

TRANSCRIPT_ISH3_SESSION1_NETZEROT EESSIDE_12072022

00:13

Good morning. Can I just confirm everybody can hear me clearly? Thank you. And can I confirm with the case team the live streaming has commenced. The time is now 10am And I'd like to welcome you all to this issue specific hearing on the draft development consent order in relation to the application made by net zero, t side power limited and Net Zero North Sea storage limited for the net zero T side project. proposed development is a full chain carbon capture usage and storage projects comprising a number of elements. And these include a new gas fired Electricity Generating Station with post combustion carbon capture plant gas electricity, water connections, a carbon dioxide pipeline gathering network for collecting carbon dioxide from a cluster of local industries on T side, a high pressure carbon dioxide compressor station and an onshore carbon dioxide export pipeline. Thank you everybody for attending this meeting. My name is Susan hunt. I'm a chartered town planner and a planning inspector. I've been appointed by the Secretary of State for levelling up housing and communities to be a member of a panel of inspectors examining this application. Today, I will be chairing the hearing, going through the management of the events and taking introductions. Now going to ask my fellow panel members to introduce themselves.

01:51

Good morning. My name is Kevin Gleason. I'm also a chartered town planner and planning inspector employed by the planning Inspectorate and have been appointed by the Secretary of State's today to lead members of the panel to examine this application. I believe in the discussion today on the detail of the practical consent order.

02:12

Good morning. My name is Beth Davis. I'm a chartered geologist and a planning inspector. I've also been appointed by the Secretary of State to be a member of the panel for the examination. I'll be taking notes and action points today.

02:27

Thank you together we constitute the examining authority for this application and we will be reporting to the Secretary of State for business energy and industrial strategy with a recommendation as to whether development consent order should be made. You will have already heard from Jake Stevens and a tillable sauce that my right there here in Middlesbrough today. And they're supporting the case manager Sean Evans who is online today with Case Officer Alberto Santamaria. If you have any questions or queries about the examination process or any problems with the technology we're using today, they should be your first point of contact and their details can be found at the top of any letter you've received from us or on the project page of national infrastructure websites. And in addition to this in person events here today in Middlesbrough, this meeting is being held on the Microsoft Teams

platform, and it's being both live streamed and recorded. And for those people observing or participating through teams in order to minimise background noise can you please make sure your device to turn silence and you stay muted unless you're speaking in please use the Microsoft team's hands up function. Although please be advised there may be a delay before we can see it. Sign in end of the meeting for you to raise this under item 10 on the agenda, any other business purpose of identification and for the benefit of those who may be watching the Digital recording as later dates Could I ask at every point in the proceedings if you give your name and who you're representing just small formalities because we are recording and retaining these digital recordings. They form a public record that can contain your personal information and switch the general data protection regulations apply. Plan inspectorates practices to retain and publish recordings for a period of five years from the Secretary of State's decision. So if you participate in today's meeting, you need to understand that you will be live streamed and recorded and it will be published. So if you don't want your image to be recorded, you can switch off your camera

05:02

If anybody needs any special arrangements in order to participate today, if they can't hear me properly, please let the case team know so they can make the appropriate arrangements. I've been told there's no fire alarms today or drills. So in the event of a fire alarm, please exit any of the doors in the room and use the stairs to the ground floor and congregate outside the reception area.

05:36

Do so please do so responsible, responsible and with proper consideration for other parties. This must not be disruptive and the material must not be misused. And please bear in mind the only official record of the proceedings are the notes and the audio recording which are to be placed on the website. Social Media Communications arising out of this meeting will not be accepted as evidence in the examination of this application.

06:19

For 45 minutes to an hour, there will also be a break mid afternoon if we need to continue much beyond then. I'm now going to ask those people who wish to participate in the hearing stage to introduce themselves. If you're here as an observer, there's no need to introduce yourself. Please ensure you've given your details to the case team so they can complete the attendance list. Please state your name and who you represent your preference on how you wish to be addressed. Please speak clearly into the microphone for the applicants must feel part of

06:56

Good morning madam My name is Harry would fill pot Queen's counsel and I appear today to get together together with Isabella twofer of counsel who sat to my left. I'm instructed by Pinsent Masons on behalf of the applicants saved in respect of Agenda Item three on Article 49. And agenda item six. The second bullet point only were were instructed by Herbert Smith, free hills. To my right, I've got Mr. Nick McDonald, who's a Partner at Pinsent Masons who you'll hear from on a couple of matters on the agenda. And at the end, Mr. Richard Lowe, who's a director at AECOM, and he will also be speaking on some of the matters later on in the agenda.

07:44

Thank you very much.

07:50

Could I now have the introductions for record Cleveland Borough Council?

07:56

My name is Adrian Miller. I'm head of Planning and Development at the council and unmade councils representative today. We have no specific representations to make on the draft DC or Bill respond to any inquiries.

08:12

Thank you very much. Southeast Development Corporation

08:21

Good morning madam My name is Tom Henderson. I'm a solicitor and partner with BDB Pitmans law firm. We are representing se Development Corporation. To my right is Mark Reynolds of South East economic cooperation and to my left is my colleague Ryle head of b2b Pitmans.

08:44

A Thank you very much. And for Ofsted warns you for

08:52

Good morning, madam. My name is Selena Cahoon, co I QUH, or un on council, and I'm instructed by Shepard Wedderburn on behalf of Orsted. To make it clear, I'm not part of the team that deals with the Hornsey for DCO project, but should there need to be any interface or any link? We will sort that and I'm here with Mr. Vita, who is who you probably would have heard from for we're dealing with in particular article 49 and the protective provisions section of the EIA.

09:27

Okay, thank you very much. Is anyone else appearing here today? Who's who would like to speak before I move on to the virtual attendees? Nope. Okay. So for those appearing on Microsoft Teams today, could I first take introductions from PD Teesport?

09:59

Good morning, madam. My name is Paul McLean. I'm a principal associates from eversheds Sutherland representing PDT support. We're here to talk on two points if required one in relation to requirement 32 And then the other in relation to the protective provisions insofar as they relate to our client.

