

## ISH 6\_29 April\_Session 2

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00:00:05:27 - 00:00:16:29

Okay. Well, moving on, we have reached section three of the agenda today. And at 3.1, we're going to talk about allowance for compensation measures for other projects.

00:00:18:23 - 00:00:53:16

The answers we received to our first written questions seem to suggest a disagreement between natural England and the RSPB about the approach used in compiling the report to inform appropriate assessments of the contribution to the losses of the Kittiwake feature of the Flamborough and Filey Coast Special Protection Area as a result of the Hornsea three project is compensated for and that the project's contribution to an in combination assessment can therefore be discounted. Clearly, we need to follow this up. The disagreement is between those two organisations, but we have your response as well.

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Do you have anything to add on this matter?

00:00:59:01 - 00:01:11:16

Kind of governance for the applicant. No, we don't have anything to add. Clearly, our position is aligned with natural England's position on this matter, and it's for RSPB to set out further their position insofar as they disagree. Thank you, sir.

00:01:12:04 - 00:01:25:16

Thank you. And we will, of course, follow that up with them after this hearing. Item 3.2 is the approach taken to apportioning impacts on European site interest features?

00:01:27:16 - 00:01:47:04

Mr. McGovern The applicant, responded to excuse our first written questions. HRA 117 on this topic at Deadline's one and two. Could one of your team please summarize and expand on those responses in relation to your approach to the apportionment of impacts on the interest features of the Filey Coast Special Protection Area?

00:01:48:22 - 00:02:03:18

Interested in understanding your rationale for using a theoretical, generalized, stable aid structure derived from the population models and why site specific data were not also presented as was suggested by the RSPB.

00:02:11:10 - 00:02:18:03

Got him for the ask. And yes, sir, I will pass you to Mr. Sweeney, who'll be better placed to answer that question for you. Thank you.

00:02:18:24 - 00:02:19:09

Q.

00:02:21:04 - 00:02:58:25

She wants relief for the American. And yes, I suppose on the latter, the two questions in response to queries around the use of science specific survey data. I think just due to the sample size from is quite small in terms of those differentiating the difference in the age structure of populations. And that's why we default to more reliable sources, which in this case is the the breakdown of the age structures from the first paper, first hit papers that give you a Dutch structure is adult, immature and breeding.

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It's also worth noting we did put within our within our responses that there are certain species that may look like adult birds and it will tend to purposes to you and I. Even professional ornithologists out in the field would not be able to differentiate the difference between, say, second year kittiwake and adult kittiwake. But obviously there is that and more research guidance that then puts that structure in place. So we felt that and the evidence was in support for us to, rather than of default, rely on small sample size data regarding adults that may actually be not breeding adults or birds that look like adults that haven't yet reached maturity to be able to breed.

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Then we relied upon the data sources there from a much wider and highly increased set of data to go into that research. Sir.

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Thank you and reject comments on natural England's response to our first written question, which highlights the recently published paper by looking at Moselle and whether this might provide you with any further insight.

00:04:11:19 - 00:05:04:01

I shall finish for the applicant again. Yes. I think we should. Certainly. We did discuss the beginning paper. Briefly in our discussions in Ice Age five. But we can reiterate. Yes, I mean, these are all very, you know, exceptionally useful reports, particularly in taking all species, I suppose, for this. In this particular case, a number of coal number of colonies around Scotland contributed to those, the type birds. And there were smaller number of tags that we recall retrieved rather in that dataset from colonies that would be more applicable or we would assume to it moved through the 24 sites of those birds, very minimal taking retrievals from Coquet Island, the Falkland Islands, and the Isle of May, which is the the southernmost of the larger Scottish colonies, if you like.

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And so, yes, we find it useful again the datasets that they don't sort of prove that birds wouldn't migrate from those colonies south with hornsea four array area as they rely upon what we termed the 50% kernels from those sites to 50% essentially of where there were 50% those if you looked at the other datasets, the, you know, where are the birds from there from those colonies had flown. And indeed there were many records suggesting that there were further to the southern North Sea and indeed even off the CORNISH coastline within that dataset.

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And there's also one further point, really, is that there is no differentiation made between the male orcas that were tagged and the female orcs that were attacked. And just the just that anyone unaware of the biological behaviour of all species, then the females tend to leave the nest earlier, leaving the males with the chicks. And at that stage the chicks are flightless. So the males do move slightly slower, obviously without flight with their chick, whilst the females, you know, have that sort of restriction on their movements by blocking all the datasets together, we see it inherently causes a bias towards those being unaccounted for.

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So I think had the datasets been split up, we may see some different results even when using 50% kernel distributions that we have within that paper. So yeah, it's very useful paper and it's very good to see that type of research being done. But I think in this case it would point to it being a reliable source to suggest repurposes the birds from those particular colonies do not fly south and therefore through the Hornsea four project area during those post breeding dispersal months.

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Thank you.

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Item 3.3. We're going back to the issue where I raised a bill from the Falkland Islands special protection area where not screened in to the assessment.

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You did respond to this to natural England's relevant representations on the report to inform appropriate assessment

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where they requested further justification as to why raise a bill which is an unnamed component of the foreign islands special protection area seabed assemblage was screened out for no likely significant effect

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here analysis which we received the deadline to predict mortality is significantly less than one breeding adult bird from the special protection area. Even when you use the upper displacement rate of 70% and mortality of 10%, clearly we we need to understand natural England status after this hearing your responses to that and whether it can be correctly screened out, do you have any further views on this or shall we move on?

00:08:18:10 - 00:08:51:14

Shanti. Yes. In the latest version of the risk and issues load from natural England, they did confirm that. They agree that the assessment methodology and the outcome from the note we the applicants submitted, they are in agreement with the outcome of that, sir. I should probably just reiterate was reiterating to those the letter may be the process that, you know, is, of course, filtering system for those species and sites that the screening at your nature a screening process and some of that is around, you know, expert opinion.

