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01:02
Welcome back, the time is now 150. And it's time to resume this hearing into the net zero T side examination. Mr. Gleason?

01:20
Thank you. So we are still on gender item for. For the break, we finished on requirements 16. So let's now move on to requirements 18. This is the construction traffic management plan. applicants have modified this to address some additional consultees. Some courts have also made comments. Mr. Bias, can you tell me please? Are you content with this? Bearing in mind that you have previous comments? Or is this another item that you need to add further comment to?

02:19
And no further comments add to this the comment on this relates to being consultative.

02:25
Thank you. Sorry, I've jumped back on site with 10 requirements 1821 and 23. So let's move on to quirements 25. Restoration elements.

02:44
Sorry to interrupt I promise to come back to you on requirement 23 after lunch as it happens. Yes. Okay. And just to say that the nature of the representation was the same call was seeking that requirement. 23 also include work number six. Insofar for the annotating instructions over there on that overlaps, that representation is maintained. Because insofar as there will be any tattling in the future, even if that's not a preferred option, then the concerns about piling relate and vibration etc relate to existing infrastructure of Sim core in the pipeline corridor.

03:25
Thank you for clarifying that. Thank you, sir. So it's common sense five restoration of land use temporarily for construction.

03:44
So, deadline for the applicants indicated that an amendment was proposed to specify that a scheme for the restoration of any lands within the order limits, which has been used temporarily for construction must include remediation of contamination caused by the undertakes activities to address the comments of the Environment Agency. This was the earliest comments from the environmental agency about the need for restoration as well as the need for remediation as well as restoration. So again, Mr. Philpott I'm guessing you haven't heard back from the environmental agency or not

04:30
yet. So no, we hope that that is that that's what they wanted. We've tried to reflect that in drafting, but I assume that will be covered in next week's meeting.

04:38
That's fine. Thank you. And Mr. Pious. This was one you'd identified earlier principles, which we did. Thank you. Exactly. Thank you. Okay, so, requirement 29 is the local Liaison Group And this was also on which cemco had comments on this post you want explain what's your position is on this place.

05:14
So, as a matter of fact, changes have now been made in relation to these requirements. And so the changes that have been made meet our concern, so we have no, no further representations to make.

05:26
Okay, so you've been added as a party to be invited to join that group. Does that still address the issue you'd said about wanting the applicants be required to participate in Wilson groups?

05:41
If it helps on that we have separately committed through the protective provisions rather than through regulation through through requirement 29. To joining the other groups are going established or operated by sencor. So we hope that that has also addressed that point, but that's the way in which it's been done.

06:01
Okay, that sounds good. Thank you.

06:04
Mr. Philip. But yes, it has. Thank you.

06:06
Thank you. And then requirement 31, which is carbon dioxide storage consents and fuels the connection between this requirements and plant Earth's illustrative requirements. It's Aleksei Have they written well, we'll deal with those together after the next item. So let's move on to requirement 32, which is decommissioning and a number of comments made by various parties on this one, including some core and also CF fertilisers. In the US, I trails and PD T's port. Mr. Phillpotts, you want to explain the changes that you've made at deadline for you've added a new limb I think to this requirements, we've

07:07
added a deadline for a requirement that where the relevant planning authority notifies the undertaker the information that's been submitted on one isn't approved, then there is a period of two months where we either maker where we must make a further submission to the relevant planning authority. And the thinking behind that is to address concerns over the what there was a potential difficulty in enforcement

in the event that an application is submitted, not approved, and we don't do anything about it. That was my understanding of the thinking behind that. And we hope that that has addressed that point.

08:03
And Q. So have those are these objecting? Previously? We've got some coins. We've got P the Teesport? I think. So can we begin with Mr. Pious? Have you any comments on this further change?

08:27
No comments

08:28
on a further change? Thank you. So our our concerns were twofold. One was the consultation point we've already talked about. And the other was a timetable point. And in their response to our representations, the applicant has pointed out that the there is provision made for a timetable, so we don't need to pursue that point at all. So the only point we have on this is the consultation point. Thank you.

08:52
Thank you. And Mr. McLean, in terms of PD TS Paul, did you want to comment on this?

09:06
Not insofar as it relates to the change to the need to read recommence that process. If there's a refusal from the the planning authorities who approved the details that addresses our second concern, we did have another concern around the use in 32, one of reference to permanently ceasing operation. Our submissions, as you've seen, says that it was slightly ambiguous as to what was meant by permanently ceasing operation and that does not appear to have been addressed in the latest set of revised drafting.

