

# TEXT\_ISH6\_Session2\_29012021

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00:06

Good morning, ladies and gentlemen, welcome back, can I just check with the case team that the live streams and recordings have commenced and that I can be heard.

00:19

I can confirm that the recordings are started, I can see you and the live stream is up and running.

00:27

Excellent. Right. In that case, ladies and gentlemen, we will move on. And we will move on directly to agenda item three. And at this point, and again, it is well worth having if you're able to, and the two orders side by side in front of you in either electronic or physical paper form. I'm now going to move through and the orders in drafted order. So we're going to move to citation commencement and article one. And then on directly because I've got no request to speak on that item to the interpretation provisions, Article two in both orders. Now there, I've got one or two initial questions from the examining authorities. The first relates to the definition of commence and commencement and the relationship between that and activities that would take place outside the scope of commencement or before commencement, and particularly that I'm interested in Read Across with the definition of onshore preparation works. And so matters such as site clearance, demolition, diversion, and lack of services and creation of site accesses, and are matters that, in principle are therefore capable of taking place before commencement. But there are potential ecological and indeed, social and economic impacts that arise from such preparatory works. And route 121 does address this to a degree. But then there are some other potential environmental impacts in relation to archaeology, watercourses, etc, that may still not be fully covered. And so, fairly substantial works could take place outside the definition of commence. So I would like the applicant to address that particular point first. And I've then got a couple of other related questions in this article, and then I will throw it open for interventions from the from the parties. So if the applicant can deal initially with the relationship between the definition of commencement and onshore preparation words, male

02:59

and female for the applicants. And so, as you pointed out, the definition of commands does exclude onshore preparation works from triggering commencement. Now, and onshore preparation works. And as you've mentioned, you do cover a number of operations. And, and the the definition actually, you know, it's a fairly standard definition in many parts. And it does follow existing precedent, and in the Sangha 3d seal and the recent Hornsea project, 3d seal, and, and numerous others. And the reason for specifically excluding some of these, these early preparation works, and is because it's absolutely critical that the pre commits and activities can be carried out in a timely manner, and to make sure that the commencement of the works and are not then held up. And what you have alluded to there and is obviously we have, we're conscious that some of these preparation works may have potentially

ecological impacts, or other impacts, and where that is the case we have included control within the the requirements and to make sure such works are appropriately managed. So and obviously ecological preserve requirement 21 covers this from an ecological perspective. And you did mention archaeology and now we are in discussions at the moment with Suffolk County Council in respect of pre construction works and and how they would be addressed in terms of archaeology. So I would hope that we'd be able to give you an update on that particular matter at deadline 5am with respect to the drainage and we'll we'll take that one away and and consider it but as a general principle, the main reason for including these this this definition of onshore preparation works is to ensure that these these early works, you know, many of which wouldn't constitute development in any event, and can be carried out prior to the main construction works and Taking place and so that they're not held up by all of the approvals under all of the, the suite of other and plans, etc that need to be approved. So we've tried to pick out the ones that we anticipate may have, or the receptors that may have been impacted by this and put the controls in place. And but yes, that is something that we are thinking very carefully about as to how best to manage that within the requirements.

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And we do of course, note that in the most recent version three, you have struck out highway alterations as being something within the scope of actual preparation worked on on the basis, that's quite a substantial set of works in and of themselves.

05:38

Absolutely, yes. Okay,

05:41

right. Well, look, I will invite others in. But after I've dealt with just a couple of other questions, and most mill and first of these really write relates to something that isn't there, particularly rather than something that is, and in relation to any formal definition, and the limits of deviation, as I see it, and do correct me if I've gone horribly wrong here.

06:12

Ah,

06:15

those defined and as the limits for the schedule worked on the work plans. And now beyond that, and that's a, that's a relatively brief definition, is there anything else that might potentially be be needed to be included there, just just a quick and feed back to your cell phone as well. And then also, in relation to the definition of maintain. And if I mean, this is, this is a matter that is regularly discussed in these in these hearings. And there, just bear with me a second, as I scroll back down to it, there are a broad range of activities included within maintain. And some of these, as you rightly point out are activities that have now established precedent in a number of modes, made orders. And, but there are nevertheless, terms such as adjust and alter, that can be a little woolly at the edges. And and I just wanted to again, place on the table, a concern that that was a definition that was

07:41

perhaps

07:43

not quite as tight as it might need to be, and maybe a little too inclusive. So I'll I'll put those on the table. So it was metals, he won't respond to me briefly on those and then I'll throw this item open.

07:53

And yes, definitely male for the applicant. And with respect to the limits of deviation query, and obviously, that is a, I think that's sufficient in that it shows the areas on the works plans, and all of the, the full order limits are obviously shown on the works plan. So and the view would be that, that that definition is sufficient to cover the cover any works within the the order limits. And with respect to your comment on the definition of maintain, and, you know, we this is obviously a definition that has evolved over the years through multiple deals. And as you rightly pointed out, it has been the hot topic in a number of examinations. And and so I do think for that definition we are, and some progress has been made in terms of precedent on that point. And as I see that the items in there are fairly standard, specifically, you refer to the word altar. And now that actually finds its origins in the model provisions and is in virtually every DC or, and there is and we would agree that it's appropriate to have that there as well as adjust. Because when you are when you come to maintain things, you know, it might be that it is just an adjustment that is required or a minor alteration, it still has to be within the scope of what's been assessed in the environmental statement. And I think that's probably the key point there is that the definition of maintain is limited to what's been assessed in the environmental statement. So our view is that the the definition at the moment is appropriate, and follows existing precedent.

09:34

So in your submission, then, to a degree that the kind of precise relationship between what is an adjustment and what is an alteration and whether one is nested within the other, or whether they're different and is really moot because at the end of the day, it's all within the Rochdale envelope and you've secured that and that in your view would be sufficient.

09:56

Absolutely. Yes. And I guess from an offshore perspective as well. There are obviously additional controls in place offshore with the ordem plan. And so we do have it from the turbine and the offshore infrastructure perspective. We've discussed it with the MMO and others. And so and it's slightly different in that are not different. It's still all within what's been assessed within sorry, the nm plan. And it's all within what's been assessed within the environmental statement. So, yes, the, your position is correct.

10:29

Okay, fine. And that has led me through that specific questions that I had on that provision does I can I just see a show of hands. Does anybody else want to raise anything else on

10:42

article two?

10:43

Before I move on? I see Richard tourney. Just let me check that my hands are working. I am very, very grateful for that. So I see Richard tourney. I see Andrew Tate and I see Ruchi. Parikh Ruchi. I'll come to you first as as counsel for a council apologies, Mr. Attorney, I will then go to Andrew Tate for the district. And I'm done. I'll come to rich attorney.

11:16

And thank you. So for that. Good morning. And just a very brief comment on definitions. And this is from archaeology in the sense of archaeology. And we have, of course, the outline written scheme of investigation, onshore document. And just a small comment that we've made from the start is that we would like archaeology to be built into that definition just because it then clearly signals what that document is all about. But that's the only comment for now. Thank you.

11:40

Thank you very much. And then if I can go to Mr. Tate.

11:49

Thank you, sir. Andrew, take for the district. We do have concern about the point you've raised on commencement and the interrelationship with onshore preparation works. Because it means that the cmcp, which is the subject of requirement 22 doesn't encompass any onshore preparation works. So while we know that requirement, 21 has a carve out or cost, again, for ecological mitigation, and requirements. 16 uses the word begin for highway access. It nonetheless seems to us looking at the definition of onshore preparation works, that there are a number of activities there site clearance, demolition work, pre planting of landscape works, whatever that means. I don't know what that includes buttons. Temporary means of enclosure, all of which may have the capacity to cause noise or disturbance. And as to which there is currently no control. So that one way of dealing with this bearing in mind, the rationale for the exclusion is timeliness is to have a pre commencement works crcp or mini csep, which doesn't hold up the for the by reason that the main csep needing to be agreed, that focuses on those those onshore preparation works and brings them into the ambit of some form of control, which currently doesn't exist. Other than in the examples I've given such as 21 on ecology and 216 on highway.

