

TRANSCRIPT_ISH3_SESSION4_NETZEROT EESSIDE_12072022

00:35

Welcome back, the time is now 340. And the hearing into the net zero T side project is resumed. Mr. Gleason.

00:47

Thank you. So we're now going to move on to the second part of item six scheduled 12. Protective provisions. And the agenda item here says the applicants and those that host Hornsea project for limited will be asked their respective positions as to the need for protective provisions in relation to the Hansie for projects with particular reference to a number of detailed submissions. Clearly, there's overlap with what we discussed this morning. So I'd like to begin with Orsted, please, if you could set out your position on protective provisions. Thank you.

01:35

Thank you, sir. I don't want to repeat some My Submissions this morning, but clearly was to its position is that that the endurance store is an important element of this project that is before you and the endurance store is also affects HP fall. To that extent, there is a clear interrelationship between if you want to call them all three projects, there is there is a clear interrelationship that the difference between most exposition and that of the the applicant in this case, is that Orsted sorry, NTT needs the endurance store, as part of its ultimate aim, you know that, in other words, the extent to which it can use the endurance store for its co2, or its compressed co2 And where it places it is an important part of the justification for this case, for this DCO Sir, did that extent I submitted this morning that the conclusion must be that the project in scheduled, two terms under the EIA regulations includes the endurance store, the fact that the NS t have concluded and using their words from the earlier submissions we give me it's it's rep 3012. They refer to the fact that that the endurance store is said to be sorry, this is paragraph 3.2. Point two. They argue the endurance store is a distinct component part of the NE P project subject to its own consenting process. But then if one looks, for example, very clearly, I think it's the way that work number eight is described and I'm looking at the way it's described in rep 2060. Page two, work number eight clearly refers to the capture of the compressed co2 To take it towards the endurance Ceylon aquifer. So, the connection there between this DCO project and the endurance store is is is clearly there. To that extent, as the endurance store needs to be treated as part of this project, where not only where HP four places its turbines may have an effect upon the extent to which NCT can use the endurance store equally the extent to which that might be affected by what NZT want to do there that affects HP for So, in very simple terms, that is why protected provisions need to be before you and you need to be recommended. And the purpose of those protective provisions allows For the issue of colocation, and the issue of where the turbines may be placed, ultimately, and how how BP and HB four, and how the utility of the insurance still can be sorted, is through this proximity and coexistence agreement. And that is that the principal purpose of those protective provisions says In

essence, if there is no HP for DCO, then of course, nothing arises. But if it does, then there needs to be this process whereby an agreement can be reached. And so that the process and the detail can be worked out at that stage, because to between both you and your colleagues on the HP four project, there is no specific details yet that can be presented that is the nature of the DCO process. So So, in very simple form, that is where we are. And that is why there is clearly a need for protective provisions. Certainly BP have sought protective provisions under the HP for DCO. But that, in effect is is separate consideration to what you need to do we say, as a consequence of what's before you. So do you want me to go through the protective provisions? Or?

06:24

I mean, the difficulty you have is, I'm afraid is that there, that the response from the applicant is we don't that they don't want to comment on it, and therefore, they won't engage with what's in it. So we present it as is yes, if you have questions about those provisions, and clearly we'll answer them.

06:43

I'm not sure at this point is going to be of assistance to us to go through them when we have looked. And we will continue to review as we go forwards with the whatever the applicant saying and we may need to come back to you with written questions. But I'm not sure this afternoon is the appropriate times go through those in detail.

07:12

So they are draft. So if clearly as a consequence of anything that you ask, they may be changed, but it may be that if there'll be further changes as a consequence of what happens. Yes, the other DCM is that they are very, they are draft. Yes.

07:31

Okay. Thank you so you mentioned I think the terms of use with proximity and colocation agreements, is that coexistence

08:00

sorry, sir.

