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00:11

Good afternoon, everybody. It's now noon. Welcome back to this adjourns. session is h one. Mr. Walker, you'd had your hand up for a short while and also wanted us to respond on the discussion we've just been having about the approval of these plans and where they sit. You can give us your views, not not simply on the SS MPs, and how enforceable they are whether enforce would also in relation to the environmental management plans, the construction environmental management plans? And if you could, yes.

00:52

Thank you, sir. Angus Walker, uproar that he suffered counsel, we do share some of your concerns that was not doesn't seem to be that much control over these documents. I mean, my starting point would be there's in most DCs I've come across there is a construction environmental management plan that mentioned in a requirement that is then approved by the local planning authority. Now, we do understand that this is a much larger project than most other decio unzips. And there will probably be a number of these plans. I don't know how many, dozens maybe. And so it may not be appropriate in this case to approve every single CMP. But any, but we do think of construction practice that sits on above these should contain all the areas that we would routinely expect to approve in in a CMP. And at the moment, it doesn't really have that level of detail that we would we would want to take an example. hours of operation is a typical thing that is defined in a semp or cicb. At the moment, that current draft doesn't say anything about ours in part A the project wide section, then in Part D, which is where was it called? I can't remember the title. I think that's the main the main development site, section 1.3. It does talk about hours. But it's just a sort of description of what what's expected to happen. It's not, it's not written in a way as controlling what is going to happen. And there's no it doesn't seem to oblige those hours to be kept to in any way or anything. So I think we'd want if we're prepared to accept that we don't need to approve the individual stems, but the things that would be in them, normally, we would like to should go in the cicp. And we would then approve that, or it. It is a certified document. And so it's sort of finalised during the examination. And currently, the cicp doesn't isn't in the right language for our purposes. Dual Language what what do you mean? Well, like the working hours, if you look at paragraph 1.3, point one in part B of the current cicp. It just says the majority of workers are expected to be working on an early shift or a late shift. Most of the remaining employees would work to office hours. I mean, doesn't say anyone has to work to any particular hours there. Which is normally what you'd expect in the working hours to provision. So it's just sort of describing what might happen rather than committing to any particular hour. So

04:03

are you content with the response? Which Mr. Phil Parsons sharp Davis about the who enforces the SSA MPs? And what's your view on the you know, where one sees the divide if indeed it is right that there's a divide between some which are enforceable by the authorities and some which are just internal documents for the applicant?

04:30

Well, my view is that that as long as the cicp is where the applicant is on the hook, and that contains sufficient of these controls, then that would be sufficient. It's up to the applicant. Howard then instructed its contractors to behave. If they misbehave, then they will have breached the CEO, the applicant will have breached the cicp

04:52

so you don't expect to see parts of the a limp, sort of. So the OLAP leads to a lamp

05:00

Yes, I was only dealing with the sample SS MPs. I mean, generally, for anything that's going to be approved after the DCA was approved, we would want to see an outline version that the final approved version is then in substantive is substantively consistent with or whatever the phrase is going to be. Or if there isn't even the outline version, that the DCA should list what it should cover. So at least there's some structure but I think there aren't documents when most cases Yeah, I think

05:38

it may be different with the airlines because we've established now that 14 and limits 22 or thereabouts are the ones which actually give effect to those but for the for the camps. You're not expecting to be able to enforce those because you think that the substantive the important parts will be set out in the cscp. And so what you would be doing would be enforcing the CCP against against the Undertaker and it is the undertaker if it hasn't sorted out with its contractors, then that's its lockout.

06:17

Essentially, yes. But the CFPB currently we don't think is up to that task at the moment. But but it is, it certainly is possible for it to be drafted. Anything else that you wanted to say about? About those? I've got one point on the T MMP, the terrestrial environmental management monitoring plan as your hand up? No, no, it was it was to respond on this main point. very minor one. I mean, we have seen and commented on the draft. So we would like it to be a certified document in module 22. Which it currently isn't extra point on those control documents. I do still have more points to say about mitigation in general. But yeah, I can do that now or later. No, hang on. Okay, that's it on these particular points for thank you very much to the Suffolk County Council want to say anything?

07:19

Thank you, sir. Michael Bedford, Suffolk County Council. So we certainly do want to say something more generally, in terms of securing mitigation. And whether that should be matters dealt with under the draft decio or under the deed of obligation. But as I said, that's a slightly wider topic than where you are at the moment. So I'll just hold fire on that. But I just put down a marker. There are some as it were big picture, things that we want to talk about. So far as so far as the code of construction practice is concerned, as you know that the main code of construction practice is the discharging authorities East Suffolk councillors proposed in requirement to and we have genuinely deferred to a Suffolk on the detail of that we do have some detailed drafting points, which I think we've had in correspondence with the applicant, but I don't take up time on those now. And then we also obviously, just make the point that so

far as the enforcing authorities concern primarily that's going to the east Suffolk Council for any breaches of requirements with the possible exception of West Suffolk Council in relation to pavement. But obviously, you're alive to that. So to that extent, I think we've been sitting in the sense behind the Suffolk on the detail of the Theo's EP, but we would certainly echo the point that Mr. Walker's made, particularly about the language, and he gave the example of construction hours. And you see exactly the same in Part C of the cicp. In the way that it refers to the construction hours for the off site associated development sites. It's in very broad, general language, it's certainly not worded in a way which would make it readily enforceable if there was a transgression of those hours.

09:11

Good. Good. Okay. I got your point that you're tucking in behind. Mr. Walker, and, and Co. So as you profit the rest of today, if I don't call on you to say something, it's because I assume you're still tucked in behind. If there's something that you want to say, put your hand up and I'll bring you in as

09:31

well. Absolutely. So we have got some substantive and very important things to say about the whole structure of securing the mitigation. And I don't want that to be lost in the debate.

