

TRANSCRIPT_SizewellC_ISH14_Session2_17092021

Fri, 9/17 1:48PM • 1:25:21

00:05

Welcome back, everybody. Thank you very much. We are now in second part of ishs 14.

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But Mr. Tate,

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do you like to address us on item three APS?

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Thank you, sir. And I can do so briefly in the light of Mr. Bedford submissions. On the first point that lay,

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for the reasons set up by Mr. Bedford. We think the answer to that is no. And I won't repeat that. The second part?

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If it is,

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right, that the answer to that is yes.

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Because site licence is not specific, but

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would be a site licence in general, that is not appropriate.

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that will be the answer to that, again, is no for the reasons set up by Mr. Bedford. And from our perspective,

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when once considering the reasonable endeavours provision, for example, to secure delivery, the accommodation campus under the deed, the accommodation campus being worked three. So

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outside the scope of

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five a as yet that's sort of

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that's your exam? Yes. Yeah. Precisely. And if there isn't control over that land?

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That's a good answer to

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those who are saying that reasonable endeavours have not been undertaken.

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In relation to see, we think no further changes required, because that enforceability is implicit in nine a one, that the terms of the deed enforceable and its explicit big through the signature

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of the original party. And successes are addressed under nine five a, so we don't think any further changes required there. And in relation to D.

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We think that is potentially useful, particularly in the context of there being more than one transferee. And we will be content with the suggested wording, subject to further discussion with the applicant set up by Mr. Bedford

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to have a deeming provision in effect. Yeah. So you're deemed assigned? Yes. Yeah. Okay. Yes, sir. And then if I can call it E, which relates to the five year embargo on

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an agreed application for variation of the section one and six. So our position is, although overall, we've sought to seek to ensure that the

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evolving approach if it can still be called that, in the deed, moving as it's still evolving? Yes, it's a little bit down the line from the early stage of evolution.

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But it is still evolving. Although we've sought to ensure that the new format replicates the provisions of Section 106. As far as practicable, we are in fact neutral, about the bar on changing making any change. If it's not agreed. For the first five years, we wouldn't be opposed to that incorporation. But we are effectively neutral on that. Okay.

03:41

I'm, I'm much obliged to you. Thank you very much. Mr. Tate.

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Are there any other interested parties who would like to contribute to item three A Good morning, Mr. Scott.

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microphone on sir. Thank you. Good morning, Mr. Brock.

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I'm trying to think sink intervention. Thank you, downstream of the fact that from our relevant representation as a group, and when we raised ownership change issues, we are now into

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considerable legal complexity. But the question I wanted to ask is that I noted recently that one of the standard legal websites had picked up that after 100 dc O's, there is the first redetermination of the decio.

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I think it's Potter's website, but I can send in the reference for that. And I wondered how that facility which I presume is a facility involving Secretary of State's powers might relate to the five year window and weather really well the question of the reference and the terms of office

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Which references the Secretary of State is made

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might not be overridden by that redetermination process. So in other words, now that we know that the corporate entity of EDF doesn't want to retain

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anything other than I think the formula we submitted wasn't we recorded to you as no more than a minority interest. And it's not clear whether that's a minority interest in the operation or even in the construction period because of lack of capital.

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That the question of an ownership transfer is actually quite urgent.

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It seems to me the five year cap would actually be a comfort to people who are depending on the EDF, but

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also for the developer, if there is redetermination possibility, then a lot of the clauses about transfer, which seems to be quite complex to draft might themselves be redundant.

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So in other words, if there is,

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can I

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sort of two things First of all, this is very remiss of me, you've mentioned

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the rubric presentation that we made an offer it's completely glide in my head as to which organisation you are representing in addition to yourself, personally, I see the faces so it was such familiarity. So we're, we're we're we're a community monitoring organisation, a network of people. I need I just give it to s.s.k.g.he. goes, don't you? I see. I saw your posters last year as well. Very good. Okay. Um, well, I might I ask you this please, q2 in your in your written submission?

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refer us to and include relevant extracts from the legal website resource, which you just been quoting from? And might I ask you to look to look carefully at that to see how it is applicable or not to the position which we are, which which we're discussing that would that would help me help me greatly? Yes. Thank you. Very good. Okay. Thank you, Mister. Thank you very much. Indeed. Mr. Scott. Are there any other interested parties who wish to say anything before I returned to go to Mr. Philpotts?

07:33

Okay, I see no hands up. Mr. Philpott.

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Thank you, sir. And just before I come on to the main business, just to deal briefly with what Mr. Scott said, obviously, we'll wait to see what comes out of it. But it sounded like what was being referred to redetermination would follow a quashing of a decision in which circumstances Well, there's a fresh decision to be made, and matters would it fall to be determined afresh and the usual way. So we'll wait to see but I don't anticipate that it would affect what we're discussing now.

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So I'm going to deal with some items a through two, I think what we're now calling he Yeah, I had it me slightly out of order in my notes, if I get to the end of item D and appear not moving on to E, please do remind me.

08:24

So dealing with some Item A which is to do with whether or not the secretary of state should separately have to give consent to the transfer of the DCA to someone who holds a licence under Section three of

the nuclear installations act? And if so whether it should be stays to be licenced to operate sighs well see, the the essential point, which I hope is relatively straightforward, is that if someone has gone through that process, and has been given a nuclear site licence,

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following what is a rigorous process, as you might expect, given the nature and importance of the responsibilities of the licence holder, then in those circumstances, to require such a person to go through the additional step would appear to us to be unnecessary. Now, before just explaining a little bit more about that, ultimately, of course, the decision as to whether or not the secretary of state needs to have a separate power to consent in those circumstances will be made by the Secretary of State, him or herself. And therefore, in making this order in deciding whether or not this is an appropriate exemption to include, because if the secretary state considers that actually there are separate things which second state would want to take into account? Well then this is simple enough.

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thing to deal with in the drafting. And so I made that point. And in terms of putting this into context that I can deal with it relatively lightly because we can all argue about what the Secretary of State may think, is or isn't necessary in respect to the person who's a site licence holder. But the Secretary will form a view about that. Now, our position is that a nuclear site licence and needs to be held by a body corporate and is not transferable.

