

# AUDIO\_ISH15\_EA1N&2\_Session2\_19032021

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00:02

Good afternoon, ladies and gentlemen. And welcome back to these issues specific hearings 15 into the draft development consent orders for the East Anglia, one North and East Anglia to offshore wind farms. My name is Ren Smith, I'm the lead member of the examining authorities. Can I just check with the case team before we go any further that the internal recordings have started, the live streams are running and the captions are switched on.

00:27

over and I can confirm that the recordings have started internally, I can see a new three of you at the live stream has started now in the captions are working perfectly fine to everything's good to go. I'm very grateful for that advice. Thank you very much, Mr. Williams. Now, the knights and gentlemen, we are returning to agenda item two where we have heard from the applicants. I have just got one final question that I wish to put on that material that we've heard from the applicants and I'm going to seek contributions from the parties in relation to all of those matters was no.

01:05

You clearly took us through all of the all of the material that were there has been changed. And I'm very grateful for the explanations of the changes that have been brought forward. And most of the questions that I identified as being matters that we needed to raise have been touched upon. There's one point though particularly that has not been because it relates to a matter where, as we understand from an get submissions yesterday, and indeed,

01:34

the applicants position as we understand it so far, you're not minded to make changes. And this is in relation to the submissions from both eath from both a Suffolk Council. And there we're looking at rep six hyphens series of nine and indeed, from safeties at deadlines seven rep seven hyphens 088.

01:59

drawing attention to the question of the withdrawal of permitted development rights and the tandem issue of the definition of operational land in relation to the operation of the substations. Now, I take it as mail that that you are in broad agreement with and get that you seek to resist such changes such further amendments to the draft orders.

02:29

Ah, we have

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if you know the time, we can deal with the operational land issue, or if you want to separate it off and get through essentially the core decision matters and have it at another point? Or alternatively, no, I'm quite happy to make the applicant's position on operational land clear if that's of assistance, or treated as a separate issue that we deal with somewhere in the agenda. Okay, my instinct, I have to say is to potentially deal with it. Now, you know, it doesn't pin meekly to existing provisions simply because I'm conscious that we have the council and we have

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the SE C's waiting to speak and I'm sure they one or both of them will probably introduce it even if you don't. So let's have it now. And then that avoids having to go back to you on it. Okay, comments about the applicant, dealing with matters relating to operational land,

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in particular, want to address the submission made by safety in relation to the matter. And in particular, the construction of Section 263 of the time country Planning Act,

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if I could just want to point to look at the specific physiology of that and break it down. And then put it in context, I think it's quite important to understand that this particular provision. So if I look at 2631, a,

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and this is the definition of operational land for Section 263, it is land which is used for so I make that first point that clearly within the definition, its land which is used for is an important part of the definition. The second key component of it, it must be for the purpose of carrying out their undertaking, and that is very important and defining quarters covered. So it's got to be the carrying on of their undertaking. So in terms of in my submission, if you're a transmission Undertaker undertaking works that are essentially for the carrying out of the transmission of electricity is effectively what is caught in relation to that paragraph one, obviously, depending on the undertaking, the undertaking will depend on exactly what is envisaged or caught by operational land. But I said two key components of the first sub paragraph

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A is land which is used. And it's for the specific purpose of the undertaking on their undertaking.

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And insofar as the second part is be its land in which an interest is held for that purpose. So again, it has to be land that has held, and it's for carrying on the undertaking. So those two, it's got to be an intention at a future point to be carried on in terms of the undertaking, again, in my view, looking very carefully at what the undertaking actually is, and what it's effectively permitted to do.

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The, there is a second part to the, to the to the definition, as it were, because it goes on in subparagraph. Two, to have paragraphs A and B of subsection one did not include land, which in respect of its nature and situation is comparable with land in general, than with land which is used or which interests are held for the purposes of carrying on the statutory undertakings.

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And insofar as the planning encyclopaedia is concerned, it suggests this as rather strangely worded.

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And, and in my submission, of course, this has a considerable history, and it has been used in not the same way, but in slightly different guises, dating back to two after the Second World War, when in fact, much of the the country was governed and, and essentially a lot of activities were undertaken by Undertaker's of various character.