13:32

that's a that's a very interesting point that I would ask the applicant specifically to address either now or in writing. And, and and, and it does bring back to memory. And I'm just trying to remember which order I've seen it in previously. But provisions that essentially refer in relation to a code of construction practice or equivalent document to an approval of part and the ability for that to be approved in part and then for works relying on that part to proceed with reference to it, even if they are pre commencement. And that, as I seem to recall, has been used as a mechanism to specifically address Mr. Tate the point that you've made, so it may well be a way of of solving that. Are there any other observations that you need to make? Thank you, in which case, I will then move on to Mr. Attorney and thank you, Mr. Attorney for waiting there.

14:29

Thanks. A rich attorney on behalf of says I only thought needs switched on because I thought you were calling me in so No, no, no problem. I realise you want to get to the authorities first. Can I just echo some of the comments that Mr. Taylor just made in respect of onshore preparation works. As you know, in the Friston area, there's identified pre construction, site accesses and whilst highway alterations have been excluded from the definition of onshore preparation works, the creation of site accesses has not. And those are significant as shown on the works plans. So raise that as a specific example of the general point that will end a friend just addressed you on. And we also echo your comments there in respect of maintenance and the scape for alterations for the scheme's that's particularly so of course, in respect of projects such as this where the onshore elements across to DC as potentially being developed sequentially, but also with this substantial National Grid infrastructure. The scope for alteration is is of course enhanced, and we'd seek some further clarity on what alteration would fall within that definition. So that that's the only other point is about size accesses is about the potential for interference with public rights of way occurring through onshore onshore preparation works. So obviously, without the controls of the cicp and tone in place, there's potential for interference with public rights of way, the example that's been given to me is the samplings walk and the potential for interference with the footpath in that location. Thank you.

16:22

Thank you very much. I now see Lindsay Mullen of the MMO and followed by Mike Caplin of Friston parish Council. So can I go to the MMO. First

16:36

at Lindsay Mellon marine management organisation, and just a slight deviation, if I may, from onshore preparation to offshore preparation definition. And we note that the applicant has removed the phrase at sea would have mean high water springs from this definition. And it may be one that they want to respond to us in writing, but we're just seeking clarity on that to understand why it's being done.

16:59

Indeed, well spotted. And yes, it will be very, very helpful if the applicant can weather immediately now or in writing respond to that. Anything further on this provision? No. Excellent. In which case finally Mr. Caplin?

17:21

Yes, thank thank you very much for giving me the opportunity to say a word. I just wanted to let the meeting know that first and parish Council have been in discussion with the air spaces group about these issues for you know, over the period of the planning, and the introduction of this operation. And we were absolutely in support of their line on it, they supply us with the kind of technical information that it would take us a century and a half to accumulate otherwise, so we're very grateful and supportive of their presence at this meeting. But we didn't want you thinking that we at first and parish council weren't interested in these in these babies who were very interested. But they're better spoken about by faces. Okay, Mr. Captain,

18:23

what I'm gonna do is I'm going to take it that everything that Richard attorney says is your position. If it isn't for any reason, then raise your hand.

18:35

Wonderful power. Thank you very much, Mr. Smith,

18:38

thank you very much. Let us then move to the applicant. Some of this will no doubt come out in the Washington rising at deadline five. And we can also revisit in the February vcos, issue specific hearings. But briefly, please from Stephanie male, just on those points,

18:58

definitely male for the applicants. And I'll touch on the MMOs point very quickly, because I can do that very quickly. And that is that was an error. And the reference receiver does mean high water springs and did not was not meant to be deleted. So that will be inserted at deadline five. And thank you for pointing that one out. With respect to Suffolk County Council and the reference to archaeology within what we'll do is I'll take that one away I and we will be able to provide a response at deadline five on that. But I think it's just a simple case of inserting the word archaeology there. But it and the definition obviously reflects the name of the document that's been submitted into the examination. So I just need to double check and that particular point with respect to specific counsels, concerns about the onshore preparation works and some of those works, and obviously not being included within the CCP and that is something I will need to take instructions on. So what we'll do is we'll take away those comments that were very helpfully made. And I will it will provide a response at deadline five on that particular matter. And seizes, I raised a couple of points. And with respect to the public right of way concern, I would just flag that article 11 of the of the draft development consent order requires and requires alternative public rights of way to be put in place prior to a public right of way being stopped up. So even if anything did need to be done, that would affect a public right of way at an earlier stage in the process, the alternative would need to be in place before that can happen. So it was just to try and reassure me with that respect. And on preconstruction accesses, I will just take that particular comment away as well. And we can respond in writing at deadline five on that one, but the one point I would flag is that and requirements 16 on on accesses, as was rightly pointed out, does not refer to the word commence. And that is because it's it to be approved prior to 20 access works being undertaken. So it was just to reiterate that that particular requirement will apply to works that fall outside of the definition of commencement as well. So I think that's a high level summary of the main points that were raised there, but I am I don't offend Mr. Ennis has anything he would like to add on that.

21:33

Okay. In terms of maintaining pace on this, what I'm going to perhaps suggest as well is that if there are kind of overarching sort of, I guess, methods, stroke strategy points that Mr. Ennis wants to introduce, we can perhaps try and group them together, and so that we can then kind of get up a head of steam and move quite rapidly through through a number of provisions, and then provide him with an opportunity to catch up. And if we then move on, and we are now at articles, we're in part two, the principal powers in both orders and articles three and four, neither of which I have any specific comments on, I'll just check with my xa colleagues to see if any of them wish to raise anything on three

or four, which then brings us to the benefit of the order in both orders and article five. And it essentially here this is to make clear that this provision does enable a essentially transfer of undertakings, and there could be circumstances in which one project is then delivered by an entity different from the special purpose vehicle subsidiary of SPR. That is may be currently anticipated. And I think it is worth observing that this amount of transferability is broadly normal, and is broadly equivalent to that that is found in equivalent made orders. And I didn't want to go past this without without making an observation on that point. And is there anybody who wishes to speak specifically on the benefit of the order provisions? articles? Five, I just see hands. I'm seeing no hands. So unless my hands have broken again. And that looks to me as though there are no takers on the benefits of the order on either order. We can then move on to the application and modification of legislative provisions, articles six in both orders. And can I just check? My colleague Mr. Rigby, I believe did have a point that he wished to raise here. Is that still a living point? Mr. Rigby?

24:04

Yes, that's

24:04

the case. Mr. Smith? Yes.

24:08

The floor is yours.

24:11

Thank you, Mr. Smith, in relation to Article six, particularly the dis application of the neighbourhood Planning Act 2017. I had just one or two quick questions here. Firstly, all these are to the applicant. timescale for introduction of regulations, is the applicant aware of any move towards introducing regulations under the Act? and tied in with that, what if the regulations are introduced before your powers are exercised, bearing in mind what you've said earlier? And then, again, we're back to the separate projects thing. What if the separate project timescales come into play? Really Finally, on this point, would the applicant consider moving towards the approach taken in the neighbourhood Planning Act, for instance, in respect of notice periods, even if the Act and the regulations are not actually made under the Act, I just would like to hear from the applicant on those linked points, please,

25:21

Stephanie, Mel for the applicants, and with respect to whether any regulations have been made, and we are not aware of any having been made, and we did check the position prior to this hearing. So nothing has changed in that regard. And, and we're not aware of any future and data or anything like that. And if powers are regulations are made between now and commencement, and our view is that the powers that are set out within the DCR, as drafted are the powers that should apply. And for the reasons that I set out it, and compulsory acquisition, hearing one, and that is to provide certainty as to the processes that will take place. And so our view is that the provisions should remain as they currently are with respect to temporary possession, and to enable the relevant certainty to the project. And therefore, you know, if, hence, why the provisions are just disapplied. And so if regulations did come forward, the decio provisions would would take precedence there with respect to these two

projects. And that would apply, regardless of that change in commencement date. So I think that is our fundamental position on that point.