00:08:51:22 - 00:09:26:09

And that expert opinion dictated that in this instance, we screened we did not screen that particular feature, which is a part of the seabirds, which are not named components of a seabird assemblage. One of the species that we did screen for, and we actually determined that would be there would be no likely significant effect. I think it just goes to show that that expert opinion is proven in this instance as well. So there was no likely significant effect, as you can see from the results, even by taking the most precautionary approach possible for determining the displacement of that that species, that there is no lucky sign of a defect.

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So yeah, we're pleased that they're in agreement on that in principle.

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So another little. Well, excellent. In that case, that completes section three of the agenda. Unless anybody else wishes to raise that, I think we're going to move on to Section four, which is matters that have not been previously discussed at hearings relating to derogation and compensation.

00:09:50:23 - 00:09:59:09

Okay. So item 4.1 is a discussion about nesting habitat and is it a limiting factor for Kittiwake in the southern North Sea?

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This comes from the fact that Natural England has previously submitted that it's unclear if nesting habitats is a limiting factor for the breeding population of kittiwake in the southern North Sea. Whereas we're grateful for the responses from all of you to our first written question at deadline two. I just wanted to tell a little deeper into the respective parties current positions on this particularly natural England was my intention as we're not entirely clear about its response to our first written question in relation to this matter. So we will need to follow this up in some detail with them after this hearing as an extra point.

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More specifically, could I ask the applicant review and something related to this, we've had some suggestions that provision of artificial nesting habitat might simply lead to relocation of existing kittiwake paths from natural nest sites to the new structures that are provided for compensatory purposes. Do you have a view on this? And indeed would it matter in terms of the Flamborough and Farley Coast special protection area population or the total by geographical population? If that did occur, I must look at how much a team is able to help me with that.

00:11:15:05 - 00:11:21:02

Got him covered for the outspoken Mr. Carter will be able to assist you with these queries Apache. Thank you. Once.

00:11:24:15 - 00:11:59:01

Hello. Fraser Carter. On behalf of the applicant. So within a within an offshore context, which is the preferred measure or location for a artificial nesting structure for kittiwake, the applicant has undertaken a detailed location identification area today, which has been led with the consultation process with both natural England and RSPB today. But referring specifically to your question in relation to whether or not birds are just going to be displaced from natural colonies in the offshore environment.

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This was a context that nobody was really aware of until the applicant had actually undertaken and commissioned surveys during the breeding season last year to try and understand how many rigs and how many kittiwakes are present offshore. They were able to show that a large number of kittiwake were present offshore of the net, sitting in suboptimal habitat and often exposed to high levels of disturbance from operational oil rigs. The applicant then further determined that over one third of the rigs that were within their search area for the location of a potential compensation measure were due to be decommissioned within the next 4 to 5 years.

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And just those rigs alone are actually going to release around 333 apparently occupied nest sites. So the proxy that's used for nesting pairs and this is this is likely to be an underestimate for a number of reasons. So therefore, the applicant's proposal of actually delivering a artificial nesting structure would alleviate this limitation of a lack of nesting space in that location. The two positive benefits associated with increases in productivity as well, which we've referred to in a number of headline responses, and therefore provide a significant number of juvenile kittiwake into the kittiwake biogeographic population.

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So what was the figure you quoted? You said a third of the rigs would be decommissioned when you get the figure for the number of nests. So 103.

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133. That's correct. Yeah.

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Sorry. That was 333.

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333. I'm sorry. Is there any evidence about how successful the breeding is in those nests?

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Evidence wasn't collected during the first year of survey by the client on that, but we have done a literature research and the Collinson dogs and paper et al. 2019 did undertake a review of Norwegian oil rig nesting kittiwakes and was able to show that the productivity of those breeding in offshore oil rigs was higher than all natural colonies that were included within the survey. And the majority of those offshore oil rigs also had high productivity then urban structures for kittiwake as well.

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If that's been submitted into examination already, that literature, is that correct?

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Yes, it has been, yes.

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Okay.

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And in terms of going back to going back to my question.

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What relationship does that have with the potential relocation of existing kittiwake pairs? Is there a potential that those that would use or would continue to use those offshore oil rigs would just simply be relocated from elsewhere?

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So the opportunity here is that there will be a large number of kittiwakes over the next 4 to 5 years that will be evicted. And what the applicant is proposing here is a kind of they a fancy Kittiwake Hotel, if you like, that will offer the optimal evidence led nesting opportunities for this species. It will be designed in line with the evidence to provide suitable nesting locations of a certain dimension, but it will also be linked to using decoys playbacks in order to encourage colonization rates as well.

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Whilst we are of course cognizant of the fact that Kittiwake could be drawn in from other areas. The additionality point linked to that is that the paper that I referred to a moment ago shows that birds that breed offshore and ideally at the artificial nesting structure that is proposed by the applicant, are likely to have a higher productivity rate than those onshore. So it would be beyond just the case of moving birds. If birds did choose to establish a colony there, it would actually be going a step forward and increasing the productivity associated with it.

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And just to build on to that as well, the applicant has done a number of packages of work which are referred to within their application number of 189, which have looked to try and understand the available breeding pool of kittiwake that yet to recruit so are looking for available nesting habitat that might be suitable in which to establish a nest.

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Can I just check that I understood you correctly? Got it.

00:16:20:00 - 00:16:49:02

In the first instance, you're looking at existing rigs which are about to be decommissioned, which were already hosting kittiwakes to whatever extent. So the first action is to avoid the eviction of those. So presumably that in itself would not add any additional paths to the population. But we are hoping that or expecting that by redesigning those rigs or redesigning elements of those rigs and taking away the disturbance factors, you might actually increase the productivity and number of nests on that rig.

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Sorry, sir, could you repeat that question? So I think that was a mouthful.

00:16:56:10 - 00:17:08:23

Right? I think in the first instance, you said that the you'll be looking at rigs which are already hosting Kittiwakes. So what you would be doing would be avoiding eviction of existing pairs of kittiwakes. Is that correct?

