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Fri, 2/19 12:00PM • 1:18:33

00:05

Good morning, everybody. And welcome to today's issue specific hearings at number nine for East Anglia, one northern East Anglia to offshore wind farms. Before we introduce ourselves, can I please check with the case team that you can hear me that the recordings of live streams have started and the captions are now switched on?

00:29

More than ruined, I can confirm that the live stream has started and the recordings are starting today. I can see all of you.

00:39

Excellent. Thank you very much, Mr. Williams. So two introductions. My name is Ron Smith. I'm the lead member of this panel, which is the examining authority for the East Anglia, one north wind farm application and have a panel which is the examining authority for the East Anglia to offshore wind up like a wind farm application. I'm in the chair today and lead the questioning in respect to the main items. My colleagues will be introduced in question on matters relevant to their subject matter leads. I will now ask my fellow panel members to introduce themselves. And I will start with Mrs. Caroline Jones. Morning everyone. My name is Caroline Jones and I am a panel member.

01:20

Mr. Key I believe your microphone isn't on.

01:24

Thank you, Mr. Smith. Apologies for that morning, everybody. JOHN, hopefully panel member. Thank you for stopping

01:31

Hello, good morning, everyone. My name is Guy Rigby, also a panel member.

01:36

And thank you very much Mr. Rigby. And those of you who have been involved with or watched any of our previous hearings will know that the full panel is not here today. Mrs. Paris, our fifth member is working on natural environment and HRA matters. And the other members who are here may go on and off camera, but they can all introduce questions at any time.

01:59

I will now introduce our planning and spectrum colleagues working with us on these examinations, some of whom you will have spoken to in the arrangements conference. m Ray Williams is the case

manager leading the case team. He is accompanied today by three case officers Kj Johansson, Caroline Hopewell and Tamika Hall, who you may have met in the arrangements conference also this morning.

02:21

Hopefully, the published agenda papers for these hearings provide a clear explanation of our and your reasons for being here today. And that is to hold an issue specific hearing on the draft development consent orders the draft gcos. In this respect, I must flag an addition to the agendas introducing new agenda item one, a. This is to address procedural submissions made by the app defence during issue specific hearing seven that in turn followed from a written submission by Suffolk energy action solutions who I'll be referring to CS, which raised concerns about the conduct of negotiations between the applicants and affected persons.

03:03

Item one a also relates to oral submissions on the same point that were raised by Dr. Alexander jimson. At compulsory acquisition hearings to the amended agenda is available on the agenda link on the websites for everybody to see. As we introduce ourselves shortly, I will then draw out which of the persons attending and this new item is relevant to and I will flag This is essentially a procedural item. It's almost like a mini preliminary meeting. Once the examining authorities have heard those who need to speak at it, we will move on to the rest of the agenda, which deals with the substantive business of these hearings as previously notified and remains unchanged from when the agendas were first published.

03:46

I will note only that if depending on the nature of the points put in agenda item one, a procedural decision is required. The examining authorities may reserve this in order to deliberate. And if we do so, we may make it later in today's hearings orally, or indeed we may make it after they have closed in writing. Just so that's clear.

04:12

In introducing the substantive agenda items from agenda item two onwards, I will repeat some of my opening remarks for the first development consent order hearing issue specific hearings six, because I'm conscious that we do have a number of people attending here today who did not attend on that occasion.

04:31

The draft development consent orders are important documents. They are draft pieces of legislation which if the secretary of state decides to grant development consent, then form the legal basis for the delivery of the proposed developments. They set and secure the standards to which the developments must be constructed and secure the environmental performance of the developments ensuring that they do not exceed what is described as the Rochdale envelope

05:00

Assessing the environmental statements at any point during construction, operation or decommissioning.

05:07

As with issue specific hearings number six. Some people attending today may well have positions of principle that the Secretary of State should not grant development consent for reasons. It is important, however, for all participants to be clear that these hearings today are being held on a without prejudice basis. And I will remind you all what that means.

05:33

As a starting point, it means that even if your position is that development, consent should not be granted, and therefore, that the Secretary of State should not make one or both of the draft development consent orders, you can use this hearing to make representations on the drafting of the orders without conceding your wider position that the orders should not be made.

05:57

This is an important principle for those speaking today. Because it means that you can make representations that affect how the DCI is are drafted, for example, relating to requirements, which are the equivalents to conditions in a planning commission, you can do this, even if your main position is that the DCF shouldn't be granted. And you don't need to refer back to or repeat submissions that you've made elsewhere that the DCF should not be granted because we recall those. But what we need to focus on today is the drafting of the DCF.

06:30

And then, finally, this process is important for the examining authorities because we are under a duty to provide the secretary of state with the best drafted development consent orders that we can, even in circumstances where we end up recommending that the Secretary of State should not make one or both of the DCS. And this is because we do not decide these applications the Secretary of State does. If the secretary of state decides to grant consent, they need to draft development, consent order orders, and these need to be the best drafts that can possibly be provided. So even if our reports were to recommend that a development, development consent should not be granted, we will still append draft vcoss ensuring that the Secretary of State can decide to make orders if they wish.

07:23

Every recommendation report from an examining authority to a secretary of state contains a draft of and consent order, no matter what outcome the examining authority recommends.

07:35

So now, you know who we are as examining authorities and why we're here and the ground rules essentially for today. And so I'm going to ask the participants to introduce themselves. But there are just a few things to note before I do.

07:49

Today's hearing is being live streamed and recorded. The recordings that we make are retained and they're published. They form a public record that can contain your personal information, and to which the general data protection regulation applies.

08:03

Does anybody have any questions about the terms on which our digital recordings are made?

08:10

I'm looking around the room for virtual hands. And I'm seeing none and no cameras are coming on. So I will take it then that we can move forward on the basis that a recording process is understood.

08:22

Turning to today's hearings, I'll now ask the participants to introduce themselves. If organisations attending today have a number of representatives attending, could I ask that you nominate a lead representative to introduce your team on behalf of your organisation? Because I know that for a number of the organisations here today, we do have several different individuals that may wish to contribute during the course of proceedings. It would also be helpful if you could let us know at which point in the agenda you anticipate participating.

08:52

Now, can I check the name of the main speaker that we have representing the applicants today, please first, I assume this is Mr. Ennis again.