26:37

Just briefly, challenge that in that there is, of course, very good precedent as well for the position that you set out. And there are a number of made orders now, which disapply on exactly the basis and for the justification that you set out, and turning my mind to the reasoning process that the examining authorities and the secretaries of state who dealt with those and had in front of them, part of their thought process was that the projects themselves had commenced life before the proposed legislative changes that might be commenced, were known. So in other words, early stage consultation and dialogue with stakeholders with people whose land might be temporarily possessed, had all occurred on the basis of the provisions in force now as distinct from the prospective provisions in force in the future. So the prospective provisions could not really be safeguarded against by the applicants or the undertaker, equivalently, the applicants and Undertaker's have had pre contractual dialogue with delivery bodies. And again, they haven't factored any of the potentially change timescales into their conversations, because they weren't known. So in those circumstances, the it was it was relatively easy to persuade examining authorities and indeed secretaries of state, that then those provisions should be disapplied, where we are now in a slightly different world, because I take it that essentially these projects have existed. And in a world where those provisions, the potential for the commencement of those provisions has been known pretty much from the get go. And so in terms of you as applicants protecting yourselves or as under, or protecting The Undertaker's from different timescales or not, or needing to be clear to prospective and delivery bodies, contractual partners about this, and your stakeholders, maybe there's less of a need for the exclusion of these than there might have been in the past. devil's advocate, but I put it in front of you, because because it is potentially a different position from that, that we have considered before.

28:53

Stephanie mill for the applicants, and I take on board the the point that you have raised there, I guess the opposite the counter to that would be obviously there's been a number of MDC was granted in 2020. So last year, when these provisions were in place, which I would expect, probably started their development processes at a similar time to what what these projects have. And, and I think that the key point, though, is the fact that this Act came into force in the act itself, and came into force in 2017. And we've seen nothing in the three years since then. And the concern would be that the regulations do never come into force or regulations may not be needed. So I think on that basis, the applicants consider that going with the, and the wording that is very well established now in the numerous DCA O's and is the most appropriate way forward, because there is just that lack of clarity as to when and indeed if the provisions will ever come forward. And so that is the the basis on which we would stand by Our position that that is correct to apply the temporary possession powers are set out within the order. So

30:06

I'm sorry that those provisions are no longer seriously entertained, and we should treat them with that matter of coffee. Isn't it?



30:16

Great.

30:17

Thank you. Apologies, Mr. Rigby,

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at all. Thank you very much, Mr. Smith. I'm really just wanting to push a little bit further on the last points I made about whether you will consider still with certainty, obviously, because you would put the provisions in the order. But moving towards the general approach, I'm particularly thinking about affected persons in respect of temporary possession, and particularly where there are two projects that may not be on the team timescale. So it gives them a little bit more warning of what's intended in terms of notice periods.

30:56

Yes, definitely well, for the applicants, and they think that the key position is to remain with the timescales that are set out there. And purely due to the experience from developing other projects. And you're having those periods are set out within the the articles at the moment are considered to be appropriate. And for the purposes of these projects, to prevent delays. And when it comes to the the construction phase, and obviously there will be ongoing again, engagement with with landowners, and the intention is obviously to have voluntary agreements with landowners in any event. So the hope would be not to have to necessarily use and such powers and to have voluntary agreements in place. And so this, for those reasons, they're the applicants consider these timescales to be necessary and appropriate.

31:50

Thank you.

31:52

I'd like to just throw this open to submissions from any other parties, if anybody wishes to make any comments at this stage. Obviously, deadline five is there for anyone to make considered written comments? And I see no hands, my hands are working. But I see no hands. So I'll hand back to Mr. Smith.

32:18

Thank you very much, Mr. Rigby. And we then move on in the orders. And I will just flag that articles. So in both defence to proceedings in respect of statutory nuisance as a matter on which quite commonly, submissions are made. So does anybody wish to raise that I do see Mr. Attorneys hand? And at the moment, Mr. Attorney, I'm just casting around to see if I'm seeing any further hands. So Mr. Attorney, it is you for Stacy's?

32:51

Thank you, Sir Richard, Tony, for Stacy's. And can I just note in the first instance that we made written representations on this, whilst article seven has a provision which has been seen elsewhere, the effect

of it is that what would otherwise be a test for noise effects of best practical means. That's it, that's where a nuisance occurs. And it's a defence to proceedings for statutory nuisance to show that best practical means have been used to control the nuisance. This sets a different test, which is reasonable. And we say that that is the wrong threshold. And it should be set by reference to the statutory threshold and not to a different and lower threshold of whether the nuisance could not reasonably be avoided. So that's focusing on the operator doing the best it can to ensure that there aren't impacts. The second point is one which we touched on briefly in respect of the I sh in respect of noise impacts. And that is, although article seven contemplates that it would be a defence to proceedings, if a section 61 consent was in place and being complied with this is a project where it is not expressly proposed or required, that is section 61 consent will be obtained in respect to the construction works, we say that is something that should change and that doing so that is to say putting the construction works under the control of such concerns is an appropriate and reasonable steps to take for a project such as this, it is one that has been taken in many cases elsewhere. And it allows the detailed consideration of for example, construction noise impacts, to be controlled at that stage by the District Council.

34:55

Thank you, sir. Thank you very much, Mr. Attorney. And now We'll just check again to see if there are any other hands wishing to speak on this item, I see none, in which case I'll return to Ms. Mill for a brief response to that point, remembering Of course, that detail can come in writing a deadline five.

35:14

Miss Mill for the applicant, I'd like to hand over to Mr. Ennis, for this one, please. Thank you very much.

35:20

Yeah, call off the applicant. If I could give, first of all, with the best practical means advancement. The reason why that's not appropriate is essentially, rather than being a defence to statue nuisance, it introduces the same test for such use. And so it defeats the whole purpose of having the provision. The purpose of Article seven is effectively to provide that defence to statutory nuisance not recreated in the same, same format. And in most of us would be entirely inappropriate to just revert to the statue nuisance test, because that would mean the minus one not one provision. So that that is why I think the primary my primary suspicion is that it would defeat the purposes. And in relation to the second point regarding the defences in relation to a sexual 1661. They those are not anticipated to be used, but could be used, and really would be looking to through the DCA to control the construction matters. And I think that is our understanding of how the council reverse this matter to be dealt with. But they are there in case they were used quite properly defences if they are in place. So it must finish in terms of the drafting, as is, is the correct basis on which to formulate article seven. Thank you,

36:46

sir. Thank you very much. I mean, if I can just remark Generally, the provisions of the nature of articles seven are not uncommon. In national infrastructure case, workers are found in in a large number of made orders. And I think it's important to be clear that, from the examining authorities perspective, we do not wish to allow such articles to become essentially an open means of evading and controls that would otherwise be in in place, except with justification. So there needs to be a clear rationale, and

from the applicants for the requirement and for the operation of the proposed defence. And, and essentially, what we need to be clear on is that we are not being put in a position where an applicant is becoming a bad practice constructor, or an undertaker is becoming a bad practice constructor. And however, equally we have to be alive to the fact that these are very substantial and nationally significant projects and that there is argued to be a justification for there being a defence, and in certain circumstances that are unavoidable. Mr. Attorney, I'll come back to you briefly.