09:41
Thank you for that. Mr. Phillpotts. You want to respond on that?

09:45
Yes, we have. We've responded to the point in our deadline for responses to material that came in the deadline three, but we don't consider that There is a need to change the drafting. In this case, we don't believe that there is a need for a further definition of the concept of permanently ceases operation in the context where these terms are used, in our view permanently ceases in this context is sufficiently clear and precise in its ordinary meaning. And indeed, when one does consider attempts at further definition, they soon become circular. And the the teeth to this is that if the local authority forms the view, that operations have permanently ceased some part of the proposed development apply applying an ordinary construction of that term, and that the requisite steps have not been taken 12 months on from that point, it can take enforcement action. Of course, if the authority is not certain as to whether it's permanently ceased, it can request information from the undertaker pursuant to an information notice under Section 167 of the Planning Act, in order to inform its judgement on that matter. And as we pointed out in our written response, the proposed wording that we have here is clearer than equivalent drafting in, for example, the recent mem open cycle gas turbine DCO, where the trigger is a decision by

the undertaker to decommission. And so, we consider that when one looks at those terms in context, it's perfectly clear what it means it requires an exercise of judgement by the planning authority on the facts. And if it's not clear about those facts, it can ask for more information.

12:07
Think Thank you. Mr. McClain, did you want to respond to that?

12:13
I think so that's a point we'll need to take away and come back in writing on once you've had a chance to speak to our to our client, but I understand what Mr. Phillips was saying completely.

12:23
Thank you, you're most welcome to come back in writing. Okay, so I think that covers all the identified requirements currently in the draft DCO. Can we then move on to the next bullet point on the agenda, which is to ask the applicants and SDDC about their position regarding STD C's requests with approval roll over specified requirements. This may have moved on sufficiently since the agenda was put together. There's been some progress clearly. But can I ask Mr. Henson first wish to say anything?

13:15
Thank you, sir. Can I just briefly return us to requirement 29? Certainly. And it's simply to say that SDDC would wish to be expressly listed as a baldy to form part of the local Liaison Group and we would hope it wouldn't be a contentious ask.

13:35
Thank you, Mr. Phil. pontoons respond on that. Update instructions on assets fine, thank you noted anyway,

13:43
turning into the point of SDCs function under the requirements. Just to briefly summarise where we come from, potentially where we going on this. Sir, as you will know, at the stage of submitting our written representations, we revised our position which up until then had been the we were seeking a consultation role, which is obviously now embedded in the latest draft of the DCO to one of approval. And the reason for that reflected at that point a greater understanding through preparing the written reps of the extent of the potential impacts of the proposal on tes works and the lack of progress on the likes of potential revisions, side agreements and amendments to the order limits to address STD C's concerns and in light of those concerns, there was a need therefore to seek to ensure that those mechanisms which exist in the DCO for STD C to control us interests were taken up. And the rationale for doing so we recognise that it's an perhaps somewhat unusual in DCA practices. SDDC is unique status not merely as a landowner, but as a As a public authority with specific regeneration functions, and we set out the basis for that in our response to your written question, Gen 1.41, document reference, rep two hyphens 097. B. And I think we were we, in line with those functions recently very in 2019, secured a comprehensive, compulsory acquisition in order to regenerate the site. Now, we note the applicants response to this, and they're resisting that position. And as we've said, they've recently tabled both substantial amendments to the protected provisions. And very recently a draft site

agreement, which we're yet to get to grips with. And so I think the best way to deal with this matter is that we need to reflect on the latest changes and report back at the next deadline as to the extent to which this changes opposition, but as it stands, we remain of the view subject to those further considerations, that opposition hasn't changed.

16:02
Thank you for that. So can I just explore if the provisions, the protective provisions and the side agreements, addressed all your concerns? Would you then not require the approval? Position?

16:20
That's a potential outcome, that we reserve our position on

16:23
that understood, but it could be a position that you came to if you you got everything you wanted? Through the means? That's correct. Yes. Thank you.

