological mitigation strategy, which is application document app. 239. Yeah, sorry, 238, as well as the biodiversity pre commencement plan. So essentially, what we have done is considered the exclusions, as listed in the definition of commence and thought about the appropriate controls that we might need on those activities, and prepared the brought those out in the two separate documents that I've just referred to. So it isn't that these activities will occur without any control. There are some controls within those two documents that we think are essential for those pre commencement activities. And if I'm not mistaken, both of those documents that you mentioned are certified documents. They will be yes. They are certified documents. That's good.

18:33

I think this is the point that you said that the other pre commencement activities excluding those two documents, do not need the control the added control of the EMP. I think this is a point where I would need confirmation from local authorities. So if I could ask, I know central Bedfordshire left but if Bedford Borough Council are there, and Mr. Turtle representing the other three councils, Speaker,

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Mr. Trillo, can I come to you first?

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Thank you, man, Francis turn on behalf of the Cambridgeshire authorities. I think as you've alighted on in the definition of commence waps is excluded. In other words, what might be within the definition of pre commencement works is quite wide and quite substantial.

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We have obviously, that on the one hand psychological aspects, which would, as has been suggested, be covered by the ecological method statement. However,

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we've also got the biodiversity plan. But however, there are a wide range of other things, which I think would have to have some degree of control and oversight. So if the first iteration environmental management plan is not to cover them, the local authorities would be concerned to understand what does by way of example, I'm just thinking here there is remedial work in respect of any contamination. Obviously, that is a significant thing to be handling. And that we need to be done with pursuant to quite careful plans and methodologies and such like and so

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the local authorities would be concerned if there

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But nothing that was applicable. I would hope that's not what the applicant is intending. But we need to be clear quite what is applicable at this point in time, given the breadth. I've just picked up on the contamination. But I could pick other examples out of that definition as well, that would be helpful.

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No, that's good for now. And Mr. wrenn, could I could I turn to you and see if you're generally contend that the matters that have been excluded from the definition of commands, which could potentially be pre commencement works, do not have added controls of the EMP? Are you satisfied with that or not? I think we share the concerns of Mr. Terrell and our colleagues. From our point of view, if works were taking place and we got complaints and had to enforce on that matter, we would have no information or detail to be able to deal with that.

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Can I bring the applicant back on that? And I think Mr. Turturro made a point about Mr. Trump and Mr. wrenn, that,

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that if it's not in the EMP, then where is it?

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Any controls regarding these matters that have been included, excluded? Or could be pre commencement? And what's the answer to that question? If it is this,

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ma'am, it may be best to come back to this one in in writing. But what I would say is that not all requirements. You know, there are some requirements that may apply. And if there are specific examples, as Mr. Toole has already offered, that the local authorities are particularly concerned about, then that would assist the app and in determining where those controls are, such that the comfort can be given to both the local authorities and and yourself.

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Okay, so then that's really helpful. I think, what we'll do is that we'll have a post hearing action on this for

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all five local authorities

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to look at the works that have been excluded from the definition of commands. And if there are particular works that they feel need added control,

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which is not currently included in the first titration EMP. And if he could have that by deadline, one

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might just have a quick question, if I may then switch to turn on behalf of the game from authorities. The definition also of commence includes reference to pre construction mitigation works

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is made up of question of tidying, but I was just wondering, is that really also thinking of pre commencement or mitigation works or what is it that we are thinking of here as being constructed? I presume it's the shedule one works I'm just not entirely clear. What preconstruction mitigation works might comprise perhaps that can be clarified.

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Is that a clarity clarification you can give today?

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misandry, I might need to come back on that point. Thank you. Okay. Okay.

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All right.

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Are we okay to move on?

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Yeah. Okay. Thank you very much.