10:22

Thank you very much and further cut bulk terminal pace.

10:28

Good morning, John Webster Celestron partner and Russell Koch LLP from half red carpet terminal limited here and respect providing an update in respect of protective provisions.

10:42

Thank you very much. Client Earth.

10:52

Good morning, Sam Hunter Jones appearing on behalf clientearth Mostly addressing the extent to which the draft DCO secures the capture and storage of carbon dioxide at site.

11:07

Thank you. And for excellent seal sands limited.

11:17

Good morning. My name is David bird, a partner at V WV solicitors for the exam group here to address the productive provisionals on the DCO.

11:31

Thank you very much, and for Sembcorp place

11:42

Good morning. My name is Andrew bias or counsel instructed by DLA Piper UK appearing on behalf of Suncorp today. And we have some points to make in relation to two of the articles I believe and several of the requirements.

12:00

Okay, thank you very much buyers and products. Good morning, Madam,

12:11

my name is Emma Darwish.

12:12

I'm attending from Charles Russell speechlys, where I'm a solicitor, and we act on behalf of Air Products public limited company and our products renewable energy limited. And we of course raised various objections that deadline to and we appreciate that we that we have been asked to attend. Albeit I make clear at this stage, which I'm sure the applicant will do to that the applicant and our products collectively have agreed between themselves that substantive representations will wait until later in the programme as further progress is needed in respect of ongoing negotiations. Thank you, Miss Darwish. And for Anglo American would Smith please.

12:55

Good morning. My name is Morag Thompson. I freelance Minister like for Anglo American. Stay in here just to assist if any queries are raised.

13:07

Thank you very much. Miss Thompson. Trinity house.

13:19

We'll get Cameron Good morning madam Russell Dammam. Trinity house in the house legal advisor at Trinity house, primarily interested in article 47 arbitration of the draft DCO in terms of houses submissions deadline free in that regard, and of course to answer any questions that the examining authority might have. Thank you.

13:44

Okay, thank you very much. Mr. Dunn. Is there anybody else appearing virtually that I've not heard from yet? No. Thank you. Just a few more preliminaries before we move on the hearing today will be a structured discussion, which is led by us as the examining authority based on the agenda that has already been published. The purpose of the hearing today is to enable you to answer any questions that we have to ensure we have all the information we need in order to make our recommendations to the secretary of state. So please note that we are familiar with the documents that you've already sent in. So you don't need to repeat at length something that's already been submitted. And if you want to refer to information that you have already submitted in writing, could you please give the appropriate pins examination Library Reference? And additionally, if you use any abbreviations today, and acronyms Can you give the full title as there will be people listening today? Or watching the live stream that might not be as familiar with them as you are? The majority of Questions will be undertaken by those parties who have requested to speak but this is a public examination. So if you haven't indicated that you wish to speak and there is a point that you wish to make, please feel free to indicate at the relevant time with the hands up that you wish to contribute. The examination procedure rules require that at the start of the hearing, the examination authority should identify the matters to be considered at the hearing. The agenda that you can see on the screen now was placed on the project page of the inspectorate website on the first of July. And the items are the item two will set out the purpose of the hearing item three addresses the articles of the draft development consent order, this will also be referred to as DCO. Under Item four, we will consider these DCO requirements. Item five covers schedules 10 and 11. And these are about the deemed marine licences. Item six will cover protection protective provisions contained in schedule 12. Whilst item seven will cover consents, licences and other agreements, and item eight will go through the statements of common ground which are relevant to the DCO. We may add other issues for consideration as we progress and there will be an opportunity to raise other issues under other relevant business towards item 10 on the agenda. And we'll conclude the hearing as soon as all relevant contributions have been made or questions asked and responded to. If the discussions can't be completed or likely to take longer than anticipated, it may be necessary for us to prioritise some matters, and defer others to written questions. And just to remind you that the examination is a predominantly written process. So if you can't answer the question that's being asked today, or you require more time or you need to consult on it, please indicate this and you can respond in writing for submission at an agreed deadline. Are there any questions of an introductory or preliminary nature before we move on?

17:21

Nope, I will now pass over to Mr. Gleason two lead on item two of the agenda, which will outline the purpose of the hearing.

17:32

Thank you very much. So the first issue specific hearing on the draft DCO is HB two, on the 11th of May, was held to address matters issues and questions, which we had identified through our initial assessments of principle issues. It didn't specifically examine matters arising from the contents of individual relevant representations. And subsequent to that hearing further comments on the draft TCO have been submitted as written representations and deadlines one to four. This hearing will address matters raised up to an including those submitted at deadline for However, if an issue isn't raised by the examining authority at this point, it doesn't mean that we won't come back to it later in in writing or attend the subsequent hearing. Additionally, interested parties may still have issues which they wish to raise in respect of the DCO as it evolves. The agenda also focuses on number of specific provisions, where we consider examination through this hearing as appropriate. Since producing the agenda, and having reviewed the deadline for submissions, there will be some changes to those items, which will come on to set out in the real eight letter. We've also reserved the week commencing Monday the fifth of September, for issue specific hearings, which may include an issue specific hearing into the draft DCO, if required. As was explained previously, whatever recommendation the examining authority ultimately make is the Secretary of State for business, energy and industrial strategy, who will make the decision on the application. In this case, the Secretary of State is not bound to accept our recommendation. So in the circumstances that we were to recommend the order shouldn't be made, is nonetheless necessary for us to prepare a draft TCO for the Secretary of State's should the secretary of state decide not to accept our recommendation. Now throughout this hearing, I'm going to be referring to a number of key documents, which participants may wish to have easy access to just went through the references for those. So the latest version of the draft DCO submitted By the applicants that deadline for which has the examination library rep for double load to the latest version of the explanatory memorandum, which is revision three, April 2022. And that has a reference as 137. We then have the written summary of oral submissions made it is h1 by the applicants, which is rep one. Oh 36. The equivalence summary is h2, which is rep one. So, that is our 36. Previous one. Oh 35. The applicants response to relevant representations rep one Oh 45. Applicants comments on title line one submissions, rep two Oh 60. Applicants comments on deadline to submissions, rep three Oh 11. The applicants comments on written representations? Rep three Oh, 12. And the applicants comments on deadline three submissions for over 25. And clearly by focusing on the applicants comments there, within those documents are the summaries, at least not the entire document which was submitted by interested parties. So certainly no attempt to exclude their submissions. Now, as the expansion memorandum hasn't been updated since April, can I begin by asking the applicants to provide an updated version of the alongside each further revision of draft? DCO, please.

