

# TRANSCRIPT\_SizewellC\_ISH14\_Session1\_17092021

Fri, 9/17 12:00PM • 1:42:02

00:06

Good morning, everybody and welcome. It's now 10 o'clock and it's time for me to open this blended issue specific hearing which is being held in connection with an application made by n NB generation company SC Ltd. For an order for development consent for the construction, operation and maintenance of the sizewell c project. To those of you who are in the hall at Snape Maltings, I'm sorry not to be with you in vivo. To those who are participating virtually, I asked, I'll be pioneering the new normal. You're all welcome. Before I go any further May I check with the recording and live streaming team that recording and live streaming has commenced? I can confirm it has commenced. Thank you. Thank you very much indeed. So for those who are watching the live stream, let me explain to you the different proceedings are adjourned at any point, we have to stop the live stream in order to give us clear recording files. When the meeting is resumed, you will need to refresh your about browser page to view the restarted live stream. Now, excuse me, let me introduce myself and my colleagues. My name is David Brock. I am a retired solicitor, and I have been appointed by the Secretary of State to be a member of the examining authority for this application. The other members of the examining authority are Wendy mokai, Helen Cassini, Edwin Moreland and Neil Humphrey, and they will now introduce themselves to you in that order, starting with Miss MCI.

01:54

Good morning, everyone. I'm Wendy MCI, I'm an examiner, inspector and lead member of the panel. I'll now pass over to Mrs. Cassini. Good morning.

02:05

My name is Helen Cassini. I'm a chartered town planner and have also been appointed as member of the panel.

02:14

Good morning, everyone. My name is Edwin monde. I'm a chartered town planner, and I too have been appointed to be a member of the panel.

02:23

Good morning, everyone. My name is Neil Humphrey. I'm a chartered civil engineer, and I've been appointed to be a member of the panel. I'll now hand back to Mr. Brock.

02:32

Thank you very much indeed colleagues. We are also assisted at this hearing by the planning Inspectorate case team. Today, we have the planning Inspectorate case manager Sean Evans, the other colleagues from the Inspectorate who will assist us today are Jake Stevens, and Edwin mordantly. If you have any questions or queries about the examination or the technology, which we're

using the plans of events, and the case team should be your first point of contact. their contact details can be found at the top of any letter you receive from us on the project page of the national infrastructure planning website. So before I get onto the main part of the hearing, I'm going to ask my colleague Mrs. Cassini, if she would highlight a few housekeeping and background matters for today.

03:20

Thank you, Mr. Brock. As explained in the examining authorities rule eight letter annex D. The issue specific hearings will be live streamed and recorded. Recordings will be published on the project page of the national infrastructure planning website as soon as possible after each hearing closes. To assist viewers and listeners, anyone speaking should introduce themselves each time they speak. As recordings are retained and published, they form a public record that can contain personal information to which general data protection regulation applies. The rule eight letter includes a link to the planning inspectors privacy notice, which provides further information on this topic. If there is a need to refer to information that participants would otherwise wish to be kept private and confidential. It should be in written form which can be redacted before being published. If you prefer not to have your image recorded, you can switch your camera off. Repeat the request made in the arrangements conference, that if you are with Mr. Brock in the virtual world, in order to minimise background noise, please will you ensure that your microphone or telephone is muted that you stay muted unless you are speaking. In order to avoid fatigue it is our intention to take a 15 minute break at about 90 minute intervals or longer break over the lunchtime period. No fire alarm testing is scheduled for today. And therefore if the fire alarm does sound and your upstate mouldings, Please evacuate the building by the nearest exit, which are clearly marked and you'll be directed to the meeting point. The newest toilet facilities are located just outside this room in the foyer. I'll now hand over to Mr. Moreland, who will outline the purpose and conduct of this issue specific hearing

05:03

Issue specific hearing provides an opportunity for the issues raised by interested parties, and in particular the differences between them to be explored further by the examining authority. The purpose of an issue specific hearing is set out in Section A section 91 of the Planning Act 2008 is held if the examining authority decides it is necessary for the examination to hear oral representations to enable adequate examination of the issue, or to ensure that an interested party has a fair chance to pull their case. As indicated in the agenda, questioning at the hearing will be led by a member of the panel supported by other panel members. Just for the examining authority to determine how hearings are to be conducted, including the amount of time to be allowed at the hearing for the making of a person's representations. Our aim is to use our powers of control over the conduct of hearings to ensure they are carried out as efficiently as possible. Whilst remaining fair to all parties and thorough in our examination of the evidence. We have identified the matters to be considered at this issue specific hearing, and those on which we require information. And, and these are set out in the agenda published in advance of this hearing. participants should note that written summaries of your oral submissions to this hearing should be provided to the planning Inspectorate by deadline aid, which is Friday the 24th of September 2021. I will now hand back to Mr. Brock who will continue with the introductory matters.

06:41

Thank you, Mr. Mourn. At this point, I'm going to ask those parties who are listed on the detailed agenda to introduce themselves please, beginning with the applicant.

06:54

Good morning, sir. My name is Hurry. I would fill points. You see, I'm instructed by Herbert Smith Freehills on behalf of the applicant, and I may call on other speakers who I'll introduce as and when required.

07:07

Thank you very much. Who appears to Suffolk County Council please.

07:15

Good morning. My name is Michael Bedford, Queen's Counsel. I'm instructed by Sharp Pritchard on behalf of the County Council. I'd like Miss Philpott to introduce other members of the team as appropriate. Thank you.

07:27

Thank you very much. Your peers East Suffolk Council please.

07:36

So I do, Andrew. Take you see if he suffered a cancel. I may call on Mr. Angus Walker, Eddipitmans, if appropriate, but otherwise I will be speaking.

07:45

Thank you very much indeed Mr. Tate who appears forward together against Syvol. See, please.

07:56

Good morning, sir. Chris Wilson, on behalf of Together Against Ties will say I'm joined today with by Jennifer currently as well. Thank you.

08:03

Thank you, Mr. Wilson. Who appears full stop sighs we'll see you please. Close to

08:15

Brock Paul Collins first stop sighs we'll see in Seven News, which parish Council.

08:20

Thank you. Thank you Mr. Collins. Good to see you again. Who appears for the RSPB, Suffolk Wildlife Trust, please.

08:31

Thank you, sir. Good morning. I'm Rosie Sutherland. I'm appearing on behalf of the RSPB and staff at Wildlife Trust. And today, we've also got Adam Rowland's.

08:43

Thanks rush for Sutherland. Good to see you too. And who pays for Northumbrian water.

08:57

So good morning, I do Graham cane Queen's counsel, instructed by Walker Morris. And I may call upon Mr. William Robinson, who is NW ELLs water resources and supply strategy manager who I know you've heard from previous sessions, but we'll see depending where we go. Thank you.