23:18

Now, I'm just aware that it is 533. I've got two definite points that I want to cover. So I'm going to skip over advance works. Advance works has been included that question is in the written question. So we'll look forward to your response there. I definitely want to cover 60 and six E and six F. So let's do that in turn, associated development. So turning to shedule, one, Paras and you I suppose the first question is that

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you have sought to not to differentiate the insert and the associated works in sheduled. One, which in principle seems fine. But the reason we're confused is that there's inclusion of further associated development within the order limits listed in paragraphs a to you and I think the question is, can you explain that second justification for that? You know, I guess that's same thing. And then the third point is about the broad definition. So let's cover one and two. First up. Absolutely. So in relation to, as you've noted out, the draft order does not differentiate at the moment between the N sub elements and the associated development elements. And that is, on the basis that it can be very difficult and potentially lead to error, given the complexity of the scheme and the difficulty in sort of drawing that line between what what is associated and what perhaps is, and I think an example given in the explanatory memorandum is about utility diversions, that perhaps wouldn't

25:00

Some on on highway or off highway diversion. So you could have one work that potentially falls within the end zip and another work that that, and the same work that would not fall within the end. So that's the reason for not differentiating between the end zip element and the associated development. And also that there is, as far as we're aware, no legal requirement to do so. So

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then to pick up your point about the use of the sort of further associated development list a to you. Yeah, that's right, in shedule, one of the of the decio.

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Essentially, that approach is a fairly common approach across, particularly highway scheme, they made the CEOs. And it's a fairly practical reason that it is used in because in doing so what it allows you to do. So it's important to sort of recognize that the application of that further associated development is really is only in relation to carrying out the authorized development. So in relation to the works that are sort of listed above, you are able to carry out these more, sort of,

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in most cases, minor or more frequent works. So as a result of by by including them in this list, what that allows the applicant to do is it ensures that each of those works it is that these other words are available to it. So it prevents you having an extremely repetitive list of numbered works, that might each describe perhaps a verge.

26:43

What's one example? So refurbishment works to an end bridge, or that's probably not a very good example. So works in the verge of a public highway, for example, that could repeat many times throughout each of the numbered works. And so what the list of further associated development does is it just allows you to pull those out, put them at the end without having to then repeat them across each of the different works, descriptions, your numbered works, great options. Okay.

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So what you're saying then, is that these may need to happen at several times, during at all across the authorized development. So it saves you from having to repeat them at several times,

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which is helpful, but then then it goes back to the point about the broad definition of some of these items, and I'm going to pull this up in a second.

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For instance, what's under paragraph a, seems to be

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seems to be a very broad definition of everything that's included in the article to do with streets. And it seems to be a much broader definition than the controls that have been included in the decio. elsewhere. And so

28:06

could you explain that the, the operation of this article or this or this part of the shedule will be subject to the controls within the decio as well.

28:19

Okay, so where does it say that? Could you highlight that for me?

28:24

I believe this is a particular question that we have been asked to answer. Yes, maybe? Yeah. If I cut my finger on it, yeah, maybe best. Okay. So I think it's that that I think that's a very crucial point that if this is not broadening the powers that have elsewhere have been constrained, or very carefully defined in the decio. And if the careful different definition in other places in the decio, applies to this list of associated works from at you,

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then then we're in the drafting is that secured is helpful to understand. You also mentioned that this that this has become a common method that's been used in other DCs. I don't see that in the explanatory memorandum, I could be wrong. But if you could just highlight that for me, then that will be helpful.

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can have a quick look. I mean, if it's helpful again, I'm happy to put that in the response to the question on this point, but just in in front of me and my notes. I and I will include this perhaps in the updated explanatory memorandum if it's not there already, that this general approach has been taken on the a 14 Cambridge to Huntington and I see that, yeah, we have a chance. Paragraph 2.1 point 25. Yes, no, I see.

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Good. So then I think it's the clarification on the drafting which helps us understand

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that the provisions of the dcl will apply to all of these works.

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But all

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The explanation that these works have not been included as separate works numbers because there would be several, several instances.