08:01

No, it's I may have written that down. Is that within the protective provisions? Yes,

08:12

it is. So if they are attached to our rep 2089 appendix one.

09:34

Thank you, Mr. Hill. Thank you, sir. Before I say what I was proposing to say, just one preliminary point you will recall that I've addressed already and we've addressed in writing the extent to which the proposed development here requires use of the full endurance store or or not, and therefore the implications for the determination of this DCO of the debate that is ongoing in the HP for examination. I don't propose to repeat that, but it just arises as a preliminary point from what Miss Calhoun said. So,

so, a deadline to in rep 260. The applicants explained why no protective provisions are required, or all stated. That explanation should be read together with the deadline one document appended to the summary of all submissions for issues specific hearing one, that's rep one zero 35 electronic page 172 Which considered your recall sir, the different scenarios which might arise as a result of the HP four application nothing that's been submitted by Ofsted since then, either in writing or today orally provides any satisfactory response to those points, or otherwise comes close to justifying the need for protective provisions in this DCO in order to allow HB four to go ahead. So opposition can be summarised as follows. First, there is no nexus between the works that are authorised proposed to be authorised by this DCO and the works proposed to be authorised by the HP for DCO. The ns a TD so does not seek either authorization for any works in the overlap area, nor any rights over that area. The related offshore works are subjected to a separate consenting regime pursuant to which the decision maker can consider any submissions Orsted wish to make about impacts on HP for before a decision is made whether to allow those works to proceed. And of course, if Ofsted has a development consent order by that stage, then the terms of that development consent to a border would also be relevant in the determination of any such application. Now, by clear contrast, austere scheme is all to be consented under a single order. And that order does seek to authorise works in the overlap area. If HB four obtains consent, then the DCO will include appropriate protective provisions to regulate this issue. I say that neutrally, so there's embraces whatever decision the Secretary of State takes if Austin's position is accepted by the Secretary of State, through that examination, the powers that are contained in its own DCO. And the protective provisions, it advances to address this issue will have been judged to be sufficient to protect its interests because of the overlap with the insurance store, nothing that Allstate has said in rep two, zero 89. Or today, even attempts to explain why its own project will be left exposed to unacceptable risks in those circumstances. That what it describes as reciprocal protective provisions in the end said t DCO. Just pause there, you'll recall from the submissions that Austin has made about this, that its own protective provisions are advanced on the on the scenario three basis. So this is paragraph four, point 3.3

14:22

Which explains that scenario three is where the Ponzi for offshore wind farm DCO is approved subject to Hornsey falls, proposed protective provisions. So that's the that's the scenario in which this is advanced. In other words, the justification for concluding that the proposed protective provisions would be needed in that scenario has to be advanced on the basis that that's still necessary notwithstanding all that would be and could be included by way of powers and protections in its own order that there is no explanation why its own DCO would not be adequate in those circumstances. So far as I'm aware that I stand to be corrected, and don't believe that Allstate has made any submission to the its own examining authority to suggest that its project might not be able to proceed in the absence of protective provisions in the NS a T DCO. Under scenario three, or to explain why that would be the case. So the alternative outcome is if BPS position in terms of the technical issues coexistence is accepted by the Secretary of State following the HB four examination, if that is the scenario, then the Secretary of State will have rejected Austin's case for its preferred protective provisions. And there would be no basis for then reaching inconsistent decision in the NSAID T case by imposing reciprocal protective provisions when they've been rejected. Their counterparts have been rejected in the Ofsted examination. Of course, as boasted appears to accept if it doesn't obtain consent, the issue falls away altogether. So in short, the decision on HP falls DCO, will deal comprehensively with the issue of weather and if so, what