38:13

Thank you. Thank you, sir. Richard says I appreciate you don't want too much tearing and frame. But thank you for coming back. To me. The the point about best practical means is is that as you know, from our noise submissions, and we'll come back to this, there is a serious concern about the workability of the noise requirements, I'd say we'll come back to them at the moment, that is the way in which the applicant wishes to constrain the operation of this infrastructure is, you know, it's in close proximity to residential receptors. The importance of best practical means is that it allows scrutiny of whether the applicant is actually doing all it can at the undertaking, that's to say at the substation site to ensure that noise emission is minimised in the event that it's otherwise causing a nuisance to neighbouring properties. The difficulty with reasonable is that the applicant can say well look at my infrastructure as it stands, or potentially say, look at my infrastructure as it stands, I'm doing nothing but passing electricity through it. And in those circumstances, I meet the reasonableness test. And I think I would invite the applicant to consider where else we see the security of ensuring that the enforcing authority can go to the applicant and say no, your noise enclosure at this substation site needs to be improved. And in my submission, it's the blunt tool of the noise limits which which have problems with workability. That's the only place that the enforcing authority could go during the operational period. So that's why I make the point. Don't accept Mr. And Mrs. Submission that it defeats the purpose This article, thank you,

40:03

thank you very much

40:05

matters to be given very careful consideration, indeed. And Mr. Ennis, I'm not not going to return to you on that, because you will no doubt synthesise a clear argument in writing. And I believe we do need them to make progress. We're moving now on to part three in both draft orders, which deals with streets. But before I do, what I'm going to just do is provide a very brief roadmap towards the lunch break, I would normally consider calling a lunch break for an hour at approximately 1pm. I'm conscious that we have two key parties who are attending this morning, who have specific interests that are later in the structure of the order. Namely, we have the marine marine management organisation with interests, particularly in matters around the deemed marine licence and also in in relation to arbitration. And then we have EDF with a specific request for protective provisions. So risk of slowing other elements of the business down, what I was then going to do was to offer both of those parties here, because it's a reasonably good natural break the opportunity to come forward out of sequence if they wished. And can I just check with you? And ask if, if that's something that you would be interested in doing?

41:37

That Lindsay mother marine management organisation, and if it's acceptable to the rest of the interested parties, then perhaps that might be practical? Yes.

41:44

Yes.

41:45

Okay. Thank you very much. And can I just check with EDF? Again, I'd be talking about once we've heard from the MMO, advancing the protected provisions, schedules. And, and dealing with your point.

42:02

So that'd be very much appreciated. And we'll keep our submissions really, really brief on this. Thank you. Okay.

42:07

Thank you very much. Can I then just see a show of hands from other interested parties? Does anybody object to us taking those two specific items out of normal order? I see no hands. I'm very grateful to everybody for facilitating these two parties and timely involvement. So can we move to the MMO? First, and can I just validate the specific points on which the MMO did wish to make and direct submissions? And my understanding is that we do need to touch the arbitration provisions. And we will then be into schedules 13 and 14. Is that is that correct? Was Nolan

42:59

at Lindsay Lohan marine management organisation? Yes, that sounds that sounds excellent.

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Just take just take on the arbitration point first, then.

43:10

Yes, that's absolutely fine. And

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actually, just bear with me a second, because I'm very conscious that we do have as well as the house here who I believe also had observations on this. So what I'll do soon as the house is when we've heard from the MMO, on this particular point, I will give you an opportunity to speak. So apologies. The floor is yours.

43:37

organisation. Thank you for that. And yes, on the subject of arbitration, and as we understand it, in the current draft of the development, consent order, they are no longer subject to arbitration, which we are contempt with.

43:51

You're fully content with that as currently drafted. Okay. In which case, having said I would bring Trinity house in unless Trinity house do have particular time constraints, I might then leave the rest of arbitration in agenda order, because I'm conscious that a number of other parties who have not had the same concession made this has been made for the MMO may not be quite as happy as the MMO. Okay, on that basis, I'm not to introduce the house desperate to come in. So let's let's deal with that on that basis. Can I then ask Marlon to speak to us in relation to any further points that arise in either schedule 13 regeneration, Dean Breen licenced or scheduled 14 the offshore transmission assets deem relicensed to and be clear for interested parties onshore. Both of these are set out conditions that regulate all of the offshore elements of the proposed development. So we're, we're we're at sea at present, and we won't return to land until these have been discussed. So much Mahlum

45:07

Lindsey mother Maria management organisation and if I might, I'm going to turn to my colleague Rebecca Reed to speak on this point.

45:15

Hello there,

45:16

Rebecca read the marine management organisation I just had one quick one before we move to the the marine licence is in relation to Article 36 or certification of plans. And I know in our deadline submissions, we have mentioned that we would like a little bit more information in relation to this and potentially a new schedule as set out in the Norfolk bahria draft decio at deadline 18 and mainly in relation to the environmental statement and the number of documents that are submitted during examination in relation to offshore birds or additional marine mammals or fish clarification documents. x 36. One X currently states that the environment the statement is version one and document reference 6.1 it was what how are the other documents submitted and examination certified and wherever they shown and I with Norfolk Borealis, how they split split it in schedule 18. It was they had the main environmental statement. And then they referenced any documents submitted during the examination and what chapters they relate to. So at post consent stage if it was granted, and we it was clear, the final position on those matters. Mr. Smith,

46:53

you're on mute. Apologies. Thank you very much. And then moving on to the deemed marine licences.

47:09

At Lindsay Miller marine management organisation, if I might defer to my colleague Mark puratchi. On this point, believers raised his hand.

47:15

He has raised his hand Mr. crushy floors yours.

47:20

Thank you, Mr. Smith, Mark Qureshi. And there's really just one specific draft marine licence condition that I want to really just to refer to and it's referring back to Stephanie mill for the applicants. comments earlier on this morning, in relation to the cooperation condition. And the MMO is is content that this is in the DML and which allows for cooperation and discussion between two projects. And we're content that this has been inserted. I guess I also would just like to flag up in terms of any other projects. The mo is aware that that will is entered into step with common ground process with other projects as well in the area.

48:16

Thank you very much Mr. Qureshi, and anything else then that wishes to put on any other remaining elements of the draft DCs?

48:29

Lindsay Mullen marine management organisation? Yes, we are currently working with the applicant in revision of conditions 16 to in relation to the site integrity plans for both unexploded ordinance and piling. And the MMO is internally discussing the use of the phrase adverse effect on integrity within that condition. And we're going to propose guidance for drafting a more refined version, if I will, deadline five for the applicant. And further we were pleased to hear that the applicant has taken our comments under consideration in terms of the timeline of the UX or documents. And we're working with them to, you know, establish what would be appropriate for both parties subject to consent, of course. And we still maintain our position that the USO activity should be covered under a separate marine licence. But I won't rehash that well without prejudice response and deadline for the remaining item. And I will defer back to my colleague Rebecca Reed to comment on.

49:27

Thank you very much.

49:29

Hello, it's just Rebecca read the marine management organisation it just in relation to condition 20 and 24 and schedule four in the scalp protection and cable protection. And it's just to allude to that we were going to submit a response at deadline five. However, in light of natural England's comments on long term cable protection, and we won't be providing a full position at deadline five. We'll be working with the applicant and seeing the applicants response before Providing further comments at deadline six, just letting them.

50:04

Okay, I will just lay down a kind of mild marker there. And that is that each time we slip from deadline five to deadlines six, and we just get a little free sort of fear around the degree to which all necessary matters that then need to be resolved in terms of both us going back out to the parties and consulting on a commentary on the draft vcoss and can be drawn together, and also us essentially landing the various positions of parties before the expiry of the examination period. So I'm not saying that slippage is not justified, however I am, I am placing a plea in front of all interested parties, not just yourselves, not just the MMO that were possible. And if negotiations that involve for example, natural England are

not here can be accelerated with a with a view to to notice admission, that would be very, very gratefully received by us.

51:10

Rebecca the MMO. Yes, that's acknowledged, and we are looking to provide an update at the next decio hearing issue specific hearing nine. And in light of what would be our deadline six admission as well.

51:23

Thank you very much. Now I have seen a ham from Mr. Jarrett Vela, who is the applicants representative. I'm going to return to the applicant on the balance of all MMO submissions before we move on from the MMOs item, but I do just want before I do that to check and witness Mullen whether the MMOs positions are now then complete.

51:53

Benzema marine management organisation? Yes, we've outlined all of our points. Thank

51:57

you very much, in which case, I will provide the applicant with an opportunity to respond whether through Mr. Vela or indeed through mill, or Mr. Ennis

52:13

caravela for the applicant. I just wanted to quickly say that I will make every effort to ensure that our deadline six submissions, both from the MMA and ourselves are agreed positions on some of these points, rather than waiting for MMA to provide their point to deadline fix, and then responding bearing in mind the time scale. So we'll make every effort to make sure that it is actually an agreed position that we're presenting it deadlines.

52:41

Perfect. Thank you very much. Mr. Mr.

52:45

I'll hand over to Mr. middleboro, to see if she has anything that you'd like to add.