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Okay, that's helpful. I can move on to E, which has to do with compulsory acquisition of rights and imposition of restrictive covenants. Now, I'm just gonna say this,

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that this, these questions E and F have not been included in written questions so far.

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But I will include them as additional questions when the written questions are formally issued alongside the rule,

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or alongside the rule eight letter. So if we go to agenda item six, he

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if we could turn to Article 28, which is compulsory acquisition of rights and imposition of restrictive covenants, and shedule. Five, which is land in which only new rights etc may be acquired, as drafted, Article 28 seems to allow rights to be created over any of the order land.

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Is it not simply limited to plots listed in sheduled? Five?

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If it is limited to just plots listed and sheduled five, then should that be secured? Should that be mentioned in Article 28? One?

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And basically my question is at the very broad scope of Article 28, one coupled with the lack of any statement to the effect that article 28 only applies to order land listed and sheduled. Five means that for all the other order land plots not listed in sheduled five, The Undertaker may still have unrestricted right

to impose undefined new rights over order land, including overland described as being for temporary possession alone.

31:48

Madam Jonathan Bauer on behalf of the applicant, I'm picking up these elements of these points. If it would help, I just set out the sort of objects behind article 28. So it is twofold. One is to facilitate where the case may arise for the undertaker to acquire just new rights overland, which may be authorized to be acquired permanently. More specifically, it where they're listed in shedule. Five, The Undertaker can only acquire new rights over that land. And so in circumstances may may arise whereby the undertaker establishes that it doesn't need the freehold of a particular part of land, but could in fact, just acquire a new righto without land, then article 28 would authorize it to effectively acquire a lesser interest in the land, ie a new right over the land, as opposed to the freehold acquisition.

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And so there's there's two options available within article 28 either

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acquiring a new right over freehold land and not acquiring that freehold outright. Or if it's listed in sheduled, five acquiring the just those new rights and that that is referred to in the explanatory memorandum.

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I won't give I mean, I assume you've got the document reference number, but it's in paragraph 4.1 point 107. Apologies, I don't have the page number for it. No paragraph in front of me. Thank you.

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It's page 23. Thank you.

33:38

Yeah, what it would do is to reduce the extent of any freehold acquisition, if in fact the undertaker can acquire just a new right over that land.

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Miss about what can I just clarify then. So this is going to further reduce the scope of freehold acquisition further down from article five

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from shedule five

34:02

though, so, there there are, there is a land authorized to be subject to compulsory acquisition in the order either compulsory acquisition by virtue of freehold acquisition and on the land plans that are shown in pink.

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There is also land which is authorized for the compulsory acquisition of new rights only. And that is shown a colored blue on the land plans.

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So the the new rights plots, which are colored blue are specifically outlined in sheduled five. And so the undertaker is only authorized to acquire permanently new rights over that land.

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But for any of the pink land, which is shown on the land plans, what article 28 authorizes is for

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instead

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acquiring the land permanently. They could in fact acquire a new right over that land. So they wouldn't take it on a permanent freehold acquisition basis, they may acquire a new right over that land.

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Okay. Okay, that's helpful.

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But I think so I may have further questions on this. And if I do, then I will put that in the written questions. Thank you that is helpful. But I suppose it just leads to that point again, which is that should then 28 one not specifically refer to shedule. Five?

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Will it once 28? One does, it says subject to the following paragraphs of this article.

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And then it mentions sheduled five, and by paragraph four, four. Yeah.

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They practically the approach that that's taken is one drawn out first, from a policy perspective of acquiring authority should only seek to acquire the maximum extent of land that they require. And so from that perspective, that would also relate to seeking to acquire lesser interest in land, if it is possible to do so. And and secondly, it's linked to the fact that the The Undertaker has been able to identify specific areas where only new rights are required, following there, the design of the scheme, but it could be that it is possible to reduce the extent of freehold acquisition and once full scheme design is has been completed. Thank you, Mr. Bao. I think I'm clear on that. And but but if I have further questions, I will put that in written questions. And I think that kind of neatly brings us to

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six, F.

