

**File Name: ISH 7 - 18 July 2022 (Part 3) - Transcript**

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FULL TRANSCRIPT (with timecode)

00:00:02:26 - 00:00:17:23

Thank you. The time is now 1305. And the issue here is species specific. Hearing number seven is now reopened after adjournment. Over to you, Mr. Downing.

00:00:20:27 - 00:00:35:01

Thank you, Mr. Bradley. Well, I will try and make this as short as possible, given the heat. We've only got a couple of items remaining on the agenda. So let's start with item six, schedule 15 of the draft eco documents to be certified.

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So what I wanted to say on this is we've obviously had a significant number of documents submitted during the duration of the examination, in particular in relation to updates to the Environmental Impact Assessment. Can I just confirm, as you have to confirm, that they will be updating Schedule 15 of the draft ECO Act deadline seven, which is Wednesday, the 10th of August 2022. Just to make sure that the most recent versions of documents are in there, Mr. Phillips or someone in his team.

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You're on mute.

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Okay. I think you can hear me now. I'm Amy Sterling on behalf of Applicant. Yes, that's correct. We will be updating schedule 15 and I'd like to then.

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Now, let me just make a suggestion, particularly given the concerns raised by natural England in regards to Article two and the definition of the environmental statement, that if it's possible and they're able, could the applicant look at running costs on it without prejudice basis that updated schedule with natural England to make sure that they are satisfied that all necessary necessary documents have been captured. That would obviously be on without prejudice basis. Could you look into that for me?

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Anything on behalf of the applicant? Yes, we can do that if it helps. We could submit schedules, a standard document, a deadline for them to comment, but obviously then we'd have to further update it for deadline seven. So we'll take that. We can discuss it with natural England and see if we can provide some agreed or just.

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It would just reassure the examining authority that we've captured all of the documents that natural England obviously want, because obviously one of their concerns was with regards to these various updates to the Environmental Impact Assessment. Okay. If I can then move on to table three of the outline code of construction plan, which is four over 19. This list plans that will form standalone documents. Some of these are now all listed in schedule 15, but some appear to be missing, for example, the outline construction drainage scheme and the Clementine contaminated land and groundwater scheme, albeit that's an outline form of the latter, has yet to be submitted.

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Could you just check whether they are meant to be included or if they've been omitted by error? That's a question for the applicant.

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Clapper check for the applicant. We will review part three and confirm at the deadline seven submission whether all of the relevant plans have been included.

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Thank you. And then it's another question for the applicant. Would you like to respond to the comment submitted by the MMO regarding the Commitments Register, which is listed as a certified document MMO has sought clarity is how as to how it secures listed mitigation within it and how it is enacted when there is no specific reference to it that they are aware of with any within any of the articles of the DCO or the deemed marine licences.

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Amy Stirling On behalf of the applicant, we've nothing further to add than all of her previous submissions addressing this point. Just to confirm again the commitment to address there is a signposting document. It doesn't secure any mitigation at about the same post where that mitigation is secured. So we don't believe anything further is necessary. It was intended to be a useful tool for consultees. We don't have anything further to add.

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Thank you. And obviously the MMO aren't here to respond. But if they are, they do listen to the transcript. Do you want to respond as an action point? They are more than welcome to do so. So finally, is there anything anyone else wants to raise with regards to documents to be certified?

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Can't see any hands up. So I'm assuming not so I'm going to move on to item seven, which is schedule 16 of the draft eco compensation to protect the coherence of the National Site Network. As with item four on the agenda, natural England deadline five a rep five a 31 submitted to review the schedule to which the applicant has provided a written response. As thick as natural, England are not in attendance today. I cannot seek response on whether the comments made by the applicant satisfactorily address its concerns.

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And I don't therefore in the main propose to examine these concerns orally unless there is further clarification on need from the applicant. However, I want to make it clear that this does not necessarily mean that the examining authority agree with the responses received from the applicant. And I would ask as an action point that natural England reviewed the documents submitted by the applicant and provide a written response on any outstanding matters of concern.