09:43

Good. Okay. Thank you. I've got that. Thank you very much. Mr. Topol, I'm going to come back to you now and you've got the question which I raised with you before the break. Let me not make your life more complicated, but I hate to make it make it quite clear as I read it. requirement to. And as I read the cicp my understanding was that the obligation was to comply with the cscp. And because the cscp requires sub documents to be produced, that vary, that breach of those sub documents would be a breach of the cscp. Because if those records are not an existence, and the CRP is not being complied with. So with with that thought, as well, I suppose you've probably got there already, if that was there as well. Can you now respond for Dimitri, before the break?

10:43

Yes, I'll deal with that point. Now, if I may, I'll just pick up a few points that have been made. Since then. Yeah, sure. The first point i preface this, that we think that it would be helpful to produce a short note to assist you, and then the other members of the examining authority on the relationship between the cscp and the various plans, which will hopefully assist in clarifying this. So far as the point you've just raised, the, if the cscp says that there must be some s MMP within it, and you haven't done that, then you're not compliant with the CSC P. But that's different from requiring adherence to the contents of that more detailed plan. If that isn't sufficiently clear, we will consider how that might be made clear. But the intention is, as Mr. Sharp has explained, and as I probably less elegantly tried to explain thereafter. We are also I should say, in terms of helping on this, producing an updated mitigation roadmap. And the intention is that this version would be organised by measure, rather than by site, or by an issue. And we think that that may also help to clarify the relationship between different plans and requirements and therefore, measures. If when we review this matter, we consider that it is appropriate to make any changes to the text or the CIC D itself, we will of course, do that. I should say that, we will, of course, and be willing to consider any constructive comments on the cicp that the Suffolk has, in particular, obviously, others may also make comments and we'll take those into account, but bearing in mind that

they are the principal enforcing body, we'd be particularly obviously interested in to hear what they have to say about it. And so I hope that that provides enough of an answer for the moment on that, on that matter, we hear the concern you have identified you obviously, by may say so found that the position is not as clear as you would wish or is not as clearly as explained as you would wish. And we take that on board, and we will seek to do what we can to clarify. And if that requires clarification to the documents, we'll take a little bit better.

13:37

Thank you. Thank you. I mean, you're you're right. But I did have a different understanding from yours. I think that let me just say, say two things about this, if you're going to, to, to clarify a decoupling between what I'm going to call a subsidiary documents, the documents which flow out of the CACFP, then really picking up on what Mr. Walker said, You need to make sure that there is sufficient clarity certainty on on what the CACFP actually does require. So that so that's it's not just we must produce another document. But that the doc, we have got to do something or not do things in the course of the carrying out of the other of the development. I'll go back and look at your see as csep I'm interested to see what what comes forward in relationship to to that. And the other thing I want to say coming out of what you said is yes, the mitigation route map. A useful document so far as it goes, but I have found it difficult to use that document in turn if I have the document in front of me when I am trying to find a piece of mitigation, whether it's primary, secondary or tertiary Which is mentioned in the environmental statement, the mitigation route map directs me to a large chunk of text in the ies. So it may be it may be that I'm sensor paragraph, missile Section seven point, USB 3.9. And point nine might be a dozen pages or more long. We need something which, which reads in both directions so that when I'm actually when I have the DCR in my hand, and I can see it, it says regulation for DNS or a byte 14 says it says this, I can see where that's coming from exactly out of the ies and likewise that I'm holding the ies in my hands, I'm trying to find out where there's promises made good. They're in the decio or the CAC up or something else. But it's the it's not the generic bunch of promises, which is in part section 100. But it's the promise, which is made in section in paragraph 10 of Section 100.

16:08

I have both of those points on board, we will take that away, as I said it is being reviewed, and refrain now. And those that those on the call will have got that message. Good.

16:23

Okay. Thank you very much indeed. And all the documents which something else

16:28

he wants to say, if we're still on that point, I wait to hear what you have to say. So I was going to go on to deal with points made by he suffered deal with these suffragan? Okay, thank you. And it's simply this, as I've indicated, we will engage with the supper on any comments they have on the period of construction practice. And but of course, so far as working hours are concerned, the main development site will be a 24 hour website. And that's important, but understanding the absence of hours controls, the hours for the associated development sites are dealt with in the next section. And they're dealt with in a different and more specific way. Now, if there are comments to be made, about the way in which they're encapsulated and whether or not that's those are the right hours, that's a discussion we can

have. And it is important to distinguish between what seeing what's dealt with in terms of the main site on working hours, and what's dealt with in terms of the associated development sites, again, the fibre in relation to the temp. And so we have indicated I believe it deadline three, but just for the sake of clarity, we are expecting the attempt to be a certified document. So we're not resisting the suggestion that it be a certified document that is understood and that's our intention. And we've also updated requirement for so that the authorised development as a whole must be undertaken in accordance with the text. So it's it is now all embracing.

18:12

Yeah, I saw that. Thank you. Thank you. Right, then, I think you've got this point. But, you know, we've concentrated on the SS MPs, but this point about approval and enforcement as he goes across that, that that whole that whole suite of documents. So please make make that clear. I like to just to ask something about the ecological class Clark works at this point. I want to make sure I've correctly understood what they're doing this for what you might want to get us to sharp back. But I think you will both need to be involved. And I'm sure that Mr. Walker is alert as well. I'll give you a tic de Roos. Mr. Sharp, teed up is very good. Okay. So he got Clark Clark who works as I understood that persons that that that office is function from reading the environmental statement. The the killer Clark works is put forward as a mitigation as a piece of mitigation. So, in the cicp, in the second revision, it says there'll be overseeing on site ecological mitigation and ensuring that the ecological measures in the cscp are implemented. But when we get to the latest revision, it says where the ECU who disagrees with works being undertaken by the contractor which could lead to a breach in the CCP or the ACL requirements all the measures detailed the years or protect species licence. Then what happens the ECA w informs sighs don't panic Mr. Sharp I'm telling you what it says Don't worry. It says the EC o w will inform SNC co or SSC COEs environment manager immediately and only advice of the ECA w the environment manager may hold the works or any part thereof.