37:01

basis, just let me dwell on six e4 for a minute basis of consultation with persons with an interest in the order land.

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I will skip over that. I will skip over that because I think there's a related question and six F which I think we can cover that in.

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So with six f which is temporary use of land for carrying out authorized development.

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I just want clarity on the interrelationship between article 21 and article 40, temporary possession and sheduled. Seven,

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land on which temporary possession may be taken. And I think I'm just looking for an explanation which specific reference to the draft development consent order drafting of Article 14, paragraph nine subparagraph. A whether that offers an intended

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backdoor, if I may use that word, so to speak with the creation of permanent rights under Article 21. Overland which is only ever intended for temporary possession.

38:06

Yes. So when I received the the agenda, I used a slightly different term in my own mind, which was about whether the examining authority wish to explore the potential for upgrading of acquisition.

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And I think it's similar points you're making about sort of an unintended consequence of Article 49. So

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it probably

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helps to also have in mind article 25, about the which authorizes the compulsory acquisition of land, which of itself is subject to both articles 28 and 49 is a

38:48

paragraph nine.

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So if I start with article 28, okay, that that allows the compulsory acquisition of rights over land, which is authorized for permanent compulsory acquisition, and we've just covered that in Yes, responses. Agenda Item 60. And article 28, five that expressly limits the compulsory acquisition of REITs on certain land, which are then shown on the land plans and detailed in sheduled. Five and again, we've we've we've just covered that. That's fine. Yeah.

39:24

What when you look at article 49, it has a a bar on the freehold compulsory acquisition of land.

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you propose that the start of that paragraph says the undertaking may not compulsorily acquired under this order. The land referred to in paragraph one, a one

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in those circumstances, so there is an absolute there's an absolute bar on any

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permanent.

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Okay, on any permanent acquisition of that land. Right. And 181 Sorry, sorry, Miss Fowler. I didn't mean to interrupt. Please continue, please continue with your question.

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One, a one refers to sheduled. Seven. Yeah. And therefore provides that definition, or the

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shedule. Seven is the

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the Express limitation on land where only temporary possession powers can be exercised.

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But it then

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goes on to say in 49, that the

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undertaker isn't precluded from acquiring new rights over that land.

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And those rights would be set out in

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an article 28. What what the what the land plan show is those those areas of land where

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temporary possession only is permitted, and that that's shown in green. And you'll see from the land plans that the air any areas shown color blue are both for temporary possession and for permanent acquisition of rights.

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But to just hopefully close out the point that you raising, so 49 has a bar on the freehold compulsory acquisition

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of land. But as I said, it does permit the ability to acquire rights rights over land permanently.

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But it does then also tie back to Article 28. Because article 28 says that whilst you can create unspecified rights on land that is only on land, which is authorized for permanent compulsory acquisition.

42:01

And because 49

42:06

prevents the permanent acquisition of land, that would not apply. I appreciate it may be beneficial. If I appreciate you, mate, you may have a follow up question on this. But we can set out in response to

42:19

this hearing. in some more detail. They're sort of the roadmap to take you to to the conclusion that we've reached.

42:29

Because you've drawn, you've drawn the relationship between article 25 as well here, so yes,

42:38

I think it will, it will help not least also, because we are coming very close to the end of have a very full, full hearing. I think a written response will be helpful here.

42:53

But what I am going to do is of course, these questions because they're not included in the intended first round of questions. We will add them as additional questions. This in alongside with a few others in the agenda.

43:09

If I have any further nuanced questions based on what you've said today, I will add it to that list.

43:16

But I but I think to begin with, it's just that relationship, as as I've set out, it's understanding that relationship between

43:25

28 140 article 40 sheduled, seven and now even understanding

43:34

article 25. And there are two aspects of Article 40. It's paragraph nine, as well as paragraph one, a one.

43:47

Yes. Okay. So we'll wait for your written response on that.