09:14

So thank you very much. Thank you. I also note that we do have some people in attendance today who have respect requests to speak at this hearing, but who are not on the list of invitees, who were set out in the detail agenda. Please don't take that the wrong way. I won't ask you to introduce yourselves now. But the first time that you are invited to speak please do introduce yourself by giving your name and the name or name of the organisation or people that you represent. I do hope that we have all had the chance to read the detailed agenda for this hearing today. We sent out a revised version slightly fuller version a couple of days ago. During the hearing today. I have questions for the app. concern for other invited parties. So there are interested parties who wish to speak on some of the agenda items there. Once I have finished my direct questioning on the agenda item, I will normally ask if interested parties would like to make any submission relation to that agenda item. Before I move my direct question on to the next agenda item. I would ask you to remember this is not an overflow hearing on the development, consent order and related documentation. And so submissions which are made or LED please should only relate to the agenda items which we will be discussing. I want to reassure you, your previous submissions have been read and noted. I understand that maybe other issues are not on the agenda the parties may wish to raise but submissions on these matters was assuming they relate to the main agenda item for a sh 14 should be made please in writing at deadline eight on Friday the 24th of September 2021. Thank you very much in deed in advance for your cooperation on that. Now, this is a hearing. And I want therefore, to hear what interested parties including the applicant have to say, but it must be strictly directed to the agenda item that we are discussing. I would ask everybody please to be direct. And to be clear. And I think that way, contributions will automatically be succinct. We have a lot to get through. And if you have complex points to make, that's fine and take the time to do so. But please be focused and fluent in your submissions and answers. I am going to remind participants that the rules of natural justice and the duty of fairness means that the applicant has a right of reply on each item. This means that if I allow an interested party to reply to the applicant reply, we then have to go back to the applicant. And that disrupts the process. And it takes more time. What this means is that you do need to make complete submissions on each agenda, our topic when it is your turn. And it may help you to remember this is a hearing. It's not a meeting. It's not a discussion. It's a hearing. Your cooperation was where this approach will be really, really very much appreciated. Thank you. There's a list of documents to which I owe others, I suppose my refer today that's being made available on the project website. It's part of the part of the detailed agenda. And obviously, any page references to which we made reference will be to the electronic versions of the documents and not to the paper versions, although understand that those who are in the hall at snake can have the privilege of seeing an extremely large library. Let me move on now to the formal agenda and agenda item one. First of all, should I alert everybody that I propose to take the reasonable endeavours issue as part of item five of the agenda rather than giving its own separate point we'll move it up there. It's important and has been subject of much discussion at various IHS in this examination. I don't suppose we'll get to that item till

after lunch but please return from lunch prepared. There is another matter within this decio issue on which I would like to hear please from the applicant and the council's and again, this is something which I suggest we don't. But you'll need we'll have time to think about it. If we could deal with it after lunch, I would be grateful.

13:46

The Master is this the report on the implications for European sites was published two days ago on Wednesday 15th September and paragraph 7.1 point 67.1 point 60 it flags a DCA drafting point. The question is where does the DCA authorise the onsite Marsh Harrier compensation works? These are the works near upper and lower Abbey farm. I appreciate that some of the works have been done already presumably either as permitted development as an exception from the definition of development or under a planning permission. But for the new works, I want to be clear where those are in the draft development consent order. I think we need to be quite clear that somewhere within the drafting they are to be found and where that is. I would also like please to be clear how the existing works have been authorised or are authorised. And I say in opening I'm not looking for an immediate answer now, but I would like to come back to it after lunch and I would like to go away from this hearing with the answer please returned now therefore to item two, which is the implications for the content and the drafting of the decio of the points which have been raised in the letter of the third of September 2021. From Walker Morris the solicitors on behalf of Northumbrian water. That is rep seven hyphen 147. If you haven't got it up already, but Mr. Phillpotts, but rather than starting with you, I proposed proposed to start with Mr. Keene for Northumbrian water, then to go to the other IPS and then turn to you to reply. I hope that's okay with you

15:45

as you prefer.

15:47

Thank you very much. So Mr. Keane, I think it is best if I start with you. If you could turn on your camera, please. I'd be lucky. Thank you. Good to see you again. miskeen. I listened carefully to all which you said on Tuesday morning in ishs 11. But I think I got a reasonable grasp of the factual picture. And today, I would like you to explain to us please what you want to see in the decio and why that is appropriate. If I go to Walker Morris's letter, the third of September 7147. If I go to that letter, I see that you seek or walk, it said that you seek agreed provisions need to be included in the dceo to ensure that SFC comes forward in tandem with and in a timescale consistent with the provision of the necessary water infrastructure. So as to Kenosha said, this is the this is one of the appendices to that letter. It's actually a letter from Essex and Suffolk water to size, we'll have the 16th of July but it's appended immediately after the letter from your instructing solicitors, it's only Page Six of rep 7147. That paragraph goes on and says this needs to be followed by the completing of a formal agreement between EDF SSC, and n wl pursuant to Section 55 of the water industry act. And it's also said the Grampian condition is needed to ensure that the development did not come forward until appropriate infrastructure was in place. And I just remind you that I expect that you are aware that whether or not the project is likely to come forward as planned, that is a factor in the secretary state's decision. So please, could you tell us what you are seeking why, and why it's appropriate? And could you also make

any submissions you wish to make about the implications of what you seek, both for your clients and for the project? as a whole? So yes,

18:03

thank you. So I won't seek to repeat anything I said on Tuesday in relation to the concerns that my client has had and why and indeed, the distinctions that I outlined in relation to domestic and non domestic supply? Can I start this way, Sallie Mae, it may assist to cut through things for everybody. You'll recall that on Tuesday, what what I said was that although the correspondence had outlined the need for a Grampian type conditional restriction, there had been discussions outside the examination with the applicant in relation to potential protective provisions to deal in particular with nws concerns over potential requirements to compel a domestic supply under Section 41. And so essentially, since that is h 11. On Tuesday, there's been further progress with between my clients and wl and the applicants and and who received yesterday, draft text from the applicant of some suggested predictive provision. So effectively, an additional part to be incorporated within sheduled 18 of the decio. So a short part of that sheduled that will set out protective provisions to deal with the concerns of my client in relation to the potential section 4145 domestic supply issues that we that we weave like last week now. So those details were sent yesterday, they're being considered internally at n wl. And my clients have not yet been able to respond formally with revisions because of that, internal due process, but they will do so as soon as possible. The main point is that I think what I can make clear at this stage from nws perspective is that his concerns outlined on Tuesday in relation to domestic supply are readily capable, in my view of resolution by the mechanism that has been proposed by sighs Well, it's a matter of sorting out the details of the drafting. And that's an ongoing process. So subject to that, I don't think it will be necessary for me to be spending time unless it would help you explain why prior to that, because it was said that the Grampian might be be needed if there was that risk of domestic requisition being made. So that that's the that's an update division, I don't have any text to share with you. But essentially, there is a short one page of text, which would put a new part into shedule 18. The details are still to be ironed out. But I do think it's a mechanism that will work and will therefore avoid the need for me to be saying to you, or the panel, that there needs to be some extra restriction to deal with that risk. So the other thing that is maybe helpful just to deal with, again, just trying to cut through things as subject to that we sent earlier this morning to the applicant, half a side of text summarising Northumbrian waters position in the light of the discussions on the decio amendments in relation to my client's commitment to working with sizewell to develop the terms of Section 55 agreement dealing with water supply more broadly. And so I could obviously read that to you, but it but it may be that it's it's simpler, more expedient to incorporate that in the in the written summary of oral submissions in due course, as you wish, but but I think that things have moved on rather, sir. And rather than take up time, over what was set out at the letter, that there is there's progress in this discussion, but there's no text that I have for you at the moment. Does that helped to cut through

22:08

that? Okay, that is that is helpful. So are you saying to me that, if you agree, protective provisions, the Grampian proposal disappears.

22:25

Yes, because if the if the protective provisions are, are agreed, then that deals with a potential concern over over you recall that I made some submissions about the potential for that to be for my clients be compelled effectively, to make domestic provision that would deal with that the rest of the provision this or non domestic, if you like, it then falls to be dealt with under Section 55. And again, we touched on that on Tuesday, because section 55. three sets out to circumstances in which my client might be in a position where it's sort of refused applications Connect. But that's a that's a mechanism that depends on the circumstances that we outlined previously. So that the the position of where we are on the facts hasn't changed from from what I outlined on Tuesday. But there are there's this distinction that I was very concerned about on Tuesday in relation to distinction between domestic and non domestic protective provisions, we'll deal with the big concern over over domestic subject to agreement. And then the section 55 mechanism allows for agreement over connection but subject all the caveats that I made on Tuesday as to the real world, reality of the process that has to be gone through by my clients in terms of assessing, we were waiting on the further modelling to assess capacity and headroom. If there isn't adequate capacity and headroom, as I detail that is h 11. There's then a regulatory processes my clients need to go through in terms of any further potential capital projects that might be required.