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But it does seem to draw it seeks to draw a distinction of land which is of a nature, which is comparable with General Land of those, which is specific to the purpose of undertaking

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it in terms of looking at this, you cannot look at section 263 anymore, without not also looking at section 264.

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Because it is effectively linked. And it has added new constraints as to what is to be treated as operational land. And, in particular, effectively, lots of double negatives, I'm afraid in terms of the 264. But ultimately, it's an added extra for land acquired since 1968, that it's potentially got to have

07:32

essentially, a specific planning permission for its development. And, and the key thing here, there is or at some time has been enforced for swept to it a specific planning permission for its development. So it covers a situation where the undertaking may have obtained a planning information planning permission and implemented or there may be a live planning application for future. So it covers both circumstances of my submission. And as subparagraph B of subsection three goes on to say, the development of carried out would involve or have involved its use for the purpose of carrying on the statutory undertakers undertaking.

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And again, I think that that essentially is an added dimension, which adds on to the requirements in the modern context for operational land.

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I want to come back to 263. And seeking some ways to try and illustrate what is or is not caught by the statutory provision.

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And I'm going to try and make it relevant to the circumstances that are before us, and perhaps suggest

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an overhead line pylon

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if I have an overhead line problem, that is clearly land which has been used to support it. And clearly, there's a purpose of carrying on an undertaking in respect of that matter. But as a general position, I don't think anybody accepts that effectively, a pylon is operational land. And the reason is that most pylons sit on land, which has also been used for another use. So for example, a pylon that sits in a field they use as a field and agriculture is continuing. And the land is not just being used for carrying out the undertaking, and it is therefore caught by subparagraph. Two, and it's therefore not operational land.

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Contrast that with a substation, a fenced substation, where clearly electrical equipment stabled, it is clear that the land is being exclusively used, foreign connection with the undertaking, an electrical transmission equipment is located within it. In that context, is it clear that the substation is not

10:00

comparable to other land. It's only an interest which is held for the purpose of carrying on the statutory undertaking, and therefore, is clearly operational. bland. I think that's an important distinction. And I think one which is recognised in application, and also recognised in some ways in the formulation of permitted development rights. And insofar as this matter is also raised, if one goes to the relevant class of the committee to order and looks at essentially, Class B, the electricity undertakings,

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if one looks at the development of statutory undertakers for generation transmission, electricity subparagraph, a deals with installation or replacement, in honour over land on electric line, and the construction of shafts and tunnels and installation of replacement of federal service, political transforming, or switching stations or chambers reasonably necessary in connection with an electric line. Now, insofar as that permitted development concern, you won't find the word operational land used.

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And I think it's very clear that when you piece this together, that effectively lines electrical lines that are installed, or not viewed as being operational land, in relation to the undertaking, because the nature and character of the land which matron situation of land is such that it's still being used for other purposes. And it's not therefore not being held for the purpose of the statutory undertaking.

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And in contrast, our former gets to the aspects which are considered more appropriate for substations. And those are located further down in the paragraph under buildings etc. One gets to the phraseology of being an operational land. So, in my submission, when 263264 are properly construed, that the operational land is restricted to that which is operated, which is

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used for the purpose of carrying out the undertaking, and I think it's got to be very clearly used for the purpose of carrying out that undertaking in relation to transmission, it's got to be used for that purpose to essentially be the land use the underlying land use of the particular area must be used for the undertaking.

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And in my submission, that's an important distinction. And as I say, it's reflected in the way in which permitted development rights are formulated. And my submission, that is the correct interpretation to apply. And in relation to this particular order. In addition, I would highlight the way in which regulation 17 four has been formulated with regard to these matters.

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It is the fencing and means of a closure and encompasses the works number 3041 and 38. The substations and sitting and complaints, and the approved fencing in relation to those works, needs to be in place before the substation are sitting and complaint is brought into use, and must be maintained for the operational lifetime of the work to which it relates.

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Clearly, in my submission, there is a requirement for that fencing to be approved. And in that context, that will help and we'll define the work, which would be potentially operational land arising from at 263.

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Okay, just take me back to that final reference. I think I just had a brief dip of connection, its requirements 1774. Yes.