16:35
Mr. Hill. Sir, thank you. That's helpful. I'll try and be brief if I can, in this circumstances, just to provide you with a sort of high level summary of our position on this, we provided a response in red three, zero 12, where we explain why we continue and deadline for we've continued to allocate the role of approving authority to the relevant local planning authority in the usual way. And the reasons can be briefly summarised. The local planning authority has been given the task of enforcing compliance with requirements in the public interest, and should therefore also have the related task of approval of details under those same requirements. That's the well established model. And it makes obvious sense for the local planning authority to be given both roles having regard to its statutory functions, its experience and expertise in development control. And there's no reason to depart from that, here and if I can just reflect for a moment on the the nature of both tasks, there is obviously an exercise of discretion in judging whether or not what is submitted for discharging a requirement is appropriate or not. And then if there is any departure from that there is an exercise of discretion as to whether or not enforcement action should be taken in the public interest on any particular failure to comply with a requirement. And there is obvious good sense in the same authority and the same officers and members if necessary, making that judgement in the public interest. And there are four short further points as to why in the particular circumstances of this case, STD C shouldn't be given an approval role under these requirements. The first is that if it was an approval role alongside the LPA, well, one couldn't fetter, the local authorities discretion by adding a further layer of approval. And secondly, Parliament has not given SDDC this role in respect of Town and Country Planning applications, there's no reason to believe it should be given that role under the Planning Act. Thirdly, as we've said in our written material, SDDC is of course, a landowner with significant commercial interests in the order land, and so its ability to, in those circumstances act with a requisite degree of impartiality is at the very least uncertain. And then fourthly, SDDC in its position as landowner, benefits from protective provisions were appropriate in order to protect its particular interests. But we've nevertheless added SDDC as a console T on the list of requirements to ensure that its views are sought and taken into account where applications to discharge requirements affect its interests and engage its role. So that's why in brief we we are where we are in an I'd be surprised if that changes.

20:03
And Kim I think on that basis, let's see what happens next. Clearly, there's further discussion on the protective provisions and side agreements and opportunities for both parties to come back on that point. Thank you. I think just one further point before we move on to the last issue under this agenda item, and that was STD C's comments about the issue of residual arisings being removed within the set period to avoid unnecessarily sterilising lands. And I think you were suggesting, Mr. Henson that you you were looking for requirements to this effect. Is that still the opposition?

21:08
So the method remains under negotiation. I would suggest that in the next turn of the statement of common ground, which we are hoping to put in by deadline five, that we can address the matter there.

21:19
Okay, that's fine. Mr. Hill, anything you wish to add on that?

21:23
No. Well, hopefully that will resolve it. If not, it'll crystallise where we answer least

21:27
thank you. Okay. Good, thank you. So if, unless there any other comments, generally we'll move on to the the issue of client Earth's illustrative requirements which was submitted at Annex A, of their written representation. Perhaps I'll just begin by summarising where I think we are on this and then ask the principal parties to comment themselves so a deadline to clientearth stated that its position was the applicants that rejected the need for requirements to capture and store carbon dioxide produced by the generating station. clientearth also noted the applicants track TCO provided for requirements for carbon dioxide storage licence to be in place before the proposed run can commence construction with a proposal to include a similar requirements in respect to the offshore carbon dioxide transport pipeline, putting clientearth view needs with these provisions which require that comes outside captured would be supplied to the carbon dioxide gas free network for onward transmission. So, clients are suggested that the draft DCO needed to be amended in various ways and set out in Annex A proposed illustrative requirements which was addressed the concerns along the lines previously proposed for the key p3 Order, which is currently recommendation stage. Applicants response to that was that requirements 31 has been amended and the amended requirements achieved the same overall applications as set out in the drafts keep the order that the applicants don't agree that requirements 31 should be further amended to require the carbon dioxide captured from the generating station to be supplied to the network for onwards permanent storage. So, the applicants have accepted the position of requirement that will prohibit the operation of the generating station until the infrastructure of the capture storage captured transportation storage of carbon dioxide has been consented that consults are returned deposition that the operational requirements at the generating station including the need for the generating station to operate with carbon capture and achieve a 90% minimum capture rates and more appropriately control to environmental permits. And that imposition of TCO requirements governing these matters would duplicate and potentially conflict with the condition of the environmental permits. And then I think that's so 10 filing overnights deadline for claims Earth have said that the changes

made the draft DCO excuse me, appear simply to replicate was included before the KPA applicants made these checks. changes in response to clients concerns. So there seems to be some way still to go on that probably don't need any more than that myself. So can I ask them? With Hans Jones, do you want to comment on what I've said something needs to be added to that and extending further you, you need to say to applicants at this point.

25:30
Thank you, sir. No, I think that summarises our position. Well, you will have seen from the dead deadline for submission that we asked what would welcome clarification from the applicants as to what their intended changes to the DCO were intended to encompass whether they were in fact intended to cover all of the changes that were made by the key three applicant as implied or whether that was a different approach that's that's being proposed. And I think beyond that, we would also welcome clarification from the applicants about what precisely they expect, or envisage the permit requiring in respect of the capture and storage of the carbon dioxide.