20:28

Now,

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this doesn't sound to me, like a piece of mitigation. The incursion Clark works has got no further input other To be frank than acting as your policeman. And why is that? They can't stop the works. There they are. They're not they're not an added layer of discretion saying, in my view, this would be a bad thing to do.

20:58

Have I correctly understood it? And if I'm right, he's not a piece of mitigation, is he?

21:09

So I think the point here is that if if the ecological Clarke of works identifies that something that may be inconsistent with a measure in the cicp, or other part of the decio, the point of saying that they would then need to discuss that with the with the applicant is principally to make sure that there's confirmation that that there is a there is a potential breach. And so it certainly is to make sure that there's a validation process that that that there is a potential issue, because the ecological block of works will

have a very limited scope, they'll they'll they'll be looking at ecology. And so I think point is, is to make sure that before we take potentially disproportionate action, that there's a, there's a there's a sign off process with in effect the client. And so it's essentially to make sure that we only stopped works where, where there's a genuine issue and that when when we're not leading to it to the constant stop start process that may arise if you had to hold works if if every time the ecological park of works had had a doubt. And so the point here is to try and sort of ensure that we're only stopping when there's a genuine issue. And so is it It is intended to be a mitigation measure. And we tried to clarify exactly how that role would work in practice, which is precisely how these these roles would work on on any any major construction site.

22:51

So you make your mitigation measures whatsoever out in the DCU. And these and the construction practice.

22:59

I'm sorry, my speakers, music.

23:05

Your mitigation works, your mitigation is what set out in the DC and the code of construction practice. Yeah. I mean, isn't he's not giving any any further mitigation. He's simply saying I think may be going wrong here. And he tell he tells it says CQ, The Undertaker

23:24

water, it's an underground enforcer. That that allows it now a qualified ecologist to check that works that being undertaken in a way that's consistent with the terms of the cicp and the DCM at large, but I think the specific point here is that because this is such a complex project, and there are so many different requirements of the decio it wouldn't be appropriate for that person to to have this sort of, you know, the the ability to stop works at any point that they're not unsure that they're not clear of whether or not there's a there's a breach and so the intention of having that as a referral to the environment manager is to is to make sure that things are properly taken into account.

24:15

Okay, I'm not saying that the your ecological cargo gear is basically an internal function, isn't it?

24:23

Yes, if I can help on design, as I understand it, it comes back to the point of principle that I was identifying earlier. We have to comply with the code of construction practices, we have to comply with other requirements. And as the text explains that the purpose of the ecological clock works with that individual's particular expertise and location is to be an internal early warning system to say, look, I think something may be going wrong here. And you sizewell sico If you carry on down this route, I think you may be committing a criminal offence. And therefore, I bring this to your attention. So they take steps to ensure that you don't commit a criminal offence. And in that sense, of course, in order to comply with the code of construction practice, The Undertaker must appoint that person in order to fulfil that role. And that will be an important way of ensuring that the code of construction practice and any

other requirements are adhered to. But it's the it doesn't require the ecological block of works to be able to stop the work because the ecological clock works will not be the person in the dock if his warnings are ignored, and so therefore, there's a sufficient incentive filled in to the system, which this is intended to make effective.

25:57

Okay. All right. Thank you. Thank you. A lot of the discussion which we having so far has touched on issues of language. And I'm just going to deal with this quite quite quickly. As we've discussed, any breach of the decio any breach of a requirement creates a criminal liability. Now, reading through the code of construction practice, I see a lot of words like, well, I see a lot of word I see a number of times it says should sometimes isn't, is too. And sometimes there's even a could. Now, all those words are expressions of hope. And in some cases, they're conditional words as well. They're not, I mean, conventional drafting terms, these words are not imperatives, which carry with them an obligation to perform something. The This is important, as I'm sure we all realise the cicp is part of the regulatory suite of documents, which you've got, and breach of it gives rise to criminal sanctions. And my understanding of criminal law is that clear words are needed for criminal sanctions to apply. And I'm puzzled as to how the local planning authority, the judge, or the magistrate, is meant to be clear as to which parts of the ca csep and any other enforceable Li documents, which we've been talking about which parts are aspirations and hopes, and which parts are obligations, which must be performed. And it's important also for for your clients. Mr. Phil bot, it is important for the contractors who are who are under underneath it. Before you respond on that. I'm gonna ask Mr. Walker, who had his hand up for a moment earlier, if he wants to say anything as well about about language.

28:14

So Angus Walker, for he suffered counsel? Well, my hand was up on the ecological clock of works, actually, but because it may. But you've you've got the point that he or she is not a council officer running despite the name sounding a bit sort of council officer, he has an internal role. I think we would quite like to be notified as well, when when this person suspects a breach and the cicp we're all just opportunistically betting. But on your point about the language of the cmcp? Well, that's probably precisely my earlier point that it is not currently drafted in a way that is giving us series of commitments. It's it's sort of somewhat aspirational. And we would want it not to have kids and woods and shoot maize in it. Okay, thank you. Thank you. Mr. Hill, Bob, what do you what can you tell me about this?

29:19

What I'm going to do is I'm going to hand over first to Mr. Sharp, who's been involved in the the detail of it to explain the purpose and thinking that lies behind the way that it is drafted. And it seems to me that's probably the first thing to do so you understand what is intended. And then we consider the use of the language in that context. So I'll hand over to Mr. Sharp persons. Okay. Thank you.