21:45

So we'll do that.

21:46

Thanks very much. Now, before moving on with the applicants wish to comment in general terms on the matters I've just outlined.

22:04

So no, that's that's clear. Thank you.

22:07

And does anyone else have anything to say under item two before we move on? Okay, thank you. And that case, I'll move on to Item three on the agenda, which is the articles of the travel DCO. So the agenda sets out that the applicants will be asked to provide a brief overview of the proposed changes to the articles for the DCO. Closing, the reason for changes since is h two. And the app, the examining authority will specifically ask the applicants to address IP submissions in relation to the number of articles that IPS will also be invited to ask questions of clarification in relation to those articles. So if case team could put up the draft DCO, which is rep for Tableau to please. And then we can have that as backgrounds as we work through. Thank you very much. So if we start at article to

23:16

top of that page, I think that's fine. Thank you. So let's begin then, as I said, as the applicants first of all, they wish to provide a brief overview of the changes. Before we delve into the details of those specific articles I wanted to ask questions about

23:50

so yes, I'm going to ask Mr. McDonald. To my right, just to provide a brief overview. Thank you.

23:59

Good morning, says Nick McDonald, from Pinsent Masons on behalf of the applicants, the we note that the agenda item requests that we address submissions of interested parties in relation to articles listed 289 2547 and 49. In the following section, the applicants have made changes to all of those articles specifically to address submissions of interested parties. And proposes that we address the changes to those articles as part of that, the discussions that is to follow on those, in which case, if you're content, I'll briefly provide an update in relation to the other changes that aren't included within those articles. And then we can move on to the discussion in relation to those particular particular articles after that Okay. The applicants have made a number of changes to articles in the draft DCO. Since the issue specific hearing to on the 11th of May, two versions of the draft DCO have been submitted, one at deadline to on the ninth of June rep two double O two company by a track change version showing the amendments. That included amendments to address comments raised by the examining authority and interested parties at that hearing, written questions as well as matters raised in representations and in discussions on statements of common ground. A second updated version of the draft DCO was submitted at the deadline for reference rep for web three, and again was accompanied by a track change version showing the amendments since deadline to the draft ECA submitted deadline for included amendments to address matters in representations submitted at deadline two, and three responded and to matters raised by interested parties also in relation to statements of common ground. And the changes to the articles are set out in the applicants to shedule of changes which were also submitted a deadline to read to Tableau for and that deadline for rep four double oh four. Aside from the changes to the articles, which the applicants will come on to discuss the valley been a limited number of changes, since issue specific hearing to a majority of these are to Article Two interpretation

generally to insert new definitions or amendments in order to give effect to changes to other articles or addressing comments from interested parties. And aside from these definitions, yeah, plugins highlight the change to the definition of date of final commissioning, which was altered, so that it applies not just to the dates when the authorised development as a whole is completed, but also commences operation on a commercial basis, but to also refer to the date on which specified work number, commences operation on a commercial basis. That was following a commitment of the applicants to review the drafting of data final commissioning and how it's used in the order at ISA h three, sorry, Isa, two, two. And the applicants concluded the definition should apply generally where it's used in some parts of the DCO. But it should be specific to work numbers in other cases. And the change to definition seeks to achieve that there being consequences consequential changes in relation to that in relation to Article 19 to be which relates to the protective works which may be carried out, reference to data final commissioning was deleted and replaced with a period which runs from the date that those works are completed, which was to give greater certainty and clarity on that period. Article 31 Four specifies the period during which the undertaker may remain in possession of land used for construction identified in shedule nine to the order this period is now the earlier of

28:45

the end of the period of one year beginning with data final commissioning of the authorised development or if earlier, where shedule nine specifies a purpose for which land may be taken, which relates to particular work numbers, the end of the period, beginning with the date of final commissioning of those work numbers.

29:10

Aside from changes related to articles that the later agenda items address, the only other points were minor drafting ones identified by the examining authority to issue specific hearing to clarify article 12 For to correct the formatting and a to move the definition of consenting authority from article 44 into Article Two.

29:48

Thank you, thank you. So then, that's fine. It's a helpful introduction to the changes that have been made as such. attacking the gents we'd like to then go through a number of specified articles, and particularly ones where there is still disagreement on the provisions that are set out. So let's start with Article Two interpretation. And specifically, the definition of permitted preliminary preliminary works. Now, the background to this, me raising assistants, se han Corporation pointed out, that's rep 297. A, that definition would allow the applicant to carry out more preliminary works than they had been authorised. And the recent GCOS and set of adepticon should clearly sets out the works, they will carry out prior to the discharge of requirements. Having seen that submission, it's too old 97. A. First of all, can I ask? Mr. Henson, is there anything further you want to add, from your perspective about this article? For this definition, specifically,

31:18

thank you. So Tom Anderson, Paul SDDC. might be helpful. Just to summarise our I mean, the basis of our concern is that these the works that are capable of being exercised over temporary land in which SDDC are attempting to bring forward other other developments as part of their function to regenerate

the wider site. The works are widely drafted, for example, would permit the preparation of facilities for the use of contractors which in our submission would be potentially extensive works. And our particular concern is to ensure that those works are appropriately controlled, and don't interfere with other developments which are coming forward on the site. I would add two points, which are, in fact, relevant to all of the submissions we'll make today. You will have seen, sir, that a deadline for very substantial amendments were made to the protective provisions for the benefit of STD. See, we first saw those on publication on Friday before the this week. And last night, we were provided with a an interface agreement, which obviously yet to get to grips with so there's quite a large quantity of new material that we're not yet in a position to provide confirmation as to whether it addresses our our issues, or not all I can say at this stage is that from a brief review of both of those documents, we don't see any new provisions which would provide comfort that SDDC had sufficient oversight or control of the primitive preliminary works, which, as we understand it, are capable of being exercised before the discharge of any requirements. So at this stage, the issue for us is unresolved.