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So drawing that together, it's therefore your submission to us that there need be no essentially broad, broader concerns about

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creep of operational use outside the enclosed fenced areas of the substations

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occurring because the land is more broadly or the land

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but in the land that is defined as land to provide drainage, landscaping, access and other other necessities to support the proposed development.

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And so on that basis, you're also inviting us not not to be concerned about the question of whether or not permitted development rights or to be intervened with or or curtailed or removed?

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Yes, yes, sir. But I would just flag 264

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Three, that is specific Planning Commission for its development. So it's the specific Planning Commission has got to be in place for its development. So it's got to be development that's caught in my submission of operational land. And secondly, that it's got to be for the carrying on of the statutory undertakers undertaking. And when I take these requirements together, that effectively would cover at the substations and the sitting and complaints.

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Okay, those are clear submissions, I'm grateful for those and and constantly spent a little bit of time on something here that isn't provided for but then in the orders as they currently are, but then

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there will be submissions, no doubt from others suggesting that they that there won't be additional provisions in the order. So I thought it was very useful to get that onto the table. And my second comments about outcome, my second submission broadly on the removal of permitted development rights, as parliament has determined

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where and when conditions should be applied to the application of permitted development, and it draws distinctions. And for example, under subparagraph, b one, in relation to class B, A, there are very specific technical

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requirements, whereby it's not permitted, if it's caught by section 37, one of the electricity Act, or includes the installation of a chamber over a certain matter. So that is essentially dealing with the electrical line matter. And my submission on that is clearly what the parliament is intending, as they understand how important electric lines are, and therefore saying, well, there isn't any geographic extent to which we're restricting that particular permitted development right. In contrast, the electronic communications line, which is under B, is is not permitted.

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And circumstances outbreak takes place on national park on a and b.

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And therefore, there's geographic restrictions and conditions per time. And it's drawing distinctions as to where these sensitivities lie. And where effectively parliament has deemed it necessary or not necessary to extend and restrict the nature and scope of the permitted development. And so on that basis, the transmission lines in your view are of the highest order and with no geographical specificity or limits, and therefore, we should, at least in policy terms, direct ourselves to the rationale for that before we start to entertain submissions that there shouldn't be geographical specificities or limits.

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Yet, comments about that become precisely certain that the plan applies equally to key elements of the substation infrastructure subsequently, which again, are treated differently from the communications. And I can understand that thinking in terms of, again, that being critical national infrastructure, that whatever happens, it needs to be kept going.

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And it draws a distinction between a matter of communication, which it thinks is potentially less important, and it is drawing distinctions between particular paragraphs. It's been very carefully put together my saying that's, that's one of the points that I would say, Mr. Humphries is absolutely correct on when he made his return yesterday, this isn't an accident, very careful consideration has been given to these permitted development rights. And insofar as the applicants are concerned clearly, ultimately, the substation site may be occupied by three different parties with National Grid operating their national grid substation, and the two off two parties operating at the two other substations, it is particularly important again, in looking at this is that the whole purpose of the offshore regime is to introduce competition and encourage participation within the the the often market and they will presume that they will be given those permitted development rights to be able to continue and maintain that operation. And if those rights weren't there, certainly, there may well be concerns raised at the time of the transfer that they are being treated differently in relation to other transmission assets which benefit from those permitted development rights.

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And so it does, it is an important matter, but as I say in my submission, and QA properly construed, it is quite narrowly contained in terms of what operational land is and what the permitted development rights. Okay, well, we've got your position there. When we come through the parties, I will specifically provide an opportunity for both

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East Africa Council and indeed Stacy's to put their positions on these points.

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And to the degree that they note and respond to and agree with any of the points that have been made by your ministers, if there are other outstanding concerns of theirs that they consider can be addressed or secured in another way, then this is going to be the final opportunity for them to raise any such proposals. So we'll provide that opportunity on that basis between you. As journalism as Mel I trust, we now have the applicants position on the draft orders as they currently stand. So on that basis, I am then going to go round the room and seek submissions from interested parties and I will go in the normal order. So I will start with the council's Can I go first to Suffolk County Council, please?

21:14

Sorry, Thank you, sir. Michael Bedford, Suffolk County Council.