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So if sizewell c CO, wanted to sell sizewell C to another entity, that new owner of the asset would need to have a nuclear site licence in respect of this site, specifically, granted by the Office of nuclear regulation, regulation under section one of the act in order to construct or operate the power station. So no one would be able to operate and therefore take the transfer without having

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a nuclear site licence for this particular site.

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And given that the requirements for being granted such a nuclear site licence are so stringent for obvious and understandable reasons. It seems to us that then to require a further administrative step of seeking the secretary state's consent for the transfer would be otas. And it's not obvious on the face of it, what those separate considerations would be beyond the very rigorous process for deciding whether or not the person was fit and proper to be able to operate a nuclear power station on this particular site. Nevertheless, ultimately, the issue is relatively easy to resolve in drafting terms, because if the Secretary of State takes a different view, can simply put a line through that part of the drafting. So we think it would be sensible. But we recognise that ultimately, that's a matter of judgement for the Secretary of State. That means I've given that that's why we've included it.

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Thank you. That's, that's helpful. Nice asking you, though.

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I'm not sure that I've been my notice create. I've got a note here with the you said a site licence is not transferable except to a licenced operator.

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There is not transferable. So we can't transfer size was he couldn't transfer a site licence? Yeah. So if we wanted to sell to another entity, and the new owner would need a nuclear site licence to be granted to them by the Office of nuclear regulation? That's my understanding of the position. No, that's

13:01

right. Then the question about whether or not it should be specified to be a nuclear site licence for the site is, in a sense, academic, because it could only ever be a nuclear site licence for the site, there's no point selling to someone who doesn't have a nuclear site licence for this site, because you don't hand over the keys to a nuclear power station, somebody can't run it.

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It's just not that sort of infrastructure. So that's our position. We think the point is relatively straightforward. also relatively straightforward to deal with. The Central State takes a different view. And then we're good. Again, I don't think there's much more we can say about that. So far, then as item B is concerned, which is whether it's right to limit the enforceability of the deed of obligation to any person to have the power to construct or operate one a to h has been transferred or granted under Article nine, I should perhaps say first, so your your final question on this. Should it be one a, a to h not one, a to h? The answer is yes. Clearly, it should be well sorted out. Thank you for picking that out. But coming to the substance of it, the answer, in short is yes, it is right to do that. Now, we've explained previously in

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written submissions, why it's appropriate to bind the entity with the power to construct and operate the nuclear power station, and therefore the person with the commercial benefit of the order and not for example, national grid or Network Rail

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and listening to the submissions made on behalf of the County Council. though perhaps they say reluctantly, that point appears to have been conceded

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That that is appropriate. And indeed, you'll have seen the sort of sums of money that are committed to in the deed of obligation. And the idea that someone other than the person with the commercial benefit of the infrastructure project would agree to take, the burden of the deed of obligation is fanciful is simply not going to happen. And whether it's a regulated entity, such as the two that I've described, or someone else, the reality is that the burden must set with the benefit. And that principle is what is encapsulated in the drafting. And there's no practical or other purpose served by making the deed of obligation enforceable against anyone else. And no, as I said, no party who doesn't have the benefit will ever agree to be bound. And that doesn't limit the enforceability of the deed of obligation.

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What it does, is to provide a clear and elegant drafting mechanism to identify the party who will be bound by all of the obligations

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of that party, the party with the commercial benefit, will need to take appropriate steps to ensure that where it delegates implementation to any other party, whether that's Network Rail, whether that's national grid, or a contractor in the usual way, it takes appropriate steps to protect its own interests, because it will remain liable for all of the obligations.

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And it's no different in principle, to the way that obligations work for any other big project where contractors are engaged to undertake the work that have been approved for the commercial benefit of a developer.

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And therefore, there's no difficulty of enforcement that arises because the person with the benefit will always be on the hook for all of the obligations. Now, so far as the points that are then raised, says is they might be on the hook in the

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says you won't necessarily have the powers to deliver those. Well, this, if I may say, so this is this is something of a straw man, it's just not right. Because if you're going to transfer,

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you've got to transfer on pursuant to Article nine.

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If you're going to transfer, the benefit, any or all of the benefit the provisions of the order to another person, you need the consent of the Secretary of State. Now, if the it was proposed, to transfer part of the benefit, in relation to some part where this issue arose as a matter of practicality. First of all, Article nine ensures that the council's who have responsibility for enforcement of the obligations and the deed of obligation are notified they are consulted. If this was a concern in relation to any proposed transfer, they would raise that matter with the Secretary of State.

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No transfer would take place and as the Secretary of State was satisfied, that it didn't give rise to any issue of that sort.

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And that is that is important when not when considering clause 5.1 in the draft deed,

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which is

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drafted as follows that Sizewell C Co shall upon transfer of the entirety of the undertaking, pursuant to the DCA be released from all obligations, but without prejudice in relation to any antecedent breach. Now, it is right to say that the undertaking is defined that way that links it to the commercial benefit of the order.

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But that transfer that it contemplates, is protected by the terms of Article nine.

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And so that there is no

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stress realistic scope for any enforcement and difficulty to arise and one has to ask the question, why would ask

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Any commercial body seek to transfer

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the undertaking or part of the undertaking in circumstances where it would no longer be able to control its own liability, and it remains on the hook for the liability. It's simply not realistic. There is no enforceability problem here. And that's why we are content with the drafting, as we have it, and

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I hear your commercial point, just

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let me ask this, I think the problem which Mr. Bedford was contemplating, and I'm going to put it to you, if he wasn't, I'm gonna put it to you hypothetically, if

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work number one, A to H is transferred, but just work one A to H,

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then doesn't that give the problem that the transferee doesn't have the power

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to build the SLR? Or to do the marsh Harrier works? Well, if that were to happen, if that if someone were to take that transfer and all the liabilities that go with the details, we'll come on to the question of, of how we secure these associated development sites, and so on in due course. But if they were unable to deliver key infrastructure, which is needed in order to construct the power station, they'd be in

a position where they simply couldn't construct it, it doesn't it that the the obligations need to be effectively enforceable by the undertaker themselves, a person who has the ability to construct the past session has to have, as a matter of practicality, control over the delivery.