33:21

Thank you, Mr. Henson. Mr. Hill.

33:24

Thank you. So you've seen obviously that we have responded in writing to STCs written representations at rep three, zero 12, section 17. We've also responded at deadline for two points related points made on behalf of Sim core. And that's in Section 11 of our default response to the deadline three representations paragraphs 11 To 19 211 to 21. So I'll try and be brief and just deal with it, if I may, in terms of the principles, as you'll understand the definition of permitted preliminary works, finds its application in certain of the requirements, because there are activities specified in the definition, which may take place before the discharge of the relevant requirement that the list of works covered in the definition is prescriptive. So any works that fall outside that definition, would require local planning authority consent, and they would only be able to approve the carry out of such works. Before discharge of conditions, if they were satisfied that the environmental effects element of that definition was In effect, in other words, that the works would not give rise to any material new or materially different environmental effects from those assessed in the environmental statement. So there is tight constraint on what is allowed to take place without the discharge of the relevant requirements. And it is a provision the the nature of which is, well unprecedented. I don't believe there is controversy, or could properly be controversy about the principle of limited works, preliminary works of this sort being undertaken before the discharge of requirements. And if one thinks about it for a moment, the reason for that is obvious. Some requirements will require investigations to be undertaken on site in order to discharge them. And so a certain amount of preliminary work is recognised as being necessary and appropriate, before the discharge of requirements, provided that it is properly controlled. So the principle shouldn't be controversial. The only question that then arises is whether or not the scope of works which are proposed to be excluded in this way is appropriate, that is necessarily bespoke to each order. Because it very much depends on the site, and its sensitivities, the sorts of requirements that need to be discharged, you and your colleagues have had a chance to see this site. It is different from others, it will have similarities to others, but the judgement as to what is appropriate, has to be made on the facts of this case. So we are we are looking at a list of works, which the applicants say are of the type of initial preparatory activities that can be carried out before discharge without material adverse

effects. And anything that is thought to go beyond what has been assessed would have to be approved. We haven't therefore proposed any changes to the definition at deadline to or deadline for now. We have looked carefully at the concerns that have been raised. And I've listened to the point that's been articulated on behalf of STbc this morning. But it's important to understand that this is a planning issue, as opposed to a protective provisions issue. And the distinction matters.

38:01

Because it falls to be determined against the tests for imposing requirements, including in particular, whether preliminary works of the sorts that are covered by that definition, need to be prohibited in the public interest pending discharge of the requirements in question. And whether prohibiting those works is reasonable in all other respects. Now, the distinction between that and the protective provisions approach is that the protective provisions are in order to protect the particular interests of parties such as STD C Sembcorp parties of that sort, and where they have particular interests that might be affected by works, as opposed to the planning matters which are regulated by the local planning authority. Those are addressed through protective provisions. Now the protective provisions do not feature exclusions or preliminary works. So those protections are not affected by this definition. They apply to any part of the authorised development. And we say that the protective provisions provide a comprehensive answer to the concerns raised so for example, the concerns raised just now about impact on other SPDC activities within their land. Now, we are open of course, to discussion, negotiation of the terms of protected provisions, if it is thought there are potential impacts of the permitted preliminary works that need to be covered in some other or different way. But that wouldn't justify or require a change to the definition in Article Two due, it's a matter that is to be discussed through protective provision negotiations, looking at the interests of the party that might be potentially affected by works of that sort. So that that's my way of overview and why we currently believe that our definition is corrected. Reasonable.

40:23

Thank you, Mr. Hill. Mr. Henson, something you want to come back on that about.

40:30

Thank you, Sir Tom Henderson for SDDC. Just a couple of points in response. Firstly, as you will have seen them in the scope of the works to go beyond surveys, the matters that Mr. Phillips suggested would actually be necessary in order to discharge requirements. So our fundamental issue here is not one of environmental effects or the scope of the Yes, or stand envelope. Our concern is that in the context of this scheme, there are numerous other projects coming forward on land which are affected by these powers. And so in the context of this particular scheme, there is a need to ensure that the permitted preliminary works are appropriately controlled. Now this could happen in a number of ways. One would be to reduce the scope of the definition. Therefore, the matters would then fall to be dealt with through the discharge of requirements, which would be a mechanism for ensuring they're controlled. That's not the approach being proposed here. Our position is that we're amenable for the matters to be dealt with through the protective provisions. But as it stands, we understand the protective provisions which are stressed, we've only had one business day to get to grips with the scope of what we as SDC SDDC sorry, have the ability to control is limited to specific numbered works, not all of which would bite on the exercise of permitted Polonia works, for instance, in relation to the

main site, which is not a matter of protecting divisions afforded us the right to have a prior approval labour. So it's a matter to take this forward, it's a matter capabilities have been dealt with in protected revisions, but currently hasn't made its way into the drafting.

42:13

Thank you. But Mr. Hill Potts point, is this difference between protective provisions and preliminary words? And are you saying you're opposed to these permitted preliminary work? So you want changes to them? irrespective of the fact that you haven't agreed on the protective provisions yet? There's still some way to go in that understand that we can just focus on this interpretation of permitted preliminary works, because I think you pointed out that the emperor or the 2018. In that case, he was attached to specific works, rather than this being more general, are the changes you want to that definition? And are you discussing those with the applicant?

43:03

The opposition is that the protected provisions in this provision are inextricably linked. We raised the submission in the context of this definition, because at that point in time, the protected provisions don't don't address the point. So we, I think, would be content to live with the scope of these works provided that the protected provisions for this appropriate level of input and oversight as to what's happening on the rest of the site beyond the

43:37

if the protective provisions can be agreed, then you think that this article can be accepted without too much tweaking? That's correct. Yes. Yes. Thank

43:47

you. Mr. Hill, sir. Thank you. That's helpful. The only thing I would say just by way of clarification, I think it may have been suggested that all of the requirements have this wording within them, they don't there are some which do not exclude the preliminary work. So for example, requirement 15 on protected species, that that doesn't have an exception for preliminary work. So it is inserted where we think it's appropriate and not inserted, where we don't think it's appropriate.