26:22
Thank you. Mr. Hill. Thank you. So I'll start off our response, I may then pass across to Dr. Lowe at the end, for some further points in terms of the environmental permit. But if I can just set some context, our position in short is that we believe that the substantive concern has been addressed by the revised terms of requirements 31 as it now sits, and that was following the changes made deadline to so no changes required and the deadline for version. So far as capture eight is concerned, as you indicated, our position is that that will be controlled by the Environmental permit. And so not only does it not need to be duplicated in the DCO, but it should not be duplicated in the DCO. For the reasons that we've set out in writing. We have identified that the generating station will also need to be operated in accordance with a dispatchable power agreement. And a decision by base on insert T's bid is expected soon. If that bid is successful, it's suspected that Enza T would enter into such an agreement. And the operation operation of the generating stage would have to come forward then in tandem with a full chain, carbon capture transportation or storage solution. But as we sought to emphasise in writing, the DPA is not necessary in order to address client Earth's concerns. Because we say the combination of requirement 31 and the environmental permit provides a comprehensive answer that simply adds a further layer of strong commercial incentive to achieve the same result. But it's not necessary to rely on that. Now, so far is client has deadline for submissions are concerned. As I understand it, and obviously if I misunderstood this, it can be clarified, and then we can make sure we're all dealing with the same issues, that the concern that now seems to be raised is by reference to certain track changes in the key B three draft development consent order, which it is said need to be made here and be corrected. If I'm wrong. I don't believe that the deadline for submissions, specify which track changes are referred to or explains in each case, the effect of those changes and why that effect is thought to be necessary here. I'll do my best. To briefly summarise what I think the position is. But having looked at those matters at the moment, the applicant doesn't consider that there are any gaps in its own drafting that need to be filled with further changes. And looking at the track changes that were made in the version of the KB three, draft DCO, which is appended to client Earth's earliest submissions. As I understand it, the the track changes that appear to be the root of this are certain changes to the definitions of terms in Article Two of that order. And I believe that the definitions of carbon capture and compression plant, commercial use and commissioning, but they say I don't think they're specified. But that's my

interpretation of what I think is envisaged. And that's there on page electronic page 10. Of The Planet Earth submissions rep 2079. On the face of it, we don't believe that, that there is a need to make those changes to the definitions in order to address the matters that arise here. Nor do we think that simply cutting and pasting them as it were, would make sense when one looks at it in the context of requirement 31. As drafted, I don't understand it to be said that the key B three development consent order in draft

31:28

includes any requirement for the infrastructure there the plant that's defined caption carbon capture and compression plant to operate at a particular capture rate. The wording of the definition appears to relate to its design, as opposed to regulating its operation. And presumably, the reason for that is a recognition that with a separate regulatory regime, it would be inappropriate for the DCO to regulate the capture rate in operation. In other words, that appears to accept the underlying point that we make. So far as a suggestion that it is necessary for the development consent order to stipulate what the undertaker must design its plant, in order to achieve that, in my submission, comes back to the same a central problem of duplication, it's not necessary to oblige the undertaker to design its plant so that it is able to meet the regulatory requirements, the separate regime. It's the same duplication, if it doesn't design its plant so that it can meet the requirements of the separate regulatory regime, it won't get its permit. And so if the separate regulatory regime does as appears to be recognised in this drafting, regulate capture rate in terms of operation, and as night follows day, the plant will have to be designed so as to get a permit so as to meet those requirements. So that's why I say, having looked at this, and I'll be corrected, if there are other things that we should be looking at, there's no, it's not necessary to import that definition. Indeed, it would be effective duplication to do that. And then so far as the other definitions are concerned, once one looks at the effect of requirement 31 Three, as we have it, which is that work number one a may not be brought into commercial use, without work numbers one C seven and eight also being brought into commercial use. That does the job that there's no need to define commercial use in the way that it is proposed to be defined here. Because unless one sees seven and eight are brought into commercial use, then one eight may not be bought into commercial use. And so there's there's no gap so far as we are able to discern it. And then coming back to the illustrative drafting, that deals with paragraphs one and two. This is on electronic page four of the clientearth representation that deals with On a two, part three is a suggested requirement that all of the carbon dioxide that is captured during commercial use must be passed forward for the purposes of one would permanent geological storage, save where there is a safety issue. And we just consider that that is unduly prescriptive. Because there may well be all sorts of situations where

35:38

it is appropriate in the public interest to use some of the carbon dioxide that is captured for other reasons, which may not be to do with safety, it may be to do with wider sustainability issues. So for example, if a carbon dioxide is needed for some important national purpose, as we've seen recently, there was a situation where there was shortage of that material. And using the carbon dioxide that is gathered here for that purpose is more sustainable than the alternative means of obtaining it. Why should that be constrained? It may not be unsafe to do that. It may be how it'd be the right thing to do to do that. And this is effectively stifling the opportunities that may exist for innovation in the sustainable use of this substance. So we just don't think that there is a necessity case made out for that. So far as

the position on the permit is concerned, I'm just going to ask Mr. Lowe, if there's anything he wants to add in terms of the way that the issue of capture rate is dealt with in practice, through that regime.