23:55

Okay, the the problem for us is that we don't have another chance after today really to look at this. Obviously we'd guys age 15 and a couple of weeks time, but I'd hate that we don't have to look again at DCA provisioners. There. And the problem is that if you don't reach agreement on your Jace to shedule 18. I don't think you're telling me you're abandoning your Grampian approach.

24:32

Well, so let me let me let me let me say this. I don't mind the fact that I didn't particularly want to be looking at it at a pay for page of legal drafting. online now, even if I was in the room, it wouldn't be something which either of us would really really relish. But But given that sheduled 18 does become part of the way it is part part of the DCA public document and there is some Secretary of State oversight and sense the resolute we try to let you get on with it. And if you're happy with it, then you know, generally speaking, we would we would take that as being as being okay. I think I would like to have an outline of the points of what you are trying to agree, please.

25:19

So, yes, effectively what what has been suggested but forward is that you're the main the main concern deals with section 41. So, which is the is the risk of my clients being compelled to make domestic a provider of domestic means essentially, and and what the proposal is, is this unless otherwise agreed by my clients in its absolute discretion, that the undertaker will would not serve notice on my clients pursuant to Section 41 in relation to the development the authorised development, and indeed would withdraw any such notice, which may have been served on my clients prior to the coming into the force of the order. And there are then more specific provisions about the supply of potable water to the authorised development. And that really sets out the process that we went through on Tuesday in relation to needing my client needing confirmation from the Environment Agency that there is indeed, a sustainable potable water resource. And the winner process, the which is part of the water resources management plan that we discussed on Tuesday, is completed. And then those circumstances that the



quantities of water that the size was revised its position to so 2.2 mega litres today have potable water annual average at a peak demand of 2.8. that that would be the, my client that uses reasonable endeavours to to make that supply subject to those those previous stages as soon as practicable. Now, there's some there's some detail, as I say about the drafting of what's been proposed, my clients haven't yet internally reviewed it, and they haven't gone back. But as I said to you, at the outset, I think it is now readily capable of resolution. I know, you know, the details in the drafting many lawyers said that before, but but but but this is a mechanism that that will, can work and will if it's drafted, subject to agreement, we'll deal with the concern, and we'll deal with it in a way that removes the need for me to be here arguing for you for an alternative restriction.

27:39

Okay, okay. Well, hang on. Just let me remind me again, exactly what section 41 does.

27:45

So yes, let me let me just just turn it up for you for a second. Section 41 is the duty to comply with the watermain requisition. And effectively it says that it will be the duty of a water Undertaker. To provide a water main to be used for providing such supplies of water to various premises, I don't need to get into details sufficient for domestic purposes. If the undertaker is required to provide the main by notice served on the undertaker, by the person specified. And so the concern that I outlined on Tuesday was that the effect of that is that the provisions of the and there are other 45 and 5051 52, etc that come into play potentially but but the provisions of the of the water and infrastructure industry act effectively, therefore compel statutory undertakers to provide both new infrastructure and water supply for domestic purposes. And that's irrespective of any environmental capacity issues, which may result hence, my my clients serious need to protect its position on that because as we discussed on Tuesday, Mr. Rhodes told you it had been the intention of the SSD to make that request for such a requisition. So that's that that's the thing that we've been most concerned about. The

29:08

one so that is section 41. Is that is that domestic or was that industrial?

29:13

There's domestic so so so what the what the protective provisions would do would remove that risk of compelling over domestic supply. And then as far as non domestic is concerned, that's where section 55 regime kicks in. And the reason so that that isn't of such concern in terms of a potential Grampian, etc, is that it has flexibility within it in the sense that in certain circumstances, the water Undertaker can refuse to make that sort of supply, because because the provisions of Section 55 three, kick it in, which is effectively that the undertaker can refuse to supply water for non domestic use, if one in order to meet its existing obligations to supply water for domestic or other purposes. Together with its probable future obligations to supply buildings with water for domestic purposes, The Undertaker would incur unreasonable expenditure in carrying out such works. Or secondly, if such supply would put at risk the ability of the undertaker to meet existing or probable future obligations. So it costs section 55 enables that potential to refuse in certain circumstances, there is inherently more flexibility in it. And indeed, as Mr. Philpott pointed out on Tuesday, it isn't just a matter of an undertaker saying no, because if they do, there's then the provision in Section 56, which enables that that matter to be to be go to go forward to



the authority to further Water Authority be determined. So so there's a sort of review appeal mechanism as well within that within that statutory structure. So that's

30:51

section section 41 is the domestic suppliers. So 255 is the industrial supply. I'm going to call it that. The industrial suppliers what they need to make concrete and section 41 is the supply which SSC need for the workers and for doing the washing up. You're on day one day if they have a power station completed.

31:12

Yeah. 1441 deals with means there are other provisions that are reasonable 45 deals with with what once the main is there. So the supply connection as it were, but but the but 41 is the is the main is the main statute provision relates to domestic supply, but absolutely, section 55 is then the non domestic.

31:32

Yeah. Okay. My colleague, Mr. Mr. Humphrey wants to ask you a question. I have a finished with you myself. Let me let me let Mr. Humphrey come in.

31:43

Thank you, Mr. Kean. Did I hear correctly you said you do use reasonable endeavours to supply an average of 2.2 mega litres and maximum 2.8 mega litres? Are those of quantities in operation at the power station.

32:06

So as I click on someone else's speaking,

32:11

no, didn't hear anyone else is just that my recollection of the hearing the other day, those were the levels of potable water required when a power station is in operation, not during construction, because there's a maximum of up to fall during construction.

32:25

So I think, again, event, things have moved on outside the examination. Perhaps I could could I ask Mr. Robinson, who I know is online to to deal with that point more swiftly than I would?

32:39

Good. Good morning, everyone. So yes, I think EDF intention, as outlined in its water strategy is to have the temporary desalination plant for construction for the full construction process. And then by the time unit one is due for commissioning, that is when it's looking for us NW well to provide the mains water supply. And that would be at that point, that'd be looking for a peak daily, of 2.8 megabytes per day and an annual average of 2.2 mega litres a day. So so that's for commissioning, and it will be on that those same volumes for the operational phase two.

33:14

Thank you. Mr. Proctor, you're on mute.

33:22

done it already. Thank you, Mr. Humphrey. And thank you, Mr. Mr. Robinson. Okay, I think can I get where you're going to Mr. Key. But it's, it's that ration to Section 41. So possible water supply? domestic, which means the showers the lose the washing up within the power station, and the accommodation, the accommodation block during construction?

34:04

Well, so there's, I think we, in a way, there's there's uncertainty on this because effectively as I understand it, what sizewell will require is the construction of what will effectively be a new town to house that might be old way of describing it, but there'll be a very substantial requirement to house a large number of construction workers. So that there is frankly room for plenty for debate about whether or not aspects of this are actually domestic supply within the provisions of the Act. But if there is a clear risk let me put it that way and that my client would be compelled to provide that you know, a new water main and supply water for domestic purposes and as acknowledged on Tuesday it was sighs was intention to request such a requisition so that quite where the which bits of what counters domestic, you could probably spend a lot of time But the risk is there. And what the protective provision will do is remove that risk of compulsion as it were compelling, despite any potential capacity or environmental issues. And, and there is less, it's less of a sharp issue in relation to commercial supply because of the the operation of the alternative provision for the different provision for non domestic supply and the mechanism in Section 55. Three in particular. So, so

35:26

when we get but then when we get like I can see john construction period, there can be quite a few arguments about whether it's a domestic supply or not. When they get to the operational stage, it's more clear cut, isn't it?