44:34

Any other comments on that? Definition? No, thank you. So move on Article eight, is the next article identified on the agenda? What I'd like to do suggest that this article was dealt with under Article 25 Because the consensus to SDDC on Article 25 also addresses Is article eight? That's acceptable?

45:03

Yes. So they are connected. Yes.

45:05

Thank you. So then we'll move on to Article Nine, which is amendments and modification of statutory provisions. And this ties in with sheduled. Three. Again, there's a lot of connection here with protective provisions, which will be dealt with under item six. Before we get onto that, would Anglo American wish to comment on the wording of Article Nine and sheduled? Three? And

45:41

Mark Thompson's sorry. Yes, we're at Thompson's we're sorry. We will have the same colour on screen, I think.

45:54

Yes, I've got both of you on screen at the moment. Sorry. Mr. Bias. Do you want to speak first?

46:13

I'm sorry, sir. I think it was just a delay with my hand being raised on the system. You asked a question about whether there were any comments and other comments on Article Two and I put my hand up and there was a slight delay. I'm very sorry for the inconvenience. The short point is that there's much in the discussion that's just been had with which my client simcorp agrees. The essential point that we make is wanting to ensure not so we've made some comments about the scope, the definition, but our principle point is really about ensuring that the protective provisions are catered for permitted preliminary works. And the applicant has said that that is the intention. And we know that I think we will probably come back to them with some drafting points in order to make that abundantly clear. But I just wanted to record that for the purposes of this session.

47:11

That's fine. Thanks very much. Thank you so. So Miss Thompson for Anglo American.

47:22

You said, can I take this in two parts on Article Nine? Firstly, the change that's been made to the location of the Protect provisions for for the applicant within the port port port are shorter that change was our request and is is clearly acceptable to us. It brings the the your polish order, will the change the awkward short order proposed in line with the rest of the order? So that's entirely sensible and acceptable. Just for the ones of any doubt the the protective provisions are included in the DCO that you have before you are not acceptable? And there it's a bit of an ongoing discussions.

48:07

Thank you. So to be clear, are you content with the wording of Article Nine? And sheduled? Three as it is, although we noticed that you have concerns over protective provisions, which we'll come on to, yes. Yes. Your concerns with that? Okay. That's, that's very helpful. Thank you. So, Mr. Philpott, there's one thing you wish to add on that. I think there's probably I don't

48:33

I don't think so in the light of that. That's helpful. Thank you.

48:36

So we will come back, obviously to the protective provisions themselves later. So that deals with Article Nine less than one else has anything to say. If we can then move on to article 25, which is compulsory acquisition of REITs. As a said, this relates to Article eight as well. So again, coming back to the representation of SDDC. At rep two Oh 97. A. An objection was made there to the applicants power to

transfer the benefits of the order to unknown statutory undertakers saying that the applicants know at this stage that there'll be transferring the benefits to third parties, those parties should be named. And the applicants need to explain why this pair is necessary and whether it is precedented. The applicants compensated at rep three Oh 12 and latest position is set out The deadline for report double O four, which explains how the article has now been amended. Mr. Hill puts you on to explain where you've got on this. And then let Mr. Henderson come back.

50:15

Yes, sir, as you'll see on this looks at article 25, as a starting point, that the drafting has been amended, so that any exercise of the power under Article 25 buyer, a statutory Undertaker has to be with the consent of the Secretary of State. And that needs to be read then together with Article eight, which is generally about transfer of benefit of the order. Now, an article eight itself is a I hope of familiar approach, the general approach, which one finds here is to be found in a number of recent development consent orders, where there are specific parties are identified where the transfer may take place. But essentially, what what we've sought to change deadline for is the extent to which article 25 compulsory acquisition of rights can be used by a statutory Undertaker to address the concerns that have been raised. The Secretary has to consent to that. But I I'm hoping that we're hoping that that change has taken cognizance of the concerns raised and hopefully address them. Because when it's combined them with the rest of Article eight, the safeguards that exist there, we think that that ought to address any reasonable concerns about any other party being given the benefits of this order.

52:28

Thank you. Mr. Hansen tunes comments on that I appreciate that deadline for zoning just occurred, and you won't have had time, if you want to make any initial comments. But clearly, he wants to come back in writing next deadline on that proposal as well. But if you have anything you wish to say, at this point, thank you. So

52:47

yes, we will respond substantively in writing. I think Mr. Fuller partially answered the question that I was there was going to be going to put across which was the interplay between articles eight and 25. And I think, as I understand it, working in parallel, Article eight doesn't subvert the requirement for our secretary say consent under Article 25. And if that's the case, I think there's scope for drafting amendment somewhere within article eight just to make that clear, because it's it's not obvious from the provision as it stands. Other than that, we'll need to consider the implications of this now. In the context of the revised protected provisions, which may be a home for our our concern, so we'll come back to in writing on that.

53:34

Thank you, Mr. Hansen. Mr. Phillips, anything further, you say?

53:45

No, sir, it does seem that there is cause for optimism on that, and we'll wait to see what SDDC come back with in writing.

53:51

Thank you. Any other comments in relation to Article 25? Or indeed article eight? Nope. Thank you. In that case, we'll move on. The next article is one I've put into the agenda, which is article 27. Just a minor point on this just wanted to clarify. And it's as simple as asking, should the heading be trend change to applications in 1981 act as it's already been defined?

54:38

Well take that away and respond in writing.

54:41

Thank you. And then another additional article. Today article 31. temporary use of land for carrying out the authorised development As I understand that this wording is wording was added to this paragraph one a two, in order to allow article 31 to apply to lands, which may later be subject to ca. This reflexive common approach to designing building infrastructure projects. So the possession is taken up a wider area required for the purposes of construction. And once the location of the apparatus is known definitively after it's been built, then the final area of lands required permanently is defined in the quiet. And the applicants has said that this allows a more proportionate approach the extent of land acquisition. The question I have is, if temporary possession is followed by CEA is that acceptable in terms of affected parties understanding the consequences of this article? Could it be misleading in its effects, the parties are only expecting temporary possession and then face compulsory acquisition, ultimately for smaller area of land.