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With regard to Schedule 16, I note we have the Schedule 16 as contained within the current draft of the development consent order, which is read 58002, which would deliver Kittiwake compensation, which is part one fish habitat enhancement, which is part two and a contribution to the Marine Recovery Fund, which is part three. We also have submitted into the examination without prejudice, derogation, draft development, consent order Schedule 16, which is 39, which was submitted by the applicant last week, that in addition to the Kittiwake compensation fish habitat enhancement, a marine recovery fund contribution would deliver organic compensation and guillemot and raise civil compensation.

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As today's session is focusing on the drafting of the DSA, I am not proposing to consider in detail what the without prejudice schedule 16 would deliver.

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In terms of actual mitigation assets will be considered in at issue specific hearings later on in this week. Instead, as a set out at the beginning of the session. The purpose of this session is to look at drafting. So can the applicant confirm that the without prejudice schedule has been provided? So that should the examining authority or the Secretary of State, Secretary of State consider that the compensation measures would be required, that without prejudice, Schedule 16 provides the applicant's preferred wording for this to be attached to the DCO.

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In extending on behalf of applicant. Yes, that's correct.

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Okay. So looking at first of all, at the schedule as contained within the draft DCA in terms of part one, KITTIWAKE compensation, I can't see anything in the current drafting that sets out a timeframe for the submission of the Kittiwake compensation, implementation and Monitoring Plan as currently drafted. It would only prevent commencement of work until a plan for the work of the Hornsea four Offshore Ornithology Engagement Group has been agreed. Natural England have raised this as a concern threat 5111 when they advised that previous offshore wind farms have all had conditions, requirements, delivery of the associated implementation and monitoring plans at a specific time, at a specified time period prior to operation.

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And they consider that such an approach should apply to Hornsea four. Could the applicant comment?

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Amy Sterling. On behalf of the applicant, the timetable for preparation of the relevant implementation and monitoring plan is to be agreed with. Under the Plan of work, which is also to be approved by the Secretary of State, that secured by to see of part one. So there will be a timetable for preparation of the implementation plan. It just it was it isn't necessary at this moment of time to specify when that is. And it can be subject to further approval by the secretary of state.

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And I would need to double check the other 20 CEOs, but I'm not actually sure that is accurate, that those other DCO do provide a timescale for the preparation and approval of the implementation time. But perhaps we can take that as an action point to review the accuracy of that statement.

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If you could, and also maybe as an action point for natural England, if you aren't here, if they could maybe provide the examples of those farm consents that they they refer to. Okay. In terms of both sets of drafting, but all the compensation measures proposed, both within the one that's included with an independent consent order and the without prejudice schedule would require funding. I note that there was a without prejudice derogation funding agreement submitted with the Act, with the application which is AP to O2.

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And also there's obviously of course the main funding statement itself, which is AP 2 to 4, which was updated at deadline to wrap to one eight. What I'm what I'm asking here is how is the compensation now being offered, which has evolved through the lifetime of the examination and includes elements such as the contribution to the Marine Recovery Fund that were not in the original offer being funded? And do these documents need to be updated to reflect the evolution of the proposals?

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And on behalf of the applicant, I'm advised that the funding statement provided sufficient contingency in the applicant's view to cover the evolution to the extent there has been an evolution of the compensation proposal proposals. Although I would stress that the fact in the first instance the payment to the Marine Recovery Fund is in lieu of delivery of the measure. So if necessary, I'd be double counting out the payment of the £500,000 is a new requirement in the DCO.

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However, that was already contained within the original compensation proposal for pre availability research. So it's not necessarily a new £500,000, it's just become more formalized with further information becoming available on the Marine Recovery Fund. So in short, the applicant feels that the funding information that's been provided is sufficient for the current compensation proposals.