protection is required for Austin's project to be able to go ahead, if it's allowed to go ahead in the overlap area. If there is any separate issue, and as I've indicated, none seems to have been identified, that would be a matter for the decision making process for the offshore elements, cognizant of what has come out of the HP for examination. So if notwithstanding those points, you wish to explore or study, draft protective provisions further, we have a deadline for supply deal with the written submissions that we made to the HP for examination about the form and substance of the equivalent provisions that have been put forward to the HP for examination, and why we say those provisions are fundamentally flawed and don't provide an effective mechanism for dealing with the overlap issues in any event. And so if I just give you the references in case you do want to look at that, if you look at Appendix two, to the deadline for submissions at annex one, paragraph 712 817. This is the technical response. That explains why the latest authored suggestion of post consent technical work, which is built into their protective provisions is unrealistic and flawed. And then appendix two to the deadline for submissions annex two that's the legal response. Paragraph 510 to 514. Explain why authors protected provisions simply don't provide solutions to the technical and viability problems that BP suggested revisions are designed to address. And that's potentially relevant if you want to get into this question. Because the justification or the protective provisions that now seeks to have included in this DCA are intended to be of broadly reciprocal effect. So in those circumstances, so the applicants have not considered it necessary to make written submissions on the detail of those draft protective provisions. Obviously, if you wish to ask us any questions about them, no doubt you'll do that and we will respond to any questions you may have. So, sir, unless I can help further, that's the summary of where we've got to.

19:22

Thank you, Mr. Hill. So anything you'd like to come back on that just go home? Well,

19:31

so the, the fundamental point is that you as an examining authority, do need to engage with what happens in the area that surrounds the insurance store. Set aside, overlap area or exclusion area, the endurance storage is important part of this scheme. And as a consequence of that, the process follows that the uni John To stand, what may happen in that area, and how that may affect the justification for this scheme. So by saying, in effect, that this is a matter that is being left to your brothers and sisters on the examining authority for HP for itself doesn't deal with the issue. What you don't have I'm afraid is the response, as Mr. Phillips has made clear to what is proposed. Now, if it is reciprocal, then that is perfectly appropriate. And I have considered clearly the fact that that various scenarios have been set out that that is certainly not to the point. This is an examination of this DCO, which you will need to report on to the Secretary of State. And to the extent that you may want to have regard to what's happening in another DCO is central to the purpose of my you need is we need these protective provisions. And so that, that is it in a nutshell. Let me just ask if there's anything. So I think that's all I wanted to add. Thank

21:23

you. So we have posted saying we need to include protective provisions within this dcl. And saying that very firmly in the applicants saying very firmly that they're not required. Is there any likelihood of any change within this examination? One to either of those positions? I suspect the answer's no.

Alternatively, two other things happening in terms of the HP for examination that would change the way we need to look at things can ask us that first review on that panel is the applicant?

22:42

And to try maybe just pull your answer that. The reason I'm sure you'll work out the reason I'm asking that is because if there's no change in position, then as the examining authority, we need to take a view one way or the other, because that doesn't seem to be any middle ground. It doesn't look like the two sides are going to get any closer on this and like lots of other issues. So that was the context of that question.

23:12

Well said, as you'll be aware, the parties have been talking for many years. So and the we all remain entirely open to discussions. And if there is a a another way around what we consider our issue and and where NCTR, then certainly we will seek to see it because it's it is unsatisfactory, of course to have to for us to be at loggerheads on this. So I'm not saying no. But we will certainly. I mean, the difficulty is there is going to be a hearing next week where the same sorts of discussions will be had. So yes, that we will be updating you clearly as soon as we can as to what happens out of that, though. Thank you, the door is open. Okay, thank you.