00:17:09:18 - 00:17:30:00

I'm afraid so for the applicant. So it would be providing an alternative nesting space for those birds that have been evicted once the rates that they are currently rated on have been removed. The additional benefit would be that it would be a purpose built structure rather than an operation or oil rig which provides probably suboptimal habitat for the species.

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Am I incorrect in my understanding then, that you are looking at an existing rig to adapt.

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For these costs for the applicant? There's two options that are currently being put forward by the applicant in the offshore environment. The first is a repurposed structure. So exactly as you say, sir, a repurposed rig that's designed for purpose. And the second option is to design a new rig or a new structure that would be designed to fulfil the compensation measure. So, yes, you are correct.

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So at some stage, presumably, you've built into this equation not just accommodating the evicted birds from those oil rigs, which is nothing to do with your project, but you're trying to compensate for the potential losses as a result of your project on top of that. So that's been factored into the equation, I assume?

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Yes, that's correct.

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Thank you.

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In terms of in terms of what's happened so far, in terms of artificial onshore nesting areas, I mean, that's still on your list as a potential way forward. Is there any evidence that there's been displacement from natural populations into those areas?

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Fraser Carter on behalf of the applicant. We're still in the very early stages of understanding how artificial nesting structures that have been produced onshore have

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played a part in the dynamics of naturally nesting kittiwake. The compensation measures have been praised for recent projects that look at artificial nesting structure. Only time will tell how they interfere potentially with natural nesting, artificial nesting, artificial, sorry, naturally occurring kittiwake structures. But at the moment the evidence suggests that there's a large number of birds breeding in suboptimal habitat and also a large population of birds that are prospecting that are looking to set up a colony.

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So therefore even delivering an artificial structure onshore, which is the kind of back up option that's being proposed by the applicant, which still have a population of birds for which to fulfil it.

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And part of my original question is, you may or may not be able to Armstrong may not be willing to answer. But my my question was, if there was displacement from natural gas sites to these compensatory artificial nest sites, would it actually matter in terms of the numbers in the population, given that that would then lead to vacancies, as it were, in the natural hotels on the cliffs, which presumably would be available for colonization as well.

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Fraser Carter on behalf of the applicant? Yes, that's correct. So again, linking to the fact that productivity might be higher offshore and therefore the juveniles that will then be produced from artificial nesting structures will then contribute to the biogeographic population for which flamborough and finally coast s.p.a Fitz pass. So it's all in that larger population scale where those birds would be recruited into.

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That's very useful. Thank you very much.

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And that was kittiwake. So unless there's anything else on the kittiwakes. Can we move on to 4.2? And the question here is whether nesting habitat is a limiting factor for guillemots and raise a bill along the southern coast of England and in the Channel Islands.

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Data submitted to the examination

00:21:01:04 - 00:21:23:08

indicates increasing guillemot and radical colonies of Flamborough head. And in our first written question, we asked if there are any regional variations in population and colony dynamics. Thank you very much for everybody who provided the very useful information in response. It seems the picture is quite variable, but with some documented increases in Devon and the Isles of Scilly over recent years.

00:21:26:11 - 00:21:57:25

I don't know whether I still have Mr. Carter here. I'm paraphrasing, but in summary, I believe you are telling us that suitable for occupied or depleted or nesting habitat can be found at the sites that you're investigating for compensatory rat control, which are mostly around the Channel Islands. The overlap of rat colonies and unoccupied or depleted habitat, you say, is a good indicator that rat and rat eradication would have a beneficial effect on nesting colonies, or at least that you can infer this.

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Is this a reasonable understanding of your position?

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Fraser Carter on behalf of the applicant? Yes, that's correct, sir. And the information that we've pulled together today shows that the locations that are currently being investigated by the applicant in their eradication implementation study support either or both brown and black rat populations, and also currently hold small numbers of Guillemot and Roosevelt or historically held numbers. We've been working with various stakeholders to understand the level of overlap so the level of interaction that predators may have to get them on Roosevelt and the associated impacts that might have two populations as well.

00:22:41:12 - 00:22:52:29

Q How confident can we be that there is the availability of viable nesting habitat as a limiting factor for guillemot and visible along the southern coast of England and the Channel Islands?

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So Fraser Carter, on behalf of the applicant, said the breeding areas of Guillemot and Isabelle are typically situated where birds are not accessible by mammalian invasive predators. And in a mainland context this means that birds are usually confined to two sheer cliffs or boulder and scree fields at the bottom of those cliffs where they wouldn't be accessible even from the sea. As is the case for Kittiwake. The Northeast and the south coast cliff habitat is relatively limited in in that area. And therefore there's only a relatively small number of guillemot raised, though, that actually breed along the southern coast.

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In the southeast, when you compare it to the size of populations at Flamborough and finally and then further north into Scotland as well. Islands in the south are also limited as well. So you mentioned the Isles of Scilly. So the we've also got a number of smaller islands, but that don't pose as suitable habitats for Guillemot Arcibo. So the number of islands available for both of the species in comparison to elsewhere in the UK are also limited. And as a result of those two factors, only two of the 34 primary designated space for Guillemot are actually found in England and both of those are in the north east of the country with some of them Filey coasts, of course, being one of them.

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And a similar story is true for Fraser in that extent as well. But in relation to islands, cliffs in the tops of large stacks are often preferred, but where predators aren't absent,

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they often. And where that habitat is absent, sorry, such as within the Channel Islands, they breed among rocks and on flat areas as well. And this makes the species particularly vulnerable to invasive mammalian predators where they exist. And this is why the applicants undertaken the site visits and the implementation studies in order to understand that level of risk as well. So ensure sorry as a kind of summary, the information that the applicant has gathered to date shows that all of the locations that are currently considering do have overlap and that there is likely a population limiting factor as a result of invasive mammalian predators and in this case, rats.



00:25:01:02 - 00:25:18:29

Okay. Thank you. And I guess the question was actually how comfortable we can be that the availability of nesting habitat is actually a limiting factor, or whether there's other factors along the southern coast of England and around the Channel Islands that might be limiting the numbers of pairs of Guillemot other than nesting habitat.