35:40

I would have thought so. Yes. But again, sort of subject to, to detail potentially. And I would hesitate to perhaps call on Mr. Robinson again, in relation to that. But but but there's the potential. And so that's, that's, I mean, I don't think there's any there's no arguments about that, as it was something that was on the cards as being sought. And it needs my client needs the protection to deal with being effectively compelled to connect it at a time when there isn't any ability to make provision.

36:14

I think, Mr. Robinson, what the the view I'm getting from Mr. Keane is that there's a serious risk that you may be compelled to to produce domestic water in the operational stage. And there is a possibility during the normal operation during the construction stage, is that right?

36:31

Yes, if we were compelled to provide the water. There'll be two things, there'll be two outcomes of that if you like, the first outcome is, is that we would fail to then comply with our abstraction licence conditions. And we're essentially procross prosecuted by the ultimately be at risk of prosecution by the

Environment Agency for doing that. And if we would exceed abstraction licence conditions again, then there's the risk of causing significant environmental impact from from doing so. The alternative scenario is that we comply with our licence conditions, but don't have sufficient water to meet demand, and therefore customers will go without water.

37:10

Yeah, I got that. And I don't mind what's wrong. What's your Mr. Keen clarifies the concrete making water? Is that section 35 or section 41? Which one? Is it?

37:26

section? 55? Yes. Just clarifying the point you asked as well. So we're about once operational, how much of the water will be for domestic size? We'll see. We'll be able to confirm the ratios there. But once operational, my understanding is that these are by far the significant proportion. The majority of the water will be for process use, if you like so it will fall under Section 55. I think the the domestic elements increases slightly when they have an outage and need to undertake planned maintenance more or less or have more staff on site.

38:03

And it's a difference in the quality of the section 55 water and the section 41

38:08

though it's all the same water or mains potable water.

38:13

Okay, thank you both very much. Okay, so I understand why you say it's appropriate to this, but you do what you will have Mr. Keane. What you will have, under your protective provisions is the ability the absolute ability to prevent the applicant from making a section 41 requisition?

38:52

Yes, but the point but as as it's, I mean, again, we haven't some final text but but but that what it does, rightly so is contemplate the group, it needs the agreement of my clients. So they may well come a time when there is clearly capacity and it's appropriate to connect, etc. So it is not it's not the case that it needs this provision needs to be disapplied as such, but it requires there to be an agreement that the time is right that it can be done.

39:24

And you've got absolute right to refuse that consent.

39:29

Yeah, that's what's proposed.

39:31

I simply need to understand what is the worst case? Yeah, there's, there's no judgement. I'm just just understanding what what it is that that goes into becoming.

39:43

And so as I say that this this is text that we've received from cyber wherever Mr. football in the moment of doubt, but but this is suggested wording so so I'm not putting words in their mouth as it were, this is what this is what they've suggested we we do, and and as I say, we've yet to come back with it. detail points on the drafting, but it's a mechanism that that I think will will be able to do what it needs to do subject to the detail.

40:08

Okay, so it has to my question, what are the implications of this for your clients? for your clients? It's your you're happy you're protected. submittal details getting sorted?

40:20

Yes, that's right. That would that would that would be sufficient comfort to my clients to remove its previous position that you needed some sort of Grampian conditional restriction imposed.

40:32

It's not far off being and Grampian really

40:37

well, it may, again, I mean, it could it could be, but the the the approach that's been taken by size was that they don't want to have a cramp in that we've said, Fine, show us something that will do the job. This has been put forward. I think it will. Now we could we could do it a different way. So for sure you're in sheduled turn restrictions, but I'm

41:00

not pushing you in one direction or the other. Okay, Mr. kienet. Mr. Robinson has been very, very helpful. I think. I'm now going to ask if there are any other interested parties who would like to say anything? I see no hands. Oh, yes. Mr. Bedford. I see Mr. hight. Mr. Tate sounds we'll start with Mr. Bedford. do with it first. Mr. Robinson, you can put your camera off now. Thank you.

41:35

Thank you, sir. Michael Bedford, Suffolk County Council. So I'm conscious. First of all of your earlier remarks about sticking precisely to the agenda items, and you've focused this on the content and drafting of the decio of the points raised by this issue. You haven't broadened that to the deed of obligation.

42:00

Now, I'm happy for you to broaden it. That's fine. Right? Well,

42:03

that the point I just wanted to raise his this. Clearly at the moment, it is proposed in terms of the desalination plant, that that will come forward as an authorised work under the decio. But there are no commitments to provide it either at all, or more particularly at any particular point in time. There is

simply obviously, powers being given to provide it. Now, we obviously understand it's the applicants. It's in the applicant's interest to provide it during the course of the works, particularly given what we've just been hearing. But what we have a concern about is the issue of before the desalination plant, it is clear from the updated water supply strategy, that there is initial period where it's necessary to have the water trucks coming in. That is not something which we think was itself assessed during the course of the transport assessment at the earliest stage. And then there's the question of the headroom which is available within particularly those the 300 HDV caps on the B 1122. And the water supply strategy seeks to give some information to show that they can do that within that headroom. But that cap only applies to the use of the BLM 22. And depending on where that water is sourced from, there could be impacts on the wider network. And there's obviously been reference to a potential source of supply to the north in the vicinity of Beckles. And that gives us users to the extent to which there would be use of the A 145. And additional traffic on that in terms of HGV traffic has not been adequately assessed. Now, obviously, I'm not going into the details of transport matters here. But the question that we would like to certainly be considered is should the implementation plan which we're going to talk about the achievement of that through the deed of obligation later on, but should the implementation plan have within it some requirement to deliver the desalination plant in accordance with an identified timeframe? Because it's quite clear from the water demand figures that are provided in the water supply schedule, particularly in figures 3132 and tables three one and table three to the available capacity. Shortly exceeds in terms of water demand and therefore HGV demand the headroom for traffic. If it isn't provided, if the desalination plants,

45:10

I think I think I've got the point if they don't produce a desalination plant, you don't want trucking for 10 years?

45:16

Essentially, yes, that's a short point. And it's just a, it's a matter that I think it's perfectly capable of being addressed. But it's something that ought to be addressed. And it isn't, as far as we can see at the moment, it isn't addressed.

45:28

Very good. Okay. Thank you, Mr. Bedford. That's really helpful. Mr. Tate, so your hand is up as well.

45:38

Thank you, sir. The points just made right raised by Mr. Bedford are points that we would endorse, we can see that the desalination plant works are now specifically identified in the latest draft of the decio. That's revision nine, late submissions, as part of works one, a, a to M to N two to P. But there isn't a requirement or trigger for their provision. And that's the point where we would align ourselves with what Mr. Bedford has said. And in addition, the council would like to secure notification of the proposed location and subsequent relocations of the plant, either through a requirement or through the cscp. Because that has the potential to have environmental implications. So we'd like to have some wording either directly in the requirement or through cicp, to secure that the long term water supply solution for the project. And so far as that comes forward for the Town and Country planning a route, we suggest

that there will need to be assurance that that is encompassed in the current environmental assessment. So we just anxious to ensure that that is that is covered.

47:05

So certainly a long term supply was always was always in visitors coming through the pipeline. Yes.

47:11

Well, if that if that remains, or if that if that is not going to be the position at all times during the operational period, then we want to make sure that that is encompassed in the environmental assessment.

47:27

Right. Are you saying that it's not now?

47:30

Not necessarily, we want to make sure that it is. And we were just like assurance on that.