52:50

Thank you.

52:53

So for the applicants, it was just thinking on one point, the the comments that Miss Reed made about article 36. And we will take those ones away. And then and come back. We've obviously got the list of the documents in the article at the moment. But if there is a requirement to specify, and more details, I think we need to work out which are the appropriate documents to list within the DCO because obviously, not all of them will necessarily be certified plants as such. So I think that's one that we need to go away and have a bit of a think about. And but we will provide a response on that.

53:28

I'm very grateful. Okay, in which case, we now are going to turn to the EDF position and here as I take it, and the primary position relates to the absence from both orders schedules 10 of relevant protective provisions for the sizewell operations and the sidewalk construction process. Who will be speaking to to these items for EDF?

54:01

Thank you, sir. It will be myself. Abraham's from EDF energy nuclear limited. So, there are two primary points that we wanted to briefly touch on, which is the protective provisions and the amendments of the requirements that we're seeking. We have already in in our written submissions and all submissions outlined what the protective provisions were seeking are intended to cover. And I don't intend to rehearse they. Also, we've outlined the reasons why we're seeking them. And obviously, it's very much welcomed to hear today from the applicant that they are agreeing to include a set of protective provisions for our benefit on the face of the order. It'd be interesting to understand from the applicant, whether that'll be included in line five on Wednesday, obviously, we would very much like to actually understand the detail of what is expected and what isn't because we have provided them with a form of protective provisions inserted. Hopefully we can have those discussions shortly to agree a way forward. And we will obviously submit a deadline five on Wednesday our preferred form protective provisions. So you have that but hopefully, this can reach an agreed position and resets the requirements. Again, we have outlined in our written and oral submissions what we're seeking. So I won't go into the detail but we are seeking amendments to requirements 13 1622 and 28, to ensure that constant consultation with EDF NGO, occurs in respect of those various points is landfill construction method statement in respect to work six, the size will gap construction method statement, the access arrangement and also the construction traffic management plan in 1011, and 15. So it'll be useful to understand from the applicant, whether those amendments are acceptable to it.

55:56

And I think, bearing in mind that we're in a dynamic process here, and that they may not be able to give us a kind of clear view that they are absolutely acceptable to the most currently drafted, there may be some negotiations that need to continue. But nevertheless, what I would find very, very helpful is if the applicants can at least give us a view as to whether they are still strenuously opposed, or whether they're whether there is room for manoeuvre, and that there are discussions and that deadline five combined with a further touch point on this at the DCR issue specific hearing in February, are likely to bring about movement towards your position. Okay. And in which case, then, can I turn to the applicants must know, will you lead on this?

56:45

Yes, definitely well for the applicants and just to confirm that and as I said, we will discuss the protective provisions with with EDF in the first instance, as opposed to submitting a version at deadline five. So our our proposed approach would be to try and reach agreement and then include an agreed set of protective provisions within the draft development consent order. And so we will pick up very shortly with an EDF after the hearings and to provide our comments on the the form of protective provisions that EDF provided to us. And and with respect to the consultees point on requirements, we'd



also like to discuss that further with an EDF to see if there is a way that we might be able to reach a position on that particular point. So whether that may be through some text to the protection provisions or something to that effect. So and we are definitely going to continue discussions with EDF on those points and will hopefully provide an update at deadline five. But realistically, the agreed forward protective provisions are more likely to be at the next version of the DCR. After that, we can get agreement. In the meantime,

57:53

I fully accept that we're not going to see sort of a great chapter and verse a deadline for what would actually be very useful would be if you were able to show your hands to the extent that you have a draft in progress that represents the applicants position, because I did note there that EDF were proposing to put in essentially their current preferred position. But deadline five, the reason I raised that is simply because again, looking looking towards February and the issue specific hearing on the DCS, then it would be very useful if we, if you are still in dispute that we have essentially, latest position statements from you both so that we can work out what the gap is and why the gap still there. And whereas if you if you don't put your position in front of us, until at least deadlines six then it's it's starting to get very tight in terms of any use that might be made of that hearing to try and further and better understand why matters are still outstanding between you if they are, of course it may well be that they've been resolved by them. But that that's that's why I'm asking for the best disclosure, you can make a deadline five, if that's at all possible.

59:03

We'll see what we can do and until we'll provide an updated deadline.

59:08

Okay, thank you very much. And so if I can then turn back to EDF, are there any other matters that you haven't already put that you wish to put?

59:21

No, thank you. That's everything.

59:23

Okay, thank you very much. In which case then Ladies and gentlemen, we will return to the the slightly more structured process of marching through the draft orders, part by part. And if I can remind you now we are at the beginning of part three, which contains the articles provisions relating to streets. Now, I didn't have anything on my list until we got I believe, to Article 11 and the temporary stopping up a public road rights of way. But can I just ask on block? Is there anybody who wishes to speak to anything between articles out? Through 211? And I'm looking for yellow hands or cameras pinging on and I'm not seeing any of those things on article 11. And I want to just briefly introduce Mr. Rigby who had, I believe a question on that matter. Ah, hang on, Mr. Mr. Attorney, is this is this for a matter before? article 11?

1:00:36

No, I misunderstood. You meant eight to 11, excluding 11. If this isn't, I'm

1:00:44

sorry. If this is 11, we'll allow Mr. eggbeater to explore his matter with with the applicant, and then I will introduce other interested parties. I'm sorry, Mr. Rigby.

1:00:55

Thank you very much, Mr. Smith. We're just a couple of issues I wanted to raise under Article 11, which has to do with the stopping up of public rights of way. The first issue is how this works in practice, if the projects work on separate timescales. And the second is to do with the effects on public rights of way prior to commencement of construction and whether there might be any effects, which may come into play before commencement of construction. Now, I thought I would like to ask the County Council and the District Council First, if they wanted to elaborate because I'm aware that this was raised briefly, in issue specific hearing for and if they wish to say anything further at this point before inviting the applicant to respond.

1:02:00

Or any points from either,

1:02:02

sir, I'm just going to call on a net. Robinson thoughts. All right, to just deal with that. Thank you.

1:02:11

Thank you very much.

1:02:27

Apologies, Mr. Rigby.

1:02:29

Not at all.

1:02:30

Please continue.

1:02:34

If you could just bear with me a moment, I'll just open our response from that. hearing us need to be reminded.

1:03:06

I believe my concern was raised over the amount of closures that will be happening at the substation site at the same time or potentially sequentially. It's a concern that the network that all of those rights of way out substation site will be subject to temporary closures and permanent closure. And we're concerned that we will end up with a site that effectively will become unusable for the residents of Friston because the numbers of closures that will be happening. Thank you. Is

1:03:52

that your points? Or do you wish to make any further submission?

1:04:00

I think that's my point for the time being. Thank you.

1:04:03

Thank you.

1:04:04

Does the District Council have anything to add? Thank you. So

1:04:11

now we've got nothing to add at this moment.

1:04:13

Thank you.

1:04:15

Thank you.

1:04:15

Does the applicant wish to make any submission at this point or

1:04:19

before we move to the applicant? Can I just flag that we did have Richard attorney asking at the very beginning of the item that he wish to speak on it. So can I just say thanks.

1:04:32

Thank you, sir. Richard, Tony, on behalf of SES is, in fact, echoing Mr. rugby's two points. First of all, in terms of sequential development of the two projects, the potential for closures, temporary closures sequentially. So, at the moment, the two DCs do not make any provision. This is General pointed out earlier do not make any provision to beyond the new provision in article in requirement 42. To ensure that the two projects impacts are in any way restricted. In the event, they come forward sequentially. And of course, footpath closure is a good example, because footpaths could be temporarily closed under the first project to come forward, reopened and then closed again. So the scope for interferences is far greater that the second point is about pre commencement impacts. And just to pick up I think, on a comment that Miss mill made earlier, the whilst a where there is a diversion in place that must be in place under the DCA before the pleasure occurs, the public rights of way strategy itself does not have to be submitted until after commencement. And that's article sort of requirements h2. So those points that Mr. Rubio has made are shared by the local community.