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Fraser Carter on behalf of the applicant. Apologies. That wasn't a direct answer in relation to that. So that the applicant does have confidence that the habitat that is available at the locations that they're looking at is likely to be limited by the presence of invasive mammalian predators and therefore the removal of such species would allow the increase of guillemot populations. Whilst we are aware that there are other influencing factors for Guillemot on reasonable in the Southwest. We could look at the land, the example of the eradication that was undertaken.

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There is a really good example of how a an eradication has led to a large increase in guillemot and reasonable numbers and has also increased the amount of available habitat there. And the applicant within their ecological evidence report had a look at their population increases relative to both national increases, but also regional increases to show that the population increases guillemot rates but at Lundy were above what was happening at other local colonies and therefore suggesting that predator eradication was a limiting factor in such habitat.

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Thank you. That's useful.

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Okay. I'm happy to move on to item 4.3 and assess anything else you wish to add to that. This is the likely effectiveness of an offshore nesting structure for Gannet, and that's including consideration of a joint structure for Kittiwake and Gannet if required. We have had a quick discussion about this already.

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We've heard from the applicant that we can have confidence in the effectiveness of a joint nesting structure and we have read the submitted evidence that appears to demonstrate some use of offshore structures by Kittiwake in UK waters. And you have referred to that very recently. It doesn't, however, appear to be similar evidence in the UK or European waters for Gannet using these structures on their own or as a joint option with kittiwake. We've seen the submissions from Natural England and the RSPB. The cast doubt on the likely effectiveness of the provision of artificial nesting structures for it, despite the evidence they've submitted so far into the examination.

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I can only assume you are continuing to promote this as compensation without prejudice, obviously compensation. Gannet. And are you intending to submit any further evidence on this?

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Fraser Carter on behalf of the applicant, as you referred to, sir, and referring back to issue specific hearing filed yesterday, the applicant is anticipating not to undertake compensation for it based on their understanding of the impact levels, but they have still undertaken a without prejudice derogation case for the species. You are correct in that the applicant is still progressing with an offshore nesting structure for Gannet and it would be delivered as a joint structure with Kittiwake. You're right. And also noting that there's a lack of evidence associated with Gannet breeding offshore to the same extent as Kittiwake.

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And the main reason behind that, we believe, and that's been presented within the ecological evidence reports, relates to the specific nesting requirements for Gannet when compared to that of KITTIWAKE and that many of the offshore oil rigs don't provide the correct ecological nesting requirements for Gannet in order for them to establish a nest. There's also an indication of a potential lack of suitable nesting habitat naturally occurring throughout England as well, with 21 countries around the UK and Ireland and one of them being in England.

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It's a mainland colony and a number of components of evidence supporting the fact that there's potentially a lack of a lack of suitable nesting location there. So therefore the applicant proposing this joint structure would alleviate the nesting limitations associated with that and it would be a purpose built designed structure using an evidence led approach to be able to design an optimal nesting habitat for the species.

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So the structure that the hotel structure would effectively have two levels of rhythms and one room would be designed for kittiwakes. One type of room designed for Gannet.

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The phrase garter on behalf of the applicant. That's exactly correct. The gates would have the penthouse at the top.

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Thank you.

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Okay. Clearly, there's still a doubt gap there, and I think particularly natural England and the RSPB are still looking for further convincing. Are you going to try to close that doubt gap through the standard common ground process?

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Fraser Carter On behalf of the applicant, yes, we are going to continue to talk to Natural England and RSPB regarding this matter to try and resolve it.

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Can we move on to item 4.4? That's the lead in times for any compensation measures that may be required. I'm aware that progress has been made on negotiations around the lead in times for new nesting structures. But the draft statements of common ground seem to include continuing differences in respect of the kittiwake age of breeding and precedence for other offshore wind farms. What is the applicant's current position on this? And also the concerns raised by natural England that the lead in time for Predator control would be inadequate under the current without prejudice proposals.

00:30:44:06 - 00:31:17:25

Fraser Carter on behalf of the applicant. So referring first to your point about Kittiwake. The applicant is currently within the draft. ECO makes a commitment to the implementation of the nesting structure three breeding seasons ahead of operation of the wind farm and the main reasons behind this fall to a number of factors. Section 1.9 of natural England's final comments on to base on consultation. Three of the Hornsea three Kittiwake compensation plan actually refer to the natural England highlights.

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That's a 3 to 5 year colonization period to ensure that the compensation is functioning prior to the impacts occurring would be suitable. So we've been given a bit of steer from previous projects in the

offshore wind environment of a potential lead in time there. And three years is also supported by the course in 2011 publication, which shows that around a quarter of recruits at an English colony were aged three as well.

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The preference of the applicant is to deliver an offshore nesting structure. And as I've mentioned before, there's a number of pieces of evidence that suggest a higher productivity rate associated with offshore nesting structure as well. So compared to onshore, there is the potential that birds breeding there will also have a high productivity rate as well.

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If and in relation to your second part of your question, say the lead in times associated with guillemot and reasonable predator eradication, that the final island for predator eradication is going to be decided when the feasibility so the implementation study has been undertaken, which will be provided at deadline five. However, all the islands that are currently shortlisted, as I mentioned, are suitable for an eradication. It's just the process of identifying the most suitable and then the scale of the eradication as well.

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And the eradication will commence no later than two years prior to the operation of any wind turbine generator as well. It's not just that measure that's being proposed to get them on razor bill. The applicant has committed to a suite of measures that will be delivered. So the use of a bycatch reduction technology within the South-West focusing on Guillemot but as well. And when we've discussed this with natural England, natural England have been pleased that a suite of measures is being offered and therefore allows some scalability and flexibility and an extra added degree of confidence within that suite of measures that the compensation population can be compensated by the project.

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Thank you. Yes, I've read the background to those. Is there is there a remaining difference then between natural England and your sales in terms of the lead in time for the Predator eradication program? Or are you pretty close?

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I think we're pretty close. It would be good to continue our good relationship with natural England on this matter and continue to discuss it.