29:56

Yeah, hello. Hopefully that's that's that That's working. And I suppose the starting point is that, you know, when you read through the cicp unit, it's, it's intended to provide a sort of environmental management system. And so, you know, there are good words in there, and they are generally deliberate, because that they're dealing with, if you come across a certain scenario, if you're doing a

certain type of works, there are things that you need to consider. And so that, you know, that wording is deliberate to make sure that there's the ability to apply the right measure for the right type of works. And if there are particular sort of instances that either he Suffolk or or the county have in terms of where more clarity or where where we can remove those codes or shirts, then we're happy to have that conversation. I think the important point is that where there are specific where, where there's a need for specific controls in the cscp, they are made explicitly. And so you know, that, that there's there's a need to sort of have a balanced approach with this to make sure that, you know, the contractor is aware of the things they need to be taking into account in undertaking certain types of works. Yeah, but

31:26

Forgive me, I just interrupt you for a moment. I don't think the Secretary of State I don't think he sort of counsel too bothered whether it's you or the contractor who are in breach it's it's it's the undertaker, which is which is in breach of the undertaker to pass the thing down to the contractors. And you do that in your contracts. The it may be assisted by what's here as well. But but that's that's your contractual relationship is the basic one where you where you offload or where you back up your your like your liabilities, you say to me at some of the codes are deliberate? Because there's a choice to be made. But if, if, if the sub accounts we'll consider it could be the different choices, right? Or consider this within the realm of or could you didn't even make the choices that are what actually, we're not going to deal with that? Where do we go, and what is what is actually going going to happen?

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But I suppose the point here is that, you know, alongside the cicp, there is a range of monitoring commitments that are made, which which help sort of enforce the project. And so if there's a problem occurring, the monitoring scan to sort of show that something hasn't arisen. And so for example, you know, if it's a noise threshold that's been exceeded, it's clear that some of the construction works haven't been applying best practical or means there's, there's a clear way of understanding, you know, there's there's a threshold that's been breached. And it's clear that the cause of that was, you know, a construction methodology that wasn't properly applying best practicable means and so, you know, that there is a clear path to enforcement on these points. And so, you know, there's a number of different ways to apply best practicable means and so that, you know, some of the languaging in there is, you know, intend to try and help, you know, explain the full set of measures that that could help keep within those defined limits. I think just using you know, that.

33:44

Thank you. Thank you for that. I hadn't appreciated the linkage between the monitoring and, and aspects to csep. One of the questions which we've been asking, is, what, what does one do with monitoring, there's lots and lots and lots of promises to do monitoring. And I think we've asked them a number of questions? Well, that's fine. You monitor, and then what happens? So So is that linkage there now? And if it's, is it there now? And if not, could you make sure that it's there, please?

34:19

Yep. No understood. And so for example, you know, the terrestrial ecology, monitoring and mitigation plan sets out all of the monitoring requirements for the project. And so that's that saves, you know, how ecological and what would need to be done if if monitoring identifies a different impact than that

assessed in the essence. So you know, that monitoring is covered in that part, in relation to the cicp. there's a there's a section on noise and so there's a noise monitoring and mitigation plan that sets out what the monitoring for noise would be. what the mitigation proposals would be in respect of of that, and the same in relation to air quality in terms of the effectiveness of dust control measures and so, okay, what?

35:13

That's that's, that's, that sounds helpful, and it sounds good. But can I just ask it at the moment for linkage, which you're talking about? Is is far from clear to me? Yeah. And it may be that I haven't read all your documents thoroughly enough for that, or documents, which have yet have yet to hit this week's reading list. But But if you could help us, please with that would be helpful. I want to say I've been interacting with a number of times, Mr. Shawn, Frankie, where to Mr. Phil part, is there anything else that you wanted to say which I've stopped you from saying so far?

35:50

If I can, if I can just add briefly to what Mr. Sharp has helpfully explained. First thing, we're conscious, of course, that we are not by any stretch of the imagination, the first, nationally significant infrastructure project to how a code of construction practice or in some cases, it's the CMP. And therefore, that there will be necessarily quite a bit of precedent in terms of the drafting both of the requirements and also the documents themselves. And what we propose to do, if it's helpful to you, is just to provide a note, which considers how our plan and the way that it is phrase compares to others. So so for example, we just now looked at the northhampton, gateway decio, which had a requirement that there must be a set as it was described in those terms, and that that sample is full of the language of will, and should obviously be considered acceptable in that case, and we'll look at others as well in other instances, because that there's we're not the first people to attempt this exercise. And it's a it's obviously an ongoing issue. So so that is the that's the first point. The second point, I would say, is we as we take this issue away, in order to provide assistance on this because I don't want to take unnecessarily long with it today is that of course, as I think Mr. sharps explanation has highlighted, one needs to look at the use of language in the particular context, that it that is dealing with the particular element of the cicp, to widget lakes, to see whether the language is appropriate in that instance, or not. And we will do that. But it's unlikely that it will be a document in which every instance of the phrase could or would or should, is converted into something which is more strictly imperative, because as Mr. Sharp as as being that would not necessarily be appropriate in every instance.

38:12

But you must tell us what what you what you intend. And that's, that's absolutely fine. Kind of comparison with what other people have done is helpful up to a point. But you learn your clients learn, everybody learns new things as we as we go along. And sometimes things which haven't been looked at, are looked at, under a closer lens and with a stronger microscope. So the important thing is to show you actually how this stuff really hangs together. And how it works and for you to interrogate it yourselves and look and and and ask yourselves if it is hanging together. And if it isn't, it is actually working. Mr. Scott, Hank Seeley, you come on onto onto this onto the screen. Could I just finish this point with with the applicant? And then I've noted that you've got a point that you want to make?

39:07

apologies. Mr. Phil, boss, internet connection has just had a problem. So he's just trying to log back on so if you just two magnets,

39:18

you got the point. I was making that engine. Mr. Sharp. Mr. Sharp, did you get the point which I was making that. So what's happened in the past is is helpful up to a point. If the microscope is has got a more powerful lens on it, then we may discover things which we hadn't thought were nice before. And indeed, it what we're interested in is to make sure that actually the system works. Please show us how how that how that operates. Like that's

39:46

that that's understood, and we're obviously equally I'm keen to make sure the system works, too.