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So if I defer, obviously, for the reasons you've already outlined, position for protective provisions as a separate item, that leaves then two

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issues arising under agenda item two, one is narrow.

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But he's quite as it were convoluted, and the other is wide, but he's actually quite short. So, I deal with the the narrow point first, which is concerns the interplay between requirement 32 and new requirement 26

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and 32, which is dealing with the rights of way strategy.

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And effectively what that

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has as an essential trigger is no stage of the authorised development can be undertaken. And then unless and until the rise away strategy is in place.

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And then 26, which deals with the new arrangements in relation to the onshore

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works management plan. And you will have noted, leaving aside your your very fine drafting point about whether there was a surplus, a in little three, but if you look at that definition, you will see that two of the things which are included within those list of potential works are the creation of site accesses. And also footpath creation,

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which are matters, which obviously engage the council in its rights away capacity, where potentially they may impact or interfere with existing rights away.

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And what we had been seeking clarification at earlier stages was a recognition that onshore preparation works insofar as they did affect a right of way would be subject to requirement 32.

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And we had thought that we've reached as it were,

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an agreed position on that. And paragraph 103 of the applicants submissions, rep five, zero 30

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seemed to be clear enough to us. And so we we thought that was clear. But that was I think before then



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the terms of requirement 26 were set out. We then having seen that raised a further query in our deadline, six comments, and that was rep 686, which didn't pre work didn't attract a particular response in the applicants deadline. Seven comments. And so the issue I think was raised informally in meetings with the applicant earlier this week, just to clarify the position. And we don't think that the clarification we got was quite what we were expecting, because we think that then the clarification became that the onshore preparation works would not sit underneath requirement 32 and wouldn't be subject to it. So

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That then led us to focus on the way that the definitions work. And we think that there is still an issue. We think it's an entirely resolvable issue in terms of the,

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the drafting. And I think that the problem seems to be that the, the definition of the onshore preparation works. And there, there are two definitions. There's the definition in requirement 26. item three, which is a subset of onshore preparation works, because it's only the specified ones which appear in that list. The actual list which appears in Article two, one

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is slightly wider, although not for the purposes of my point.

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In relation to this, because the creation of site accesses and footpath creation is common to both. So I say there are two definitions, but I'm not particularly concerned about the the difference between those two definitions because it doesn't affect my particular point here. But

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both of those four then to be considered against the definitions in Article two. One, you've got obviously the definition of the authorised development and the definition of the ancillary works. And apart from the things which are specifically listed in the respective schedules, in relation to those definitions, the other distinction between the two of them is the authorised works would be including anything authorised by these orders, which is development as defined by section 32 of the 2008 Act, whereas the ancillary works are things which are authorised by these orders, but which are not development defined by the section 32 of the 2008 Act. And we understand that, I think the problem is that some of the things which fall within the definition of the onshore preparation works could be in one category, or they could be in the other category, depending in particular on whether, for example, any engineering operations were involved in what was entailed to achieve, let's say, the creation of the site access, or, for example, the creation of a new footpath. And obviously, depending on the answer to that, it would be either one side of the line or the other. And

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I think the, the essential problem that we we are left with is we don't think that the documentation, and it's particularly more the documentation in terms of what is said in the onshore preparation works

management plan, which is, as you know, Appendix one to the outline code of construction practice, and how that marries with the outline rights of way public rights of waste strategy.

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We don't see at the moment that it is sufficiently clear that all or any of the works, which would be onshore preparation works, which might involve

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operational works, which would affect a right of way, would be caught by requirement 32. And since that's all we're trying to achieve, and I say, it's, it's quite a convoluted point. It is, it is a fair bit of detailed drafting, but we think that it's not quite there yet, in terms of reassuring us that it all works together. And that those various definitions as it were coincide in a way which which gives us that protection

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and winding this back to a core principle. I take it then your position is that there should not be circumstances were

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essentially works that take place as preparation works that affect the public right of way network occur

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prior to commencement, without another form of documentation and authorization by your authority. Absolutely, sir. Yes. Okay. So if we can kind of keep that in mind as the kind of shining light on the hill that you're trying to achieve.