37:00
Thank you, Richard low representing the applicants. Certainly from the discussions we've had with the environmental agency, and with the representations they made into the key three DCO examination themselves, they certainly envisaged that the capture rate will be the design of the plant to me to achieve a capture rate will be regulated through the environmental permit. The best available techniques guidance specifies capturing that must be met to demonstrate the use of bat and you will have to demonstrate the use of bat in order to obtain the permit. So I think we can submit that representation that was made, we can certainly supply that into the examination in writing. Just to clarify that point. I appreciate that we haven't yet got the equivalent wording for this application. But as we've already talked about, we will be engaging further with the Environment Agency over the next few weeks. So we'll try and replicate similar wording for this specific application as well.

38:07
Thank you, I think that would be helpful if you could encourage the Environment Agency to send that position. Help us to support that. Thank you. Yes.

38:20
i Quick question for Dr. Lowe. What is the minimum capture rate in the back guidance? Is it 90%

38:30
or Richard low represent the applicants actually the guidance as drafted is 95%. We have assessed as as a worst case, the 90% basis in the environmental statement.

38:45
Thank you. So Mr. Jones, just coming back then. So I think Mr. Phillips clarified that there was no change made to a to requirement 31 between draft two and draft four. It sounds like you were expecting a change to be made you suddenly wanting a change to be made. You thought that something had been missed. But clearly the counts sorry, the applicants has now clarified that it's sticking with the proposal as set out in requirements 31 You're still a position you're wanting Annex A your own Suggested Wording. We have the alternative which is set out as you say in key P which was requirements 32 I think there can you see any movements in any position on what your your requiring this point.

40:11
Thank you, sir. helpful just to clarify in response to a number of points made by Mr. Ferber and Dr. Lowe firstly, on the changes are going to be thrilling DC explained, five of climate deadline to submission.

40:35
So you, you're breaking up, I'm afraid. Sometimes it helps if you turn your camera off. Can we see if the sound is better that way?

40:46
Sorry about that. Is that improved?

40:49
Slightly? Let's go with that for now and see if it's does help.

40:55
So in response to those differences made by foot one doctor, is correct. And as we explained deadline, five, the final submission ended this year. And,

41:14
sorry, we're not, we're not getting clearly what you're saying. And just check with production 78, whether there's any issue here, we're not thinking there is. It seems to be your connection, I'm afraid. And I'm a bit reluctant to take what you're saying if we can only hear parts of it. Perhaps one way might be if you logged off, and came back into the process to make your comments. So if you switch off in live feed, and come back, log back in and we'll see if that works. has stayed so give you 10 minutes, unplug the the technology. But that's what I'm always told, let's let's save a new connection helps. And if that isn't going to help, immediately, let's try it again later this afternoon towards the end of the examination, but I just I don't want for you to try and present your case now. And for us not to not hear it properly or fully. I think you'd be a disadvantage. As well as that sounds okay. Yeah. Yeah, I was very much. Okay. So I think on that basis, we just need to put that side some on hold

42:54
for a short while. See if stance, Jones can come back in. And then we can address that. If not, we'll come back to it.

43:12
Maybe after item six on the agenda, if more time. So, on that basis, shall we move on then to item five on the agenda

43:35
which is sheduled 10 in the level of the draft DCO. Covering teams marine licences. Again, I think there's been progress made on this which is encouraging, as I understand that the composition is that the Atkins made changes to the draft at deadline to the MMO. In management organisation commented at deadline three, the MMO still recommended that unexploded ordinance clearance is not included in the team's marine licence and instead the separate marine licence application is submitted. A deadline for the applicants made further changes to sheduled 10 and 11 with the inclusion of a condition 28 on safety management. The MMOs deadline for submission reiterated this earlier position that the activity in relation to unexploded ordinances should not be included within the team's licence. Furthermore, MMO does not considered that the environmental impact So, from unexploded ordinances have been fully considered within the ies and

45:08

further,

45:12
which further supports their stance that these activities should be consented separately. And in anything further towards Mr. Fuller.