56:23

So I don't believe that should be a concern, because it would be clear when one looks at the order is a whole and when one looks at the land plans that the area in question is identified for permanent acquisition. So anybody whose land is affected by a provision of that sword would know that permanent acquisition was intended. What this would allow them to understand is that it may be that in advance of the land being acquired permanently temporary possession may be taken of that land. And in those circumstances, it may well be that the extent of permanent acquisition in due course, would be less than a showing on the land plans. So whilst in one sense, it provides the ability to enter the land and take it temporarily, when otherwise one would be obliged to exercise the full compulsory acquisition powers over the whole when seen in context. That is inherently more proportionate than the alternative, which is that if you are pretty sure you're going to need some of it, you have to acquire everything out right at the start. So for the person whose land is affected, our submission is that that is a better and more proportionate approach than the only realistic alternative, which seems to take the entirety from the outset.

58:04

But once that affects a person, be aware that you were taking temporary lands to begin with. And then moving on to ca. So there's article 31. The London two relates to is that identified for compulsory acquisition in the first place? Are you saying that pink land?

58:29

Yes, so this is the way that article 31. One works,

58:38

is trying to get microphones out as it's on. Yes. So,

58:42

yes, so there are there are there are two elements to a. So you have the ability in terms of temporary use to enter on and take possession of effectively the blue land, the land of which temporary possession may be taken, but also other any other part of the order land where you haven't yet gone through the steps that a subparagraph two sets out. So effectively land that you could take permanently but haven't yet gone through the necessary steps. You're able to exercise the temporary powers over that land as well. So it's clear when you work that through that that other land is land that you have powers of compulsory acquisition over.

59:45

So anyone I appreciate that. As with many matters related to orders of this sort, there is a certain element of necessary complexity. But if you if your land is affected by this And one works it through, no one should be in any doubt as to whether their land is subject to permanent compulsory acquisition powers. Because this is now a relatively familiar mechanism incorporated into such orders, it's reasonable to expect that the effect of it would be well understood by those advising affected parties. And they'd be able to understand, hopefully, the potential beneficial effects for them of this more flexible staged approach.

1:00:37

Thank you. And if we could just move on then to article 44. procedure in relation to certain approvals. This came up at the previous hearing on the TCL. I think my question at that time was whether they should specifically states whether it applies or not, to teams, marine licences, not clear whether that's answer has been given yet. If you need to come back in writing that that's fine, I put you on the spot a bit, but

1:01:35

I think we better come back to you in writing on that. It doesn't sound like I've got a quick answer to

1:01:38

that. That's fine. Absolutely. Okay, let's get back onto the agenda. Then article 47, which is arbitration.

1:01:55

I'm sorry, I've got a legacy hand. I'm a bit late. Getting too long. These articles. I'm sorry.

1:02:01

That's fine. This Mr. Glass?

1:02:04

Thank you. So it's not a point that I think was in our written representations. But we do have a concern and read perspective, article 44, as well, just in the sense that our understanding of it is it does apply to

my client as well in terms of the consents, etc, that are going to be sore from my client. And the effect of those obviously, is if there's no response within six weeks, then consent is deemed to be given. And in the context where the applicant is also objecting to my client having a consultation role in respect of the discharge of the requirements. It does put drop provide the potential for a bit of a bind for my client in terms of ensuring that responses are given in time given the highly complicated nature of some of the issues relating to the pipeline's quarrels. Now, it may be said that this is a matter that we can address in due course, through negotiations on the protective provisions. And if provision is made within those for a different mechanism, then we can deal with it that way. But again, so it's just something for me to notice at this stage, because we were talking about the article

1:03:16

and said Mr. Pious, yes, sir, sorry, Mr. Phillpotts want to come back?

1:03:22

So only say I, I noticed it's very fairly acknowledged that this is not a point I think it's been made in writing before and that it may be capable of being dealt with through protective provisions. So rather than responding now, I think we'll take that up with some call if we may, in discussions outside the examination. Thank you, sir.

1:03:47

Okay, so let's move then on to article 47. Arbitration. And I think there's been a change made at that line, or report Tableau to an insertion to include that subject to article 270 foot Transy house at the beginning of this article to address the comments made by Trinity house. Mr. Dunham, sorry, functions he has did you wish to comment on this for us applicants to respond?

1:04:34

Thank you, sir. Russell Darwin with Trinity house. No more pacifically. Sir. Trinity has notes the amendment to article 47 and is content with that amendment as it as it now reads? Thank you.

1:04:49

You your consent with the amendments? Is a yes. Good. Thank

1:04:53

you. Thank you.

1:04:54

Thank you. So Mr. hotpot. I'm sure you're happy with that

1:04:58

very much. So you So and we didn't have any, there's no difficulty in providing for this trinity house doesn't have an approval function under the draft DCO. So we're quite content to make that change.

1:05:12

Thank you. Good. So now let's move on to article 49, which is the DIS application of interface agreements. And we may need some time on this. So this was an addition that was made at a deadline to insert this new article. And there has been considerable discussion in relation to this, since that insertion of the article, including the deadline for the applicant has come back with suggested changes. So just to be clear, the article says from the date of this order, the interface agreement shall no longer have effects, and no claim may be made. No award granted, for any damages. As a result, any alleged antecedent breach of the interface agreements, prior to the date of this order. could ask the applicants to briefly summarise the current position regarding article 49? And then I'll ask Ofsted to respond on that basis. And then a couple of detailed questions, but I think that would help us to understand the context and where we are on this, I think it's a very important matter which we have discussed before. And well, let's see where we get to initially, yeah, so