09:01

Yes, good morning, sir. My name is Colin and I'm a partner in the law firm of Chevron Wedderburn, and I'm instructed by Fiona Coyle, of SPR legal.

09:12

I'm accompanied today by a number of parties who may or may not speak depending on what topics come up in the context of discussions, particularly around the DCA. But I have Stephanie mill, a senior associate from my office, who will be speaking quite extensively in relation to DCA drafting matters. I also have Steven Hubner, our real estate partner and my firm in relation to any property matters or rights issues that may arise in the DCA. I'm also accompanied by other parties who will be familiar with Paolo piazzola, who is from rotoscoping in case there are matters that arise Jerry Vela again the offshore consents manager, Brian McGregor is the onshore consensus manager, Kiran merner, the Senior Project Manager with responsibility

10:00

property and engagement. And finally in Rakhine, who's the project manager for EA one North it's not not participate at this stage the extent to which all those parties may speak, but that there in case I need to call on them, it will be primarily myself and Miss mill who will be speaking. Thank you, sir.

10:20

I'm very grateful Mr. Ellis now moving on. Can I then ask

10:26

the person leading the marine management organisation team to introduce their team please?

10:33

Good morning sir. JACK Cole from the marine management organisation. I am the case officer assigned to Stanley one north. With me today I have Rebecca Reed case officer for East Anglia to Lindsay Mullen, who is the case manager for East Anglia two. And Paul Stephenson, who is a senior case manager within the organisation and is our lead for the renewable sector. We intend to speak today on agenda item two. And the way we've prepared to do so is going to be a combination of responses from Miss Reed and Miss Mullen on the various points for the draft development consent order. I'd like to point out to the examining authority that the animal doesn't tend to leave the hearing after the close of agenda eight and two. And we will be doing so unless the examining authority has any objection to this, or has any further questions that they would like to put to us. And finally, just one more thing, and the MMO case team is very happy to be here today. But we are under resourced at present. And we hope that the examining authority will bear this in mind when providing the animal with additional actions after this hearing, and throughout the remainder of the examination period. Thank you very much. Thank you very much, Mr. Koh. And we note those those points on resourcing, I think that the position that you find yourselves in is in fact akin to the position that many parties or patient participants in these examinations find themselves in, in circumstances where the pandemic means that many people are obviously working from home, but also caring for relatives and homeschooling. So So those points are all noted. And with Trump, we have a fixed deadline upon us that is a statutory deadline. And we must honour that. But what we are trying our best to do is to make sure that everybody is engaged in the most efficient manner possible. Thank you very much, then, Mr. Koh, Can I check now whether we have a presence from the crown estate and who that will be?

12:35

Do we have a presence from the crown estate?

12:39

I'm just checking my spreadsheet.

12:45

Mr. Smith, we haven't checked anybody in during the arrangements conference for their crime estates. Okay, thank you very much. I will mark them. Absent apologies. I had thought I had seen a name go yellow, but I was obviously

13:02

misleading myself. Thank you very much the case team there. Can I then move to Suffolk County Council who will lead for Suffolk County Council.

13:11

Morning. My name is Michael Bedford Queen's counsel. I'm assisted by Richie perec, who obviously was addressing you yesterday, but I expect to be the lead. In terms of this morning's contributions.

There are a number of officers from the county council present. I say I will be the lead unless we get into particular areas of technical detail where I may then call on the relevant officer. And I'll leave it to you to introduce those officers at that time. Thank you very much. If I can then move to East Suffolk Council.

13:45

Thank you, sir. Andrew Tate, Queen's counsel for East Suffolk Council. I'll be the principal speaker. But I may also call upon Naomi Gould, who's the council's senior energy project officer.

13:57

Thank you very much. Now if I can just confirm with the coast team. I don't believe we have Norfolk County Council in attendance. No we do not.

14:10

In which case the next person on my list is the Right Honourable Dr. terez coffee and P

14:19

and or Phillip North are Dr. Kaku. Good morning. Nice to see you. I am here. I'm Phil North also is here. Because it's possible I might need to dip in and out a little bit but I'm going to try and do most of the speaking. Okay, now can I just check I gather that you have a specific request to speak on agenda items. One a and four. Correct. Thank you very much. I'll make sure that you are introduced and if you're not here, we'll go straight to Mr. North. Thank you. Thank you very much. Can I then

14:54

check that we have that

15:00

To Suffolk

15:04

nuclear power station bodies represented EDF nuclear energy generation limited Are they here?

15:12

Good morning sir. My name is Katie Abraham's on behalf of EDF energy nuclear generation limited to the owner and operator size will be. I'm here with my colleague Brian McLeish and we would like to speak to agenda item three to the extent that's required, although hopefully the applicant will be providing you with an update which may mean that you don't need to hear from me.

15:32

And with your

15:34

blessing, sir, we will also be dialling off after agenda item three and if you have any further questions for us. Okay, thank you very much.

15:43

I'm

15:45

now just checking whether we have any other EDF representatives present and as far as I can see, we do not.

15:57

In which case I'm then going to go to Suffolk coast and AONB partnership.

16:07

Good. Good morning, Simon Amstutz, the A and B area of outstanding natural beauty manager representing the south coast nice amb partnership. I'm only intending to speak if I feel the need to make a comment on behalf of the partnership. Okay, well, the yellow hand is your friend then Mr. instance. So I'll be watching for your yellow hand. And thank you very much. And moving on.

16:34

We are now at the parish councils so can I just check who is here for the parish councils. I'll just start with old bruh Town Council.

16:52

Council fellows I'm afraid your microphone isn't switched on.

16:58

Good morning Mr. Smith, sir Marianne fellows over town council. Good morning ladies and gentlemen. And everybody.

17:06

We may or may not speak but the relevant matters that we would like to specifically look at with your kind support is item two. item three, four, a and b and potentially item five. Thank you very much. Thank you very much Council.

17:25

Okay, now I just checking the list as I see it. We do not have then representatives for Friston, nada short ordering and comms thought parish Council. So I'm then going to move on to the various action groups. Starting with Stacy's, please.