39:53

Yeah. Yeah. That Mr. Scott Hello. Hello. Thank you, Mr. Brown. Just a very small matter is not really why I want to be involved today. But I have looked at the HS two documentation and the in their.

40:12

in their environment statement, there is quite a long section about the legal status of many of the many of the conditions and promises and so on. And they do explicitly state that they would be, as far as they as a company of concerned on a project, and it was a hybrid bill and so on a hybrid act, that they would be deemed planning conditions. And that's back in 90 2013. I could send you the reference all that if that if that was helpful.

40:44

Thank you, by all means feel feel free to, to put put that in Hs 200 a slightly different regime. But if the point is valid for this, then that would be helpful. I just want to ask the case team, because some of the images on my screen have frozen. Can you still hear me? Yes, I can still hear your screen is frozen, though. All right. Well, we'll we'll go on. And that may be a good reason to see if we can adjourn at about one o'clock.

41:18

Just to be clear, I although I dropped out briefly, and I've had to reconnect using misadventures computer, so I didn't know whether I now appear under her name for In which case, I hope you'll forgive me and we'll I can recognise your voice and recognise my voice and also my distinctive appearance compared to misprints. But I did manage to catch most of what was said. And I'll try and sort out the problem with my connection over the lunch and agenda to buy me

41:49

our lives. Thank you. Thank you. I'm going to come back to some aspects about standards. But I want before the lunchtime the German to look at the deemed marine licence, particularly as I believe we've got the MMO with us at the moment. And it may be helpful to them if they if we get engaged with that

now. And then if they don't want to be here in the afternoon they can. So is he was here for Miss Williamson, are you here?

42:27

Hi, it's Alan from the MMO. I'm going to be speaking about the de marine licence and louella will probably assist. Very good I didn't catch your surname. Ellen Mackenzie,

42:40

Mackenzie, thank you very much indeed. Miss Mackenzie. Okay. Let me let me start with you, Miss McKenzie and the MMO. When I read the statement of common ground, that indicates to me that there's a lot of outstanding points in relation to the deemed marine licence. The applicant appears to be saying that they had done all that is necessary. But I also see that a meeting was arranged for the first of March 2021. So could you do two things for me now, first of all, could you summarise what is actually outstanding? What are the solutions that you seek? out? What was the outcome of the meeting at the beginning of March? Yeah, sure.

43:31

I'll go through a summary first. And these are issues that are still outstanding after this meeting. First of all, just to touch on something relevant to the the code of construction practice, which you were just talking about. And so all known mitigation relevant to the marine environment should be secured with conditions on the deemed marine licence, so that it's enforceable for the MMO. And that's not been done yet. So within the clcp, and it is stated that there'll be no piling for the construction of the to be left between the first of May and the 31st of August, and that's to prevent impacts on breeding birds. But that's not actually stated in the DML. It is hidden away in the clcp, which the MMR won't be approving so the MMR would request that a condition is included in the DML. to state that. And also the the mitigation route map states that there will be pre and post construction GFS physical surveys undertaken to monitor impacts on several areas has been closer. And that's not stated on the DML. It is stated that several area monitoring plan will be submitted to the MMO post consent. And but because they are outlining while the applicant is outlining that that will occur as part of the mitigation and that's no now we would request that that is written in The DML so that that is secured now. And also in relation to safety of navigation. I know you mentioned the aids to navigation management plan is discussed in the clcp as well. And the MMO would request that there's a DML condition that states that un aids to navigation management plan should be submitted to the MMO for approval, prior to the commencement of the licenced activities on the DML. And that's so that we can actually approve the aids to navigation. And we would do that by consulting Trinity house. And that's a standard practice on other dmls for insects. Yeah. Okay. And so I'm going to go back to kind of two issues that haven't been mentioned now. And so our main issues with the DML Firstly, we strongly disagree with the appeal procedure that's contained in schedule 20. A. Yeah, that's our our kind of that's a real major issue for the MMO. And that's introducing a new and enhanced appeal process for the applicant, which isn't available to other marine licence holders, including other NSF projects. And so that would create an unlevel playing field amongst marine licence holders. And it goes against what was intended by Parliament in the Marine licencing appeal regulations 2011. And our reasoning for that is outlined in our written record. So if you do want detail on why we disagree with that, I would refer you to our our written Rex,

46:45

just in two sentences. summarise it for me, please.

46:50

And so the two seconds, you can have three sentences. Yeah. So there is already an appeal process available for the applicant. So we believe that they don't need this enhanced appeals process. Also, what they're suggesting is changing what was intended by the appeals regulations. And because the legislation doesn't include an appeal process to any decisions the member would make, to discharge conditions of a marine licence. The appeal regulations only allow an applicant to appeal for if a marine licence has been refused, or to appeal the inclusion of any conditions within the licence. And again, like we said, other end tips do not have an enhanced appeals procedure. So we don't feel like there's any reason why in this situation, and there should be an enhanced appeals procedure.

48:00

Okay, thank you. What are the other main outstanding points between you following them the first of March meeting?

48:10

So there are determination dates stated in all of the marine licence conditions, that's linked to the appeals procedure. So it stated that if we do not make a decision by those determination dates, then the the applicant will be able to make an appeal under that enhanced procedure. And because we don't agree with the appeals procedure, we don't agree with the inclusion of determination dates, so we request that that's removed from the conditions. Yeah. I mean, the the the applicant is it, obviously is the way that it's changing what the what the standard process is, and indeed, the Planning Act allows for the change of existing statutory provisions. So when you say, Well, this is different for what the statute currently provides. The i'm i'm wondering what what else is there? Why is it Why are you? Why should Why is the status quo appropriate here? Sorry, what do you mean by Why is the status quo appropriate here?