1:06:53

what I'll do if it's helpful, I'm going to cover three matters. In introducing this. First, I'm going to provide an overview in terms of the documents that you have, and also the documents you don't yet have. Because there are some matters on that it's worth noting at the outset. Secondly, I'm going to provide an overview of the current position as we see it and how it's developing in the eight, the HP for examination. And you'll have seen in our deadline for submissions in response to those put in BIOS to the deadline three, that the approach this is being taken to addressing the underlying issues that arise in the effect of the interface of human to is changing. In order to meet some of the concerns have been raised about the original approach. So that's the second matter, I provide you with an overview of where I think we are, and where we're going. And thirdly, I'm going to address you on how we therefore suggest this is most appropriately dealt with at this stage. And in this examination having regard to those matters. So if you can bear with me while I work through those points. So in terms of documents, I'll try and deal with this briefly. But you've got our position set out in writing in a number of places. And it's worth just noting. The first of those is in rep one. Oh 35, which is the summary of oral submissions from issues specific hearing one, in addition to what's in the summary itself, Appendix six, which is responding to action to from that hearing is a note on the requirement to assess impact on Hornsey before, and that addresses the issue of EIA and explains why the applicants aren't obliged to assess the impact of the separate offshore works on the proposed HP poor development, but it's nevertheless volunteered to do so that assessment has now been provided as part of the deadline for submission. And that's read for over 30. You've also got appendix seven in that in the ISA h1 appendices, which was a document responding to action four, which considers the potential outcomes of the HP four application and explains why in all of those scenarios, this issue doesn't affect the acceptability and deliverability of this proposed development. It also explains the lack of direct physical conflict between the development that's proposed in this order and the development proposed in HP four, even when the necessary offshore elements are taken into account and then appendix one to that To appendix, appendix one, two appendix seven that introduced the additional proposed article, or this DCO, which displays the interface agreement and summarises the reasons for its inclusion. And that also dealt with opposition on avoiding unnecessary duplication of examination of the underlying issues. Now, as that explains, and as we say, it is the right position. The only separate issue for this examination is identified as being whether if dis application, or some equivalent provision is found by the Secretary of State to be appropriate in principle, having regard to the examining authorities report in the HP for examination, there is a justification for reproducing that provision in this order. That is a separate issue to be

examined here. And the main purpose of reproducing that provision in this order is to cater for circumstances where the DIS application is judged to be appropriate. But the HP for DCA was refused for other reasons. There's also a subsidiary point about whether they implemented but the main point is, if that if a seual state says yes, the interface screen, it has a problem. And then he's to be provisioned dealing with it, but then refuses the HP for DCO for some for some other reason. And that's explained as being required. Because the terms of the interface agreement mean that the risk it poses to the viability of a wider ECC plan remains even in circumstances where Austin's current DCO application is refused. Now, I just pause here one set of documents, which you don't yet have, but which I suggest will need to be provided to you at the next deadline. Our documents which have gone into the HP for examination, namely, first of all the interface agreement itself. And secondly, there is an accompanying commentary on the interface agreement, clause by clause provided by Herbert Smith free hills. And that explains what the risk is why there are why the provisions in there give rise to the concern that you don't currently have the benefit of the agreement, or that commentary on it. And in preparing for today. The difficulty that that might cause you in forming a judgement about whether it should be reproduced here, because of the concern that's raised, it becomes apparent and therefore it seems to me that that's something we need to give you the next deadline. The next set of documents, we provided a rep to zero 60, which is the response to austere deadline, one submissions, and that those deadline to submissions they address avoiding re litigation. They also address an item which comes up later in today's agenda, why no protective provisions are needed for HP for and we'll come back to that I know, but also why this application is appropriate. We then got rep three zero 12, which is our response to the written representations. And there are section 13 of that document that responds to horses written representations. And then most recently, you've got the deadline for submissions, rep four, zero 30. And you've got my hurt. I don't know whether you've had an opportunity to read them in any detail. But there's a covering note. There's the assessment of impact on the of the exclusion area. And I'll come back to that on HB four. There's a response to Austin's technical submissions that went into the HP for examination and the response towards his legal submissions, which went into the HP for examination. So that's the dock. That's the set of documents you have and as for the reasons I've explained that's not yet complete, but it will be shortly

1:14:37

before you go on Yeah, just as rep two Oh 21 was a position statements between Allstate states and BP. How relevant is that to the discussion your setup

1:14:57

is relevant in the sensitive line rather than It's so relevant contextual information. But in my submission, it mainly goes to the technical issues and disputes I get to come on to just talk about where we are with those. But one of the points that we've sought to be consistent about throughout is that there's no need for benefit from this examination, re litigating those technical matters. And I'll explain that that in more detail in a moment. So that is, those are irrelevant, but they're irrelevant by way of context. Because in terms of what we're seeking to include within this order, and the separate issues to which that gives rise, it is actually only a very narrow point. It's a very narrow point, and it depends on the outcome of the examining examining authorities consideration of the HP for application as to whether it arises at all. But if it does arise, then it's a very narrow point that I move on to the second matter, which is the overview of the position and how it's developing. And there are two aspects to address. First is the

technical issues which relate to colocation. And those technical issues underlie the proposal in the HP for DCO context, to make provision in that DCO for an exclusion area where the two projects overlap, that is not something which we seek to reproduce in this DCO. The second aspect are those issues that relate to the potential for the interface agreement to undermine the viability of the wider ECC plan. And that underlies the proposal to originally to disapply. The interface agreement. Now we're evolving, and I'll come to that. And that's common to both DTOs. So if I start with the technical issues, and I'll deal with this briefly, both parties have submitted and continue to submit extensive technical evidence to the to the HP for examination on the potential for coexistence in the area where they overlap. And whilst Austin's most recent technical evidence moves helpfully towards BPS position in a number of important respects. It's fair to say the debate as to whether colocation of these two projects as a practical proposition, the overlap area continues in that examination. The documents we've put in a deadline for represent the most recent evidence that's gone in from us, at least to the HP for examination on those matters. But in circumstances where we are not inviting you as an examining authority for our application, to examine those matters or reach any conclusions about them. And we're not suggesting that the exclusion area be addressed in this development consent order. I don't propose to say anything more about those in oral submission. The written submissions we've provided are just for your information, and in particular, so that you can be satisfied that these issues are being addressed in that separate examination. The second matter is the different dis application of the interface agreement. And the underlying issue with the interface agreement is summarised in rep four zero 30. Appendix one that electronic pages seven to eight.