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I've chosen I've chosen big and obvious things. But if it's a more minor thing,

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you know, not one, which is crucial to the actual building of the power station.

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So if you

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identify a particular example, the The point is this, whatever the obligation, the obligation is enforceable against the person but the commercial benefit. And if they put themselves in a position where they become liable with a difficulty of discharging that liability, well, then they're on the hook, and they can still be enforced against, it's just that in that entirely improbable, factual scenario. And they would have landed themselves with a difficult problem. And they would end up being sued for breach of contract, or injunctive, or whatever other forms of remedy or junk somebody when they don't have the property on which they need to deliver

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so that they are liable for all of the obligations.

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And ultimately, the court is not going to allow it assuming even that the Secretary of State were somehow to to Norden to miss this. When the benefit of the the question of transfer came before the Secretary of State had been scrutinised by the council's and the secretaries they had to make a decision to sue me even the secretary state misstated. The idea that in those circumstances, the court would allow someone to avoid the obligations is just not realistic. I mean, essentially, the answer is well, hang on. So if Okay, if it's an obligation that sounds in damages, that's easy.

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The damages is is awarded, but for the ones which can only be performed. You need then you need a mandatory injunction if the person hasn't got the property on which he needs to perform the land of court is that they're not get gone injunction. That so that that that assumes that that that scenario would be allowed by the Secretary of State on a transfer and this isn't this is not going to get near any court is not necessary to identify all other elements. Because as long as the person who has the commercial benefit is caught, there is there is then upon them in the same way as they would with any other contractor to ensure that they have the ability to perform those obligations.

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I mean, you're looking some years down the line, Mr. Phil trot, somebody who hasn't acquired the familiarity with the documentation and its importance.

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And

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if that's not just the case, at the at the department at the secretary of state's Department, that is also the case

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As the as the council's who you're relying on, to put up the red flag. So if I, if I may say so, there, there are a number of points that arise there. First of all, it is necessary and appropriate for the Secretary of State in deciding this issue of the examinee authority and making this recommendation to assume that the Secretary of State will behave reasonably and will consider matters which are pertinent to any proposed transfer, including questions of enforceability of obligations. When making that decision, it would be inappropriate to make a decision on the assumption that sexual state would not do the job properly.

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That that is the ultimate safeguard. The second point, of course, is where if we're contemplating a transfer, the point of notifying the council's is to ensure that they scrutinise any proposed transfer. And given the importance of the obligation, given the fact that by then not only will the examination have completed, but if this is, as used suggests, a point that arises some years down the line, there will be a considerable body of experience in overseeing, tracking and if necessary, enforcing the terms of the obligation, the familiarity of the parties, with the practicalities of that obligation are likely to increase over time, not decrease. And if one contemplates the circumstances in which it was proposed, that an application will be made to transfer part of the benefit of a nuclear power station to the Secretary of State, that would be quite a significant application in itself, it is likely to be an application that will attract a considerable degree of interest and scrutiny from those who are charged in the public interest with performing that role. One has to assume when determining this question that they would perform that role properly, competently and thoroughly. And there's no reason in this case, to suggest that they would be anything other than thora. In their scrutiny. Nothing has happened during this examination would suggest that those parties are likely to do other than their proper job of scrutinising any such application.

27:33

Okay,

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I'm

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gonna ask you, and indeed, Mr. Bedford and other IPS, who want to make submissions on on this, to set out those views, obviously, clearly, in your post is h submissions. I'll do that. I don't I don't think I can add anything more on the item. I'm grateful to. I think we're at sea now, aren't we? Yes. And there seems to be a reasonable degree of consensus on C two, which I can add.

28:06

There's no need for article nine to do this. It is the legal entity. That was my obligation to write

28:16

some item D deeds of Covenant. Should there be deeds of Covenant, in addition to the versions of Article nine short answer is no.

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The existence of a statutory instrument, which is bespoke and makes explicit provision to transfer liability makes any deed of transfer audios. And as you've heard, there is consideration of an alternative to this, which is just to add some further words for the avoidance of any doubt at the end of the drafting, which appears to be enough to satisfy the residual concerns in that respect. So unless you want to hear further from me on that, I'll then without needing a prompt, go to item II, and the question of the five year restriction.

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And I start by making this point. This, of course, is a bespoke piece of legislation.

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It is a bespoke piece of legislation to deal with a particular infrastructure project.

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It's not a conventional Town and Country Planning Act development. Nor is it what might be described as an ordinary run of the mill enset. This, as you've indicated, is right at the top end, in terms of scale, complexity, and it has unusually

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for n sips, more generally, an identified urgent need

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and with a particular

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The urgency

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that comes with the associated dates that we discussed in the policy and need section,

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which sets it apart,

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together with the

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time and complexity of the build from other energy entities, which are themselves also urgently needed.

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And it is a project where much of the content of the deed of obligation is concerned with addressing impacts that will occur

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in the first five years following implementation, not all of it, but much of it is concerned with the construction impacts.

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Against that context, therefore, have a bespoke provision for a particular project. The question that I suggest needs to be considered is why would a five year restriction on applying to the Secretary of State be necessary and appropriate to protect the public interest?

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If there is a need

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felt by the applicant felt by the undertaker in those circumstances for a modification or discharge within the first five years, and the parties to the deed are unable to reach agreement,

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we say it must be sensible and reasonable to enable the Secretary of State in those circumstances to resolve any difference. And that is ultimately all that this allows for it doesn't in itself allow for the change. It simply allows for the Secretary of State on a project of national significance, particular national significance, the reasons I have given to resolve any difference that arises, whether it's within the first five years or thereafter. And so far as the public interest considerations are concerned, those can be adequately policed by the Secretary of State when determining any application.