17:50

Morning, sir. My name is Richard Turney. I'm here for spaces, just to say at the outset that our position today is supported by Friston parish Council, and that's the reason why we're not separately bearing. And I'm joined also by Michael Marnie, who know and i'll bring him in as necessary. I'm very grateful, Mr. Attorney. Okay. And then if I can ask who is representing Suffolk energy action solutions sees this morning. Good morning, sir. This is going to go more representing see Salford energy action solutions

today. And we have two speakers for item one a. Anthony Fincham, a retired solicitor, a local volunteer, and also Dr. Alexander jimson, representing his mother. And we would like to all speak on item one a today please. And then I'm here to speak on item two, and in particular for Thank you very, sir.

18:59

Thank you very much.

19:04

Okay.

19:08

Save us handlings.

19:14

I do have Richard Reeves, I believe.

19:17

Mr. Smith with a case Tim's been made aware that Richard Reeves is experiencing technical issues at the moment. So he appears to have dropped tight, right? Yes, because he was here earlier. Okay, well, if I could just say the case team and do your best to contact Mr. Reeves. And obviously, if he is able to reconnect by ordinary telephone or a mobile device or something of that nature, then we'll do our best to reintroduce him as he emerges. And I'll keep a watch for him.

19:48

Thank you very much. And

19:51

then finally, just let me check whether there is anybody else who we were expecting to be here.

20:00

Who I have not registered? Suffolk energy Action Coalition did not attend in the end. So I believe that's correct. And

20:13

can I just check that there are no interested parties then assembled in the virtual room who are wishing to speak and I have not checked off.

20:25

And I'm not seeing any hands, which is very good news indeed. In which case, I'm then just going to briefly move to

20:33

those who I will expect to hear from in relation to the new agenda item one a where I will be calling on the applicants. I'll be calling on Suffolk energy action solutions CS and Mr. Fincham there.

20:48

And Dr. Alexander Jimson. I will also call the Right Honourable Dr. Tres coffee MP. And can I just check finally, are there any other interested parties present who are specifically wishing to be called on that item.

21:05

And I see none, I will flag that we did offer the opportunity to participate to Miss Fiona Cram. However, she has corresponded with us and indicated that she does not appear to be able to attend this morning.

21:20

Any interested party who's not participating directly in this session, but observing on the live stream is welcome to set out observations about what they hear today in writing by deadline six, which is on the 24th of February 2021.

21:33

The introductions are now complete. I have some final preliminary remarks before we move to the commencement of agenda item one a.

21:42

As with all previous hearings, these hearings are held for both projects in parallel. There's a single agenda for both hearings issued on the eighth of January amended as I've indicated on the 18th of January to incorporate the additional detail around agenda item one, a.

21:57

Whilst the agenda is designed to enable us to hear oral submissions to the two applications in parallel, we can also consider each project individually during proceedings if necessary.

22:08

Before I move into the rest of the agenda, I do think it'd be useful to check that we are all on the same page, literally as well as metaphorically in relation to the documents that we'll be reviewing today. In referring to the draft development consent orders, or ddcos, as they will be often called I have the most recent tract versions open on screen in front of me is version four, which are in the libraries rep five hyphen 004. And can I just check with the applicants that these, in your view are the most up to date and tracked versions available to the examining authorities and interested parties?

22:47

Step No, for the Africans? Yes, that's correct. Excellent. Thank you very much. Now, it would assist parties speaking if they to have these versions available in front of them in screen or print form.

23:02

I will also then flag that on the 12th of February, the examining authorities published a written commentary on both draft development consent orders, and that passes under reference PD hyphen 031 in both examination libraries. And what I'm going to make clear here is that we will not address all

of the issues in those commentaries today. And some can best be responded to individually and in writing by deadline six, which is not far away. But there are items in that commentary that do bear on agenda items here today and will benefit from some discussion in the round around a virtual table, potentially leading to greater clarity and shared understanding before the finalisation and submission of deadlines. And in that respect, we will be discussing some of the points in the commentaries documents. And again, you can obtain the documents from the websites. And they're listed in the most recent versions of the examination libraries.

23:57

Both of the draft development consent orders are what we've come to refer to as a pigeon pair that provisions are identical or if they're not, the divergence is found in the same place. And this means that we can generally refer, for example to Article One in both drafts and that article is doing the same job setting out how each order should be cited and when it would commence. I trust everybody's happy with that.

24:20

Items, too. On this agenda is a place for the applicants to update us on their proposed changes to the draft since we last spoke to them on this issue specifics hearing six and I will be taking input and comments from parties who have requested to speak on those changes at that point. Agenda item three onwards raised specific matters that the examining authorities wish to ask that were held over from issue specific hearing six in large part. And we will open those matters to the applicants and interested parties for contributions. And it is a virtue of holding this discussion orally rather than in writing. So it's easy for us all to see the implications of one set of progress.

25:00

With some changes on all parties and the performance of the draft orders in the round. So even if you've come armed to speak only on one particular point, it's worth listening to the submissions on other provisions in case they turn out to affect your interest. And if they do, even if you haven't already indicated you wish to speak, raise your yellow hand and has to be introduced.

25:20

Now, I have flagged that we will now move on, and I'm proposing to bring on agenda item one a, but before I do move to that item, I will, as is normal seek any other questions of a preliminary nature

25:38

in relation to how today's hearing or indeed the examination will run. I see Richard tourney. And I also have one item. Is there anybody else who wishes to speak on preliminary matters?

25:51

I just see route attorney. So Mr. Attorney.

25:56

Thank you, sir. I'm sorry to interject at this stage, but really just for guidance as to how we put our submissions. Obviously, at the moment, masters are slightly out of sync in the sense that we put in post

hearing submissions after I said is h six, deadline five. And that was when the revised draft DCA was submitted. And then we had, of course, your comments after that. And then I think the next DCA is deadline seven.