24:01

So the the only thing I would say that might help at least narrow the differences is it is important, as reflected in the agenda to separate out conceptually, that the two questions of this application of the interface agreement or addressing the potential liability under the interface agreement as one issue, which has its own set set of submissions on each side as to why it is or isn't appropriate. And as I've identified that issue is actually quite narrow for the purposes of this examination. And then separately whether it is appropriate for protective provisions to be included in this order for Ofsted. And as I've sought to articulate in my oral submissions, and we'll obviously put this into the written summary so you've got a clear note of it. There are clear logical steps that have to be worked through in order to identify what is is the essential issue that determines the outcome of those matters. We've sought to articulate what we think the crunch questions are and what we think the answers to those questions are. There will be an opportunity for Oster to respond to those points in writing and to articulate for example, the response to the question which My Submissions pose on the protective provisions. Is it the case is it being said that in Scenario three, there would be a significant and unacceptable risk to the Hangzhou project for development going ahead without reciprocal provisions and the edcet DCO? And if so, what is that risk? Those matters may help to narrow differences, at least to narrow the focus of debate on to the crunch issues that you will need to report on in the likely event that this matter is not otherwise resolved. So I think matters can be progressed further than they have been today. But it will require serious engagement with the clear, distinct logical issues that arise in each case, in order to get down to what are the real issues and not complaint matters.

26:33

And presumably, those discussions are going on at pace.

26:38

Well, there are certainly discussions going on on a regular basis, as you might anticipate in behind the scenes in order to try and resolve matters with so far as the protective provisions that have been advanced. For this DCO is concerned, as much as then we simply don't understand why they could properly be set to be necessary. And with respect that matter has not been has not moved on as a result of today. So we would need to be persuaded that there was a real issue to address before we looked at anything in terms of drafting. So I don't want you to be given the impression that we're discussing authored proposed protected revisions for this DCA behind the scenes. I don't understand that that is taking place because we just don't understand at the moment why they're by there could be said to be needed.

27:32

Thank you. Is there anything further? That's hosted with service points.

27:41

So now I take all of Mr. Phillipotts points down? I've written them and I'll be discussing them with my client. Well, adventure. Yes, trying to clarify.

27:52

I think that's probably as far as you can take it today. So let's create. Yes. Clearly, quite a sticking point that we will have to deal with some points. So thank you for that helpful.

28:11

So is there anything else in relation to protected provisions generally and all issues to discuss? No. In which case we'll move on to item seven on the agenda, consents licences, and other agreements.

28:40

And I think all we're looking for here really was an updated progress and timescales for completions of any of the consents, licences and other agreements that are identified in the documents, other consents and licences, which is latest version of grep to Tableau eight, is an intention to update that documents at any point or is it not? No progress is made, so it's not worth updating it can give me a feel for for where you are,

29:13

if I run through what I understand the current position to be, and we can consider whether there might be benefits in updating it, or at least providing you with confirmation before the close examination what the position is, so far as the environmental permits are concerned, we're currently engaged with the environmental agency to complete the duty made process. I'm told that the outcome of that as expected during the examination, Dr. Lowe may be able to provide you with more detail on that. Then the offshore sia process We're currently on track for submission in September of this year, and so approval in the second quarter of next year, the store permit, we're on track for submission in November of this year with approval expected after the final investment decision has been taken. And then so far as the endurance store, lease and seabed leases for infrastructure are concerned, the agreement for lease letters been submitted to the Crown Estate, they are processing the request. They won't give a timescale for the outcome of that, but it is expected to arrive before the final investment

decision. But that's by way of overview. If you've got if you want any further detail on the environmental permit process. And doctor they may be able to assist with that.

30:56

No specific questions, but if something talks about wishes to highlights happens here.

31:02

Thank you. So yes, I think the duly made decision is we're hoping to get in next couple of weeks. So we'll be able to update you when we

31:09

have code. Thank you.

31:13

Dr. Lowe was a decision made? If it was one permit covering everything or two separate permits,

31:21

which are represented in the applicants, it is going to be two separate permits? Yes, we agreed to do an additional permit for the compressor, as Julian has apparently associated activity, that application has been submitted. And that will also be due to meet in the similar timeline. So it has been prioritised by the Environmental Agency.

31:44

Thank you. So was there anything further Mr. Phillips, want to

31:53

know. So I think probably best if we take away the question of whether or not there is merit in updating the document referred to and we'll come back to you on that.