47:35

I guess you can come back to us on that. And we can take it up again as h 15. Yes, sir. Yeah. Okay. Thank you very much, Mr. Tate. So is there anything I was gonna say? At this stage? No. Thank you. Many. Thanks. That's good. Mr. Wilson.

47:56

Thank you, Mr. Rock, just a couple of points. So we're also discussing about the the decio provisions. And first point was confused how those provisions can be agreed today, when we haven't had the buy sh on the desalination plant. And there's a lot of doubt However, they won't be

48:16

they wish. As you as you know, Mr. Wilson, waterboarding amazes between the two of them, they will produce what they're happy with. They'll put it to us. And we will have a look at it. And we'll tell the safe state what we think but

48:29

Okay, thank you. And the other couple of points was just to get clarification from the applicant, or they are definitely looking for to use the desalination plant for the entire construction period, which I think is a point that Mr. Kane mentioned, and also have sort of concerns over sustainability. If we've got three working reactors that basically have an outage every 18 months, every six months, we'll be looking at a need for 2.8 million litres of potable water. And just to make sure we've reflect the sustainability, the sustainability issue there again,

49:11

but that that last point you made, that hasn't changed as it is, it's always been that you could have outages through each of the three reactors.

49:19

Yes, now that that's true. Yeah.

49:23

Pretty good. Okay, I would like to thank you very much. Mr. Phillpotts ice ice, no hands up. Are you on my hands? So you have been trying to avoid? Let me turn to you now.

49:40

Thank Thank you, sir. Um, I wonder if I might deal first, with the points raised by the Council can do that quickly. And then I can come to the points raised by

49:55

a question sort of already like,

49:57

Thank you, sir. And the point raised On behalf of Suffolk County Council about commitment to delivery of the desalination plant is understood. And we are going to come obviously, in due course in the agenda to the question of reasonable endeavours and the delivery of key mitigation and the implementation plan as matters of that sort. I don't think there's any difficulty in principle with the issue that has been raised being encapsulated within that discussion, but that because there, there are matters that I need to explain when we come to the reasonable endeavours clause about how we're envisaging dealing with that. It might be better to fold it into that discussion. But I don't think it raises any separate point at the moment to take instructions. But I don't see a difficulty with achieving that, if it's the right thing to do through that mechanism is essentially the same sort of point is for any other element of the scheme that where the delivery is important.

51:00

Okay, that's, that's fine. I just think need to warn Mr. Keen, we weren't getting a little soft for me. And so.

51:08

And so I mean, so far as Mr. Kane is concerned, I anticipate that it will be of interest to him to understand that we intend to deliver the desalination. And indeed, our plans rely on it. That's why we put it forward. We didn't put it forward because we were quite content to deal with it by other means. But if he wishes to listen to that later on, he's more than welcome to stay. And so far as the east suburbs Council, this other Council's point is concerned, obviously, I'd need to take instructions about the additional point about notice of location relocation, but on the face of it, that sounds like something that's relatively straightforward to achieve, and understands why they might want to know. And in terms of

51:55

what notice of relocation, he wants to know where it's where it's going to. And I would understand the breed of the site.



52:03

Well, I hadn't understood it was a request to prove the site I understood it was native occation of where it's going to, as opposed to the ability to control where the desalination plant is located. But I may have misunderstood that. So we just,

52:21

we just check them to take.

52:28

Thank you, sir. I did say notification. And that was an instruction. I meant notification.

52:33

I beg your pardon. Thank you very much.

52:37

I'm Greg. So I'm grateful to Mr. Tate that that that was my note and that that's helpful clarification, will obviously pick up in issues specific hearing 15 questions of environmental assessment, and that that can include questions about the intermediate step of using tankers. I understand that there was a transport meeting the regular weekly transport meeting with the County Council yesterday, where tankers were discussed. I don't need to go into the detail of that. But that is being actively discussed. And we don't see there's any difficulty in principle, with managing the tankers within the existing range of controls with that subject of active discussion with the County Council as to reassure reassure you on that point. So so I was then going to turn to the substantive issue. And I'm very grateful to my friend, Mr. Keane, for outlining your benefit, the essential nature and structure of the protective provisions that have been sent over in draft for consideration. And and obviously, I don't want to trespass too much onto those negotiations, because we wait to see the the drafting that comes back what I can say, just to supplement that, that there has been, as I hope is apparent from what you've heard already very positive and constructive engagement between the parties and their legal teams this week, to seek to reach an agreement on the question that you've raised under this agenda item and which comes as you've indicated from the letter of the 16th of July, in light of the position that's been reached, and as it was explained to you, I don't propose to explain our view, in respect of whether a Grampian would have been appropriate In any event, because the mechanism that we've put forward addresses that concern without the need to go into it. And it clearly, if you'd find it helpful to understand our interpretation of the provisions and the background to it and how the barricades Starts or does not fit into this. We'd be happy to explain that in writing. But I don't propose to take time over that. Certainly not today in circumstances where, as Mr. Kane has indicated, the parties are discussing what would appear to be a sensible mechanism that deals with a particular concern that has arisen. And there are just a couple of points that I want to add, though, about the nature of what is proposed. And first is this, it's important to understand the two elements of the proposed protective provisions as forming a package. And they are interdependent because the first part is Mr. Keane explained, is the foregoing by my client of what would otherwise be its right to insist upon a domestic supply under Section 41. Now, that is, in part made possible by the addition of the desalination plant planned for the purposes of construction. But it also has a relationship with the second part of the proposed protective provisions, which is concerned with

56:26

it the longer term process of supply. And I don't want to go into the details of the you'll see the drafting the deadline, a version, but essentially as as was summarised by Mr. Kean, the reasonable endeavours point, and you'll see how it's expressed in the drafting in due course, is intended to ensure that the water company then gets on with it, in return for not being subject to what would otherwise be a statutory duty, that there is then the reciprocal element of it, which is embodied in the second part, and you'll see the drafting in in due course. But essentially, the two things have to go together the the section 41 absolute duty is therefore surrendered in circumstances where there is a second provision, which provides comfort in terms of what is then going to be done by the water company. And that that's, that's important, because there needs to be a clear trigger for the water company to then get on with the business of the transfer main, which originally the section 41, requisition would have triggered that process. So that that's by way of sort of outline, clearly, you'll you'll see what emerges from that, we hope that by deadline eight, we may have an agreed form of words, if not, we will put forward an our proposed form of words. So that as you can see where we are, there may be some elements of that that are agreed others that are work in progress. But what I would also suggest in order to assist you and ultimately the Secretary of State is that there may be married and are seeking to agree with en wl a statement of common ground that can be submitted before the close of the examination, which sets out where we are in terms of the factual position, as well as what has been agreed in terms of the decio in its and its implications. So it we will seek to work on that, hopefully n wl will cooperate with us in agreeing such a statement. And that would then allow hopefully, for a clear agreed position to be set before you as to both the factual position where we are in terms of what needs to be in the decio. And the implications, therefore, in terms of the decision making so far as this that's a matter that n wl wishes to comment on.

59:27

What does so what is the second part of that protective provisions? Do the first one you forget your right to the system section 41 supply? Yes, they've got an absolute control over whether or not you serve a section 41 claim what's what's the second part?

59:45

The second part is that subject to the Environment Agency is written confirmation of the relevant quantum of sustainable potable resource being available at the licenced substraction point or an or other relevant water resources and completion of the Wynette process that the, the water Undertaker would subject to the terms of any section 55 agreement or determination under Section 56 uses reasonable endeavours to supply sizewell siko, with the quantities of water that you've just had described and explained to you as soon as possible. And that the the drafting of it will need to develop. But that's that's the that's the essence of the point. So that there is then a tree. So what you're

1:00:43

saying so once if the environment as you get comfortable with the amount of water, which is there to be had, and when it does this, does this does the same? And what goes through the process, then at that point, then who would have to use reasonable service as usually to get on with it and supply the block? Exactly, which is to make

1:01:02

concrete and that it well, that the the concrete can be made with the desalination?