26:32

Clearly there are points which we have made previously, which haven't been accommodated in this draft DCA. Do you will you be assisted today by us referring to those? Or will you take it as read that those comments are unresolved unless they have been dealt with by changes that have been made? In which case there's comments on the changes. And that's an extremely useful introduction with attorney and flags and me to provide just a little more flesh on the bones of how we will handle agenda item two, because we will be asking the applicant to set out their progress position statement, which items they have in hand what they're working on, what they're not not working on, and why and, and what what will greatly assist the examining authorities, it would be if as swiftly as maybe we can get to what I would almost call a rag status or red amber green status on those provisions that are moving. I the applicant says we have heard what you say, Mr. Attorney, or anybody else, and we are minded to deal with it. Or alternatively, the matter is still under consideration. And but so the first would be agreed. The second would be an amber, the matter is still under consideration. And

27:53

deep matters, the ones that I think it would be useful if the applicant can pick as they work their way through their progress position statement will be the matters that I would characterise as reds, where there have been specific requests for amendments by parties, that the applicant for reasons is clear at present that he proposes not to address. And so to have that broad grading done in agenda item two, I think will assist and greatly

28:26

do bear in mind in terms of detail Mr. Attorney that we do then have another issue specific hearing set aside for the for the development consent orders at the end of the march hearings block. And so you may find yourself in a monitoring position to a degree with with with greens and ambers. And whereas if you have detailed submissions on reds, then if they are red, and it's very clear that the applicant considers it, it is it is not going to take them and they're on balance matters that need to be put, then of course, it would make sense to hit them.

29:01

Does that assist? Thank you very much that does greatly assist Can I just say and I don't know if others might adopt this caveat that because you're going to want to focus on the movement, so speak.

29:14

I won't attempt to repeat or summarise representations which were previously made on the draft ECA, which we say is still unresolved, because I don't think that's going to help for purposes of today. But but can that just be taken not to mean that we think matters are resolved but instead to think matters are not best addressed while while they are still moving? Let us let us be completely clear here. Just we will by definition today be running to the highlights and the big ticket items. And there is an extraordinary breadth of textual detail. And you know we are across all of it. And

29:53

we will make sure that whether by written process or oral process, it does come out in the wash and in that

30:00

Respect some of this stuff, we will be asking for people to speak to the highlights and and rest on their written case, if the written case has already been made around the detail.

30:12

Again, I trust I trust that assists, can I then just check whether the applicant has any issue or concern about that submission, or whether they're quite content with the way that I have indicated that it will be dealt with.

30:28

I'm not seeing any requests to speak from the applicant. So that then is how it will be done. And there is one other preliminary matter that I wish to raise.

30:40

And that relates to our understanding that the Secretary of State's decision on the Norfolk Vanguard offshore wind farm has been quashed, and in the high causes, as we understand it, and the decision in relation to that the judicial decision is a very substantial decision. It's clearly an important one. And I think it's fair to remark because it's one that the these examining authorities have not yet had time to absorb. And

31:10

the applicants and indeed anyone else who wishes to respond to it, I think it's just important to play some markdown that we will allow those responses to be made at deadlines, six, and then we will be giving consideration to whether we need to examine any matters that arise further in the march hearings, and that will be addressed in agendas moving forward. So if anybody has matters to raise on any any of that, please put it in as a written submission that deadline six marked up as a response to Vanguard decision. And we will give due consideration to them there. But as a consequence of that, could I please ask that we don't move into any of the implications of Vanguard today? Because frankly, we would not consider ourselves sensibly prepared to have that discussion. And realistically, I don't believe anybody else around the table is either because the judgement is only just publicly available. Does anybody have any observations on that?

32:11

Excellent, good. In which case, I'm assuming that we can now move on to agenda item one, a.

32:21

So I'm intending to introduce as I have indicated,

32:29

the applicants sees Dr. jimson and the Right Honourable Dr. Tres coffee MP here. And as I indicated was Fiona cram had been provided with an opportunity to be here but desire able to attend her correspondence on the request to attend is available on the Documents tab dated the 18th of February. And I would urge the applicants, and indeed any of those participating who wish to speak to turn it up, as it as it is relevant, records her latest position

33:04

on the 14th of February, and sees made a written submission, which they categorised as a complaint and that's published under the reference as hyphen 074. And it raises concerns about the applicant's conduct negotiations with affected persons, alleging that these were being offered draft terms of settlement required them to withdraw their objections in these examinations.

33:28

This letter of complaint has been considered by the examining authorities accepted and published as an additional submission. And following its publication a number of further written representations on the matters that it raised were submitted and some of these have been considered by the examining authorities and also accepted and published, others that have been submitted have yet to be considered on the basis that the examining authorities. Current Time is devoted to the delivery of these hearings, and that is not directly relevant to the management of the hearings are now awaiting the conclusion of the hearings. We will be meeting early next week to consider additional correspondence.

34:05

On the 16th of February, compulsory acquisition hearings to Dr. Alexander jimson. Speaking on behalf of Mrs. Elspeth jimson. His mother who is also an effective person referred orally to the same issues that CS raised in writing on the 14th of February.

34:23

At Issue specific hearing seven on the 17th of February, the African re the applicants raised concerns about the additional submission that had been accepted from was Fiona cram,

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as hyphen 076 dated the 15th of February 2021 by email, in which she's made some suggestions about the process used by the applicants in negotiations to conclude option agreements with affected persons, which the applicants say in turn are not factually based. And her concern again, in summary terms was that the applicants process may have inhibit

35:00

Participation in these examinations.

35:04

The applicants gave oral evidence to us at compulsory acquisition hearings to the to the extent that the concern was that option agreements that had been signed were preventing parties from participating in these examinations. They go evidence that no option agreements have yet been formally concluded. And so on that basis, they said as a matter of fact, that the effects alleged to have occurred by Miss

cram could not have occurred or have not occurred, and they have sought withdrawal of Miss Pam's correspondence.

35:40

Now, that's the very particular point that requires to be addressed today. And that's why Miss cram specifically was invited to be present today in order to give her a reasonable opportunity to be heard on a matters affects her interests. And the matter though, clearly more broadly engages sees because it flows from their original correspondence. And, and indeed Dr. jimson. So so they are here and will be involved. And I do also have the Right Honourable Dr. Tres coffee MP as as the local Member of Parliament.

36:13

Before we hear anyone on this habit in terms of the decisions that we might make or the remedies that we might offer, I have three observations to make on relevant documentary sources and procedure.

36:29

And the first is to say this, to the extent that anyone is seeking that any documents be formally ruled out or made inadmissible in these examinations by the examining authorities. It's important to understand that there is no law or practice of admissibility, in nationally significant infrastructure planning, examinations and examinations,

36:52

examining authorities here and read what is put before us.

36:57

And opportunities are provided for any party who alleges that submissions are not factually based to also make their case.

37:05

Final judgments are made on the basis of what has been heard, and the relevant documents that remain on the record.