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And the council's would, of course, be notified, they will be consulted, so as to ensure that any public interest considerations that arose that they felt were of such significance that it would not be appropriate to modify or discharge, part of the relevant part of the obligation will be taken into account by the Secretary of State. And if the secretary state agreed with those, then the application would not be successful. But ultimately, what we say about this, is that the Secretary of State can trust him or herself to safeguard the public interest in such matters, in the event that any application were to be made to them.

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And there's no separate reason why five years, why would make a difference in the public interest. If an application where if a dispute arose four and a half years, as opposed to five years in one day, in a project which is so urgently necessary, and where we know that the

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the intensity of the activity throughout the construction period, it is unusual, and where it really matters, that if there is a dispute about these things, it is resolved sooner rather than later. So that that's what we say about that final, just the tests, which you've got, I mean, nine B for

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the tests, on appeal are the obligation shall continue to have effect that modification that no longer serves a useful purpose that it shall be discharged, or if it does continue to serve a useful purpose, but would serve it equally well, if it was modified, which will have effects of these modifications.

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Those are the same as y six B, aren't they? So that's my understanding is it's intended to mirror that provision. It simply in the circumstances of this case, and for the reasons I've given, we think that if a dispute arises, as to those matters, there's no reason why that shouldn't be resolved by the Secretary state whether it arises in year three, or year five.

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Yeah, I said so that's why it's six a

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subsection six, because what's be the?

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Okay, I understand what you're saying. Thank you. So so I don't believe that there was anything else under.

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No, that's that matter that I haven't covered up is three capital A. Thank you very much. That was helpful.

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In that case, I'm going to move on to three, capital B.

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Mr. Tate, can I ask you to

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deal with this face? Just because you were the first person I think to mention

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this trust deed on Wednesday, this week? I'm not kidding. It may be that I have not spotted it.

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But

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what is it? I mean, is it all in the documentation? What is it? Was it secure? Do you want to pull the examining authority? Should I see it?

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Thank you, sir. It's not before the examination, it is referred to by the applicant. In an answer to your second questions. The position is as follows. That EDF is proposing to set up this environmental trust

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and discount so we'll be on the board of the trust.

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It will

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provide funding for improving biodiversity in the local area in particular rewilding projects for the life of the project. There is an agreed scale to that. So you heard, I think it was yesterday from Mr. Philpott that the applicant does not rely on it as a necessary component of the project. And

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this Council's position is that we have not relied on it to inform its opposition on the application. Essentially, I think it could be described as corporate social and aspect of corporate social responsibility,

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which we greatly welcome. But

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we don't dissent from the position that is put by the by Mr. Phillpotts as to its status. So I don't need to worry whether it's signed or not. That's

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but of course, we would welcome

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if that was.

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Well, we wouldn't oppose it coming before you but so we don't you don't need to have it before you as opposition. Yeah, I think I just don't need to worry about the terms of what's in it, or what was an opera singer finally actually sees the script. So having having regard to its status, we that is our position as well as the applicants. Okay, I'm I'm obliged to you. Mr. bedfords. has got his hand up.

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Thank you. So Michael Bedford, Suffolk County Council.

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So we don't, I'm afraid take quite the same position on that. But we do think that there is certainly at this stage, nothing to be gained by you seeing what is still an evolving documents.

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As I think I did make clear in the county Council's representations.

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Issue specific hearing 30. In

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what yesterday? Yes. The county Council's view on particularly the overall

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mitigation, specifically in relation to the AONB, but also somewhat more widely in terms of environmental impacts, is a composite view, which has taken into account what the applicant is proposing in the natural environment Fund, which you do have before you and is set out in the deed of obligation, but also on the basis of the applicants proposals for the environment trust, which the applicants have invited you. to note, they say it's worth noting that they are proposing the environment trust. And they say that in their answer to your second written question, I ii 2.2. It's all coming back to me now once again. Yeah, quite sincerely only worth noting something, if it's of some relevance to your deliberations.

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And we think it's more than worth noting. We think it's actually important, certainly to the county Council's assessment

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The position, we know that the Suffolk council take a a different view on that matter. But I say we have taken the view that there is a package of mitigation and offsetting measures. They include the trust, which includes provision for substantial sums of money to be paid both during the construction period. And during the life of the project, all of that we welcome. And we very much welcome the applicants cooperation and dialogue on that matter.

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There are still in discussion between us some matters in terms of the precise mechanics and the arrangements for the trust, which is why I say it's still an evolving picture. And we don't think at this stage until that dialogue is completed, that there's any particular benefit in using what is still a working draft document.

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Obviously, ultimately,

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you will have to take a view on what is important and relevant in terms of your deliberations on material considerations. And it may be that you will take different views to the county council in the same way that you may take different views to the applicant on a number of matters. But I say

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I simply say that so far as the county council is concerned, this is a relevant and important matter. And it is it does feature in our assessment of the project. And therefore, to that extent, we take a different position from what the applicant has said, and what the District Council has said. But in terms of the practicalities, we certainly don't think at the moment that is there's a benefit to you in seeing what is still a working draft document. Okay. And you're saying to me that you see it as as an important to run it matter? Well, it's not that's not the test for you. You see, it's important. And you say the sacristy should take into account as an important relevant matter. Yeah. Yeah. Okay, thank you. But guy says, I don't mind being blind on the document at the moment. What I don't want to find is that it arrives

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through the ISA with the Inspectorate. I look at it, and I say, Hmm, does this really work?

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So I,

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in the same way that I'm asking the council's to really confirm that the DEA obligations properly executed and it works and properly drafted, I'd like if, certainly from Suffolk County Council, take the view that this thing is important. I would need the assurance from

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your not just your pliers, but your clients and lawyers, that the thing works.

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Certainly that point is noted to her. And obviously that will also influence the timescale of the ongoing discussions and dialogue with the applicant about this document to make sure that we're in a position to provide you with that reassurance at an appropriate deadline of which we know there are only

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a few left. It should be it should be a one liner at the end of the day, but I know these things get a bit longer. Thank you. Thank you. Is that Is that it? Mr. Buffett, your forgive? I'm obliged to thank you very much. Do any, any? We've got to any other interested parties wants to make any contributions before I go to Mr. Bill pot?