43:52

Jonathan bar for the applicants. Thanks, madam Yes. And if it would also assist we will make reference to some of the other may DCI is where this has been used a 14, for example, being one of them.

44:08

Miss Val, just with respect to making reference to other main DCs, that is always helpful, and we do rely on that. But sometimes a little bit of context on that those main vcoss also helps. It's difficult to explain what I mean by that context, but it's just helpful to understand.

44:30

Well, just helpful to understand the context within which those decio provisions have been applied have been used in in that particular

44:40

in that particular made this year.

44:42

Jonathan bath the applicant? Yes, fully understood. Thank you. Yeah. Okay, now we are, we're coming very close to

44:53

six o'clock. The second part of questions six f two, I will just leave

45:00

If that for you to, to respond to and I think the second part of question six F is also one that we wanted a response to in six E, which is if all consultation with all affected persons has been very clear that this that these provisions

45:18

of what's included in these provisions. And if you could please include that in your recent written response then

45:26

that should be covered.

45:28

I'm going to check very quickly with Mr. Bao, are we happy to move on from six E and six F.

45:36

JOHN at the back of the applicant? Yes, certainly, when we've got a written response already prepared in any event to deal with some of those points that you just raised that you'd like in writing.

45:47

Thank you. I'm going to check with Mr. Scriven about agenda item six G and hand over to him.

45:57

Okay, so

45:59

this, this is ones regarding the limits of deviation, as I think set out in part two principal powers number nine. And it is whether can the applicant provide justification for no maximum limit of horizontal deviation in meters in the draft development consent order? And just in answering that question is proposed approach common in other nationally significant infrastructure projects and associated DCF.

46:29

Good afternoon, Ella Rae Hendry for highways England the applicant to address this point. The first point to note is really just to highlight that the works plans, which are application documents app 0092010. Do you show the limits of deviation for the

46:53

both utility diversions as well as the sort of non utility works, and that's shown by pink shading across the works plans in relation to the non utility works as well as by blue lines in relation to the utility works. So whilst there isn't a metres limits of deviation set out in the drafting of the order? What there is, is clearly defined limits of Demeter deviation on the work plans themselves. Yes, so why is that? Why isn't it in the DCR. And the approach taken is, it's it's taught to Well, it's different, it's broader than simply looking at the highway works themselves. So it's not that there would be a limit of deviation, say from the center line, the limits of deviation cover all kinds of activities, drainage, landscaping, that kind of thing. And effectively, the approach taken has been to show the limits of deviation to cover the permanent land acquisition, but keeping in mind that the actual construction of the scheme is limited, not only by the limits of deviation, but also some physical parameters. So you can see the preliminary design of the scheme as shown on the works plans and the general arrangement plans. And also, there are a number of existing physical factors that the scheme design will need to connect in with side

roads, you know, the the a one the sort of other physical constraints. So it is thought that by using the shading, it's allows slightly more more flexibility for the applicant, but it's also a more realistic

48:32

view of where the limits of deviation might exist. And you'll see that that's clearly shown on on the works plans. And to answer your other point about whether or not this is an approach taken on

48:46

other made decio is I can confirm that, yes. There have been a number of other D CEOs that have used the the works plans to show the limits of certainly the lateral limits or horizontal limits of deviation, as opposed to trying to specify a meter deviation perhaps along the center line or base from the centerline of the highway work. Okay, thank you. If I might just invite any of the local authorities to comment on this as to whether they feel this is

49:18

this is acceptable for them was it provides enough understanding for them in terms of what the limits of deviation could be?

49:27

Thanks. Francis Terrell, on behalf of the Cambridge authorities. I think as the applicant has explained, this is a very standard approach. We understand the development consent orders for the principle works to have a power of deviation, which is by reference to limits shown

49:45

on the works plans.

49:48

One point we were to raise with the applicant, and I just mentioned it here, but I'm sure we can deal with it offline with the applicant is just to clarify how powerful

50:00

The deviation might apply to some of the footpath and related works in relation to schedule three.