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I would certainly encourage that. Thank you.

00:33:50:15 - 00:34:03:09

Nothing else on that one. I'm moving on to item 4.5, and that's the maturity of the identification and delivery of compensation. Compensation matters measures if required.

00:34:08:08 - 00:34:41:03

Mr. McGovern, is it fair to say sorry? Mr. GORDON Is it fair to say we're breaking new ground here in terms of dealing with the habitats, regulations, assessment, the derogation and compensation proposals, most of which you're clearly offering without prejudice. But they are offering them during the examination rather than the post examination phase. By that, I think I'm referring to the incorporation of compensation compensation measures into the draft DCO or elsewhere in the examination documents such that they could be copied and pasted into the draft DCO if required.

00:34:41:24 - 00:34:45:29

Rather than dealing with these through the Secretary of State's amendments in the decision phase.

00:34:48:23 - 00:35:13:02

Got governance on behalf of that? Yes, sir. You're absolutely correct. We are breaking new ground and we are the first project that submitted a full delegation case, including proposed without prejudice, competition measures at the application stage. All of the projects I have gone before have either been required to introduce such measures during examination or during the determination phase when the sector states be considering matters. And so we are the first in that regard. So you are correct. Thank you.

00:35:14:20 - 00:35:44:08

And can you tell me how the applicant is interpreting the Secretary of State's comments in several recent decision letters for similar offshore projects in relation to dealing with the compensatory measures during examination, rather decision phase in this way, and especially in relation to the extent that they are identified, secured and able to be delivered. And I guess I'm referring both to those measures that you acknowledge will now be required and also those that have been put forward on a without prejudice basis.

00:35:48:23 - 00:36:35:27

On behalf of the applicant. Yes, sir. We're interpreting and secretary's advice as a clear steer to Hopkins going forward in the interests of avoiding long delays during the determination phase. There is an appetite for parties to engage with such nature, conservation bodies and other stakeholders, and both during the pre-application phase under examination, in order to try and resolve differences and get to as clear position as possible by the end of examination. There may still be disagreement around measures and but certainly the degree of information and assessment work on detail that has been set out in the applicant's documents and at least the delegation composition matters, we say, goes far beyond anything that's been considered during examination on either project.

00:36:36:26 - 00:36:37:11

Thank you.

00:36:38:08 - 00:37:10:28

Thank you. It probably won't surprise you to hear that the examining authority has interpreted that guidance from the secular state in a similar way, and we will be pushing to ensure that we all do our best to to reach an acceptable place where all of the relevant information is submitted and examined before the close of the examination. To the extent that the search is to be able to have all of that information to hand that it would need to undertake a full appropriate assessment, including any derogation case, without having to refer to further consultation or incur delays.

00:37:12:01 - 00:37:27:08

And I'm sure you're very familiar with the Secretary State's comment in the Hornsea three decision, and that and I quote, the ex-aide will be required to provide an opinion on the sufficiency of the proposed compensation, even if it considers that compensation is not required.

00:37:29:00 - 00:37:53:23

And the thing that perhaps is testing is at the moment is we need to consider whether sufficiency in this context should be taken to include how many measures would be secured and delivered, not just our ecological effectiveness. We're also taking into account the two recent East Anglia offshore wind farm decisions, including the rates that were undertaken by the Secretary of State as the conference authority.

00:37:55:18 - 00:38:16:26

After this hearing, we'll be continuing to press the relevant parties on whether the identification and delivery mechanisms have been progressed sufficiently to give confidence to the proposed conflict compensation measures. And without prejudice, compensation measures could be delivered in re could be delivered if required. Do you have any sort of general comments on that? Mr. McGovern.

00:38:19:12 - 00:38:52:15

MCGOVERN On behalf of the applicant, yes, we entirely understand your position and we believe that the information that's already been submitted and the examination and have not suggest that we're not continuing to work hard with all of the relevant stakeholders in order to close down. It is an outstanding concerns. However, the information that's already been submitted in to examination, which outlines a suite of compensation measures and how they could be and delivered, is compatible if not going beyond at the level of information that the sector state had in each of those other cases at the point where the desu application was granted.

00:38:52:17 - 00:39:03:15

So you have before you, sir, and we see sufficient information and a clear mechanism to secure all of that through the requirements and the proposed drafting that's been put before you alongside the roadmaps for each of the compensation measures.

00:39:05:03 - 00:39:33:20

I you. I'm just going to, if I may, dig down a little bit into some of the background and the detail behind that. And can I ask about the progress in the feasibility study that you mentioned in your deadline one submission? Rep one zero 61 which is the Predator eradication and Ireland's suitability assessment for Guernsey on the schedule moving forward for this. I think the there was an indication that the study would be initiated at least in early 2022.

00:39:36:19 - 00:39:42:03

Got a megaphone on behalf of. Yes, sir. I'll pass you over to Mr. Randle to pick up that item. Thank you.

00:39:42:21 - 00:39:43:06

Okay.

00:39:47:29 - 00:40:28:01

Dr. Sara Randall for the applicant, yes, we have been undertaking a implementation study from the start of this year and we've hired a number of predator eradication experts who've been undertaking surveys on the mainland of the bailiwick of Guernsey, as well as some of the islands surrounding the islands. They have a planned program for carrying out the bird surveys as well throughout the summer. The results so far for the islands are that they've found rats across all of the main islands to date and also some of the islets as well.

00:40:28:27 - 00:40:53:06

And the work will be continuing throughout the summer and taking a full suite of analysis, including sort of technical feasibility. The stakeholder engagement that's being undertaken will be analysed as well to ensure that there is community support and there will be continuation of this analysis. Post the completion of the breeding surveys during the summer months.

00:40:55:06 - 00:40:56:21

What's the likely conclusion?

00:41:00:13 - 00:41:02:19

Do you have a likely completion date for that study?

00:41:04:09 - 00:41:26:09

Yes, it is just that the very end of August, however, we hope to be able to include much many of the results at deadline five. We've got we'll be having all of the analysis will be completed by that point. And we will be able to we're hoping to be able to provide some of the best survey results, but may not have the full sums completed by then.