45:22
So yes, we've obviously seen now the deadline for submission. And I request we're not if I'm wrong, but I don't think the MMO are present. Today,

45:34
they are here No, this.

45:35
No. There's only so far I can take it in their absence. But if I just outline as what I understand the position to be, we think good progress is generally being made with the MML. On agreeing the terms of the de marine licence, most of the requests that they have made, we believe have been addressed and the deadline to version at the DCO. And we've narrowed down to what we think is the only outstanding substantive issue, which is the unexploded ordinance point that you just alluded to. And the difference between the parties seems to be whether it's appropriate to have the clearance of unexploded ordinance within this de marine licence, as we believe is appropriate, or as the MMO believes appropriate, that if unexploded ordinance are encountered, it would be necessary for the applicant to have to make a fresh application to the MMO for a separate marine licence at that point in time. As we had understood the position up to deadline for the MMOs concern appear to relate to ensuring that best practicable means are used as they exist at the time that unexploded ordinance is discovered. If if that happens. In our view, that is addressed now by the conditions on the D marine licences and those you'll have seen and they appear in the most up to date version, it requires an unexploded ordinance clearance methodology to be submitted to and approved in writing by the MMO before any removal or dead detonation of unexploded ordnance can take place and then it specifies what that has to include. And I don't understand it to be suggested by the MMA that there is anything missing from the list that follows in order to ensure that all matters that need to be considered and approved by the MMA before such activities take place are in fact considered and approved by them. This is obviously a reactive measure. It would be on the discovery of unexploded ordinance, that the methodology would have to be submitted. So unnecessarily can be dealing with a position at that time. And whatever the best practical means are at that time, one can assume the MMA would require that unless it was going to approve it. So we believe that that ought to address the substantive concern. It is plainly undesirable in the public interest for there to be any unnecessary delay between the discovery of unexploded ordinance and the clearance of it. And we believe that the requirement to satisfy the terms of the relevant condition in each case, would enable the public interest to be properly protected without unnecessary delay. And as matters stand, we don't understand why it would instead be necessary to apply for and obtain a fresh licence from the MMO. There's no material that would be submitted to them under the one under the conditions that would that would. That will be supplemented if we had to apply for a fresh licence at deadline for an additional factor has been raised. Believe for the first time it's now being said that the environmental statement does not include sufficient assessment of the potential effects of clearance of

money. sploded ordinance that appears at the moment to be an unexplained concern, there is no detail or explanation as to what is missing.

50:14
That gives rise to this new concern, we will obviously seek outside the examinations to understand what the concerns are. Because having seen this, we have looked, and we believe that it's not only covered in the environmental statement, but that it is covered appropriately, particularly bearing in mind the nature of the issue, which is that one doesn't set out with knowledge of particular pieces of ordinance, which are there. It's a reactive approach, and one therefore has to have a process in place to ensure that the clearance doesn't doesn't occur without the appropriate methodology and mitigation in place. And we believe that what we've done in the environmental statement is proportionate, inadequate, so we don't yet understand why that further concern has been raised or what underlies it will seek to understand that in discussion with the MMA, but absent that clarification, our position remains as we've set it out in writing hitherto. So unless I can assist further, I think that's as far as I can take it without them here to clarify,

51:29
no, fully understand that in the absence of the MMO difficult to put push the point further, but perhaps one thing, this provision that the MMO seeking, is that do you know if that's something that they've requested elsewhere? Have you checked on other teams, marine licences is that sound I'd have I'd

51:50
have to check to see whether this is a position they've adopted elsewhere. So I'm afraid I don't have that material in front of me, we can check that.

52:00
Thank you. Okay, so unless anyone else has any comments in relation to sheduled, 10, and 11. suggest we move on. And cue. Before doing so can I just check with the case team, please? Can you see if you can make contact with Mr. Hunter Jones. If you can be re admitted. He's Oh, he's as if by magic. Yes. Thank you. I just saying I hoped that the case team were managing to get you back on board. So you've, you've arrived just in time, because we've just finished the next agenda item. Can we try again with your comments? In response to those of Mr. Hill, please, let's see how this works.

52:50
Thank you, sir. I hope this works better. So I think number made by both below, and I should be able to address them succinctly. point about change. Is

53:15
as I'm afraid, I'm afraid because we are suffering the same problems as previously. It's not working, I think, was travelling around the room to hear I'm afraid. Yes, there's there's just just been like, Would it be possible to try your phone and see if you can log on that way as an alternative.