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And obviously, when the applicant then responds, we'll see if they're minded to, to take this further. But but we're conscious of those arguments. So So yeah, claim. Thank you for that submission. Thank you. So I'm grateful.

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Let's say we're in essence agnostic as to the way in which it's best dealt with, it simply needs to be dealt with. And we're not precious as it were, the best way to deal with it. So so that was the,

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say the slightly convoluted point. The second point, which is a broader point, but I think it's not one that needs anything other than noting,

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always says, We've now got the new shedule 17 of the certified documents. And we welcome the way that that's now as it were

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articulated to give gate greater precision, and make it easier to identify the various elements, obviously, at the moment, the way that that sheduled is laid out, in a way, which tries to be helpful, but it lists the specific documents not only by title, but also by iteration. And the point that we simply make is, as you will know, from a number of either actions or indications through the earlier hearings, it is not now intended, that those documents will rest in that form. And a number of them, in particular in relation to highways matters, in particular in relation to flooding and drainage matters are to undergo further changes. And we just wanted to as it were to be registered, that that shedule will itself therefore need to be amended, in order to reflect what we understand that deadline eight will be a new suite of some of those documents to deal with some of the fairly substantial points, particularly on drainage matters, which you've heard about. And where obviously, there is still further work to be done, at least as far as we're concerned.

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I say that I say the the various points need to come together. And the same applies, obviously to the various highways documents where, again, you've heard we've got various debates and issues on matters. And it's making sure that the the final version of sheduled 17 reflects that. Firstly, that's a it's just a consistency point rather than a point of requiring anything further at this stage. And in that respect, that's probably a good point to take as an action for everybody, which is that we need the greatest possible clarity of deadline aid, that the final forms of all of the documents intended to rest within schedule 17 are recorded. Or if they're not, for extraordinary reasons,

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then there must be a clear written reservation of position. And what we would ask deadline nine is that if any of the interested parties consider this a document is not the best the most up to date, the one which should be reflected in the schedule that that should be set out at deadline nine. We don't like doing this because, bluntly, the observation of all examining authorities on the submission of reports to the Secretary of State is that all of the documents that should be done, and that we should be in a position then to recommend a whole positively or negatively to the Secretary of State. But if there are still outstanding points,

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our attention should be drawn to them so that we're then in a position to to maybe make a qualified recommendation to the Secretary of State, should that be required that says that further consultation between the applicant and a relevant party such as a council is required before it being determined, which finally is the appropriate reference to place into the schedule? Because we must make sure that these are right.

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thing so that that's something noted on our part. Okay. Thank you very much.

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Anything else that you need to introduce on on on the order? Okay, well, on that basis, I'm now going to go to Mr. Tate for the Suffolk Council. What's our flag so they're in readiness is that once I've gone to a Suffolk Council, and before I turn to the parish and town councils, I will introduce the MMO as

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a council equivalent for the marine area. So

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thank you, sir. Just to clarify, would you like me to deal with the operational land PD, right to point as a discrete point now, before running through any other points on the I think that would be very helpful, given that the applicant wrap them up as a piece? Yes, we can look at them and then we can consider the degree to which they're drafting points for the order that flow out of them. Yes. So if I just deal with that that point and then reserve the other points to just a little bit further down the line.

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On this, I'd like just to make four points if I may.

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So you refer to Rep. 6079, which sets out

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substance of the counsels argument that is supplemented by Rep. 7063. Were at paragraph 213.

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The proposed wording in the requirement was amended to provide greater clarity and precision in particular,

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making it clear that it's in connection with works 3038 and 41. I confined to the substations not to electric lines more widely. That's the first point.

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The second point is that

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the as to what the permitted development rights

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allow,

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Part 15, B, D, and F of the GDP do

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relate to operational land. And what is operational land is

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fact sensitive because it requires the application of the definition in Section 263 used for the purpose of carrying on undertaking and land in which an interest is held for that purpose. And whether it's comparable with land in general, rather than with land used, or in which interests are held for the purposes of the statutory undertakings. Section 264 doesn't add anything in this regard, because article 33 of the draft order makes it clear that this would be a specific planning permission for its development.