1:18:52

And the exclusion area by itself is insufficient to safeguard the deliverability of the full extent of the endurance store and so preserve the viability of the wider ECC plan. Now in the deadline, five submissions that deadline five in the Hornsey project for examination, BP explained how the existence of the interface agreement could give rise to a significant potential compensation liability, the potential for which may mean that the NDP wouldn't elect to utilise that part of the endurance store which is within the exclusion area. And that in turn would then prevent the full development of the endurance store delivery of the wider ECC plan and the realisation of the important public benefits of ensuring that is delivered. And that's the explanation which will provide you from that examination into the next headline here. Now to remove that risk BP As previously proposed, as you find in article 49, here, the DIS application of the interface agreement that's proposed by means of protecting provisions in the HP for examination here by specific article. But in response to submissions on this point from all stirred and also the Crown Estate, both of which have now been reproduced into this examination. So you've seen those in recent submissions. BP has now proposed a revised approach that's included within the material you've been given a deadline for, and that is material which also went into the Hornsey project for examination at their deadline five, a bat revised approach no longer proposes dis application of the interface agreement. But instead, it removes BPS liability to Oersted, pursuant to that agreement, and in lieu of such liability provides for BP on behalf of an EP to make a compensation payment to Austin. That's the the essence of the changed approach. Drafting to reflect that approach is being developed and will be included in the revised draft protect provisions that will go into the Hornsey project for DCO. And ultimately will find their way into this application, there's a revised version of article 49. Now that provision, as those submissions explain, the provision that will be made for the payment of such compensation, will need to take account of various considerations that will be relevant when

determining quantum that will go in at the next deadline of the Hornsey project for examination at the end of this month, following the initial discussion at hearings, which I believe is scheduled to take place next week in that examination. So this alternative approach, which is intended to achieve the same basic objective of protecting the public interest by addressing the risks that a significant potential compensation liability, would prevent delivery of the wider ECC plan. And instead of having a proportionate payment, and you'll see that appendix to to the most recent material that's gone in at deadline for responds to the legal submissions, which you've been provided with the doorstep of made, including by reference to how the revised approach addresses the Human Rights Act concerns, and how it addresses the crowd consent issues that have been raised. So in summary, the provision would make for payment of proportionate compensation. And that addresses the HRA and virus concerns raised and the Crown has states rights under the interface agreement would no longer be affected. So we say section 1352 of the Planning Act would not be engaged. Now, those submissions have only recently been made to the HP for examination, as I've said the drafting is to follow and that drafting we anticipate will come to this examination at deadline five. So that's by way of overview of where we are. And then in terms of the third matter, which is the suggested approach.

1:23:38

Our position remains that this is a matter that should not need to be considered at any length in this examination. For the reasons we've set out in writing. And in summary, it that's for the following reasons. First of all, the substantive, technical and legal issues are being examined in detail by another examining authority, which will report on them to the Secretary of State before a decision falls to be made on this NCL T application. The only separate issue for this examination is whether, if in the light of that separate examining authorities report, the Secretary of State's concludes that a provision dealing with the interface agreement is appropriate. Whether or not that should also feature in this order. All other matters of common and the HP for examining authority will have the benefit of all that the parties want to say and put before them on those points. So there's no nothing missing no party that is only engaged in one process and not the other. So the focus of this examination we say should therefore be on that narrow point and revise drafting for article 14 Island an explanation of it will come in if deadline five, that will be accompanied by a copy of the interface agreement and commentary on it. So you can understand the ongoing risk that arises, we say even if the HP four DCO application is refused, that material looking at the timetable would come in in advance of the second round of written questions. And it will also be material in terms of the revised drafting that will have been seen by Oersted in advance of that stage, so, they will have had some opportunity to consider the issues in principle and in terms of the drafting. But the second round of written questions would then provide a suitable means of obtaining further clarification, explanation of issues parties positions, once you've had the opportunity to see both the revised draft and the explanation for it, and then the and the underlying documents. So, paradise for taking a bit of time over that, but I hope that's a helpful overview.

1:26:14

Thank you. Before as costed to respond on that. So just to clarify, you're still proposing the there will be an article in the order. Because you only know that 49 still put in won't be that 49 It could be based on the wording which you've included in Annex or appendix two of your submission.

1:26:46

That That's right. And it's one actually yes. So the nature of the effect on the interface agreement is I hope fairly clearly explained by that document. The drafting, which is being worked on, is to deal with the matter of compensation. And for the reasons I've said there are a number of factors that would need to play into that. And so obviously, care needs to be taken to ensure that that is put together appropriately. But hopefully that gives a reasonably clear indication of the nature of the change. And therefore the reasons why we say that it addresses the legal issues that have been raised about viruses about human rights, and in terms of can consent, but yes, you're right, there will be a new article 14 line.

1:27:35

And then deadline for the two submissions by the Crown states. One comments and then the other information submitted that line three, and comments and other information said the same, it's got the same heading.

1:27:55

And I believe that that one is an appendix which is the mix of the submission made to the HP for examination.

1:28:11

Did they change your position at all from what you submitted deadline for

1:28:16

now the deadline for submissions that we have made respond to the Crown estates position because the crown estates position has been made clear into the HP for examination in the same terms. And therefore the response that we have provided to the HP for examination, which we've copied now across to you includes our response to those points. And there is a significant degree of overlap between the Crown estates points and the points made by Ofsted. And so, it is a response to both and both of those have been formed the amended approach which has been taken.

1:29:02

Okay, thank you. It's now just approaching 1130. I wonder if we should have a break now. Before he asked us to respond. Are you happy that mystical pods were

1:29:16

entirely in your hands today? Yes.

1:29:18

I think perfectly appropriate Yes.

1:29:20

Then Then suddenly I can go away and think about what you've said as well. Before we get on to host that position, so we do that, okay.

1:29:37

Okay, the time is 1129 I'll suggest right for 20 minutes and come back at 1150. hearing is now adjourned.