53:47
Yes, apologies. I will try that. Thank you.

53:49
Okay. We will, what we'll do in the meantime, we'll move on to the next item. But please, please try. separately. Okay, thank you. So then let's move on to item 12. Sorry, item six, which is sheduled 12. Protective provisions. So on the agenda, we've said the applicants and interested parties will be asked to provide an updates on progress regarding the bespoke protective provisions set out in part or parts 24 sheduled 12 An explanation of any important differences of view and a timescale for resolution. So we will do that. And then second part, this change rights and the applicants and those that haunts the project for limited will be asked to explain their respective positions. has the need for protective provisions in relation to the Hornsey for projects with reference to a number of different submissions. Now, clearly, there's some overlap between this agenda item and item seven on the agenda of the compulsory acquisition hearing tomorrow. So the way in which we have sought to distinguish the two is that this hearing is primarily to address the form and contents of the DCO, or the compulsory acquisition hearing is primarily to trust land issues. And additionally, we've also tried to talk to in the way that while parts 123 has now parts 1011 1325 and 26 of the shedule relate, as we understand it to statutory undertakers, we felt it was more appropriate to deal with those matters under the CEA hearing tomorrow. But if any parties do want to talk on those individual protective provisions, different parts of the shedule, then we're happy to hear those concerns now, certainly don't want to include people. So on that basis, for now, we're working through from Part Four to Part 27. Given that there are some new protective provisions included with any relevant party commenting should they wish to do so. And the applicants also providing an updates on progress to reaching agreements or highlighting significant differences?

56:58
Sam Hunter joined it

57:00
is now joining. Charlie puts the previous item I'll hold and we'll try and go back again. Because if it doesn't work, this time, we know that there's a problem, we'll have to do something different. So we haven't actually got too much into the protective provisions. Let's try again for the issue of clientearth and requirements 31. So Mr. Hunter Jones, we heard that you had reentered the live stream. Are you over there now? Can you speak?

57:48
Yes, I very much hope you can hear me now. Apologies. Again.

57:53
That sounds slightly clearer. So that's good. Let's see. If you can set out your case now then please.

58:01
Thank you. So in response to the various points that were made by Phillpotts low, briefly, and principally to clarify climate decision on what further three changes achieve, and and also to explain why we don't see any merit in the objection that being made to in respect to duplication. And essentially, misspoke was right, that the section of the draft preferred DCO, and KB three that we were

referring to, as we explained in paragraph five of our deadline to submission towards the definitions. And together with the equivalent of Article Six, in this DCO it was it was agreed to the applicant, those changes did in practice, ensure that the generating station would be used with carbon capture at a minimum rate of 90% during usage and full, full load. And that was accepted by Klarna. Given that specific wording and the practical effects of that. And I think the key point I would make in response to the point on duplication is I think here, it's the DCO is actually seeking to see something different to what the environmental permitting regime is, is doing by reference the best available techniques or bat. So here client is concerned that the DCO does not secure the proposed development as assessed and as it will be operated in the environmental state. And, and that's a planning matter that is separate to what what may or may not be best available techniques as interpreted and as applied by the Environment Agency. Of course, if there was a clear assurance that this would necessarily be covered by the Environmental permit, then that would be something we'd be willing to obviously, discuss further. But from my knowledge of what was submitted in keeping three, it wasn't clear, from our perspective, that that the environmental permit, three would achieve those those that usage of the generating station as along the lines of the assumptions, the environmental statement, and I think it follows on the fact that the key was the source or the need for the changes to the definitions that were made. But that they also agreed that that was the case, under that DCO inspect of that application. And so we don't see any reason for a different approach here. If I can suggest a, an approach, suppliers are wedded to the particular wording, that it put forward as illustrative wording in Annex A, it would, it would welcome a different proposal of precise wording in respect to the condition, but it would also accept a change to the definition in line with what was proposed and keeping three and and struggle to follow the reasons for not allowing that change to be made. And just finally, one one sort of discrete point on that. Mr. Fuller, made the point that the usage of the captured co2 could be beneficial if future. And so making that change the definition is inappropriate, but I think the applicants position is that it's that it would require further planning permission development consent for any substitutions to take place. We've questioned that in the deadline for submission. But that seems to be the applicants decision. So I'm interested in understanding how how that co2 will be used to get the fee on the existing DCO. Thank you. I hope that was, you're able to follow that.

1:02:31
Yes, thank you very much. I look a lot clearer than previously. Mr. Phil pontoons come back on any of those points?