1:01:08

Yeah. Yes, it's that cause he wants to make concrete. Yeah. And

1:01:12

of course, if if the water arrives, during the course of the construction period, well, then all well and good, but if it doesn't, we continue with the desalination. But that's why I was keen to stress that the two parts operate together. That there is that there is a surrender of one trigger. Because we understand the particular concerns to which that's given rise, yeah. And in return for that area is another trigger. That is of course subject to the supervision ultimately, of off Ward and pursuant to Section 56. And therefore, it brings into play what is effectively a comprehensive statutory regime for dealing with situations such as this. So once one moves away from the section 41 issue which has given rise to particular concern for n wL, for the reasons which have been summarised, and which we've sought to acknowledge in this drafting, one then moves into territory, which is the normal way in which you would secure such as applying if there's a difference between the parties about the section 56 three exceptions, then you have the benefit of the section 56 process? And does your appeal appeal or it is indeed resolution process, isn't it? Yeah, so not an under Section 56. For in any such dispute, it's for the water Undertaker, to show that it should not be required to comply with a request made to it for the purpose of Section 55. that burden of proof of proof is consistent with the overall strategic status duty on water Undertaker's under Section 37 to ensure they've made arrangements for making such supplies available to persons who demand them. So we are comfortable with that process in dwell on surprise and is comfortable with that, and there is a referee to hold the ring in the event that we we take different views on on that matter. But in other words, there being a clear and comprehensive set of statutory provisions to deal with that longer term supply, and there being a desalination plant to deal with the construction supply, provided that the section 41 issue which gave rise to concern is addressed under the protective provisions, then we say that that's all the decio needs to do. And the rest of it can be left to the operation of the normal statutory process.

1:03:54

Okay, let me ask it, sir. So what happens in the operational stage of the power station? And does the protective provisions you're talking about? Was does that help you there?

1:04:07

Well, yes, the operational stage is the supply that is identified in the reasonable endeavours. provision. And of course, I think my microphone may be running out.

1:04:19

sounds fine to me. I can hear what you're saying.

1:04:21

I'll carry on it is simply

1:04:25

I didn't make it was Mkhize timing you out?

1:04:29

It could be sir. I'll be told if I'm going on too long.

1:04:34

It's very helpful.

1:04:36

As I as I understand it, the quantum of water that is covered by that second part of the provision is the quantum that is needed for the operational stage, including outages which would be within the peak demand.

1:04:55

I'm sorry, what can supply that quantum

1:04:57

that's the watermain that As the supply

1:05:02

the one you're going to get onto the second part of the day. Yeah. So what happens? What happens if if the Environment Agency don't agree?

1:05:11

Well, the the drafting covers that point by allowing for a sustainable potable resource being available at other relevant water resources. So for example, and this is why the factual position needs to be woven into this at the moment, we are cautiously optimistic about what's emerging from the process that is being undertaken. don't want to prejudge that. But if let's say the quantum, the total quantum that was available from that abstraction, for us, fell slightly short of what was needed, it may be that an other sustainable potable resource could make up the difference. And so if that were the case, that in those circumstances are under the terms of the drafting, that could still allow for a sustainable supply of the content that is put in place, or indeed, there may be another sustainable option that emerges, which can cater for more of it. But essentially, it covers the potential that it doesn't all come from the current abstraction point that we are anticipating at the moment that the review process will hopefully mean that that becomes academic, but it caters for that possibility. I

1:06:40

think Mr. Humphrey might want to ask a question.

1:06:48

I think what I'd like to add at this point, I think, maybe straightened issues that we might want to consider is h 15. When we understand more about the drafting and more about, hopefully a little bit

more about what potential there is in the water supply. Because it's more about I think, Mr. Brock, is trying to get to what happens if the Wynette process doesn't identify sufficient capacity to supply sighs Well, at all, what would happen, and I think that's maybe a discussion of what it's about, we need to do is h 15, rather than about drafting the DCF.

1:07:26

So that that point is understood, I had anticipated that that would be a subject matter more appropriately for that hearing, not least because, as you'll have been aware, from the discussion on Tuesday, but also from the written material, the process that's going on in the background, to identify what the factual position is, is ongoing, and hopefully will produce a result, it would seem during or at least some information during the course of the examination. And the later we go, the more the more we know, then the the legal consequences. With, as with most things in in law, until you've settled upon the factual position, some elements of the legal draft into reflected have to remain slightly in the air. But at the moment, we've got a mechanism which we think embraces all of the reasonably possible outcomes from that process. The implications of that may depend bearing on the factual information that we get. But we think that's an appropriate thing to pick up at that subsequent hearing when we know a little bit more.

1:08:37

wanted. What I wanted to tell, Mr. Phil about was, how far your what what factual problems you're drafting is going to address and solve a case. So I think that's helpful. We may or we may come back to an ice age 15. Mr. Robertson's got his hand up. Mr. Roberts. I just say that this is a natural justice point is it is what you want to say a contribution to help. What were the understanding that we have at the moment?

1:09:11

It is so yeah, I just wanted to clarify that if the wind app investigations conclude that there is insufficient water to meet forecast demand, including sizeable seeds demand going going forwards, then new water supplies schemes will need to be developed through our w MP our water source management planning process through the regulatory process. And the funding for those schemes needs to be carried through our business plan. And that wouldn't be agreed by off what our regulator until 2024 at the earliest. And then funding wouldn't be released to develop those new supply schemes until 2025. So it's not until 25 in that scenario, would we be able to essentially start the projects in terms of completing the full feasibility and actual can Destruction of the of the schemes. So from our perspective, it's how quickly could they then be constructed once funding becomes available? And and whether they can be constructed in time to meet the commissioning date of the of unit one.

1:10:16

Okay, thank you. Thank you. I think that Mr. Phillpotts suggestion of a statement common ground as well on this good wrap up those sorts of things as well and be very, very helpful. Right, I hear what you're saying is to fill a pot. Thank you very much. Is there anything else that you wanted to say now,

1:10:36

sir, no, only to endorse your suggestion that it's precisely those sorts of points about timing and the facts and so on that the state of common ground will be very useful for it seems to me.

1:10:47

Yeah, okay. applies to that case, I think that deals as far as we can with item two, I've just saved this to Phil Potter, Mr. Mr. Keene and your clients. It. We are running out of time. We've got less than a month to go now. And all that you can do to bring forward agreed drafting at the earliest possible opportunity will be helpful to everybody. Thank you. Thank you, Mr. Keane. Thank you. Right, we can move on to item three now. And article. Articles nine, nine and eight, nine B of the VCO. And the points for Suffolk County Council making. Mr. Bedford, can I just ask you, first of all, in my agenda, have I got the list right? Or are there any other points apart from A, B, C and D? Which we ought to be looking at please?

1:11:56

on the agenda, I've got a, b, nine a and nine B, a nine?

1:12:04

Have you not got you shouldn't have whether it's right to require states consent to transfer the DCA to a person holding the licence under Section three.

1:12:12

Oh, sorry. Sorry. Yes. Sorry. That ABCD? Yeah, sorry. I'm sorry. I thought you were talking about the articles themselves? Yes, no, I've got I've got those matters. And they encompass, I think the areas of concern to the county council.

1:12:33

Okay, hang on. That's That's fine. Mr. Phil. But I think again, as the water supply, it's going to be simplify us, Mr. Bedford To begin, then go to the other IPS and then then come back, come back to you. So Mr. Bedford, I guess my I've got another question for you, before I let you Why don't you start? Do you want to deal with ADD sort of separately? And then we say to other IPS, and then Mr. filippov? What do you think? Or do you want to deal with them all? All in one go?