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I see no hands,

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save as fillable for the applicant.

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Thank you, sir. And if I can deal with this in two parts, first of all, is to explain what it is. And secondly, to deal with the question of the extent to which it does or doesn't have any bearing on the decision you need to make. And so it was described, I think quite fairly by Mr. Tate on behalf of the council as an example of corporate responsibility.

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And something which nevertheless does not have a bearing on the decision and that you don't have to have before you so far is the nature of what is proposed is concerned, it's right to say that we have referred to it in the answer to our ai 2.2. So that's in rep 7053. And I'll come back to the way that that is word in its implications in the moment. There is a first draft currently with a Suffolk Council and Suffolk County Council for comment and we're awaiting comments from them. It is in short, a simple contract that we propose is entered into by sizewell siko and the two

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counsels

45:02

but the purposes for which money is to be provided under that deed are beyond the matters which are necessary to mitigate the impact of the authorised development. Now, Sir, your recall, and I can provide you with a reference in in due course and put it in our written note that in the explanatory memorandum to the deed of obligation, we have set out in some detail, what we say, is the approach to considering the relevance or otherwise, and the weight that should be attached to any obligation, drawing on

45:47

both the statute and the case law in respect of those matters. I don't understand that analysis to have been the subject of controversy. so far.

46:02

There's still time, but I would have anticipated that, essentially, the first time people related they thought we'd got that wrong, they would let you know, but it is intended, hopefully to assist you in the Secretary of State, and at least setting out our view of how you should go about the task of judging the relevance, and then the weight that attaches to obligations that are provided.

46:28

Our view is that when you apply that approach, what is to be provided in this deed is not a material consideration.

46:44

It is not a material consideration for the reason I've given is is not necessary to mitigate the impact of the project. It does not purport to be calculated on that basis in terms of its size or its purpose, it's a much broader

47:01

exercise that is anticipated in terms of the spending of that money, the fund is not linked to the impacts in terms of sizing in any way. And therefore we do not invite you or the Secretary of State to take account of it or to give it any weight in the decision that that is why it is not before you That is why we've not sought to make reference to it in during the planning balance. And we don't ask you to do so either.

47:36

Mr. Bedford takes the forensic point about the It's also worth noting it, I should say if it was if that is was understood, as indicating that that was something which you should take into account, and give weight in your considerations that I am happy to make clear, that is not what was intended. And we don't ask you to take it into account for the reasons that I've said it's a voluntary commitment by the applicant with a view to enhancing the natural environment in Suffolk. Now, if the county council takes a different view and persists in that different view, it will of course, I have the opportunity to address you as to why it says that applying the tests. And looking at the evidence. That is before the examination both in terms of the environmental impact assessment, the local impact report and the

48:38

deadline, indeed, and they would have to do that. So in circumstances where the local planning authority he suffered Council has made clear to you that it has not taken that into account, forming its judgement about overall acceptability. So when one looks at the totality of the obligations that have led, he suffered counsel to that position in terms of the natural environment, and those sums and those obligations are substantial, as you will have seen from the draft deed, it will then be necessary for Mr. Bedford and his clients to satisfy you in the Secretary of State. The funding beyond that, of the sort of scale anticipated in this deed meets all of the tests in order to be material and to be given weight. That's a matter for them. There's no there's no secret about what we're doing. We have mentioned it, we think it's the right thing to do. And if it is necessary, if you were asked to put a draft before the zoning authority, we will do so. But it will come with that very clear health warning that we don't want you to take it into account for the reasons that we've said it's for others to argue differently to make their case if they think they can. Yeah,

50:01

But let me just say two things. One is if we are to take into account what has been said said about it, both by Mr. Bedford. And

50:12

so I did buy both of you on pass I really but there's something which I'm being told is important to somebody, if we're to take into account the need to know the thing actually is going to come. And therefore, it will be that we had to actually see it, it seems to me

50:26

and my mice, and you can both make the eight submissions in relation to that.

50:32

In relation to that, you will you talked recently a great just now just now about being a material consideration or not. Did you choose that advisedly? Or did you mean, important irrelevant?

50:46

microphone to apologise? Yes, I think if, if I may, in order to deal with that. One needs to go to the explanatory memorandum. And to know

51:01

how to go through it step by Justin just to give you the references section to legal and policy tests. And there is a there is a careful

51:15

consideration of the question of materiality.

51:21

And how that fits in with the question of whether something is important and relevant. And the distinction is we try and explain here is that when something is judged by the secular state to be important and relevant, it becomes an obligatory material consideration, because statute requires it to be taken into account. There is then a further category of material considerations, which are relevant and one doesn't. One doesn't, in those circumstances, make an error of law of taking it into account even though you're not obliged to. And the the complexity comes when you get into the question of obligations. And then you have the Newbery tests for whether it's a material consideration, is it for a planning purpose? This is paragraph 2.7.

52:19

Was it fairly and reasonably related to the development?

52:25

And was it not so unreasonable that no reasonable planning authority could have imposed it not the most elegant form of words, but I think we understand that essentially that applying the the Wednesbury test, and those are known as the Newbery criteria. And as we say, in two point, as a consequence of their application is that planning mission cannot be bought or sold. And it's only planning obligations that satisfy these criteria that may be treated as material planning considerations. And that is why I choose the phrase, we don't say it's a material planning consideration. And so if

there's not a material planning consideration, that's a question of law. It's not a question of judgement. And so we that's why we want to be really clear about it. And it will then be for anyone who wants to argue differently to apply that those tests to the to the facts, and to persuade you in the secretary of state that a different judgement should be formed. Now, I don't want to read through all of that, but I remind you of it, because I hope that it will prove to be a useful note. If others think we've missed something or that we've we've expressed it the wrong way. I'm sure that they will let you know, says, remind me, what's the examination Library Reference for that. So I knew I knew you would ask. It's the there is a deadline seven version. So it sees expansion memorandum at DSM, it is indeed rep 7044. If that helps my staff. That's very helpful. Yes, it is now got the document, then. applicant document number 820. I'm looking at the

54:13

I don't I've never found your numbers,

54:16

either. So well, I'm grateful to Mr. Bedford provided the number but again,

54:21

that is been consistently in that document. And in all seriousness, if any other party does think that we've set that approach out incorrectly missed anything, be really, I think important for them to let you know that this is the time this is the time they've got Morris last Exactly. on that. Yeah, exactly. I'm grateful to you for that, who didn't my view of it I I'm reminded actually that it was Robert McCracken, who addressed the opposite planning or conference It must have been

54:56

about 2010 just when the

55:00

The DCA stuff and that stuff was coming into force. And he he drew the parallel, he said, I can't understand that something

55:08

is a material consideration how it cannot possibly be important and relevant. And we there's a, there was some sort of illusion of the two in the early years.