00:41:29:07 - 00:41:31:02

Excellent. Thank you. Good update.

00:41:36:21 - 00:42:12:20

Moving on to sort of enforcement issues the RSPCA set out, RSPB has set out some concerns about how their ability to enforce against any failure to deliver compensation in Guernsey in its written representation. But I have seen your response at deadline three. I think you're highlighting that the relevant without prejudice draft provisions set out in the roadmap, which could be included in the order made by the Secretary of State if he couldn't rule out adverse effect on integrity contains a restriction on operation until the Predator eradication measures have been carried out.

00:42:14:05 - 00:42:23:21

This thus, the fact that the measure may technically be outside the UK has no bearing on the ability of the Secretary of State to enforce this provision. It's a correct interpretation. Government.

00:42:25:12 - 00:42:28:28

Gary McGovern for the applicant. Yes. So you've interpreted that correctly. Thank you.

00:42:29:15 - 00:42:56:26

Thank you. Clearly. Okay. We need to get back to the RSPB to see if they have any further issues on that. There's also an observation that any site in Guernsey chosen for compensation would not go on to receive the same level of policy protection against future project development. Given that it would not be covered by a policy akin to the UK government which protects compensation sites as though they were directly covered by the regulations, habitats, regulations.

00:42:58:17 - 00:43:05:25

What level of control and security over their application site will the applicant be seeking to ensure that this did not happen?

00:43:11:27 - 00:43:47:09

Dr. Sara Randall For the applicant, the idea that we are looking at actually have our covered by Ramsar designation. So as in the UK we have to protect the designation sites. Very similar approaches are taken on the islands of the bailiwick of Guernsey. So on the islands that we're looking at for almost the entire set of islands that we are considering are fully designated and also the islands, some of the islands surrounding Alderney are also designated.

00:43:47:18 - 00:44:14:08

So we do believe we've been engaging heavily with the states of Guernsey and we close closely agreeing a memorandum of understanding at the moment with them to gather that their support for this work and we're very close to signing. So we're hoping that very soon we'll be able to provide that deadline five, provide confirmation that we'll be able to outline the full support as well as part of that work.

00:44:16:16 - 00:44:18:01

Okay, sir, are you telling me?

00:44:19:18 - 00:44:30:18

Are you telling me by default, all the sites you're looking at are already designated as Rams or sites, so it wouldn't matter that they couldn't be protected as compensation sites.

00:44:33:00 - 00:44:55:22

Sarah Dingle For the council, almost all of the islands are covered, not every single islet, but the majority of the islands that we're considering for sure. Yes, they're all covered. And we've, as we've been doing the study itself, we've undertaken a number of different permissions and permits and consents to even just undertake the study, let alone anything further.

00:44:58:08 - 00:45:12:08

Thank you. And can you confirm that the the legislation the policy in Guernsey is such that Ramsar sites will receive the same level of protection as a European site under the habitats regulations.

00:45:17:02 - 00:45:33:26

Kind of government on behalf of the applicant. And so the Rams are protections, as you, as you know, flow from international level convention. So we would expect them to be compatible if not in every detail then certainly in their broad effect. And that's something we can certainly check and come back to confirm in more detail.

00:45:35:01 - 00:45:45:11

That would be useful because clearly the the UK's protection programs on site is by policy rather than legislation. So I'd be interested to know what the situation is the same on Guernsey, if you could find that out for us.

00:45:52:04 - 00:46:03:18

The other question I introduced, though, is what sort of level of control the applicant was looking at securing over these compensation sites? If they are used to you have any further, you can add to that list to again.

00:46:17:04 - 00:46:45:15

Connor McGovern on behalf of the applicant. And so the intention, as Mr. Randall's already mentioned, is to enter into at this stage memorandums of understanding, which give us a clear pathway and unclear agreement around the principle of the measures. And then following on from those memorandum of understanding, the applicant would be looking to enter into formal agreements in order to allow the delivery of the measure, and that agreement would provide the security around the implementation of the measure.

00:46:47:03 - 00:46:47:18

Thank you.

00:46:48:16 - 00:46:53:01

At what stage would either ourselves so the secretary of state see that if it was necessary.

00:47:07:08 - 00:47:36:04

Got a megaphone on behalf of the company, and we're working towards concluding the memorandum of understanding as quickly as possible with an aim to be able to give you an update or confirm and which and we'll use have been entered into and during the examination stage, the actual entry into agreements would follow at the post consent stage F and depending on which of any without prejudice measures actually are required to be implemented. So we would not enter into those agreements ahead of understanding what composition measure it actually required. Sir. Thank you.

00:47:37:02 - 00:47:37:17

Stood.

00:47:42:24 - 00:47:44:23

Can. Can you just remind me

00:47:46:12 - 00:47:54:26

your proposal for retaining the management of any compensatory measures beyond the point at which the wind farm will be closed and decommissioned?

00:48:02:22 - 00:48:07:10

And that's a general question toward the compensatory measures that we've discussed so far.

00:48:12:16 - 00:48:51:16

Dr. Sarah Randall for the applicant, I'll just run through all of the different compensation measures that we're looking at. So many of the of the measures will be in place in perpetuity. So such as the fish habitat enhancement, the seagrass restoration, that will be that will because you're planting it, that will remain in perpetuity. And we will have the the predator eradication work that will be undertaken. And therefore, there will be biosecurity measures that will be implemented throughout the lifetime of the project and the productivity rates that will be continue to increase well beyond the lifetime of the project.

00:48:52:00 - 00:49:20:07

We also have the bycatch measures that will be for the lifetime of the project. However, we wouldn't be considering continuing that beyond the lifetime of the project. And the same with the artificial nesting structures that would be for the lifetime of the project. And as with any offshore wind turbine, we would organise the decommissioning plan and see all the arrangements that we would need with the MMO.

00:49:22:21 - 00:49:29:06

So you would talk about decommissioning of the artificial structures in your decommissioning plan for the proposed development?