1:13:07

I'm happy to deal with them, collectively. And there is obviously an interrelationship between the different points.

1:13:18

Good, okay. I think that that would be that'd be fine if we can, if we can do that. Now, before you get started, though, I ought to say something both to you and the applicant. And of course, everybody else in particular about the deed of Covenant approach. And are I suppose my comments about it in the first commentary on the decio and the deed of obligation? I think we're all aware that deeds obligation is novel, it may turn out to have a great deal to commend it in terms of addressing the deficiencies and the restrictions which were introduced in 1991 intersection 106, the Town and Country Planning Act. We have open minds about the do but I didn't not see any great problems with the first approach, which is in revision five of the decio, where we had a wording stating that the deed of obligation, completed

pursuant to the order and variations shall be enforceable against the transferee for the less or just as they would against the transfer or when I saw the data, but here it's approach. It struck me as being very, very cumbersome. However, having read Suffolk County Council's response, it seems to me that I may have been a little too, too enthusiastic. I'm also aware that in PD double oh nine on 22nd, December last year, I said that we require we asked the host authorities to confirm basically the validity of what was then a section 106 agreement. With all the right parties joined in, and we've also require the applicant, the applicant to confirm that that is the hours that the whole thing works. And with appropriate changes to reflect this proposal isn't under Section 106, we still require those assurances. So bearing in mind that the deed of obligation is novel territory, bearing in mind also that this is one of the largest nationally significant infrastructure projects, and therefore, it's simultaneously it's the sort of project isn't it where new legal thinking emerges. But it's also not obviously the sort of place where you which you choose as your prototype. So there may be a case for article nine to include deeds of Covenant, but without removing the statutory wording, which we, which we currently see in Article nine, five a and five B. So the open mind obviously works, but I hope that reflection may help you both and other interested parties and speed up your submissions. And can I also say welcome a summary of the views of the two councils on whether it's been right to exclude ngl Network Rail and national grid. But with those Boolean remarks, I'm going to give you your head now. Mr. Bedford, off you go.

1:16:22

Thank you for my question, Suffolk County Council. Dealing with item A. First in terms of the exclusion of the need to seek consent from the secular state for transfer, if the transfer is to a person holding a licence, under the nuclear installations act 1965. First of all, we note that there was no similar exclusion for the Hinkley Point C scio, or the draft decio. For wealth. We also note that nuclear site licencing is as we understand it concerned with the operation of the nuclear site itself, rather than with the way that the site interacts with the wider area, such as in relation to transport or community impacts. And clearly, what we would want to be assured if there is to be a transfer is that any transfer re is not only committed in a legal sense, to the obligations in the deed of obligation, but also in practice, would be able to perform those obligations. And if the Secretary of State consent is required for such a transfer, notwithstanding that the person concerned has a site licence, we would have the opportunity to make representations to the Secretary of State if we had any concerns about that. And that that issue does arise particularly because we note that the the transfers can be partial transfers, rather than complete transfers. And so there are issues in terms of us being assured that any transfer re actually has the ability to deliver the full mitigation package, which is to be secured through the deed of obligation. And therefore, as it were, in our in principle position is that we don't see that there is a justification for the exclusion. Just because a party holds a nuclear site licence for placing the matter before the secretary, obviously, if the Secretary of State is asked to give consent and says, in a sense, well, of course, this has already gone round the loop through the site licencing process, everything must be satisfactory, then obtaining that consent is not going to be a particular hurdle for the applicant or the transferee. But as I say, we as we see the matters that would be of concern in the site. licencing regime would be somewhat narrower than the matters which are of concern to us to the practical ability to deliver all of the required mitigation as opposed to merely there being a legal obligation imposed. So so that that Actually, the main point on a if, notwithstanding that there were review, that there should be some exemption for a person holding a licence, then absolutely, that would need to be a licence to operate sizewell C, which is I think your final point, rather than merely being somebody who happens to have a



licence elsewhere in the UK, because clearly the regulator would not have in any way considered, matters relevant to size will see in any process that was undertaken to secure that licence.

1:20:39

Then, so far as item B is concerned, this is a matter of concern to the county council in terms of the narrowness in which it is intended, that the enforcement enforceability as a deed of obligation is defined if there is a transfer, because of the narrowness of the way in which undertaking is defined in the deed of obligation to, as you say, restricted to only a limited part of the works. One a, a age, which themselves are not even the full extent of the works, which constitute the main development site. That works. And we, we see it. Again, it's this similar concern, if there's a partial transfer, the transfer re may not have the necessary powers under the decio. In order to implement all of the required mitigation, give me an example. Well, for example, if there are transferred to them, only powers in relation to the site works which are listed. They would not have any compulsory acquisition powers in relation to be able to deliver, for example, the sizewell link road or the De Villiers bypass. So even if there's an obligation in the deed of obligation for them to undertake those work, they may not have, in practical terms, the necessary powers in order to do so. Also, do the marsh Harrier work, or Yeah, yes, obviously, you'll understand from the county Council's perspective, I'm focusing on areas particularly with the county Council's responsibilities. But yes, equally the same insert point apply is across across the board to other areas of environmental mitigation. So if there's a partial transfer, I say, what we're concerned about, is, firstly, that the transferee may not have the necessary powers to implement all of the required mitigation, including acquisition of land as well as powers of construction. So albeit that it's intended that we will have the ability to enforce the the obligation against that party, it might be pretty worthless. Right? got us the timestamp excetera. So don't say more about that. But the rub, as it were, is that under the deed of obligation, clause five, one, once that partial transfer has happened, the applicant is free of its obligations under the deed of obligation other than the antecedent breaches. So effectively, we see that there is then a risk, the app applicant is released of its obligations, all its

1:24:09

obligations, or just the ones in relation to the land that is sold.

1:24:14

Sorry, if you go through the way that five warnings word is once it's been a transfer of the entirety of the undertaking, their release, but that then sounds like it's more comprehensive, because it has to be the entirety of the undertaking,

1:24:33

but bear with me, bear with me. I didn't have the undertaking. The deed of obligation up nothing. It's fine. Just give me a tick.

1:25:00

So what you have?

1:25:01

We have D seven, didn't we?

1:25:04

Yeah, here we go. Yes.

1:25:08

Are you on the clean version? Are you on the track changes?

1:25:11

Change version? I'm on rep 7041.

1:25:14

Right. Hang on, it's just coming. Right? Where do I need to go?

1:25:21

You need to go to two places in the definitions, which are in Clause 1.1. It's the definition of undertaking.

1:25:41

First of all, yes, yeah. Okay. undertaking means that

1:25:47

the conceptual construct or operate works, one a two. Ah, so it's a narrow, it's a very narrow definition there. Yeah. And then when you go to five one, which is clause five, one, the release? Yeah.

1:26:03

Four, five and release? Yeah.

1:26:08

It's upon transfer of the entirety of the undertaking is that which has just been previously defined, be released from all obligations in this deed?

1:26:19

Okay, I understand your Thank you.

1:26:23

So, so I say the simple point is that the transferee may not actually have the practical ability to deliver on the obligations. But the applicant is released from any requirement or liability in relation to the obligations. And we don't think that that's satisfactory, because it obviously leaves things falling between two stools. And, obviously, it can be readily addressed. Because what we want to achieve is a position that the applicant remains fully liable for all of the obligations in the deed of obligation, unless and until there is another party, which not only has the liability, but also has the necessary powers in order to comply with the obligations. I mean, I say we're not in a sense, precious about the, the way in which the problem is resolved. And obviously, an easier way of dealing with it would be to limit the scope of transfers. But if there's another way of doing it, I say, we're not, we're not precious about it,

but I say that what we want to avoid is I say that risk, that we haven't got a proper person that we can enforce at all times, all relevant obligations against.