55:19

Before that, that's one of the reasons. So to avoid confusion around the significance of those words that we thought it might be helpful to dispel it out, as we say, well, don't send it send it to Robert and of course, lots of planning conferences happening today.

55:34

But he's my former pupil Master, so delighted to hear from

55:40

very good is that that's a nice freebie.

55:46

Thank you very much. That's good.

55:49

Right, it's 10 to one. Now I'm going to press on and make a start on item four, parameter plans and approved plans and which take precedence.

56:05

Mr. But I'm going to come to you first about this. And let me just try and

56:12

take it one step at a time. I think we all need to have rep seven w six available, which is the comparison is my version.

56:25

Which is the comparison between revision seven and eight or the DC to

56:38

loop sounds a definition of wage in

56:41

Article four, okay.

56:45

So yes,

56:48

we looked at all this in is h one.

56:53

And I pointed out then the difficulty for us of comparing and checking

57:02

plans against each other and but obviously, the idea that we might have to check the parameter plans and construction plans and make sure the construction plans don't go beyond parameter plans, is

57:15

I'll just put it politely extremely difficult.

57:19

It was one of your clients responses and it was a fillable. After I sh one that we were promised that we'd be told how to compare and reconcile them. And I can't say was thrilled that idea. But if we now look at

article four, in red, seven, Ws six, it's convenient, because we can see the old text and the new text. So the old text struck through of Article four, one

57:49

allowed for certain vertical limits of deviation. And that was kind of it.

57:58

We've now got a new article for one which says, look for the whole of the development, except for the green rail route, the two village bypass and the sizewell link road, we can have deviations, but I think only within the parameters plans, or the approved plans, or as may be otherwise approved.

58:27

And if I go on in relation to the green rail route with two birds bypass and a sizable link road, they're dealt with in for two.

58:35

And there we can have deviations up or down by a maximum of one metre.

58:44

But laterally only is the extent indicated in the parameter plans or the approved plans, or as maybe otherwise to prove that I'm not too worried about the or otherwise approved parts of this, because you've got

58:58

UI safeguards in in there.

59:04

But I just observe also, importantly, nothing at all is set us said about the associated development in part two of shedule. One.

59:17

But if I can pause there Mr. Philpott last year, going one step at a time. The question here is it now the intent of this article to ensure that the development can only be built within the parameter plans? I think that's what your clients are saying in their response to our first comment tree.

59:36

And so yes, this article deals with limits of deviation. And we've set out in

59:47

written answers we explained it I think also an issue specific hearing one and we've we've sought to do so Subsequently, the way in which where parameter plans are used

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adherence to those plans is secured. So

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I won't go through all of those matters again, but we've sought to do that on a hopefully a systematic basis. So, where there are parameters, those are dealt with through relevant requirements. So, for example, the construction parameter plans, the construction parameter plans are secured and adherence to them is secured by requirement eight

1:00:36

or nearly main developments on the main development on the main development side. So wherever parameters are used, in order to define the Rochdale envelope, we sought to go through an exercise in writing in identifying where those are secured, where the roster envelope is secured by other means. We've also as part of that exercise sort of has been what those means are, whether it's work plans or otherwise and again identified where adherence to those is secured. What article four is doing as part of that overall suite, as the name suggests, is dealing with limits of deviation. So limits of deviation are to be found, for example, on the parameter plans. So if one wants to understand

1:01:26

what those mean, and what their effect is, one looks to Article four.

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Now separately, in order to address the concern, as we had understood it from issues specific hearing one, we provided in rep 7063.

1:01:45

This is appendix K, to the comments on submissions merely a deadlines, compatibility schedules. Oh, now this is something which we had

1:01:59

being candid, we had promised a number of deadlines since that hearing. But the work had taken until that deadline. But what it what that document does is paragraph 1.1. Point two explains that the schedules that sit within that appendix demonstrate that in all cases on the main development site, where buildings and structures are applied for both in detail, in other words, approved plans, and in outline, so on the nuclear Island, the parameter hide,

1:02:39

does not the parameter height for the

1:02:47

for a subsequent submission of detail is greater than the hype or which approval is sought in detail. In other words, the approved plans all sit within the parameters.

1:03:00

And therefore there's no question just to fill the thought that sentence the approved plans all sit within the parameters is music to my ears? Well, what I what I what Yes, exactly. But the pert the purpose of appendix K is to resolve the apparent concern as to whether or not

1:03:24

there was a difference a discrepancy between the parameters, parameter plans and the approved plans? In other words, do the parameters encompass all that could be done under the approved plan. So if you were to

1:03:39

go down the route of building in accordance with the approved plans, you would be sitting within the parameters although in those circumstances, you will be relying on the approved plans, because you're not taking advantage of what the DCF provides you the flexibility to then apply for different details in due course. Yeah, so so what we have also

1:04:05

sought to do and we've discussed this with a Suffolk counsel is to update the approved drawings to ensure that the drawing lists make clear which work each drawing relates to which hopefully will also provide further clarity.

1:04:23

But the one point which I just need to touch on, I've been passed a note which explains that if one looks at article 42

1:04:36

Hang on, hang on it.

1:04:42

If I looked at article 42 Yeah, yeah. So 42 the words that have been added most recently

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to 14 so this is in relation to worse number for B 11 and 12.