37:12

Now, the best summary of practice in this regard can be found in the planning and spectryx advice note 8.4, which can be seen on the advice tab of the examination websites for both of these examinations.

37:25

This summarises all relevant law in practice. And again, I would suggest that if parties are familiar with it, that's useful if they're not, please turn it up and have it available because I will need to refer to it further below if necessary.

37:40

In summary, from that advice note, there are only three general justifications for the non publication of material submitted to AMS of examinations. Firstly, they raise matters of national security for which there are special provisions for hearings in camera etc. And none of those are relevant here.

38:00

Secondly, it raises matters relevant to the law of privacy and data protection. And you'll be conscious that unless there is a specific justification for private data to be published, that it is as a matter of normal practice redacted from our proceedings and documents by the planning Inspectorate on our behalf, and the standard redaction policy applies to that work.

38:22

Well, thirdly, it is confidential, and the various legal justifications or privileges for confidentiality that generally apply in civil litigation apply here too. But critically, our system places the onus on the person putting information into us to assure themselves that it is not confidential information. The examining authorities do not make judgments about confidentiality and the planning Inspectorate does not redact confidential material, the burden is on all of you, the participants in the examination not to put confidential material in front of us.

39:00

Further, the examining authorities may where discretion exists declined to accept documents and evidence because they are late. And that is where the timetable says they must be provided by time but have not been where they are vexatious or frivolous. And that is where they are intended to cause annoyance or offence or have no serious purpose in the examinations

39:26

where they are relating to the merits of policy in a national policy statement. I am arguing that we should change the policy and that's a matter beyond our remit because only Parliament can change the policy or they relate to the sum of compensation payable for compulsory acquisition.

39:45

Other than those points, a general principle of transparency has always applied in ends of examinations. What is written to us and said before us is published. And this is an important principle precisely because it underpins public policy.

40:00

confidence in our probity. The more judgments that we as examining authorities are allowed to make about what we do or do not publish, the less clear it becomes that we are being fair in our consideration and balancing of the material before us. So

40:15

in transparency is an important strength of the examination system. And as a starting point in our deliberations, it appears that the maintenance of transparency is quite strongly in the public interest.

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So having made those remarks, I'm going to first ask CS to speak to their complaint.

40:36

In doing so, I'll observe the three stanzas a document and the matters that it puts to us a clear, it needs little explanation, I will flag that our main purpose here is then to deal with the applicants specific requests for the withdrawal of correspondence.

40:50

We will also consider a consequential matter which is how similar concerns to those of C's might be raised in an orderly fashion in these examinations moving forward.

41:03

Other matters arising from the C's complaint, we propose to address later in writing.

41:13

Excuse me, ladies and gentlemen.

41:15

Having heard from cities I will ask the applicants and and indeed Dr. jimson. If he is drawn into that, I'll then ask the applicants to set out their request.

41:24

To the extent that the applicants position is adverse to that of CS or indeed Dr. jimson? Or Miss cram? Has she been here? I'll ask for responses from those bodies. Before providing the applicants with a right of reply. What I will do is I think it would be best to introduce Dr. Coffee as as essentially an interested third party in this matter after the applicants have spoken, because she will then be able to respond to the full picture. And this has been painted before the applicants have their right of reply. So does anybody have any concern about that proposed order of business?

42:02

No, in which case I'm going to call on CS first to speak briefly, please to their complaint.

42:12

I think very much, sir. Good morning. Good morning to

42:18

both Mrs. Gilmore. Come on. I want to know I believe in tension The floor is yours. My understanding is that this is your piece.

42:28

Thank you.

42:30

I live just in the in the middle of fields just to the north of the proposed site of the development but as Mrs. Gilmore said, I'm a supporter of MCs and speaking that best this morning.

42:47

I'd like to preview to address you briefly what it is we seek from SPR pi deadlines six

42:58

a matter which was canvassed for you earlier in the week. And I hope that will be helpful and the C's complaint has been I've been set out clearly and succinctly Mrs. Gilmore's letter on the 14th of February. The allegation simply is a rescue sort of trace evidence to the examiner authority by improper means namely, the payment of money to buy silence. We do not know the scale of this. We believe this may represent a systemic attack on the process. real question, all the inspectors will submit is whether the cumulative impact of gang arrangements may have undermined and frustrated the inquiry.

43:51

But I appreciate these matters to be gone into subsequently. But we returned to this at an open hearing

44:01

as to what we seek from the applicant. First, we would request this provides a statement detailing all payment discipline query offered to interested or affected parties, charities, local authorities, or other bodies or individuals

44:26

that can

44:27

seek disclosure ispr. Law serial, including any concluded agreements, draft agreements or other documents containing or evidencing offers, and all emails sent or received by SPR those acting for it rather than payments, agreed or offered.

44:54

Absent source disclosure.

44:58

We submit that they inspect

45:00

This cannot make an assessment of whether or to what extent the inquiry has been compromised by the actions of the applicant.

45:11

All we have so far is from Dr. jimson. And we know that he was presented with an option agreement that in generic form, and that that have been and is represented this term that had been had been offered to other landowners. We know that there's a

45:33

what's commonly described as a gagging clause is an extremely wide terms requiring that he

45:42

withdraw. Any objection is made to this inquiry or to anybody else, for example, I don't know but it is written to the NP have to draw that letter cannot make representations when you call the house.

45:57

We know that he was offered a substantial amount of money in access to 50,000 pounds, essentially for a cleaner cable, a buried under his land or the land belonged to his mother, Mrs. Elspeth Timpson, of nessa house.

46:23

Can I just

46:25

say a word on the post him letters, although it sounds that this may not be controversial in the light of what you said about the general transparency and identity exceptions, some C's complaint, as has been posted to say, as have, I think, seven other letters supporting that complaint, as some with redactions. Well, we're have another seven letters that have been sent to the inquiry, which haven't yet been posted, I assume pending discussion this morning. So we would respectfully ask that those letters are posted.

47:13

We say that transparency and openness class that SPS can deal with one's alleged to be no objection from CS two posting of any material from SPR response,

47:28

boosting may down the spring relevant material for the inquiry

47:34

and

47:36

SPR

47:38

seeks to persuade you to remove the existing complaints or not post further sportive letters, we say that they're trying to suppress evidence of suppression.