50:08

The those works are shown on what is referred to in this order as the streets.

50:15

Forgive me, I've got the reference, it's the streets and

50:19

rights away plants, I believe that's now called in this order.

50:24

Those are not works plants.

50:26

So and we just want to clarify in due course, where the applicant, whether there might be any deviation in relation to the property rights of way and footpaths that may be provided or required to be provided under federal three, paragraph seven. And this flows actually from experience that the local authorities have had on the a 14 were in some instances the right of way have not been constructed by the applicant, where they thought they might be I think his eyes on is what I've been told. So

50:58

that may be due to pass a deviation. We just want to understand fully in this order how this might operate.

51:04

Okay, thank you noted.

51:08

I've got a hand up here from Miss Poirot.

51:14

Hi, yes, dragon boat for the Environment Agency.

51:20

Just wanted to raise a potential concern that we we might have with the limits of deviation.

51:28

I understand that for the a 14 we had a something in the in the decio that said that if

51:39

if there was a deviation into flood zone three, that we would be consulted on that issue.

51:49

We will consider what Lorraine Hendry said in relation to the plant. But we just wanted to raise that as a potential issue and just asked if we could raise that as a response to the written questions even though that question wasn't specifically directed at the Environment Agency. Yes, he

52:12

is part of the got comments to make on those questions that have been raised and Yes, okay.

52:18

Thank you.

52:19

Sandra. Was there anything you wanted to come wanted to respond on in regarding those points raised? Mr. Terrell and Anthony as well. Thank you, Mr. COVID, here, Hendry for the applicant, nothing

to raise immediately and we will cover those further points as we can either in response to the written questions or for otherwise.

52:41

Miss Terrell, I see you've got your hand up.

52:46

Thank you want to turn on barf came from authorities, or something I just forgot to mention a moment ago was that, as we said that the approach adopted by the decio is quite standard as a overall principle. Again, in addition to Bobby rice away issue, one thing that we'll be asking for in the decio is adequate control and approval mechanisms for any new roads that are constructed. And any roads that are D trunk. Now, obviously, any new roads, which are to be local roads, which are constructed under as a deviation, again, if they are subject to those adequate powers of approval, then the local authorities have no concern with that approach. But obviously, if those powers are not included, then we wouldn't want the road to suddenly deviate and have no say over why they might end up.

53:36

Okay, okay.

53:40

I suppose we move on to

53:43

the was it g two, and I was just what I was going to say on this because this is quite a is a detailed question regarding a number of the composite sheets and the work plans is that we will make this a part of the written questions, addendum that we'll be issuing. There's just a flag that is just just some examples of where this, these limits of horizontal deviation do look quite big, up to 100. What looks like up to 100 meters in places and it's trying to understand that better?

54:17

Not a problem. So and we're happy to respond to that in relation to that question. Okay, thank you.

54:25

Mr. Scriven. Could I just add one thing, that there's there's two or three places where both Environment Agency mishpat from advisement agency, Mr. Turtle have pointed out places where the limits of deviation could be problematic. So just as either as part of written questions, or Yes, I think it will be part of written questions. We will request clarification on what those specific areas are going to be from both local authorities as well as environmental agency and others indeed. So we'll probably just broaden out the respondents

55:00

To the to both of these questions in our written questions, so that we have that clarity

55:05

on what those areas of issue might be and then wait for the applicants response on that.

55:13

Okay, so I will now hand back to the site.

55:20

Yes, I think given the the the agenda we did fairly well that we're only 20 minutes late and I do apologize that we are 20 minutes late in closing, but I want to say thank you for participating today.

55:35

And as mentioned at the start, we will provide action points from the hearing.

55:41

We really are really looking forward to your dead one, deadline one submissions, including the responses to first written questions.

55:49

I'm about to close in a minute, but if there are any questions before I close the issue specific hearing today, please raise your hand.

56:00

Okay, The time now is six minutes past 6pm and I am closing this issue specific hearing. Thank you.