00:49:34:23 - 00:49:39:13

So around for the applicants? Yes, we would, but only with the approval of the Secretary of State.

00:49:40:13 - 00:49:40:28

Get.

00:49:44:04 - 00:50:02:29

Have you made any comparison of those proposals with the Secretary of State's Decisions and Habitats Regulations Assessments for Hornsea three. The two Norfolk's and the two East Anglia projects at all in terms of the life of the expected, the expectations for the life of the compensation projects.

00:50:13:01 - 00:50:26:19

Got to go for the napkin. And our understanding is that our proposals are aligned with the position on those other projects, that the artificial structures would be in place for the duration of the project and could be decommissioned at the end, but with subject to the consent of the Secretary of State.

00:50:28:15 - 00:50:40:18

Thank you. And you do believe that the compensation proposals you're putting forward accord with the measures that have now been accepted by the Secretary of State in the Habitats Regulations Assessment of the two East Anglia projects.



00:50:43:21 - 00:50:45:20

Got him covered for the. Yes, we do.

00:50:53:12 - 00:50:59:15

And is there anything further on that terms of the maturity of the identification and delivery of the compensation measures?

00:51:07:03 - 00:51:09:07

Then I'm going to move on, if I may.

00:51:11:13 - 00:51:14:18

And we're up to the shadow HRA for any compensation measures.

00:51:17:13 - 00:51:28:25

It's obviously follows on from the last item that similar implications for reaching that acceptable place for the Secretary of State in relation to the information for his habitats, regulations, assessment

00:51:30:28 - 00:51:51:08

and the applicants habitats regulations assessment of the possible compensation measures, including those put forward without prejudice, seems to suggest that mitigation may be required so that the measures themselves or some of the measures themselves do not lead to an adverse effect on integrity when subject to their own habitats. Regulations Assessment.

00:51:52:28 - 00:52:02:05

Are these the other relevant commitments that have been made, those set out in the compensation commitment register and that's in the examination library as at oh 16.

00:52:31:06 - 00:52:57:06

Kind of MacGuffin for napkin. Yes. Or as you correctly noted, there are a series of commitments that have set out which effectively define an envelope within which the composite measure would come forward. And those commitments include, for example, avoiding other designated sites. And so long as those commitments are followed and the refinement of the measures then allows the conclusion of the one year effect on integrity follows on from that.

00:52:58:18 - 00:53:24:17

Okay. So I'm not understanding is that your intention is to identify and build those measures into the process. Now, as compensation measures, they would be secured if they were needed through future consents outside an act of the DCO process. Assuming the DCO application is successful, of course. Is this why the columns in that table for how the commitment is secured and who and relevant application documents are all blank at this stage?

00:53:26:28 - 00:53:29:02

Got a megaphone for that? Yes, sir. That's correct.

00:53:31:25 - 00:53:40:26

If we look at the the corresponding compensation commitment register, it clearly addresses environmental impact assessment mitigation requirements.

00:53:42:19 - 00:53:56:25

Is that it? 70, perhaps as soon as it should. It also list those measures that could be required to ensure no likely significant effects or adverse effect on integrity in relation to the habitats, regulations, assessment of compensation measures. I'm not clear.

00:53:58:24 - 00:54:06:05

I'm not clear what the two sets of assessment and mitigation measures seem to have been advance to different levels.

00:54:10:04 - 00:54:15:12

Got McGovern for a napkin. If you could give me a minute just to check the position on that. Thank you. I'd be grateful.

00:54:57:26 - 00:55:09:09

Guy McGovern for napkin. And if you wouldn't mind, sir, I think we'll take that one away in order that we can come back with a confirmation that we're confident is accurate in terms of that, Mike. But going to. Why not, sir? Thank you, sir.

00:55:10:02 - 00:55:14:05

Thank you. I mean, I think you'll probably understand the background to my question and my concern.

00:55:16:26 - 00:55:42:21

I'm not clear whether it matters that these could not be secured now through the DCO process and. It's going to be down to a competent authority for a subsequent consents for those measures to ensure that their habitats, regulations, assessment is undertaken where necessary, and that any necessary measures at that stage to avoid an adverse effect on integrity because of the compensation measures implemented. Sorry, this is extremely complicated.

00:55:45:24 - 00:56:04:25

Given that, is it is it fair to assume that we should require a positive outcome to each of those compensation measure? Habitats, regulations. Assessments. We would require a positive outcome to each of those to ensure that the Secretary of State could allow the derogation for this proposed development.

00:56:16:21 - 00:56:18:21

You may wish to add that to what you're coming back with.

00:56:19:08 - 00:56:22:21

Yet you've anticipated my my response in that. Thank you, sir.

00:56:23:10 - 00:56:41:19

Yeah, yeah, yeah. I hope I'm being clear, but I'm just concerned to know that the relationship between the subsequent raise for the compensation measures and the importance of getting positive outcomes to those for the ability of the Secretary of State at this stage to talk or to allow

00:56:43:23 - 00:56:46:21

her to go through that for the project itself.

00:56:48:07 - 00:56:57:23

And that's quite difficult to see how that could be done at the moment when we don't have the specific details of those projects and effectively those columns are blank in the table.

00:56:59:09 - 00:57:00:09

I hope that's clear.

00:57:05:08 - 00:57:08:27

Because also is there also an issue? Mr.. Mr.. MCGOVERN that.

00:57:10:14 - 00:57:31:04

If one of the measures compensation measures needs than neither a habitats regulations assessment nor potentially even a formal consent. How can it still be assured for the purposes of the DCO Habitats Regulations Assessment? It's a third question and I won't test you for an answer to that, but if you give that sort of thought as well in terms of what you're coming back to us with.

00:57:34:20 - 00:57:41:22

Got him covered for a napkin. Yes, I will certainly consider all three of those questions. And we're clear as to what you're looking for us to provide you with. Thank you.

00:57:42:18 - 00:57:43:03

Thank you.