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Okay. If you can maybe confirm how and explain how those amounts have moved around and that why sustain that would be helpful, I think moving forward

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with regards to the without prejudice.

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Derogation draft of a consent order. Can I ask the applicant to just check the numbering on part one as there appears to be some rogue numbering in the in the paragraphs.

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In addition, with regards to the proposed contribution to the Marine Recovery Fund, which is also obviously included within the draft DCO. As far as I'm aware, this fund does not yet exist. So can you explain how this would work if this fund is never set up or set up after the payment would come due?

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Anything on behalf of the applicant. The definition of Marine Recovery Fund, we believe, is broad enough to allow for

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payment to an equivalent fund set up for strategic compensation purposes. So again, we don't feel there's been a big difference in substance to what was originally proposed within the application because it allows for and then payment to the fund or any equivalent fund established by a government body for that purpose. And we're confident that the time the payment becomes due, which is pre operation, that that fund would have been established.

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That's not in the drafting. That's before me. I mean, I will read to you what it says in schedule 16 of part three of the DCO submitted RET 580 002 Part three Contribution to Marine Recovery Fund No tab on forming part of the authorized development may begin operation until the undertaker has paid the sum of £500,000 to the Marine Recovery Fund. There's no alternative wording in the.

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Yes so if I was unclear and the definition of marine recovery fund and paragraph one of that schedule.

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Has the operation made ever?

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But again, what happens if there is no alternative fund set up?

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Well equivalent fund. Because what I'm not understanding, which comes on to the second part of that question is how does that meet the test, the payments, because it needs to be necessary to make the development acceptable directly related to the development and fairly and relationally related in scale and kind to the development. So at the moment, this looks like a one off payment to Marine Recovery Fund, but it doesn't seem to be linked.

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Emmy Sterling on behalf of the applicant, I previously noted it is linked to the pre availability measures which obviously have been requested by a number of consultees but is unable to be funded by a single developer. If a fund wasn't established at the time, takes payment. FOSTER We believe the definition of Marine Recovery Fund is broad enough to allow a unilateral payment from an asset today to begin establishing that fund. Essentially, as it is previously mentioned, this commitment to it was originally five £100,000 payments was originally provided in the compensation fund.

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I would also have to double check, but I do believe there's an equivalent commitment by these ongoing projects within their compensation plans to provide a similar funding mechanism. So we believe there's a strong trajectory towards this. I say that is an energy security strategy and we have sufficient confidence that there would be a mechanism in place or at least that could be established prior to the operation of Hornsea four, which is obviously some time away.

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Okay. We could signpost is to that information. That would be helpful. Okay. Then finally, with regards to Schedule 16 compensation measures, the Maritime and Coastguard, Maritime and Coastguard Agency and their deadline fine representation say that the location of the proposed nesting structures is not known. Potential locations have been identified and presented to the MCA. However, it's not understood whether the coordinates of the agreed locations would be included in the DCO or agreed host consent.

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How do you propose to respond to that point.

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On behalf of the applicant? No, they wouldn't be included within the DCO. They would be separate, subject to a separate marine licence application, which has its own consultation requirements under the Marine and Coastal Access Act. And there would be a period for representations, including by the NCA, to be made in respect of that licence application. And we're willing to further engage with the NCA to discuss any concerns that they may have in that regard.

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Unfortunately, they're not actually here today because obviously I had that opportunity to respond, but maybe that could be an action point if they in light of the response that you provided to that question. Okay. Is there any other points anyone wants to raise with regard to Schedule 16 of the draft ECO, which is compensation to protect the coherence of national site network?

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No. Then we're going to move on to item eight, which is the discharge requirements and conditions based decision.

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Throughout the examination, examining authority have requested further detailed or technical information to be submitted into the examination so that we can be assured that any concerns we may have would be satisfactorily addressed. However, we've often been advised that until further detailed work has been undertaken, this information would not be available. And as a result, the DCO as drafted contains a raft of requirements and conditions that would require a variety of organisations to consider and approve this very detailed and in some circumstances, very specialist or technical information.