1:27:53

So you say transfer only to a person who has all of the obligations and all of the past.

1:28:02

Yes, I say, we can we can see that there may be scope for something more limited, for example, some of the particularly works which involve national grid, and or Network Rail. And so we can understand why there may be some partial transfers, which could be dealt with in a different way. But the essential point is that is the main operation, if there is to be any form of transfer of the main operation, it needs to be wide enough to ensure that the obligations run, and it also means it needs to ensure that the applicant is not released from their obligations until there is a an adequate person in their shoes that we can properly enforce against.

1:28:54

But it looks as though you need to deal with that not just your point not not just in the in Article nine, but also in Clause 5.1. And the definition and undertaking in the deed of obligation.

1:29:10

Yes. Oh, yes. They the two go together. Yeah. It's a then in terms of point. See, that's probably a narrower point simply in the if, if the deed of obligation has been executed and entered into then it will obviously be enforceable on its own terms. And so although in a sense for clarity, one could see that article nine, which is dealing with imposing that liability on the transfer re that one could see that for parity, it could be said one should also impose it on the applicant. Obviously, in a sense, by definition, the applicant will be bound because the deed of obligation will have been entered into by the applicant. Yeah, I.

1:30:08

You're right. It's it's a slightly intricate drafting point. But I'm just I'm concerned to make sure that we don't have any gaps Really?

1:30:17

Like. Absolutely. And we we share that sentiment completely. And I say it's a, so it's roughly narrower. Point, what?

1:30:32

What's your answer to my question?

1:30:34

Well, I say strictly if, if the deed of obligation has been entered into by the undertaker named in the decio, then it's enforceable on its own terms. And so you don't need the the decio to say the same thing? That's the strict answer, I think. So far as D is concerned. But this is an area that has given us some concern, again, for the same reasons of wanting to ensure adequate enforceability. And we have

taken the viewers so you've seen in our earlier representations, that imposing what would be then contractual privity of contract by a deed of adherence is a well established and well understood mechanism for doing that. We did note, obviously, the comments that you had made in relation to as it were adding another layer of complexity to the process. So we have been talking to the applicant about that matter to see whether there was a way forward. And we thought, or at least we think that we have reached an agreed way forward, which was to amend in Article nine. Article nine, five be known for ultimate nine, five a I apologise.

1:32:14

Let me get it up. It won't take so long as time. Nine Five a. Yeah. Yeah.

1:32:23

To add words, at the end, we have got some drafting, which I think has been discussed in which we think is agreeable, which would add after the word works at the end of five. And such transferee, or lessee shall be treated for all purposes, as an undertaker, who entered into the deed of obligation. That is a failure. It's a, it's a deemed provision to put them in the shoes of the person who had entered into the obligation, albeit it's not actually then requiring a deed of adherence to separate contractual mechanisms. So, as far as these

1:33:06

I don't feel so strongly about, about cumbersome mechanisms, as I did when I read the court, the commentary? Well, yes, helpful.

1:33:17

So So, in a sense, there's, there's a number of ways of dressing the concern. And I say we've, I say we had made that progress with the applicant, which I think we were content with. As an alternative. I say we just we do note that as a deed video, it's already a well established way of dealing with matters then there is an issue that does arise in relation to nine B on modification and discharge arrangements. Okay. Where we have we MLC we note, and don't have any issue with the basic approach that there should be a mechanism for modification and discharge. Clearly, as you can see from a nine B for what is built on izly, effectively the precedent of the circumstances in the town and country Planning Act, regime for discharge planning obligations, and we perfectly accept that approach. But stepping back from this, the deed of obligation for reasons that we don't need to rehearse is the way in which the applicant is proposing to deal with matters which might otherwise have been the subject of planning obligations. Which because we're in the decio regime would have been planning obligations enforceable as developed consent obligations. Now, so as you will know, both section 106, subsection 14 and section 106, a 11 A of the 1990 Act contemplates that planning obligations can apply to the decio regime or the clinic 2008. And, as you know, section 106, a sets out mechanisms for variation and discharge of a planning obligation. And part of that mechanism in Section 106. A, four B is that there is a basic minimum five year period, which is the threshold prior to which an application can be made over the head as it were of the other party. For this again, yeah. And so, we say that there should be a similar provision built into nine B. And there has been dialogue with the applicant about this at the moment, the applicants not all of the views that they should be at such a minimum period. But we we make the point that it's quite clear that parliament has contemplated that regime applying to the decio

regime, including in particular, section 106, applying to the decio regime, and Parliament hasn't substituted an alternative period for that. And equally, the Secretary of State has powers by regulations to specify a different period. And he hasn't specially

1:37:08

ever has.

1:37:10

So, so we say if this deed of obligation had been done more conventionally as a planning obligation, then it would have been subject to that five year period. And we don't see that there's anything in this particular circumstance which justifies a different approach.

1:37:28

Do you remember whether in early drafts because this thing kicked off as a section 106 agreement? Do you happen to remember whether or not the applicant disapproved, the five year period in the earlier drafts,

1:37:42

I don't, without going back to check the documents, obviously, we have something we can look at, and we can update you as

1:37:50

appropriate, it may it may be it may be relevant.

1:37:55

And obviously, you will note that in terms of nine B, nine B one does allow. In any event, the parties to agree.

1:38:14

Go on listening to

1:38:17

so so if there were circumstances in the five year period,

1:38:23

you can still agree does that was that 106? A says

1:38:31

it's actually section 106. A would allow section 106 A will allow a variation or discharge at any time. Yeah. Yeah. If it's ally agreement, it's only if it's not by agreement. There's no mechanism to go to the Secretary of State, of course, yes. The minimum five year period, essentially the rule being that people should be held to their bargains for a minimum specified period. Okay, I've got that. Then. If I can just check. I think I've covered the issues that are of concern to us on those articles. Yes, thank you, sir.

1:39:12

I just say, if you're able to do it briefly, if not pop it in the written stuff later. A summary of the views of the two councils on whether it's right to exclude EMG on Network Rail or and National Grid?

1:39:29

Yes, I think I think we had accepted the position that they had made it clear they would not be bound. And we were not given given their position on that. We were in a sense knots wanting to push water uphill. So I think we were accepting of that position. Even if it might have been better if that wasn't the position at But I think what you were you

1:40:02

were you were reluctantly accepting that they're not bound. Yeah, yeah.

1:40:06

I mean, obviously, you're in an ideal world, we would prefer all elements to be bound. But I think we

1:40:13

have a good defendant. Yes. Okay. I've got that. Mr. Becker, that's really helped was anything else? Or have you've completed your submissions on that for me?

1:40:25

that that that's the submissions on item? Three. Very good for three free capital A, I should say, because we haven't come on to 3323

1:40:34

though. That's, I think, as tight territory, not yours. Very good. Listen, it's now 20 to 12. We've been going for slightly more than the statutory 90 minutes or the advised 90 minutes. And I'm going to adjourn now for just 15 minutes, when I will then come back to our IP starting with Mr. Tate. And Mr. Keane has got his hand up. Thank you very much. We are now adjourned until I will come back to you as always, Mr. Kean D. Are you saying? Are y'all gonna say Could you be excuse I?

1:41:08

I am sorry, I was asking. But if my client and I might be released, because we have no instructions on the items on the agenda in this lesson, what is this the authority for?

1:41:18

Yeah, no, I'm very grateful to you and to Mr. Robinson, for your for your help this morning. I don't think there's anything which I need to ask you. Keep putting you know what? components that you could watch the thing afterwards delight.

1:41:34

Thank you very much. Thank you.

1:41:36

Thank you. We're now adjourned for 15 minutes. Thank you.