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And

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section 2643 b

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reiterates the test in 263. In any event, used for the purpose of the carrying on or the statutory undertakers undertaking,

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but what is

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operational and what meets those tests are not in a given case will be highly fact sensitive, and to take as an examples storage used within the compound does that count as land which is used for the purpose of the undertaking, indeed, not necessarily within a compound, similarly, parking, not comparable to land in general, but related to and ancillary to the purpose of the undertaking. So therefore, there is a

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a potentially wider effect of the

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meaning of operational land than Mr. Ennis was getting it.

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That's the primary focus is on

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buildings and

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part 15 b, d, expressly is allowing extension or alteration of buildings on operational land. And that would occur without any,

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if those remain without any design process with the council.

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Without any of the community engagement that's built into these plans.

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If it was decided that a building should be extended on operational land, if that included land use for storage, and the like,

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Part 15 b, f, is a capsule again in relation to operational land and the other development and Part B A, that starts by dealing with installation of electric lines, but it also includes the installation of transforming or switching stations or chambers, potentially wide and again, not in this case, not limited to operational.

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And therefore the scope is potentially wide without engaging any of the design process, carefully built up through this.

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The process is where you're considering all the community engagement. So that's my second point. The third point is that limited removal along the lines indicated at rep 7063 to 13. is in this case justified

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for the reasons set out in that document, that there is the potential to adversely affect the visual appearance of a

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sensitive landscape in proximity to receptors.

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And

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those are legitimate reasons for supplying the

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the powers. And the fourth point is that it's no part of the council's aim to unreasonably fettered the ability to undertake the operator's duties. But it doesn't seem to us that that would have that effect. And the broad point made by Mr. Ennis, that, well, parliament has included this for a reason.

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Well, it's included this with application to

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industrial and other locations and disapproved, where there is high sensitivity, for example, lamb, but the implication of what Mr. Innes is saying is that one should never be removing

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these rights irrespective of the particular local circumstances, that can't be right. In a case where there is a high sensitivity, then it can be justified. And the PPG indeed indicates that justification. It needs justification to remove but but does it suggest that there can't be such justification? So those are my

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four points as to why we think the

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requirement should be imported. But we've got to make it clear that its intent the intended focus relates to new buildings or extension of buildings

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in that respect, and two points, which are direct to the applicant as much as I direct to you with the potential to be drawn forward at at deadline as the first the first is in relation to the proposition that the critical national infrastructure dimension of of transmission system components is such that

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permitted development rights should not be Well, firstly withdrawn, African submission likely withdrawn. Again, the applicants submission. And my

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question then will be are that is anybody aware of there being any specific circumstances in which these, this particular class of permitted development rights have been withdrawn for a reason?

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Because if there is precedent for it anywhere, there's anybody who's aware of it would be useful to see that deadline date, so at least we're we're clear about what informed the circuit whether it has ever been done before. Question one, Question two, what informed the circumstances if it was done,

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then there's a secondary point, which is in relation to the interface between the examination process and the consideration of

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the Rochdale envelope has set with reference to an environmental statement and what has been assessed and the degree to which permitted development has the scope to range

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significantly above or beyond the effects of that which have been assessed, and whether in in those circumstances, there is a justification for the removal of rights that would otherwise be normal. So that those those are the two observations that I just lay on the table, it may well be that they're not responded to orally here, but if they can be responded to, by their by name that will be useful, essentially putting us in a position to finally adjudicate a contested position between yourselves and the applicants, if that's where we end up needing to be. Okay. Are there any submissions that you still need to put on the operational land and PD rights point? Or can you then move to the generality of the drafting and the audit, I can move to the generality. Thank you very much.

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So

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turning First of all, to Article 37.

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Yes, I'm there.

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Article 37. To makes it clear that this provision doesn't apply to any matter for which the consent or approval of the secretary of state or the MMO is required

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and it may well be intended to be employed.

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But it isn't express that matters for which the consent or approval of the relevant planning authority

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are also to be excluded. But ultimately, that might go to the Secretary of State if there was some disagreement that

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it's anticipated that is not necessarily likely. And therefore, there should be some

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reference to the relevant planning authorities jurisdiction being

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under schedule 16, at owl being excluded. This, indeed was was where I just wanted to clarify that that your view then is that schedule 16 applies.