1:06:09

Can I briefly just ask on that point, and this is a point to the applicant to pick up in response, please. Weather and the weather, the weather, the public right away? strategy could in fact be submitted in time to regulate pre commencement activities. Apologies, Mr. Rigby. Is there anything else then there's anybody who wishes to raise before we move to the applicant, on on on articles 11. I'm seeing no yellow hands.

1:06:50

Thank you to Mr. Attorney and apologise for not seeing your hand quick enough.

1:06:58

I think we're all suffering from the old Gremlin or to this morning. And so can we ask the app to come to respond was mill will it be yourself again?

1:07:10

Yes, definitely well, for the applicants. And so I think just covering the first point, which is about what will happen, and we've obviously got two separate projects here, two separate DCs. And I think the key point to note is that all of the requirements, and all the provisions in the DC will obviously apply to each project as an individual project. So and if there is a sequential construction, the relevant requirements will need to be discharged in respect of the project that is being carried out at that time. And the comment that was made about the public right of way strategy and the reference to commencement within that in requirement 32, we'll take that one away. And just have a think about if there's a better way to do that, because I am conscious that article 11 and as I mentioned earlier, obviously requires the alternative right of way to be in accordance with a public right of way strategy and to be in place prior to anything being stopped up. So and will take away that particular point. But just as a general principle, and the stopping up and proposals will be approved by the relevant authority. And, and an alternative will need to be in place prior to any other right of way being stopped up. So the applicants do consider that there are appropriate controls in there to make sure that no public right of way will be stopped up without an alternative be in place. And without the details of that alternative being approved.

1:08:45

Okay, anything further on that? Mr. Rigby? Before we move on? No, thank

1:08:51

you, Mr. Smith, I have nothing further.

1:08:54

Okay, well, in which case, ladies and gentlemen, I'm going to indicate that I've got nothing else on my list in the remainder of parts three, and the STS powers. So we're moving them to parts for supplemental powers. And they're we're moving briefly to Article 16 discharge of water. I do just want to have a check to see if this is a matter on which others wish to speak. Sorry, I'm was parietic. I didn't see your hand until literally a second ago. Did you wish to speak on any part of the balance of Part Three? Yes, please.

1:09:29

Sorry.

1:09:30

And I appreciate that as

1:09:31

a bit of a delay this morning with the hands. If I may just make brief points. On the well on provisions. These points really span provisions, sections 12 to Section 14 or 15. And there's there's three points here that we wish to make is Highway Authority. So firstly, as regards the time limits for the street authority or Highway Authority to respond to applications, I know that these have been now building as 28 days and You know, feeling which deemed consent just basically granted. And there are concerns about the timing of actually don't believe it will be sufficient bearing in mind, you know, the number of projects that are likely to be progressing at the same time. And the fact that there's only a limited number of personnel actually involved in the ganson will be dealing with these. And in some cases, there's the consent has to be granted, after consultation with the relevant planning authority to a number of things will have to be done in a very short period of time, and then do further matters on which if I could just bring Steve Marion, please. This has to do with the need to be consolidated and coordinated as part of temporary stopping off the streets on section 278 agreements.

1:10:43

Thank you.

1:10:45

Okay, thank you very much. Hello, good

1:10:48

afternoon, Mr. Smith. It's Steve Murray from Suffolk County Council, just to just to elaborate on article 12. Currently, when we stop up streets, through temporary orders, or do temporary speed limit orders, we allow 12 weeks to go through that process. And that is available on our website, which I can give you the links to this is to undertake the necessary consultation with others the emergency services in the district of local district council. So it's a 28 days is too short to be able to do that. I would add that if we are held to that 28 day period, all I can envisage is circular requests for us to go back and say we haven't got sufficient information. So that would be a concern. The other concern with the temporary traffic orders, as we've raised in our deadline for response, we have some concerns about the ability for the applicant to actually do a lot of this work without shutting the roads. And we are mindful of that, that if that is necessary later date, then we will have to go through all of these traffic orders, potentially short notice. So the main point I'd like to make on article 12. I have got comments on 1314 and 15. If you want to come to me later.

1:12:06

Yes, I will. Just before we move on in that respect. I mean, it may sound like a kind of almost a trite question. But is there anything more that should be done and be appearing on the face of the order in part three, to essentially press the applicants towards the greatest adoption of measures that actually

minimise road and right of way closures? Because at the moment, we're still in a world where they've got a choice.

1:12:48

From our perspective, we would like to see some stronger wording in there. But it could alternatively, from our perspective, we're looking for the controls on this and to protect our position. And it was something I was going to ask if we could come on to a later stage, either to sheduled 10 protective provisions or item nine of the agenda to talk about protective provisions. And it's the question about whether it is in the articles, whether it's in one of the supporting management documents, the management documents for such as the access management plan or the construction transport management plan, or whether it is a separate agreement, but from our position, any agreement outside of the DCR needs to have sufficient legal waiting that is it gives us protection.

1:13:35

Yeah. Okay. Right. Well, look, given that you're on the stand, so to speak, do you want to then move on and take us through the remaining streets? And provisions?

1:13:49

Yes, thank you, sir. So moving on to Article 13. two items here. One is that part one a does give the applicants powers to undertake works in the schedules without necessarily consulting local Highway Authority. This is one of the reasons we are so you can protect with provisions that would add and it might come on to some of the points raised before about pre commence the onshore preparation works and the relation to accesses and I think it is we have written it down. We'll call it 16. There is requirement for the applicant to agree and access management plan with ourselves in consultation with the District Council. And as part of that he does ask for he does say that the applicant will engage into section 278 agreements with ourselves with technical approval and delivery. So that's a start. The The important thing from our perspective there is that being pre commencement works, the construction transport management plan would not apply at that time necessarily. It wouldn't have gone through the approval process. Assess. So the controls within there do not necessarily apply to the access management plan. So we would be seeking for the similar controls, particularly in terms of things such as routing of hgvs and operating times. And this applies to the code of construction practices as well. So we'd be looking for that that holistic view that all of those necessary controls are in the access management plan, or at least referenced there. Then the second point under 13. was, again, it's to do with the duration of the 28 days, I'm typically technical approval does take some considerable time. And this is where we get this iterative, iterative process where details are supplied. It takes longer than 28 days to agree those all would happen is we just don't we just end up going back and say there's insufficient information. So those are the main points I wanted to raise on article 13. Article 14, and unfortunately, my computer's frozen. So this is the point about in Article 14, it says that agreements can can or may be made between the street authority and the undertaker, we'd argue that based on what has been said in the access management plan, that should be as well. So there is clarity that the applicant will enter into agreements with the local higher authority to undertake technical approval and supervision of this.

1:16:31

And then finally, can I just check on that? He then saying that that is a a pre commencement agreement that in other words, that you would seek an agreement to have been signed off before the works?

1:16:44

Correct? Because this this involves all of the accesses to the side, which are the onshore pre pre commencement works. Okay.

1:16:55

Right. We'll hear from the applicant on that one, I'm sure. And

1:17:00

now,

1:17:03

any for any final observations on the remaining? I think we're down to Article 15?

1:17:08

Yes, again, it's a question of time. Article 15, includes the potential strengthening works at the Mars wood bridge, and also the traffic signals that the a 12 a 1094 Junction. So again, the complexity of those works would make a 28 day response quite problematical.

1:17:24

So that's my final point. Thank you.

1:17:27

Thank you very much. And if I can just briefly return to Mr. Parakh. Is there anybody else from the council you need to introduce on any of these points? Or can we hand this one back over to the applicant? The applicant? Thank you. Okay. And just before and I will ask the applicant to put its concluded position to us on these. So just before I go to the applicant, I'll just see if there are any other hands rising for people who wish to speak on any of these provisions. And so the applicant can wrap things up together. And I'm seeing no more hand. So if I can go to him as male, and if you can then respond, taking this up to the end of Part Three, all the st works provisions?