49:22

Well, the the African says we want to change the status quo. Yeah. And what I've heard from you this morning is well, no, the status quo should stand. Do other other anything to to that argument?

49:41

We believe it should stand because we don't think that there is any, you know, exceptional circumstances in this situation. That would mean that this project should have an enhanced appeals procedure. And for all other enset they go with the appeals procedure. It's already in place internally in the MMO. And that consists of the opportunity to go to judicial review as well. And so we feel like that's satisfactory, and there is no need to make a change to be appealed regulations to create an enhanced route. Okay. Okay. Are there any other major outstanding points between the two of you. And there's quite a number of points on kind of condition wording. And for monitoring, I know, that's been discussed. And it was mentioned by the applicant earlier that the, the CEO CP, outlines all of the monitoring. And but for the monitoring in the Marine area, we feel like that hasn't been clearly outlined

to the MMO. And so we would request that in principle monitoring plan is provided that outlines all of the monitoring that's proposed within the marine environment. And we do have a marine monitoring plan, do it at the moment? No, not that I'm aware of. So that is something that we would like to be agreed and examination.

51:14

Yeah. No. Okay, well, before I asked the applicant to respond to what you said, are the other aspects which you want to bring into this discussion at this point.

51:32

And, well, there's quite a number of points that we have about the the wording of different conditions. But to summarise, we, we really need to confirm with other relevant stakeholders that enough detail is provided in all of the DML conditions. So for example, condition in relation to fish monitoring, we would seek the discussions with the Environment Agency to confirm that enough detail is going to be included in that condition in relation to the saddle area monitoring would seek the advice of natural England to make sure the scope and the frequency of the sub malaria monitoring has been agreed. Okay. Okay. And that aids to navigation conditions would seek the advice of Trinity house from the MCA on those conditions. Okay. Thank you. That's very helpful. To me. That's very helpful to us. Mr. Philip Hart. What is your response on this, please?

52:29

Yeah, so what I'm going to do with my May, is deal briefly with the first point about the what I might call the detail drafting points, which are outstanding. I'll then deal with what I think is fairly characterised as the main disagreement between ourselves and the MMA, which is over the appeals process. While I have quite a bit more to say. And then finally, I will ask Mr. Sharp to come back on the marine monitoring issue, just to give you an overview of what is in fact, proposed there. But it dealing them Firstly, with the more detailed drafting points, that the issues which have been summarised briefly just now on behalf of the MMO are articulated in the submissions made on their behalf at deadline, three, we're in the process of going through those, and we will be responding in writing on that, including where relevant changes in the draft DCF. And many of the issues that have been identified in those notes are not inherently controversial, and we suspect that we'll be able to close them out. So what I suggest is in relation to that issue, if I can ask you to wait and see what comes out of it. We'll deal with those in writing. I don't believe they're issues of principle, which we need to take time on. Now.

54:11

Okay, that's, that's, that's okay. If they're gonna say to you, yes, you can bring them forward. But but we don't have an infinite amount of time.

54:20

Yeah, well, I appreciate that. But we have that work is ongoing. We have another version of the decio, which is due shortly. And so we're not this is not a vague long term promise if I can put it that way. Yeah, and it's still happening here so far as the appeal process is concerned. So that we have dealt with this. In writing, what I might do is preface my response to the particular points that are now made and that were made it deadline three, with a brief recap of the the overview of why we have provided

the drafting that you find in the current version, the development Sent order. If one looks back at the first round of written questions, it's worth noting in decio question 1.12 for the question correctly noted that the norm in the case of regulatory approvals is for there to be an appeal process on the merits before right to review on the law is available. And in our response to decio question of 1149. We explain the underlying purpose of Article 75 a, and sheduled 28, which gives effect and that addressed the issue of non decision delay and the risk of a potential impediment to delivery for an indeterminable period of time. If we reach an impasse in relation to any issue of merit in the absence of an appeal scheme, we then had in response to the SEO question, one 160 an overview of our position on the arguments as we understood them. And the first point is that judicial review is clearly not an adequate remedy, where a dispute arises over the merits of a decision by the MMO to refuse an application for the discharge of a condition. That's the first point we've made. The second point is a rhetorical question which the MMO has failed to come up so far with a satisfactory answer to which is this, what is the public interest rationale for being able to appeal against the decision on a discharge of the DCA requirement under this DCA, but not against the decision on the discharge of a condition on the D marine licence deemed marine licence which is contained in the same statutory instrument for the same scheme? There is no difference in terms of the practical and public interest considerations in each case. The comparison with marine licences granted outside the Planning Act 2008 regime is not with respect to satisfactory answer, because parliament has decided that enset do not have to go through that regime on the basis that different issues arise with projects of this scale, and national importance. And that decision making in these cases should be streamlined in order to deliver such projects faster, and with greater certainty than would otherwise be the case. Hence, we have a de marine licence rather than a marine licence granted under the normal statutory regime, and contained in the same statutory instrument, as all other forms of development consent that are required. And if a dispute over the merits of discharge of a condition arises, it is unlikely that this would involve any public law error on the part of the MMO. And it can't be right to suggest that the delivery of an enset could be significantly delayed by a potentially unmeritorious and unreasonable in the normal rather than the Wednesbury sense of the word decision by the MMA with no remedy for the undertaker whatsoever. That's the that's a summary of what we've said in in writing. Did you say that was d 1160? Yes, that that is contained. It's in direct to 100. For those who want the Library Reference, those are the essential points that we made there.

58:47

But hang on, hang on the what Mr. McKenzie says to you, or says to me and through me to you, I guess is you haven't shown any exceptional circumstances, why the normal process should not apply. And she also says everybody else accepts the normal process.