47:54

And I suppose the last point on that would be last shot, it's felt like we already have this matter in the pilot name and posted by the inquiry.

48:08

I think that is all I wish to say for now. So maybe something was said by Mr. Ennis, which I would ask your intelligence to respond to?

48:20

Indeed, no. And I will provide you with a limited right of reply, but in the sense that this is your motion for want of a better description. And what I just need to check with you, Mr. vention? is, Does Mr. jimson specifically need to speak? I mean, the principles, I think, as I indicated are clear, and extract from your original correspondence, unless there's anything but there's no need to have Mr. jimson. Dr. jimson speak merely for the sake of form. So unless he does, and what was I would don't propose to do is move directly to the applicant who will no doubt have matters that they wish to respond to on the points that you have made.

49:05

Well, for the most part, I'm not asking Dr. Simpson to speak I mean, he may wish to add something.

49:15

Yeah. Okay. Um,

49:18

I will then just check if Dr. jimson as an involved

49:24

person wishes to to add anything briefly to that introduction of the matter from

49:31

Mr. Fincham.

49:33

Dr. jimson. I don't have anything else to add. And thank you, Mr. Smith, for asking me or giving me the opportunity to do that. But I don't have anything further to add at this time. Indeed. Thank you very much, Dr. jimson. And again, I would flag that had was crammed in here I would have accorded her the same opportunity. So what I'm now going to do is I'm going to ask the applicant, the applicant to respond to those

50:00

points, some of which have partially been addressed. But in a forum where those involved were not present, so I would really ask the applicants to kind of maybe wind back to first principles here. And who will be leading this? I'm assuming it will be. Mr. Nice again.

50:18

Thank you, sir Colin, in some behalf the applicant, um,

50:22

I want to just as short as I can. So that context, I bang get to the nub of this issue.

50:30

fundamental to these examinations, are parties presenting material that was candid, and represents a fair representation of mappers. As I my conclusions will reach in most submission, the facts as set out by CRS are incomplete in material respects, and I will make submissions on that particular matter.

50:55

To start off with SBR has a range of agreements with different parties in around the application areas. And these include intrusive sites, survey licences, site survey licences, ground investigation, licences, these are effectively formula arrangements with London is to go on the land and carry out various activities. And clearly as part of that process, we have to ensure that we have the rights to do those things, and also deal with anything that goes adversely wrong. If we were carrying out those inspections. Equally, some of the data involved is confidential, and those will be covered and those agreements, but largely speaking, they're relatively short term licences and cover periods of survey, the issue that has been raised by CMS, as I understand it, and I think I am able to piece together from the compulsory hearing, which document has been referred to by Dr. Gibson, and that is a draft option agreement. An option agreement covers the long term land arrangements of acquiring rights over land, and effectively in the context of the matters raised in respect of the property interest would be a grant of easement for the cables. So it covers a long term agreement, and is effectively dealing with all the property rights and responsibilities of both parties over a long period of time.

52:18

What I just want to say is that Dr. Gibson, obviously wraps up certain interest on the power of attorney and the January 2020 heads of terms that were agreed at these were subsequently revised by their agent in February 2020. throughout those discussions, Dr. Gibson has been also represented by Sam Jennings of Stratton Parker, one of the country's leading AP Chartered Surveyors, and those discussions have progressed through and with the assistance of agents subsequent to the signing of heads of terms, the documents are then passed to solicitors, who then negotiate the terms of the option agreement based on the principles set out and heads of terms and heads of terms are not a binding contract. And it's specifically expressly states that it sets out the gist of the key provisions which the parties will proceed on. And within those heads of terms, there is a general provision that the grantee will not object to planning applications, and that is incorporated in

53:25

and that has been designed and as a general principle, potentially taken forward. So I just want to put the context. So we have Mr. Jennings from Stratton Parker. And we now have Taylor, vintners, solicitors acting on behalf of Digi jimson. They act for a number of land interests along the way in terms of these applications. And it was there therefore decided that a generic option agreement would be discussed between solicitors and thereafter sent out to individual parties for that comment by their solicitor as at work. And this is exactly what has happened in the context of the matters relating to Dr. jimson. As I understand the position on the 26th of January, Samuel Jennings from Sutton Parker sent Dr. Gibson a copy of the draft option agreement.

54:21

On the 27th of January of this year, Sam Jennings by email, contacted Mr. Hyde, who I think you've heard speak at a number of occasions, and here is the applicants agent. And in that email of the 27th of January, concerns were raised by the fact that the option agreement was being submitted and how that potentially affected Dr. Gibson's continued raising of water issues before this examination.

54:55

So as I say that's raised on the 27th of may

55:00

January,

55:02

on the fifth of February 2021.

55:07

As an email that has copied, I think it's from Dr. Jensen to Mr. Jennings, but it's copied in to Mr. Hyde. And this advises that he's had the opportunity to review the option agreement. And he says that I'm not prepared as written in Clause 16. To withdraw my objections to post development, I spoken the public on behalf of masseuse about my opposition, and now expect me to withdraw those comments in writing is entirely unreasonable. And linking that to an incentive payment, in my humble opinion, is a bribe.

55:39

So we have that correspondence on the fifth and 10th. Fifth February. And I want to if you could have before you a copy of the CS

55:51

representation of the 14th of February, and part paragraph three of it.

56:11

And I hope you you have that for you. And in that document at paragraph three is clause 16. of the draft generic option agreement.

56:24

So, in terms of a response, the applicants agents, and this is Robert Lee's, who's a colleague of Harry Hind, sent back on the 10th of February this year, last week, our response to the two matters raised a concern about the continued ability to object and also Dr. Gibson's direct request about this clause and I will just read to you what the response was. We have discussed this matter with SPR. And an amendment to clause 16 of the option agreement has been proposed, which will offer your clients absolute discretion on when and if the representations made specifically relating to the water supply and the underground aquifer are to be withdrawn. There may be some tweaking required between lawyers in order to tidy it up, but as a basis on which to proceed. The proposed clause reads as follows

open brackets additional wording is in read close brackets. So if you look at clause 16, in the document that you have from CS, and go four lines down,

57:48

after the word withdraw, the following was proposed by SPR. It says save as the grantor shall have read search the Save as the grantor shall have absolute discretion over the withdrawal of all comments pertaining to the impact of the projects on the ground source water aquifers, and in document reference rat 1242 Rev. 2098. Rep. 5135. Rep. 5136

58:20

then invites Mr. Jennings, to discuss the proposed wording with your clients and tailor vintners, assist is active adopt jimson. We look forward to hearing from you in due course. This was subsequently followed up further email on the 12th of February, seeking an update to which as I understand that there has not been a response. Now, insofar as the complaint that has been made by CMS is concerned. And I turned to the facts on page three.