00:57:45:22 - 00:58:09:13

If there's nothing else on that, I'm going to move on to the last substantive item on the agenda, which is the invasion of eradication of sites by predators. And this comes from the fact that the RSPB has suggested that some of the possible predator eradication sites you've suggested would be a high risk pre-invasion by rats. Do you have any reliable data about the rate of re invasion following a successful eradication?

00:58:12:18 - 00:58:42:26

Fraser Carter On behalf of the applicant, we don't have exact rates associated with pre-invasion in relation to the locations that we're looking at or nearby areas. That's something that we could potentially look into in a bit more detail after today's hearing. But that the applicant is confident that there are a number of tried and tested methods which have been deployed both in the UK and across the world associated with eradication projects to limit potential invasions.

00:58:43:04 - 00:59:18:04

And the applicant is going to be undertaking the eradication program if it's required by employing world leading experts in eradication and also the subsequent biosecurity measures as well. And that group have undertaken eradication on behalf of multiple stakeholders, including the RSPB and in accordance with the RSPB guidance, which is the UK Biosecurity Eradication Toolkit 2018. So therefore, yeah, the applicant's positive and really confident that any potential for invasions would be extremely limited.

00:59:19:15 - 00:59:27:06

And I guess the question actually is the important question is if there was reinvention, would it be our intention within the lifetime of the project to go back and repeat the eradication?

00:59:29:06 - 00:59:33:19

Fraser Carter on behalf of the applicant? Yes, that is correct. We would be hoping to do that.

00:59:35:10 - 00:59:40:12

Okay. Is there a method of controlling that through the decoding?

00:59:45:14 - 01:00:04:26

Fraser Carter on behalf of the applicant. Yes, it would be it would be stated through the adaptive management process that the applicant would propose within the DCO process that would be informed by the detailed monitoring that would also be implemented alongside any compensation measure.

01:00:12:00 - 01:00:15:02

Is there anything else anybody wants to?

01:00:16:22 - 01:00:46:26

Bring forward at this stage. I am going to have to this hearing ask for all of the interested parties positions on the their current positions on the project and in combination HRA effects, which was agenda five on unless the agenda item five that unless the applicant wishes to come back at this stage, which would not be repetitive. But I think this is a question which will probably best be posed to all parties that are showing an interest.

01:00:47:08 - 01:00:48:11

Are you happy that misspoken?

01:00:56:25 - 01:01:01:06

Got a McGovern for that? No, we're quite happy to proceed, as you suggest, sir.

01:01:01:28 - 01:01:02:13

And Kim.

01:01:04:08 - 01:01:11:12

So in which case, is there any are there any other points that anybody wishes to raise related to the topics on today's agenda?

01:01:13:27 - 01:01:14:28

Any other business?

01:01:17:12 - 01:01:18:04

Not much, sir.

01:01:19:20 - 01:01:43:08

Thank you. And there's nobody else. So that's fair. And so in that case, I'd like to hand over to Mr. Jennings, who's going to discuss the action points. Thank you, Mr. Ahmad. We've got quite a few action points arising from today's meeting. So I propose that rather than going through them today, we publish them as soon as we possibly can.

01:01:43:28 - 01:01:44:28

On the website.

01:01:45:04 - 01:01:47:05

I trust that's acceptable to all.

01:01:52:12 - 01:01:53:15

Yes. That's acceptable, sir.

01:01:54:24 - 01:01:59:07

Thank you. In which case, I shall revert to Ms.. Dowling to close today's hearing.

01:02:00:28 - 01:02:37:22

Thank you, Mr. Jones and Mr. Moran. If there are no other items that are relevant to this hearing, may I just remind you that the examination timetable requires parties to provide any posting documents on or before deadline for, which is Tuesday, the 10th of May 2022. May I also remind you that the recording of this hearing will place on the Inspectorate's website as soon as practicable after this hearing, as will the action points. This was the last of this round of hearings on the examination

timetable, and I can confirm that the reserved dates for the hearings on the examination timetable for the fourth and 5th of May 2022 will not be needed.

01:02:39:14 - 01:02:48:00

Whilst on the topic of hearings. The week commencing the 18th of July is currently reserved for further hearings on the basis of what we have heard this week

01:02:49:20 - 01:03:06:18

and the written submissions that we have received, the Examiners Authority consider that it will probably need to hold a further set of hearings, but formal confirmation of holding of these hearings will be published on the project page of the National Infrastructure Website on or before the 20th of June 2022.

01:03:09:10 - 01:03:17:07

At the preliminary meeting, you. This is my question to the applicant. You indicated that

01:03:19:11 - 01:03:36:19

you had a preference for the hearings to be hybrid so that you could present your evidence to the examining authority in person. And we agreed that we would revisit this request for the hearing timetabled for July. And so I'm just going to ask the applicant whether they have any preference as the format of future hearings.

01:03:38:24 - 01:03:39:18

Mr. McGovern.

01:03:46:14 - 01:03:59:02

Kind of government for the applicant. I don't want to repeat our previous submissions on that. We still do have a preference for hybrids and we would prefer at present more evidence in person if that was possible. But we're in your hands.

01:04:01:07 - 01:04:06:29

Thank you. So just to reconfirm your stance that you set out in the plenary meeting still stands going forward.

01:04:11:14 - 01:04:34:03

And obviously the applicant isn't the only person who comes along to the hearings, although it has felt that way over the last three days. But just obviously, what we need to do is we need to just check with other interested parties who are proposing to attend any of the hearings in July, what their preference for that format is so we can make the appropriate arrangements.

01:04:35:21 - 01:05:08:01

I can confirm that we have received no requests from the company site inspection and therefore I can confirm that we do not propose to hold one. So before we close, I'd just like to take the opportunity to thank everyone who participated today and throughout the week for their time and their assistance. I can confirm that the Examining Authority will consider your responses carefully, and they will inform our decision as to whether further written questions will be required. So if no one else has anything else to raise, I'm going to say the time is now.

01:05:08:03 - 01:05:17:16

12:10. And this is your specific hearing on matters in relation to the Habitat regulations. Assessment is now closed. Thank you.