59:07

Yes, I'm not coming on if I may, to respond to the points that have been made, both orally now. And in response to what we said at D two in the MMOs. representations, d3. Okay, first point I would make about needing to say show exceptional circumstances is this. First, it's conceptually wrong. Because this is not a marine licence granted under the normal regime for the reasons I've explained. One is to start from an understanding that this is a deemed marine licence. It is an authorization contained in a statutory instrument which is bespoke to this scheme under the Planning Act. So therefore, it's wrong to suggest that we need an exceptional circumstance to justify a different approach to what happens in a

different statute. He that is that is to presuppose that there is nothing inherently different about an MC. And that's wrong for the reasons I've explained. But secondly, even if there were any merit in that point, this is a project, which is clearly as a matter of government policy urgent, and where the delivery of the project in an expeditious way is a matter of considerable public importance, reflecting both its national significance in terms of benefits that are delivered, but also the particular size scale and implications of the construction price. Anything which gives rise to the potential for significant delay or interruption in that process is therefore something that is to be avoided unless the public interest demands it, unless there is some identifiable public interest reason why it should be different in relation to a condition under the de marine licence, that it is in relation to a requirement on the grantor development consent.

1:01:10

So I think I heard Mr. McKenzie say that, that you don't have a special appeal procedure at Hinkley Point.

1:01:22

Yes, that is right. But what if I, if I may? I'll ask I, I don't have a briefing on what's happened at point C, but I'm conscious of the issue raised about precedent, and I was going to deal with that.

1:01:35

Yeah. do deal with that. And my question, I think the point would be, has it worked badly. As Hinkley Point?

1:01:44

Well, I have to ask for instructions on that point. But of course, what one can't do is say that, because in one set of circumstances, a problem hasn't arisen that it's appropriate to assume that in a different set of circumstances, works a different environment, that problems won't arise there. That's not how they'd like their loved one. I get that point, though, so far as precedent is concerned, and the MMA identifies a couple of specific decisions in its representations. I'd start by the general proposition, this is not a decision in this case, which is constrained by precedent is not a matter of it's been determined by statute, or by the courts. Previous decisions of the secretary state are of course relevant, but they're neither binding in this instance, nor determinative and must be considered on their own facts. It's a matter that in this case, has to be determined by the Secretary of State on the balance of public interest and the strength or otherwise, of the substantive arguments that are raised in this case. And that requires a grappling with the substantive issues that we've raised in writing, which I'm making now. And and clearly the MMO is relying on North Vanguard decision is identifies that, but that doesn't grapple with the arguments that we have advanced here. There's reference to the absence of evidence of any potential delays. And but that is not necessary. Nor is it a reasonable expectation, because the potential for delay can be deduced from first principles. In other words, the absence of any ability to break a deadlock should a dispute arise on the merits, that would either lead to delay or oblige the applicant to accept any decision even if it's unreasonable, provided it's not unlawful. The other decision is the Hornsey three case which the MMA relies on, again, not a case where the points we've made as to why it's entirely appropriate for a D marine licence forensics, such as this to be different from a marine licence for a project which is not an NC IP and therefore, doesn't fall to be determined under the

Planning Act 2008. But it's wrong to say coming back to the points that have been made. Today, it's wrong to say that appeals are already available. Wrong Wrong as a matter of fact, and appeal is the implies the ability to go to an independent decision maker to review the decision afresh on its merits. It's a basic principle obviously, of public law. That judicial review is not an appeal and the escalated internal procedure that's referred to in the MMOs written representations is also not an appeal. It's a complaint made to the MMO about the decision of the MMO And the MMO decides if that complaint is justified, that is not an appeal, and is the MMO. Notice this issue is related, and needs to be seen in the context of the timeframes for decisions which are currently built into the draft. And the MMA resist the ability for the applicant to be able to appeal. If the MMO has made no decision at all, on an application after four months, or indeed ever, on the MMOs case, suggesting that the the mo suggested judicial review would be an adequate remedy if it were to, quote, delay unduly. But of course, undue delay is not a ground on which judicial review can be brought. This, this is against the context, of course, where the MMA would normally expect to determine a marine licence itself in 13 weeks, we see no good reason why it should take longer than four months to discharge a condition. But the final point I would make on on this is that the MMO has said in its representations, that well,

1:06:21

they are uniquely well qualified to deal with these matters. But of course, the existence of an appeal against a refusal of the MMO to grant a licence or to granted subject to conditions presupposes that the Secretary of State can appoint a person who is properly qualified to reach a decision in the MMO stead in the event of a difference of view. And there is no substantive issue, substantive problem with the procedure that we have put in place in the shedule, which is based on an adaptation of the appeals procedure for those substantive appeals thinking so so that that's what i say i sorry to have taken my time over it, but it is, as I understand it, the principal issue between ourselves and the NRA, and I thought you might find it helpful to have our thoughts on it.

1:07:21

Indeed, it was on my there was high on my list in relation to the DML. I just want to stay there for a moment, please. Mr. Philip, I would just like to go back to miss McKenzie. And then I'll ask you for a final comment on what she says. Mr. McKenzie, can you help me please? Why does the statute creator which regulates marine licences? Why do you think that Parliament said, there is only a judicial review remedy?

1:08:00

I'm not able to answer that we'd have to consult our legal team to be able to provide a response to that. So we can certainly go away and do that if you include it as an action point, I would just refer you to what we've explained in our written representation. And of relevant read, because that that goes into the amount of detail that we have at the moment, we haven't had any response from the applicant to challenge yet. So if they could provide that response, we can then re consult our legal team and try and answer some of those or try and respond to some of those points that have been raised.

1:08:39

Good. Well, if you would take that as an action point, please. And it'll be on our list. I know. Tell us why you think the judicial review only approach was thought to be correct. But Mr. Phillpotts? Is there anything you want to say? Well, can you help me in why the statute says Jr, only.