1:18:12

Yes, definitely well, for the applicants, and there are obviously a number of points raised there, so I'll do my best to try and capture them all. And with respect to the the 28 D time limit, and the deemed approval mechanism, and that's a provision that you'll find itself in in many MDC was to date and and we've put it in there, and to prevent your delays when we come to do constructing the project and to doing the works. And I expect that in practice, we will not be submitting a document called to the coat the counsellor at the point at which it's, it's going for approval there will be later on in advance of that, but we'll take that those comments away and and provide a response on those particular points. And I do acknowledge Mr. Mary's comments about the the 12 week process and the fact that they need to consult with others. So and we will we will consider that particular point. And with respect to the

reference to Article 13, not requiring consultation with the Highway Authority, and the reason that is drafted in the terms that it is is because and requirements 16 itself, which deals with accesses must be submitted and requires an access management plan to be submitted and approved by the Highway Authority prior to any work so and that would relate to the access. So there will already have been an approval mechanism and having gone through for that one. And prior to that this provision in Article 13 A is really the power to do the works. But that is then subject to the requirement for approval within the requirements and the details will be set out within that that plan. So it's just a flag that there's there's no intention to go in and do these works without first, obviously getting approval on the works from the, in terms of the details of the works from the council first. With respect to, again, concerns around pre commencement, as I mentioned, Article 16, is intended to apply outside of commencement, and it is really prior to any work relating to accesses. And so that is the basis on which which those those provisions are termed. And so the intention is that the pre commencement works, or if any access works are conducted, and prior to commencement, they will still be approved, and by the Highway Authority prior to those works being able to be taken place. And I think we'll need to take away the specific points about the section 278 agreement and a meet Mr. Ennis, may, may come in on that, again, the article 14, that is really just the power to be able to do something, it's not necessarily a requirement or a restriction. So that's why it's termed as a me. So it's just to say, we wouldn't agree that it should be amended to will is very much and the authority to do so.

1:21:17

can I possibly assist there? I think I think we need to distinguish between a power on the face of the orders to enable the unforeseen agreement to be struck. And I think you probably need that. And it's in the interests also of, of the county and district councils that a general power remains. But if there are specific agreements prior to commencement on specific items of delivery, that the either of the council's are still asking for, I mean, we've obviously got that further down the agenda for today, we'll get there. And but that feels, to me as though those are specific agreements, and they need to be either made and executed, or if they need to be secured on the face of the order, then there needs to be a specific provision for them on the face of the order a new article, if that's required, or else a new requirement, calling up the discharge of something, if that's the way it's dealt with, and rather than attempting to build something into this, if that makes sense.

1:22:23

Yes, Mr. Smith, I would entirely agree with that, that point. So I think, as we've mentioned that the articles are really the powers that allow, and are the powers that are authorised, but they are then restricted by what set out within the requirements. So for a number of the comments have been raised. And today, whilst it would appear that a power might be fairly broad, when you read the article, when you kind of dig down into it, you'll see that there are requirements sitting behind there requiring approvals to be carried out so and so that's that the main point, I would just flag as well, the outline access management plan was updated that deadline, free to include relevant controls from the outline for onshore preparation works, I think there's a link in there to the transport management plan. So there should be some text in that particular document. And I think that's probably the the main points that were covered there, or the do. Do let me know if there's anything else well,

1:23:24



we're very conscious that the ground is being covered and then pick up a deadline five. Okay, and can I then just check that we are complete on part three of the two draft orders. We will then move Ladies and gentlemen, to parts for the disarmingly entitled supplemental powers. And can I just check, is there anybody who wishes to address us on any of the articles? That is articles 16 through two, and 17 and 16 relates to the discharge of water. And I'll just flag that one because it does potentially bear on some of the questions that have been raised more broadly about the management of the what what's been referred to as the Friston river or Friston ditch. And most Parakh has her hand up.

1:24:34

Thank you. So Ruchi Barak for the county council, and nothing substantive on section 16. The only instruction I have is bash. It perhaps could do with mentioning the land drainage act as well, because that's missed off at the moment all the references, of course, major environmental departments, but as I say nothing substantive. In other words, were satisfied with that.

1:24:56

Okay. Again, if you could just make a note of that maybe in your deadline Five submission that we'll make sure the applicant picks that up. And is there anybody else wishing to speak to either of these two articles? And I'm not seeing any hands. And can I then move on two parts five of both of the orders. And this is powers of acquisition. And what I would flag here is that some of this detail will potentially also shake out in two hearings that are still yet to be held first compulsory acquisition hearing number two, and we held in February and also the the development consent orders, issue specific hearing to be held in february two. So unless anybody is immediately proposing unless anybody is immediately proposing to come to me on all these points, they will have a place that they can go to in those hearings. And apologies for the slight disturbance or teenager just came into the room and invited and one of our working from home dilemmas. So do I see any hands on parts five powers of acquisition? I am not seeing any hands. So ladies and gentlemen on that basis. Let us then move on to Part Part Six operations. Now again, on my list, and I don't have any specific questions on Part Six. Can I just ask for hands? Does anybody wish to speak to either of articles? 30 or 31? No, in which case we can move swiftly on to parts seven, miscellaneous and general does anybody have any specific points on the articles relating to landlord and tenant law, operational land, felling or lopping of trees and tree preservation orders up to 36? I see Richard tourney. Is there anybody else who wishes to speak on these items? No more hands. Mr. Attorney, the floor is yours. If you can identify the specific provisions that you wish to speak to, that'd be wonderful.

1:27:50

Thank you. So rich attorney on behalf of sizes. I'm going to speak I think just to Article 33, the operational land provision, and its appointment I think has been covered already. And you'll be aware of it. The concern is that the extent of the land take for operational purposes, the permanent land take at Friston and, in essence, the deeming of that land to all be operational land. The consequences that, as you know, we have concerns about the extent of land take, I don't need to go into those now. They've been raised elsewhere. But if there is more land taken than is required for the structures that are authorised to be constructed, and related matters, then our understanding of the order is that any further land which is taken and not, in fact put to use would become operational land for the undertaker, and capable of being used for other development pursuant to permitted development rights. Now, that

is a particularly acute concern in respect of the National Grid substation, because as you know, there's a significant concern about the consequences of Friston becoming, in essence a connection hub for a number of other projects, a point which is now expressly anticipated by National Grid ventures at the very least, and indeed reflected in recent amendments to requirement 38. It is known that Friston is the subject of a consideration but by that promoter, at least as a connection location, now creating a very substantial area of operational land, which is the effect of Article 33. Together with the effect of this substantial land which Friston has the consequence that under permitted development rights, another Undertaker such as National Grid, could carry out really quite extensive works without requiring further consent. So the operational land in question in our submission has to be constrained. And first of all, we say that it's necessary to ensure that if the land is not, in fact required for the substation, both Scottish Power substations under either DCA and the National Grid substation, whether it comes forward under EA, one or EA to the land that is not in fact required must be excluded from operational land. I know there's been some discussion previously about ensuring that compulsory purchase powers fall away so far as they are not used in respect of the actual delivery of the final design of project the same point in essence,

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your permission,

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thanks to

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you very much, Mr. Attorney. And now, I see that we also have Mr. Tate wishing to put matters on on these provisions. And just as a reminder, this is the set of provisions in miscellaneous in general, and up to the end of trees, I've got a specific set of questions on certification of plans article 36. That will follow. So Mr. Tate,

1:31:38

thank you. So I was going to raise my point at a different location, but I think it is sensible to raise it now since Mr. Tony has raised his point on article 33. And that is the matter of the definition of operational or the application of the operational land provisions in the Town and Country Planning Act. Our point is slightly different, it's driven by the same concern, and that is that, in particular, in relation to the National Grid substation, where there would be permitted development rights under Part 15 of the GPDO that would allow various substantial extensions or alterations. And bearing in mind the sensitivity of this area. The council considers that it would be appropriate to have a provision which restricts the application of what would otherwise be permitted development rights, and particularly in relation to extensions of the station in particular, this course applies to the National Grid substation, because although there is any provision, which removes the PDU rights if yes, is required. In such a sensitive area where a new noise baseline is going to be set by the operational noise conditions. That's exactly the sort of instance where there is the concern that we've expressed about noise creep, so that it increased by three dB from the new operational limits may not be significant, such as to trigger EA, but it would be significant compared to the current baseline. So that's why the council will be suggesting that there shouldn't be a restriction on PD rights both in relation to the