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Article 38 and schedule 16 apply there is a procedure for the discharge of requirements that expressly invokes an appeal process if there is a non determination or there is an adverse decision.

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Yes, that's and that is how all such disputes should be dealt with. They are not arbitrable matters. So it's just a clarification really, in 37 to the arbitration doesn't arbitration provisions don't affect that, because yeah, it's made explicit in other in the two other examples. And if that should be, there should be a minor amendment to encompass the approval process by development planning authority. And I think that would include the Highway Authority where in the few instances where they have the direct discharging

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responsibility. So that's all on that, then the next point is on requirement 12.

46:41

And last time, we expressed anxiety about article 12 at requirement 1217 and the Working Width of the cable route a crossing the 100 River.

46:58

We have now received further explanation of that in the biodiversity HRA hearing,

47:04

we note that the

47:10

40 metres has been reduced to 34 metres, and that addresses the matter to our satisfaction. So we welcome that. In relation to the substation design principles statement, which is referred to first at requirement 12. Four.

47:37

There is there are two matters in relation that doesn't deal with the it doesn't relate to the drafting of requirement 12 at all, just relates to the substance of substation design principle statement, there are two points there for incorporation still into that statement, which I think still is a wrap for stage. The first is the wording that we had endorsed set out in grep 6877, which was from originally from Suffolk County Council,

48:13

as to

48:15

the detailed design of the project, responding to emerging new technologies, et cetera.

48:23

So that's

48:25

point 1.2 relates to the commitment a commitment within that to be expressed to seek to reduce, as far as practicable, the overall size of the

48:41

proposed buildings in the design process, that's just a marker that we

48:47

are hoping or expecting to see some potential alteration in that document.

48:57

The third area requirement 13

49:04

we welcome the changes that have taken effect in the in this latest version of the draft decio. And that addresses our concerns.

49:21

The next point is requirement 15.

49:25

It was

49:27

confirmed by Stephanie mail this morning, but that is going to be further amended to include work 29. And if that happens, that addresses our concern in relation to

49:42

the next point in relation to is in relation to requirement 21 and small change that's occurred in requirement 21 two and that addresses our concern in relation to requirement 21

49:58

in relation to

50:00

23

50:02

there are to be further changes, first in relation to the within the body of the outline code of construction practice. So that there is subsequent notification about emergencies. And we welcome that. And secondly, to provide for approval of what is an essential activity.

50:26

So that 23 three and also the suppliers to for 24 three is going to be expanded with some wording we've discussed and agreed with the applicant. So that that is part of the jurisdiction of the local planning authority. So that addresses that because that will address our concerns on requirements 23 and 24.

50:52

The next point is in relation to 26.

50:59

We welcome the inclusion of the of that in principle.

51:05

And we like Suffolk County Council's comments and not going to repeat. Repeat that and

51:14

that that can be addressed

51:18

in not repeating them. Do I take it that those are supported by yourselves? Or

51:25

probably we haven't fully absorbed that point? We weren't aware of that?

51:31

We are so I don't want to be unsupported. But

51:37

it seemed to make sense from what from what, from what I heard, but that we hadn't in them with the judges. Okay, five

51:47

requirement. 27.

51:50

Clearly, we've only recently had the

51:53

noise session, but Stephanie Mills indicated

51:59

that there are obviously discussions following that, and

52:08

that position may become clearer by deadline date.

52:11

Well,

52:15

there is then requirement

52:17

30 which we

52:21

the adjustments to which we welcome.

52:24

33 has been the revisions have been agreed with both this council and Suffolk County Council. So we welcome that.

52:38

38

52:41

have no comment, we note that

52:45

then there is

52:48

requirement 43. We have no

52:52

comment on that.

52:55

And that brings us then to shedule 11. We note the inclusion of important Tetro 28. Within Part One previously admitted, so we're content with that.

53:07

And that brings us finally to schedule 16. The final point.