59:05

Rather than having the text at paragraph 23, saying Dr. Gibson is determined not to be silenced of proper and fair basis would say Dr. Gibson has raised concerns about his ability to continue making making representations, but has been given absolute assurances by scottishpower.

59:26

Not in my submission. It is very clear that the factual basis on watch this complaint has been made does not have not disclosed to you and a full and Frank manner. The exchange of correspondence that's occurred and disrespect. And I think that's extremely regrettable. And it may well have induced other people to take a view both of the applicants and and conduct. And I simply put that I think the way in which this has been portrayed and the way in which that additional correspondence is unfair.

1:00:00

Now what I say is that I fully understand that given the timing of that email of the 10th of February, that those within CES might not have been given that information before they wrote the letter of the 14th of February. But now that we have that information disclosed and in the public domain, and my submission, that CMS should consider very carefully the terms of the letter that they have submitted, and that, in turn, was the concern that the applicants have in relation to this matter. And it is very, I think, very clear and obvious from the submissions I've just made, that those concerns are very well founded. As I say, what we want to achieve in this examination is a fair and full examination of the proposals. That is the basis on which I would submit that this applicant has conducted itself right the hearings, and what I don't want to end up. And this is what I was trying to get to earlier this week, is the debates with people about these basic factual circumstances, if people have misunderstood the position, or if they've not understood it, but it's not fair to put material and that is not based on sound fact, and is potentially attacking the company's credibility. As I say, I don't think it can be compatible. Given that no options have been agreed that the some of the statements that were made in rescans letter can be correct. And she acknowledges in her subsequent letter, that some of the facts to which she's admitted that she has only got a limited knowledge as to them. So my submission is that you

should consider the material once you've seen it all, and perhaps can carefully consider as to how you want to proceed. But in my submission, there is absolutely nothing wrong of the conduct and the applicants in respect to this matter. And I would say that I did take the opportunity yesterday, to carefully consider the whole of the correspondence between the agents are acting on behalf of Scottish power, and Dr. Gibson's in relation to this matter. And what I saw and viewed was a very professional exchange of views on regular contact, and of parties generally working very effectively together in order to seek to resolve matters. So as I said, I've reviewed that and I feel that that the conduct looks totally reasonable in that respect, and simply put, I think, think this has been fairly put before the examination. And that is my criticism of this particular complaint, and the subsequent correspondence that has ensued. I have nothing further to add. Thank you. So

1:02:55

Mr. Smith, you're currently on mute.

1:03:00

Thank you very much, Mrs. Jones. I've got one question to to Mr. Ennis, in that respect, and that given that earlier oral submissions at age seven included, in summary terms that you saw the withdrawal or possible ruling out of material, have you had an opportunity to to review

1:03:26

broader Principles and Practice around the way that examining authorities deal with such requests? And do you have any concern or objection to the principles that I outlined in my opening remarks, which is that we consider that absent the very specific grounds that we have for the exclusion of documents, and there is not a general power to exclude or rule in admissible documents that are put before us, but that we do provide everybody who contests the factual basis of material the opportunity to respond either orally or in writing, which this is in part,

1:04:03

an opportunity to do? And do you have any concerns of principle or law with with those points that I've I've set out in my opening?

1:04:12

Well, sir, comments above the applicant. In my submission, this is verging on the vexatious. I don't make a submission that it's spacious yet.

1:04:23

But it's approaching that because I don't think it is correct, that a partial position is presented, and then other people are induced into making representations. Okay, I laid down that markup, but I genuinely said the Africans do not want to end on going down this route of

1:04:42

animosity, and having to essentially dispute material before this examination, which is not really going to assist your examination. But Madison raised I set out your position. The applicants would like to move on with this examination without rancour, we respect

1:05:00

Parties views. And I think, as you've probably seen, through our conduct through these hearings, we have absolutely respected all party views and acknowledged the participation that they have made. And the points that were made have been useful and added to this the added to the examination, and our ability to participate has been improved by those representations. And those organisations have been extremely effective. And I include seosten days. So I respect we respect the views of that organisation, and their conduct today and the submission. This This, however, is not really where we feel the examination should be going. And that's Yeah,

1:05:41

I would rather seek to try and draw a line rather than trying to extend this and also to cause further difficulties both for you and other organisations because it's taking other people's time up as well. It is indeed. Okay, now in terms of who might additionally speak on this, I do have

1:06:01

the MP Dr. The Right Honourable Dr. Trees coffee who has specifically requested to speak so I will, in the interest of not wasting any more time move to her. And I do know that I have a hand from Councillor fellows. I will cancel fellows in principle here unless there is specific in inverted commas, fact that you wish to bring forward and I'm going to suggest that I won't specifically hear you on this point. Once I've heard Dr. Coffee but I do see Anthony Fincham foresees and I did indicates I would give him a limited right of reply on this. And so I will go back to him. So, Dr. Coffee.

1:06:47

Well, thank you very much and for allowing me to contribute to short notice. And I just wanted to flag a couple of things. I have received representations from a number of constituents, and I won't name them for confidentiality reasons. But I wanted to be clear that I have written to the Secretary of State not prejudicing the outcome of the decision. But it's my concern and somewhat relates to the elements of the principles that you set out early on today, in that people should be able to object to the overall decision of the proposal, while still agreeing potential conditions that may want to be posed and the decio. I am concerned that this does feel like short practice, it's not happening in any other energy projects that I'm aware of locally, this approach were in effect, people feel compromised about their ability to be able to make representations to this perfectly legal process. Otherwise, they may feel they will be financially worse off as a consequence on the basis of any further future decisions by the Secretary of State. So I wanted to flag my concerns about how this certainly from the outside now appreciate what the lawyers have just said for SPR that it feels like it is trying to block. I'll be it. It's a relationship that an NDA has between the the contractor the person that the two parties, but I have shared those concerns directly with the Secretary of State. That's all I have to say.