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I therefore wanted to take this opportunity to check with those organizations that they are confident that they have the necessary expertise and resources available to do this so that the NSA, when reporting to the Secretary of State, can be satisfied that the outcomes referred to throughout the examination in response to our concerns would be achieved. So if I can just check with those organizations that are here. So I'll start with the east riding of Yorkshire Council, if they're still here, because obviously the majority of their comments would need to be discharged by them. Are you happy that you have the resources and the experience to discharge the requirements in the way that has been set out in the examination collection? This is some sort of.

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Yes, thank you. In my opinion, we do both. Obviously, there's a funding performance agreement in place to help with them, with funding and making sure that the officer time can be delegated to this.

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Okay. Thank you. That's reassuring tonight. Thank you very much for that. I think Trinity House, the only other organization that's here today that would have something to do with discharging of requirements if the representative if Mr. Dunham still here, is are they satisfied that they have all of the expertise and resourcing in place to be able to discharge the requirements in the way that has been outlined, that they would be through the examination system?

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Thank you, Madam Russell Dunham. Privacy House. Yes, certainly. Trinity House does consider that has as the requisite expertise and resources. I think it's it's worth making the perhaps the point here as well that in terms of Trinity House's interaction with the DCI, aside from provisions in relation where it might direct action in relation to certain safety of navigation requirements, for example, for the marking of structures during construction and after construction, that principally Trinity House as well, of course, is one of the as the council to with DMO where the member will consult with Trinity House on the ICE and Navigation Management Plan.

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But of course the CMO ultimately grants the consent and so that's in consultation with Trinity Ask. So in addition to your question, madam, yes, we are satisfied with the DCI makes the appropriate provision for Trinity House.

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And you are satisfied that the EC they can be confident that what the what we've been told will happen would happen.

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Yes.

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Thank you. Thank you. Okay.

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So. Just on that before I round off, I just want to offer the opportunity to everyone who's attempted to stay to ask if there's anything else that anyone wants to raise with regards to the drafting of the development consent order. So I'm just going to look around and see if anyone has their hand up.

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No, I don't. Okay, so.

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Before I hand back to Mr. Bradley, I have one other request the applicant with regard to consents, licences and other agreements. We touched on this at the last issue specific hearing and you confirmed at that point in time that no Section 106 agreements are proposed. Can you advise me for the purposes of reporting to the Secretary of State where I can find a list of the consents and licences required under other legislation that you would require, in addition to the development consent, in order to be able to construct the proposed developments.

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For example, I'm talking about things like licences, protected species, environmental permitting, water abstraction, how a Section 278 notices under the Highways Act, Traffic Management Act, etc. and where your latest position with regard to those is. So Mr. Phillips was somebody in his team. Do they want to respond on that?

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Any selling on behalf of the applicant. That information is contained in the CONSENTS Management plan, which is the document with reference AIP dash 2334.

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App.

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Dash two three, three.

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And have you provided an update on that? Because obviously that's an iterative process.

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And I'm just wondering if obviously that was what was submitted with the application and whether there's been any movement on those. Is there certain if those permits have been agreed or are no longer required because of what's happened through the examination process.

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And was something on behalf of the applicant? We haven't felt there's been a need to update the content management plan because the other concerns that would be required are all posts DCO Award. So there's been nothing substantive to change through the examination process to date. Obviously, keep that under review.

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If you could and then if it doesn't need to be updated, if obviously you can provide that at deadline seven so that any changes to that

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can be incorporated into a report. So.

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Just before I hand back to my colleagues, just slightly change the agenda around. We would be going to action points arising from the hearing at this point in time. But I'm just going to deal with asked Mr. Bradley to deal with any other business and then we'll deal with action points. My apologies for any confusion caused by the agenda, but our script has been written in that way, so I'm proposing to go with that. So if I can hand back to Mr. Bradley, he'll deal with any other business.