53:14

And

53:16

here so far as the amended,

53:21

time periods are concerned,

53:24

we are willing to accept those

53:31

that leads one issue, which is the principle of the deemed consent where we are

53:41

not in agreement. And there are four short I can make four short points. In addition to that, if that's helpful, that is helpful because if you know the end of the day, if you're if you're in outstanding disagreement, and this becomes a matter that has to be adjudicated in our reports. And so we want the armament of submissions both from the applicants and yourselves in order to enable us to to carry out that adjudication make a recommendation.

54:11

point one is that the such a provision is not contained in appendix one to advice note 15 data 2018 and

54:24

departure from that requires in the in the wording of appendix one to be justified in full.

54:34

And it's the council's position that the ordinary position which provides for appeal against non determination should be the appropriate provision.

54:48

Secondly,

54:52

looking at the local position

54:56

we have the precedence of EA one and EA three

55:00

neither of which included deemed consent provision. And

55:07

it's the council's understanding that that has given rise to no issue. Indeed, there are no appeals at all.

55:14

So that

55:16

it will be my submission. There's no local justification,

55:20

imposition of a deemed consent provision. Thirdly, looking at my might call them cognate. Recent decisions I in the energy sector, neither Hornsey three, approved on the 31st of December 2020.

55:41

No, Norfolk Vanguard proved in July 2020. Although, of course, now quashed included any deemed consent in the discharging provisions.

55:55

So the Secretary of State in his most recent approvals in this area, has not included such provisions not concluded that they are deficient in any way without such provisions. And indeed, Norfolk Borealis in the draft DCA does not include a deemed consent

56:14

provision. And the fourth point is that a comparison with the general planning regime is telling because there is provision for deed consent in the development management procedure order 2015. But first that explicitly excludes EIA development and various other categories, presumably on the basis that's too important for the deemed consent provision to apply. And second, that in any event that provides as part of a coherent and structured process, as opposed to an ad hoc application or variation,

56:58

for Diem discharge notices to be provided. So that if there is going to be prospective reliance on this provision, to avoid the possibility of there being some procedural hiccup or misunderstanding, given the importance of what would the significance of the deem consent provision is that was the circumstance it provides for these Diem discharge notices these 14 days before the expiry period, which then stimulates if that is necessary, the local planning authority to make the determination one way or the other, rather than something happening,

57:35

for whatever reason, without any advance notice of that. So that

57:43

that would that is my fourth point.

57:46

And, of course, there's no such provision here.

57:50

And

57:52

I think that's all I need to say on that. So I think that covers all the points we'd like to make on the draft decio, what is in and what isn't?

58:06

Thank you. Thank you very much, Mr. Tyson, in that respect, and whether the applicant addresses them orally here today, or alternatively, in written submissions, first, deadline eight and I would place my preference towards the latter. It will assist us if the applicants in addressing those points that Mr. Tate has raised, sets out very clearly, its rationale for the specific need for the deemed consent provisions in this particular instance, what is particular what particular mischief is sought to be remedied by that by having those provisions in place, because they have been made in a number of ends have made orders but there have been specific local justifying circumstances or significance justifications based on the particular projects concerned?

58:56

And alternatively,

58:59

as well Can Can Can they say, so they need to set out very clearly what the justification is. And secondly, can they address the point about some form of deemed compliance notice provision, so so that so that maybe, as Mr. Tate is suggesting now, there's a means of cutting a halfway between for deemed consent approach where no notice is provided and, and the consent then emerges automatically in one way, a formal notice of the application of the deeming provision has to be served on the LPA before it can come into effect. So that those are some matters that I'd like to see the applicant wrap up in submissions to us.

59:47

Does that bring you to the conclusion of submissions for the council, Mr. Tate? Yes, thank you very much. It does. Now I'm very conscious in terms of moving on to the next party in line is the marine management talk.

1:00:00

nitration and there are there is a fair chunk of detail that the MMO will, I suspect wish to address this on. And because there have been a number of changes to the deeming licences, particularly. So what I'm going to suggest is this is now 20 minutes past one. Can I suggest that we take a break and we return at 10 minutes past Tuesday, it's a slightly shorter lunch than we would normally have 10 minutes past two ladies and gentlemen, and then we'll move straight on to the marine management organisation. So let's now break for lunch and return at 10 minutes past two. Thank you very much, ladies and gentlemen.