1:08:59

So now we can look at that and see if we can provide any assistance. There's one point so which I I should have mentioned, which I mentioned. Now, I am told that the same issue has also arisen in relation to the Aqua wind examination where a decision is expected in September. So during the currency of this examination, so just as a sort of, look ahead, when that decision comes out, we'll also of course, we'll need to look at it and take on board and address any conclusions that arise out of that process. It has to if you want to make sure make sure you send me to the right paragraph.

1:09:44

Sorry, David. I just want to add No, this was mentioned by Mr. Phil's Yeah. Hi, there. I'm sorry. I know that this was just mentioned by Mr. Phil. But I would like to refer you to the Secretary of State The recommendations that were made for Norfolk Vanguard on Hornsey three, because they do discuss this the same or what we believe is a similar issue, the applicant may raise new points. And that's something we will have to go back to our legal team on. Thank you.

1:10:27

Maybe that we've lost Mr. Brock? I don't know if he can confirm that Mr. Brock, pasty. Are you about Mr. Brock? Just had confirmation by another rule, because he has lost his connection at the moment, and I think we're coming towards the end of that topic. I just saw that there were a couple of hands up. Well, Williamson, was there anything you wanted to add?

1:11:06

Hi, yes. Laura Williamson from memory management organisation here. I just wanted to touch base on obviously, we appreciate the sort of explanation given there by the applicant. And we will endeavour to provide an updated response, in light of what was brought forward there, just for the examiners, sort of, I guess, some clarification around some of the reliance on previous dcl decisions and sort of this precedence. I'd just like to reiterate that, you know, is a case by case basis. And whilst we have tried to helpfully sort of refer you to previous decisions, it's not necessarily sort of a reliance or precedent. I think, ultimately, the point we're trying to get across is that, yes, it is a deemed marine licence, but ultimately, we will be responsible for enforcing it, and it will function like a marine licence, which many renewables across the country will have. And so when we are enforcing and sort of undertaking our role with the conditions, and the responses from the applicant, they would ultimately have an unlevel playing field, they would have an advanced sort of mechanism for undertaking those and providing those and that is not something that anyone else that has marine licence already marine marine licence at this point, would be able to undertake and I think that is ultimately, where we're trying to get the understanding of why in this case, there would be a different circumstance that is an exceptional circumstance that would allow them to deviate from that that the other marine users are able to use. We again, I will rely on my written rep to sort of summarise this a bit more cohesively. But just again, to make sure the conversation flows and for your information around the determination deadlines, that memo does rely on submissions from the applicant. And obviously, when we try and advise timescales

such as six months, four months, we are a transparent and open organisation, we have routinely have proven that we will endeavour to meet these deadlines that we've sort of set for the applicants sort of plan their projects appropriately. So we would endeavour to make decisions in those timeframes, like my colleague, Ellen said, where we haven't, there are opportunities for them to sort of submit those initial reviews or those complaints. But this is not something that we've commonly have to undertake, because it is something we take, you know, very seriously. But ultimately, if the applicant doesn't supply what is needed, we would be held to a deadline of termination, which is not something that we that we necessarily will have been in control of. Because if we don't get the information that we require, from the applicant, we are held to a deadline to make a decision on something that is ultimately out of our control. And that is why this determination, dead dates on the DML conditions are concerned there Now, obviously in relation to the appeals as well. So as I mentioned before, I will get that interview to you in writing as a formal response. And thanks to the applicant there for sort of providing that in writing in sort of verbally there for us. And we will endeavour to kind of get back to you on that in writing. But just to kind of make it clear here, I suppose to kind of close off that section. But thank you for your time.

1:14:20

No, thank you. Thank you. And if I could hear from Angus Walker, you have your hand up as well.

1:14:28

I do. Thank you, madam. Not on this particular issue about that. But we do have a couple of points about the jurisdiction between the suffered counsel and the MMO. Which if the MMO isn't coming back after lunch, perhaps they would like to we'd like to hear while they're still here in case they want to react to it.

1:14:49

But I have seen those points made is Is there anything new you want to add here, Mr. Walker Well, jurisdiction,

1:15:03

I think the consensus is that the soft council should retain the planning functions in the area of overlap, which is between high and low water. So that would mean an amendment to Article 86, which is about in planning enforcement and an amendment to requirement 12. b, where there is an approval by the MMO in consultation with the Suffolk Council, but should be the other way around.

1:15:33

That's, that's fine. Just Just a heads up that the detailed wording of those particularly requirements and article 86, that will be considered at ies h six next week. Okay, thank you very much. But um, if

1:15:50

it if it helps on on that. The last we've seen on it, which I think was in deadline, three submissions made on behalf of the council, was that there had been discussions between the council and the MMO, on how they were going to deal with the overlap and jurisdiction, and that they were expecting to put forward a proposal that has arisen from those discussions shortly. We were encouraged to hear that I'm not sure yet that we have seen the outcome of that. So if there is any indication of when that will be

forthcoming. It might be that that's something that we can look at ahead of it being done within the subsequent session.

1:16:34

I'm just walk every software council where we these discussions have my think just about concluded on that point. And that was I was putting the results of the conclusion to you. And we can get some proposed changes to us as soon as possible, hopefully in time for further hearings. Thank you,

1:16:53

we'd be happy to take those outside the examination so that we can discuss them as we have with other things with the council and others.

1:17:04

Thank you, and then obviously, perhaps provide an update for that later hearing. Are there any other points that the man wants to make? Before I close this particular topic and adjourn for lunch?

1:17:23

Mr. Williamson here, marine management organisation, we're fairly content now that the rest of the agenda items are covered in our written representations. We will of course, review the notes and complete our actions as as required following this meeting. And thank you for your time this morning.

1:17:40

Thank you very much for coming. Thank you. Right. We'll adjourn now for lunch. And we'll resume at 10 past two. Thank you.