32:02

That's fine. I don't want to put you to any further work necessarily. An update, certainly the end of the examination will be very helpful. I'll leave it to you whether you think it would be helpful this stage or not.

32:16

We'll we'll take that away and consider it. And certainly by the end of the examination, I can see that it will be helpful to have an up to date position for you to take away for the reporting period.

32:27

And the other point just to raise is that, clearly, in reviewing all the progress on protective provisions, it's quite clear that there's a lot of work going on behind the scenes in terms of site agreements and all sorts of other discussions and agreements. And while I'm sure this will be recorded in statements of common ground, and you'd be useful if we could have a schedule, which explained what other agreements you are working to progress. Now, clearly side agreements, we don't we will not see the

detail of that when they're completed that that's fine. We don't need that we're not asking for anything that is unusual to hear. But because there are so many other agreements, taking place different types, be just useful to understand what is being agreed elsewhere as a simple schedule for each individual IP, or IP. And then when you get to the point of agreeing side agreements, presumably they will be recorded in stems with common grounds. But will we have a summary of what they say? Or each party has agreed? So that we can report on that.

34:11

And so that the sensitivity in that is that there is normally confidentiality in terms of those agreements. I've got a note of the request, because of that issue of confidentiality, I think I need to take that away rather than say that we necessarily will do that. We've gotten out of the request, and we'll report back to what we're able to do.

34:32

Yeah, so fully understand the issue of confidentiality, which is why we don't we certainly don't want to see the side agreements. But if you have made an agreement with another party, which has relevance to the examination, and you can record that for our benefits so that we know an item has been addressed. That would certainly help us

34:56

so that that that is that's understood. It's just an of quite how we might structure it and where we need to draw the line, but leave that with you certainly understand that request. And insofar as these matters, deal with issues which have been raised through representations, and I completely understand why you would want to know that.

35:17

Thank you very much. Any other comments on Item seven? No? So automate following on stem to Common Ground relevance, the DCO.

35:56

I don't have anything specific. I wanted to ask under this, apart from the issue of whether there's a need for a statement of common grounds with us that we had discussed this previously. And I think I referred to this morning as well, there is the statements.

36:28

position statements between onto project for MPP, which has no review, statements, and then individual statements from the parties. Clear that relates to the interface with Northern insurance, punch projects, as well. But I come back to the point that we've been thinking about this as the examining authority in terms of the the wide differences in positions between the two parties. And one of the clear benefits of a statement of common ground is the identification of areas where there's no agreement. And anything that could be done to spell out maybe it is building on this previous position statements, I think, could be useful to us. And perhaps Mr. wilpattu, can explain why initially was said you're going to do a slavery's common ground with those that then rejects the account. So I had

37:35

hoped, as you will recall, at the last hearing, that we might be able to make progress on that, as you'll have seen from the subsequent written representations view was taken that there simply wasn't enough common ground. That's not, however, to say that you couldn't have a statement, which was largely Uncommon Ground, one can have a statement of that sort. And we're certainly happy to revisit the question. And I suspect that actually the process that we've gone through since then, in the exchange of statements may well have helped to narrow the differences. As you'll recall from the submissions I made earlier, we set out a series of scenarios in the document that was appended to our summary of oral submissions issues specific one issue, sir in one, and that was provided, you'll recall, partly in lieu of statement of common ground. And then when one looks at the submissions that have been made in response by Ofsted in relation to their protective provisions, one can see that the that amongst those scenarios, Ofsted have effectively selected, which one they say is the focus of their submissions. So it may be that as a result of those exchanges, we are able now to narrow down what isn't isn't an issue. So we'll take that away. I'll talk to my clients about it and see if there's scope for something which is more useful. Now we've got a few steps further down the line. Thank you.

39:14

So certainly, we will cooperate as much as we can and try and assist you.