1:08:15

I'm very grateful for that intervention. Now as as I indicated, counsel fellows, have you got specific matters of factual reference that are directly relevant to this point. And because if you if you do have I'm very happy to hear you on it. But But if we are looking at general observations, I think one of the points

that we have to be clear about here is that there's a lot of detail that goes on in the negotiated relationship between applicants for projects such as these and individual landowners,

1:08:51

some of which is present to us, some of which is not some of which is in the process of negotiation, none of which, according to the applicants yet has been formally finalised.

1:09:02

And what I think we must all avoid doing here is speculating further on what may or may not have occurred. So I did want to just bring you up to date that this is an ongoing and live problem or live situation in that only yesterday I was contacted by a resident Cobra

1:09:25

and there is I'm not being able to to meet with the with the people impacted, but I have tried to make contact with him this morning.

1:09:34

But there is apparently new letters only received this week by obrah residents

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and whether it's perceived or actual, I think the applicant does need to understand that people feel they are being picked off. That there is this concern that if they make it difficult, they won't receive the best financial package and in fact that these letters

1:10:00

Coming out of the blue at such a late stage in the process of this examination is quite a shock to people. And with the COVID-19 restrictions, limiting our normal contact with people, I fear there are many people who are not seeking advice not being supported. And I just wanted to bring to your attention that I believe this is something that is currently now happening still. And we would seek your support in making sure we can reach out to these individuals and say, you can make this public knowledge you don't have to keep it to yourself guiding or NDA is and not specifically, perhaps appropriate in these circumstances. Thank you. Thank you very much.

1:10:48

Okay, now,

1:10:50

other other final observations that need to be made from the two principal engaged parties here? I'm just going to go to Anthony Fincham facies first, and I will obviously return to the applicant.

1:11:06

Mr. Fincham.

1:11:08

Thank you very much. So can I just say two very brief things in response to Mr. Ennis?

1:11:17

Clearly, if Caesars persuaded it said anything, which might be misleading, we will correct that.

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And we'll have a look at clause 23. I'm not persuaded we have because the amendment that he laid out seemed to me to be limited to

1:11:37

the water supply and aquifer rather than which the masses you know, talk to Timpson has been concerned about, and the general principle of non opposition to these applications seem to be intact, but we'll have a look at that. If there's anything that's misleading that that we will send another letter and corrected, we'll talk to Dr. Jameson. And the second thing I'd like to say is that

1:12:08

Mr. Ines culminating in a submission to that you should consider all the material once you've seen it. Well, that is absolutely not controversial. We agree. And we're grateful to you for standing this over to enable PR to look for the inquiry relevant material, we've set out what we expect to see and what we think you will need to see, to look at this issue and then we will be able to formulate and develop our case.

1:12:40

In the light of that. There's nothing controversial about that. And I don't need to, to respond to it. More than that.

1:12:49

Thank you very much, Mr. Fincham. So if I return, then finally to the applicants, Mr. Ennis, are there any further wrapping up matters that you need to put having heard the two elected representatives and Anthony Finch's response,

1:13:04

as well as the applicants, all that I would say is that, again, it should be based on the full facts of the particular circumstances that have been alleged. And in my submission, once you read that material, I believe that you will reach a very different conclusion from that which has been submitted to you by sees in terms of their supposedly complaint.

1:13:27

I also raised the other factors, their requests

1:13:31

across the board with a material that is confidential.

1:13:36

And as you said out, that we're not allowed to, and it would be inappropriate for us to

1:13:42

submit large numbers of documents and other matters, which here suggested should be submitted, say, our D six submission will be restricted to the matter of responding specifically, to the complaint that's been made. And we will set out our version of events. And then I leave it up to the examining panel as to how you take this forward. And I'm happy to leave it at that at this stage. So thank you

1:14:12

for that, but what I'm going to indicate now, Mr. Fincham, is this a legacy had no you are no apologise. But we're pretty sure you want to move on. But Mr. minnis, has raised a new point, which he might have raised money, which he responded namely, confidentiality. The bar to disclosure. And first of all, we accept that there should be appropriate redactions in material disclosed and secondly, a option agreement

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provided to talk to jimson includes a carve out clause 26 or material required.

1:15:00

In connection with this inquiry, and also one that's reserved to,

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to SPR the applicants.

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So

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I

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I didn't know what other confidentiality arrangements may be, but in sports is relying on the confidentiality attempts to come to this option agreement and discussion surrounding it. The option agreement itself addresses the point.

1:15:31

It may be an argument next time, I'm afraid to we

1:15:38

I will be very clear. And our purposes in conducting this agenda item this morning, were to enable us to move swiftly to a ventilator matter that clearly was of concern to a significant number of parties be to enable us to directly engage with the specific requests that have been made

1:16:04

by yourselves and the applicants recognising that there are matters that we would be able to deal with in in summary terms. And in order to be able to maintain a functioning, examination and move on, and there were other matters of judgement that we would have to consider in detail with with in the light of proper evidence before us. Now, I my my view is that we have now before us, sufficient argued position from all of those engaged in what's what's happened, and to be able to make a limited procedural decision that deals with the specific questions of what to do next, as I outlined at the beginning of this morning's process, around the handling of additional submissions, and around the management of requests that specific documents somehow be ruled out. And what I will indicate is that I won't be announcing that now because myself and my panel colleagues sensibly do have to deliberate upon it. And so we will reserve our position and either to any other business at the end of this hearing, or or potentially even into writing after this hearing.

1:17:24

I don't believe Mr. Ennis, that any of that raises any other matters on which you need to address us.

1:17:35

calling somebody African. Thank you. Thank you very much. In which case, I'm proposing to move on from this agenda item by by firmly indicating that we will reserve a position on this matter, it may proceed in any other business, it may proceed in writing hereafter. And we are now ladies and gentlemen at 20 past 11. Rather than have

1:18:01

10 minutes, engaging in the in the next substantive agenda item and then bringing it to a juddering halt when it would hardly be underway. I'm going to suggest that we take our morning break now. And we return at 35 minutes past 11. Ladies gentlemen just a little earlier than we normally would, but we will then be able to get on with the substantive agenda at a clip. Thank you very much, ladies and gentlemen.