1:04:55

It says green rail route to the red bypass and the SLR Yeah.

1:05:00

And it says and in terms of what the deviation that may be allowed and laterally to the extent indicated on the parameter plans. Now, as I understand it in the notes from past me, there are in fact no parameter plans for those works. They are approved plans and therefore, actually in the next version, as I understand the note that's been passed, to me, those the words parameter plans will be struck out, because they're rodeos. In those circumstances, there are none on which you could bite. There's a heads up to me not to worry about that when it comes. Don't worry about that. And if that is certainly

hours running, I apologise. But we hope that the combination of the redrafting of Article 412 make clearer how the limits of deviation work

1:05:49

together with appendix K, which seeks to provide reassurance that there is no discrepancy between parameter plans and approved plans in terms of the Rochdale envelope and sticking within it or anything of that sort. That that hopefully addresses the concern. If not, we would obviously be keen to do so. But we don't think that there's anything wrong with it. But we're keen to reassure you that that is the case. Okay, well, can I say straightaway, thank you very much to whoever in your clients team has the job of dealing with that. And the fact that it came in a bit late may have proved my point.

1:06:33

But

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more,

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more seriously, if I get for one, however, and this happens, you see this quite a lot. You see it through the requirements as well as well. What Why do you need to say,

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per hour parameter plans or the approved plans?

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Why do we have to approve plans in as in as well?

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Well, so I'll check this, but I would assume, therefore, that the limits of deviation that are referred to are indicated on both parameter plans, and is the same, the same limits of deviation we did with the limits of deviation will be as they're shown on the plans, I wouldn't want to I don't have the plans in front of me to check that. But essentially the function of Article four one is to

1:07:29

explain the role of the limits of deviation shown on those plans. And if there are deviations shown both on parameter plans and approved plans, it ought appropriately to refer to

1:07:43

I mean, it seems to be from logic logic from what you've been telling me which has been enormously helpful is that because the the approved plans are wholly contained within the parameter plans, even if you've got different limits of deviation in the approved plans for limited deviation shown on parameter plans, those different limits of deviation must be within the limits of deviation parameter plans so quite difficult to see why you have to have approved plans mentioned as well.

1:08:14

And just every time somebody looks at this, they will ask themselves the question Oh, Crikey. I've got to compare the plans I said it with with was with respect I don't think that that that that that is right. Because if the approved plans have limits of deviation marked on them or needs in the article that deals with limits or deviation

1:08:41

to explain what that means

1:08:44

to link the plans and what is shown on the plans to the DCA itself.

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But But in any case, I'll leave I'll leave your guys to have a think about it and fly fly up a paragraph or two about it if we were pleased that de aid we will we will do that. So but but just to complete the picture of course as you've indicated the because the approved plans sit within the parameters the limits of deviation that are allowed on the approved plans will never take on beyond the Rachele envelope SPSS Yeah, so that's that's that's what I'm trying to find trying to get that that's the thing we should be worrying me in singlish I'm trying to get the ratios that's I hope that's helped allay your concern but we'll we'll explain we'll set it out in writing a deadline AIDS. That's great. Well, hey, don't go with

1:09:31

so

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alright, that's that.

1:09:42

Go with that.

1:09:58

Okay.

1:10:03

Could you can we just turn to requirement eight, please. And then I'm going to take you through a couple of other requirements as well.

1:10:13

It's round about page 75. On the

1:10:20

reps under lasix electronically, it's more than 75. It's 7077.

1:10:30

was to fill but when I read requirement eight, first of all, it only applies to work number one.

1:10:37

But I observed that the heading will it's been changed. So it says the construction works must be carried out in accordance with the construction method statement. And the main development site construction parameter plans and so on.

1:10:52

The heading to the thing is still temporary construction Related development, I thought this is intended to apply to permanent. And I know that convention is that the headings don't don't change. But

1:11:06

you got my point that this is these are construction words, the construction parameter plans, as I understand it, deal with, for example, the heights of cranes, that sort

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that this is correctly labelled as temporary construction Related development.

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Good, I'm glad I asked. Thank you.

1:11:28

Then the next one is.

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So if we get to requirements 11.

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requirement 11. deals with approved buildings on the main development site.

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We have a list of works, which are all part of work number one.

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But this requirement

1:12:00

doesn't mention the parameters plans until I get to

1:12:08

11. Two, which is alternative plans from the ones. So you what you want to make some sort of sort of modification, listening to what you told me earlier?

1:12:22

Is this because, yes, the approved plans? are the ones controlling the works listed in level one, you're showing me that the approved plans are all within the parameter plans. So I don't need to worry about the parameter plans in level one. But the parameter plans do come into play in 11. Two, because now you're trying to change things. And I've got that right. That's right. So this is the as the title suggests, approved buildings, structures and plant contrast with 12, which is reserved matters. So 12, one sees the need under one for submission of approvals, and then under to the requirement that they must sit within the parameters shown on the parameter plans. Whereas 11 is under one you build in accordance with what's been approved, but under two, well, if you're not going to do that, and you're going to submit alternative plans, then they've got to sit within the parameters. Yeah. Thank you. That's good.

1:13:41

When I get to requirement 12, it's not applying to all of work. Number

1:13:50

one, it's not applying to all of the buildings on the main development site.

1:13:57

What about the other buildings?

1:14:01

So I think in terms of that there are different categories of buildings on the main development side, and that they're subject to different approaches. Now, I have with me, two seats across to my right, Mr. Matt sharp from quad who can help with explaining the concept and where these things are dealt with, I think in more detail that I'm going to be able to because he has it more at his fingertips. And he can provide you with an explanation of the different types of buildings and also why that they're dealt with in this way. So I'm going to pass over to Mr. Sharp just because I think he's actually a closer to the detail of this and can give you a better explanation.

1:14:44

In requirements 11 and 12, please.

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And Matt sharp for the applicant. Good evening.

1:14:54

Good afternoon.

1:14:56

Essentially we've got sort of three approaches to

1:15:00

As buildings within the main development site requirement 11 relates to the buildings where we have detailed design for. And so the the details that refer to in requirement 11 part one, the drawings that are

needed to build that design. And paragraph two then relates to if those designs were to change to allow alternatives to come forward.