National Grid substation, but also, yeah, Article 33. In relation to the other substations in particular in relation to extensions. And

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I, I take it you'll be advancing forms of words that will give us a sense of how you think

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I was going to do with this under requirements. But as it comes up now, this came

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up. in DC, OSHA specific hearings, do you think you've got something way down the bottom and in the requirements, it actually comes up earlier, and you can discuss it and move on? Okay. Thank you very much. And is there anybody else then who wishes to speak on any matters up to Article 36? No, I will come to the applicant in the round when we get to the end of parts seven, but on certification of plans article 36. I wish to reflect various oral submissions that have already been made here today around the environmental statement being a certified document and that we have indeed received money agenda, and no doubt will continue to receive agenda and clarification notes, which build on and refine what is in the original environmental statement. And, again, the the the bariatric approach has been commended to us, and in which there was a schedule, and for all of the documents that needed to be certified, and a very clear tabulated tracking system to make sure that the right version of the right document ended up being secured on the face of the order. And which would then leave the article, Article 36, basically setting out only a kind of coat peg provision that would refer on to a new schedule, that would then be the place where perhaps considerably more detail could be set out. And is I wanted to basically throw that forward as a question for consideration by the applicants. And then just before we reach the end of these provisions, I did then also just want to check on article 37. And the arbitration provisions as well. Now I do see I've still got Mr. Tate's hand up. Is that a residual hand from the previous item? Mr. table? Did you want to speak on certification of plans and article 36? Before I move on to Article 37?

1:36:22

I'm so sorry, it is definitely a residual hand. knocked it off?

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Excellent. Okay, well, in that case, I will briefly then move on to Article 37, which is on my list. And there's been quite a considerable range of debate in nearly all of the recent and offshore wind farm dcl examinations around the appropriate scope of arbitration provisions on the basis that they used to be essentially very simple, and typically had evolved to become a mechanism enabling the appointment of an arbitrator to resolve certain very narrowly defined matters of dispute. And as if the parties fail to agree on such an appointment that an appointment can be made on application by either party, and by the Secretary of State. And now this provision seems to have returned much more closely. And so the the, the the early forms of arbitration that have been a provision that have been examined on many occasions, and I do notice the strikeouts now of the reference to the potential involvement of the International Court of Arbitration of the International Chamber of Commerce, in in circumstances where there was a dispute with the Secretary of State. And I also note the reservation out of the Marine management organisation from the arbitration provisions. So there's been a substantial amount of

movement here. And But nevertheless, there's a broader point, which is that there are other expert or statutory statutorily established entities, for example, and the maritime and coastguard agency or indeed Trinity house, or possibly in certain circumstances where it's discharging a specific licencing obligation, and the Environment Agency or natural England, where submissions have been put to previous examinations by those bodies that and it was never the intention of Parliament, that their specific expert roles or licencing functions or discharge obligations, were things that could be in inverted commas likely set aside by the operation of an arbitration provision. So so the balance question led to the applicant here is you've reserved out the MMO. Are they the only body that needs to be reserved out? Does consideration also need to be given to any of that class of other equivalent bodies that I've also raised? And indeed, if the council's have any points on the operation of this provision, then I would be very interested to hear from them too. So we've got two sets of have specific questions from the exercise the applicant, that on certification of plans and the possible need for a schedule and then some probing about the state of play in terms of lumens on the arbitration provisions. Can the applicant wrap all of that up, please? And and was it would be good to do is to try and get that wrapped up? before lunch or with Do you prefer to take a break now and maybe resume on was mill,

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Stephanie mill for the applicant here, and I will pass over to Mr. Ennis, shortly to talk about the permitted development rights point that was raised. And with respect to Article 36. First of all, as I mentioned earlier, we will take the certification process and points that have been raised to date away, and we will have give them some consideration because unconscious, the MMO of the CV start point and we will look at what Norfolk Borealis have done. And, as well, and article 37, arbitration. And you mentioned some of the other statutory authorities and their natural England MCA, etc. And under the DC or there aren't actually any approvals required from those bodies. And therefore, it's not necessary to carve those particular bodies out. And as we alluded to, at the start of today, and we have updated the DCR, to specifically carve out Trinity house. And so that will be in deadline, the deadline five version. And, and as I say, just the general reason for having this, having a bit more detail within the provision than was perhaps in previous vcos was really just to set out make it clear that what the process was because, you know, arbitration can take many different forms. So it was trying to try and set out a clear and concise process for that. And so

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can I just actually briefly interject that as well, because I was probably going to refer anybody who's interested on these matters to a short section in a report that you may not have read because it ended up recommending refusal of the order concerned. And so the Secretary is the Secretary of State never gave detailed consideration to the arbitration points that were set out in the report, but the Thanet extension offshore wind farm panel report actually does go into these issues in in reasonably substantial detail, and I don't want to labour any of them. So might what it might be worth doing is taking that away, bearing in mind that Yeah, so Secretary of State didn't actually form a judgement because that order was never made. But um, that's kind of useful compared with the position reached in the barrios report, and indeed, in the barriers made order.

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Yes, we will certainly take that that point away. So just in terms of permitted development, rights and contract, I skipped over that. And so if I could hand over to Mr. Ennis, and people and provide some submissions on that point. Okay, thank

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you very much. Not because colonists about the African just in responding to the submissions on article 33. And article 33, obviously has two purposes. The first is it creates the land come operational land for the pups 99, the act that has more than just a status in relation to permitted development rights. It also gives the statue Undertaker's land, a status and a presence, which is also of value to that Undertaker, in considering acquisition of other rights from the undertaker, and in particular, electrical terms of electricity act of its operational land, then there are certain consequences that flow from that in relation to other parties seeking to acquire rights in an over at that particular land. As far as I understand the concerns, it's the applicability of the essentially the permitted development rights that is of concern. And our particular position is that in terms of the National Grid, substations, substation, and indeed CDN components, it the extent of the operational land would be the extent of those ultimately designed to areas that were for national grid. And the balance would not be operational land for those purposes unless it directly related to the operation of those substations. So insofar as the idea that you could use permitted development to do the NGV extensions just don't accept that that's a reasonable premise, if there were to be an extension to these substations, they would require to go through a proper process and be evaluated because no alteration that goes above the threshold of an extension to an EIA development would pass the muster in terms of permitted development. So normally it is asked to take the test of it would be an extension to development had already been determined to be here. Ah. So that would make the position very clear that there already are the controls in present within the PD order in relation to that particular matter. But as I say, we will consider the specific points that come back and writing. But let's say in terms of the provision, we think it's not just the provision for I put environment as got a wider issue and application, particularly in the context of electrical infrastructure, and interference with it. So as it will come back and writing on on the on the bat has given us 10. past one, and I'm sure everyone knows that seeking, seeking to go and get lunch. Thank you so

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very much. In which case, ladies and gentlemen, I will flag that in terms of the balance of the provisions in the pair of D CEOs running through to the end of the articles up to Article 43 funding, and are not matters under which those are appearing on my list for any specific questions. So can I just check to see whether any of the other parties wish to raise points on any of those? And I see Andrew Tate. Is there anybody else wishing to speak on any of the balance provisions? Okay, Mr. Tate, the floor is yours.

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Thank you, sir. Just a

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flag.

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The point arising in relation to Article 38, which introduces the new schedule 16. And it may be most convenient to deal with that when we come to schedule 16. Yes, I

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was that that was what I was going to suggest otherwise. And that indeed, I you know, it would not be my intention to rush and gallop over scheduled 10 protected provisions either if there were major points that needed to be raised, but those will be dealt with in the schedules, rather than in the article. And so on that basis, ladies and gentlemen, I take it that we can then move on to the schedules. But of course, that's a very useful time to break for lunch. It's now 12 minutes past one. Can I ask ladies and gentlemen that we resume at 10 minutes past 2 10 minutes past two, and we will then go directly into the schedules. Thank you very much, ladies and gentlemen.