39:18

Thank you very much. Thank you. Anything else on Simon's column grounds? Do you wish to send any more generally just fill potholes?

39:29

No, sir. You've you've had a deadline for in the application guide ref poor zeros, zeros or one that shows the latest versions of each of the statements of common ground including those which had been updated at deadline for and that can be seen and read alongside the statement of commonality and read for zero to two. The individual statements of common ground that have been submitted At deadline for I hope are helpful in terms of the way they deal with the DCO matters. Some of those have moved on. But given that they're there to read and the guide identifies where, where they have changed, I'm not sure it'd be a productive use of my time just to tell you what you've already got.

40:18

That's fine. Thank you very much. Good, thank you.

40:30

I'll run through actions. I'm assuming unless someone says otherwise, it'll be for deadline five. So action one, Article Two of the DCO SDDC. And the applicant has to continue to work towards protective provisions to overcome concerns regarding the scope of permitted political luminary works. Action two is the same, but between Sembcorp and the applicants x and three s TDC. To respond to the applicants regarding the changes to article 25 and interaction with Article eight. Action for the applicants to amend the article 27 Heading if it needs doing action five for the applicants to clarify the relationship between article 44 and the dean marine licence. Action six for the applicants provides the examining authority with a copy of the interface agreement from Hornsey for and the commentary that goes with

that action seven SDDC and the applicants to continue dialogue regarding control over vertical limits of deviation. Action Aid for Sembcorp whether or not the effects of vibration should be addressed in requirement 22. If the tunnelling were to go ahead, X nine for the applicants consider whether or not SDDC can be included the local Liaison Group under requirement 29. Action 10 for the applicants to seek to understand the MMOs concerns regarding control of the unexploded ordinance via the D marine licence or not. Actual 11 For exhale and seal sands and the applicants to explore establishing a statement of common ground. Action 12. The applicants and unlike the others, this is probably by the end of the examination to update, I think was our EP 008 which was the list of licences and consents. Action 13 The applicants by deadline five to consider providing a summary to the examining authority of commercial agreements between parties where it has relevance to the examination. And last one, the applicants and all stood together or separately to revisit the possibility of a statement of common ground between the applicants and their stead.

43:19

Thank you,

43:20

I believe there may have been one more mile in which was seeking the applicants to seek confirmation from the Environment Agency in relation to the environmental permit. I think that was one of the things that came up in terms of the approach to capture rates that we undertook to see to do that, through the meeting that we have with a mess we that's

43:42

fine. Thank you. I'll record that. Okay, thank you.

43:51

I'm sorry. Oh, sorry. It may be that I didn't know to properly and forgive me if that's so But with regard to the update to article 49 and the revision to that. I know that we have not necessarily discussed timescales, but I wasn't clear when that was going to come forward.

44:16

I said deadline five I think I may have said it more than once.

44:20

I am so sorry. Apologies.

44:33

Are there any other matters anyone wishes to raise that are relevant to today's development consent or the hearing? Or we move on to close? No hands up. To tomorrow's compulsory acquisition hearing. We'll deal with a number of matters that follow on from today's hearing. And these include. There'll be another discussion on protective profit Jim's, particularly in relation to statutory undertakers. And if there are no other relevant matters today, I'd like to remind you that the timetable for this examination requires that the parties provide any post hearing documents including written submissions on or before Tuesday, the second of August, and that's deadline five on the examination timetable. And also, just to

make you aware of the recording and a transcript of today's hearing will be placed on the National Infrastructure website shortly. Thank you very much for attending today and for your participation been very helpful in our examination of the draft sent order. We'll consider all of your responses carefully and it will inform our decision as to whether further written questions and a further round of hearings will be necessary. The next hearing is tomorrow which says the second compulsory acquisition hearing due to commence here again at 10am Tomorrow. The time is now 425. And this issue specific hearing is now closed. Thank you. Sam Hunter Jones is now exiting