1:15:26

requirement 12 then relates to a different set of buildings and the different set of buildings are those where we do not yet have detailed design. And so they're the buildings that we you know, we're seeking an outline approval for. And so requirement 12 relates to only the buildings where there are detailed design reserved for subsequent determination. So between the two between the two articles, the two requirements, and you've covered the whole four buildings on structures of land on the main development side, it covers most of them. So, that balance are then covered through requirement 13 which, which, which is then main development sites and sillery structures are the buildings implant. And so these are this

1:16:20

is on page 78. Yeah, I got I got waylaid by the Triple S line crossing? Yeah.

1:16:29

Okay, so between 1112 and 13, you say you've covered every structure building plant on the main development site? Yes, that's correct. Okay, thank you.

1:16:45

That's fine. Thank you.

1:16:56

11 1212, a

1:16:58

12, various sports facilities. Mr. Phil, part?

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They are. There's nothing about parameter plans in relation to them.

1:17:11

Why's that, please. So I think when it comes to these individual sort of side by side questions, again, to pass back to Mr. sharp,

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sharp until you interrupt. Indeed, I think that's probably better, because he knows these things. So well.

1:17:30

Yes, so in relation to requirement 12. A, you'll note that paragraph two says that the details referred to in paragraph one must be in general accordance with the proposed site plan leisten Leisure Centre phase. And so that that that sets out the illustrative layout of those sports facilities. So it's essentially a reserved matter. And so paragraph one is seeking approval of that reserved matter, which needs to be

developed. How do I know? So this doesn't have a grand plan? So the fundamental point is, how do I know it's been assessed and the environmental assessment

1:18:12

plan has been taken into account as part of the ESM service referenced in the environmental statement? And we can provide a reference to that, would you mind just pointing me in your da, of course, there's levels to the exact paragraph and the exact documents and the exact you know what I'm gonna say examination, my renumber Thank you. That's good.

1:18:38

12 b deals with the

1:18:44

searcys. The hard coastal defence facility

1:18:49

parameter plans do apply to that date? They

1:18:54

correct. Thank you. Okay.

1:19:01

Triple si Rossing?

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How is Matt

1:19:14

covered by Brown has a plan.

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So

1:19:19

with with the triple si crossing, there are sort of illustrative drawings that have been provided, which also referenced in the environmental statement. And so here we say in general accordance with the main development site, triple si crossing, along with the relevant drawing reference number. And so the idea here is that it's a subsequent approval that he suffered would need to be satisfied that the details are consistent with

1:19:46

the illustrative

1:19:49

drawing. But defining the precise details, three, three, that's sufficient. All right, okay. There are two or three other more ones like this, which are more

1:20:00

They are quite detailed they are, they are important. What I'm going to do is issue them to you on Monday, it'll either be part of rule 17, or be something which comes as part of

1:20:13

help from us as to what we need need to know.

1:20:16

And I'd be grateful if you could answer those in the in the same way. Yeah, of course. Thank you very much.

1:20:27

Okay. I'm going to turn to Mr. Tate now on this item, unless, Mr. Philip, what you want to say anything more about him? And no, sir. Thank you very much. I'm grateful to Mr. Sharp for hope that's been of use. And we'll follow that up in the way you suggest. Yeah. Thank you. Do you want to say anything about this agenda item? Very briefly say yes, thank you. So we we understand the relationship between the

1:20:54

requirements, which have approved plans and those which are subject to parameter plans, and how therefore that feeds into article four, one and, two.

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Clearly, we still need to be sure that the correct drawings are

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enumerated. And so we welcome that the applicant is updating the drawing lists, and we will need to look at the compatibility schedules to make sure that we have got the right drawings in there. But in terms of the principal, so we're satisfied, but the relationship, the overall architecture, between article four, one and two and the requirements. Okay, so so you don't there's nothing you want to disagree with? And what Mr. Philip told me. Not in that client sense. But the detail, obviously, we're still looking at Yeah, I guess you can look at that appendix K, as well as it has me later on. Yes. So we have that delight in store as well.

1:22:03

Thank you very much. Mr. Bedford, did you want to participate in this discussion?

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only briefly, sir, to say that we have looked at appendix K. And certainly the text is very helpful. We found the schedules, certainly at the moment, very difficult to understand. And they probably need further consideration by us. And we will obviously,

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make any comments that we think is appropriate at deadline eight, but we are reassured by what the applicant has been saying today. And then it's just a question of making sure that we've fully understood how things work together.

1:22:48

Good. Thank you. I'm grateful for comfort from you. And due course on that one. Are there any other interested parties who would like to

1:22:58

make representations on this agenda item?

1:23:03

No, that sounds clear. I see no hat. No, I see no hands. Mr. Philip, what can I come back to you is nothing you want to respond to? So only this? I've heard what Mr. COVID has said about her difficulties with the understanding of schedules. What I would say of course, is rather than waiting for deadline aid, if there are uncertainties in the usual way, just talk to us outside the examination. And we'll see to assist me the people who do those shadows up will I'm sure be delighted to help if that reduces the burden in terms of getting on top of them and understanding what they need. And they of course has everything that arises from that. There can be clarified them, we've got a head start of getting that to you. Okay.

1:23:46

That's very good. Thank you. Yeah, I would also encourage those who have any concerns about sheduled K to appendix K to take that to the applicants at the earliest possible opportunity. That's very good. Right, we're now 20 past one, that is the end of item four, and I get to take an adjournment now. After the adjournment, I'd like to hear on that Marsh Harrier

1:24:20

point which are raised at the beginning. So where does the

1:24:24

DCR actually set out the

1:24:30

permission to do the work which is done on on site?

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And then we will go to item five structure control documents. I don't think anything else I reserved for after lunch was there.

1:24:45

For you can tell me off lunch if there was thanks for actually it's now 20 past one and we will adjourn for 45 minutes. So come back, please really to go at five minutes past two. Thank you very much.

1:25:00

We're adjourned.