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Thank you, Miss Dowling. We haven't been notified that anybody wishes to raise any other business that's relevant to this particular hearing. But before I cover three points of AOB on behalf of the Examining Authority, can I ask if there are any matters that anybody wants to put into the hearing at this point?

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No. Hands up. Thank you. The first points of AOB has already been raised this morning and it is essentially, as discussed, that for efficiency, the applicant should not submit it to deadline six, an updated version of the draft DCO or schedule of changes to the DCO, but instead should incorporate these into their submission at deadline seven, which is Wednesday, the 10th of August. Would I just want to give them an opportunity to see if there's any reconsideration on that from the applicants? Would the applicant be content to submit these together with any changes that may result from the excise preferred draft DCO?

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Mr. Phillips For the applicant, yes, that's absolutely fine. Thank you. Thank you. The second point, which is also mentioned earlier this morning,

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relates to the cancellation of the compulsory acquisition hearing that was due to be held this afternoon. They say having reviewed the information submitted, decided that although we had a number of minor points requiring clarification, these could be dealt with in writing as a consequence. Just as a formality, we confirm the cancellation and that the essay intends to issue a Rule 17 letter, which will seek all of the information on CAA along with anything else that might come out of this week's hearings that cannot be dealt with through action points.

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Are there any questions for any parties from any parties? No. The third point then of AOB is to make a special note that this application features a number of position statements between the applicant and interested parties in place of associate in some statements of common ground. Some of these have not been updated since early in the examination. And some have been supplemented by issue specific position statements. Now, to assist the essay at the reporting stage, we're going to issue an action point to ask all parties to make best efforts to work with the applicants to submit updated and final signed position statements at deadline seven.

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That's Wednesday 10th of August, and that's recording matters. Both agreed and indeed also where appropriate, where agreement has not been reached.

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So we'll record that as an action point to the applicant and to all eyepiece and with the applicant also take an action to submit at deadline seven, if at all possible a schedule of all position statements up to that point and the state of agreement reached with each interested party. Mr. Phillips.



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To the applicant. Yes, that's fine. Very good. Thank you. I'm not going to pass over to Mr. Jones to discuss the issue of action points, which, of course, are extensive.

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Thank you, Mr. Bradley. You took the words out of my mouth. Where? Well into the twenties already in terms of action points. So rather than go through them all today, I propose that the essay publishes them on the website as soon as we possibly can in the next day or so at the latest. Rather than actually sit there going through all 20 plus of them today.

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Is unacceptable to everybody.

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Not in any hands, in which case I shall revert back. Mr. Phillips, did you wish to say anything?

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No, I was just saying. That's fine. Thank you. I'll take the whole case. In which case, I'll revert back to Mr. Bradley then. Thank you. So if there are no other items relevant to this hearing, may I remind you that the timetable for the examination requires that parties provide any post hearing submissions on or before. DEADLINE six Wednesday 27th July 2022 may also remind you that the recording of this hearing will be placed on the Inspectorate's website as soon as practicable after the hearing. The next virtual event for this application will be on onshore environmental matters, which will be held tomorrow morning, Tuesday, the 19th July.

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The agenda for this is also available on the project page of the National Infrastructure website. May I also take the opportunity to highlight the issue? Specific hearing will start at 9:30 a.m.. Before we close, we'd like to thank all of today's participants for their time and assistance during the course of this hearing. Hope that people aren't suffering too badly from the heat. We'll consider all of your responses carefully. And they'll and they will inform the excise decision whether further written questions and or a further ado I think this is

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unlikely that further written questions other than the Rule 17 will be issued at this time. But we will take that into account. The time is now

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1333, more or less, and this issue specific hearing on the draft development consent order for the proposed HORNSEA project for offshore wind farm is now closed. Thank you.