1:02:39
Yes, just very

1:02:40
briefly, if

1:02:42
I may. The first point is that references made to securing compliance or securing consistency with the assumptions made for the purposes of BIA. But that doesn't necessarily in all circumstances mean that the DCO needs to be the legal means by which that is secured, if the decision maker is satisfied that there exists a separate legal constraint which can regulate that matter adequately. So there needs to be

as accepted, there needs to be a relationship between the assumptions that are made for the purposes of assessment. And then the appropriate controls. But those controls do not as a matter of principle need to be within the DCO if there are separate controls that deal with it. That's the first point. The second point is that if it is right, but the environmental permitting regime is going to govern the question of capture rate, and will regulate capture rate. Not only would it be inappropriate in principle to duplicate that regime in the DCO. But because a breach of the DCO is a criminal offence, you potentially set up a situation where one body the environmental agency is seeking to regulate a matter. And it may take a particular view as to what's the appropriate thing to do in response to an issue that arises about capture rate, but not withstanding its view as the appropriate regulator. And one could find myself in a situation where there is a criminal offence being committed and potential prosecution under the DCA well that that can't be The right I mean, the parliament has provided a means by which these matters are to be regulated. And that there is no suggestion, as I understand it, that the environmental permitting regime is in some way, inadequate to deal with that. The third point is it's suggested that we haven't explained why it follows from our submissions, that we shouldn't allow this change to be made. But with respect, that's not the test. The test for requirement is whether it's necessary, and whether it's reasonable in all other respects. If the decision maker is satisfied, that the form of words we have put forward addresses the substantive concerns that have been raised so far as is necessary in the public interest, it's not a matter of whether or not one allows further wording. It's a matter of whether it's been demonstrated that that further wording is necessary, and reasonable in all respects. The final matter, which has to do with alternative means of use of captured carbon dioxide, and references made to our submission that it is likely to be the case that a further planning permission is needed, when a sensible and comes back to the same issue, if whether there is or isn't to further planning permission needed. If it is either not necessary to have a further planning mission, because no act of development takes place. Or there is an act of development, maybe a change of use of some land somewhere. And it's decided in the public interest that that is appropriate. The effect of the proposed additional requirement would be to make it a criminal offence for that to happen. That is not only restrictive, it's far too crude a measure to deal with an issue such as this, and there's no good reason why it should be a criminal offence to use the carbon dioxide in some other way. If that is judged to be appropriate in the public interest. It's simply too crude to measure. And it hasn't been justified. So those are the submissions that are made in response.

1:07:26
Thank you, Mr. Phillips. Mr. Han's Jones, was there anything further you wish to add?

1:07:37
I'm conscious that it's gone. I was just going to come back on one or two points, but happy to take your guidance as well as any points that you'd like me to address.

1:07:50
There's nothing specific. I'm wondering how you and the applicants can progress this if there's any possibility of narrowing down in disagreements? I think certainly the suggestion that was made by Dr. Loh of talking to the environmental agency, and clarifying the points about the environmental permits, that may help in some way. Otherwise, I'm not sure how much further discussion certainly is going to get us any further forwards. Clearly, you have further opportunities to make written submissions. And

it's possibly in that we may come back to this, again in the further hearing. But clearly, there are other opportunities, if you wanted to say anything. Finally, before we close on this issue, happy to hear that.

1:08:47
Thank you. I don't think that that would obviously be acceptable from our perspective to continue dealing with issue in written submissions. Just to come back on the point about what's the approaches to making the changes to DCI wasn't intended suggesting a different approach to the usual planning tests on whether conditions are reasonable or necessary, etc. I was simply making the point that the applicant and keeping three clearly accepted that there was a need to make this change the definition to the DCO in that examination, and an opposition is that that is also justified in this case, notwithstanding the fact that there may be some way in which this is dealt with in the environmental permit. It's far from clear, as we understand it, that there will be the same conditions on the operation of the plant, as are assumed in the environmental statement, and that it's perfectly appropriate for those assumptions to be secured to the DCO. And on the point in criminal liability, that means it's common facially such as it'd be dealt with in the DCO. And I we don't follow the point on criminality, which seems to be something that is inherent in the DCO setting of conditions generally. So I think I'll leave it there. And if there's any other points I can help with.

1:10:16
That's fine. That's helpful. Thank you very much. Mr. Han's Jones will finish on that. Mr. Phillips, and

1:10:23
the only hopefully practical suggestion is this. As I explained when I was seeking to represent a hope, and I think fairly what, what I understand the deadline for submissions to be driving out, if clientearth Consider that they're that an alternative form of words, which reflects that those definitions, however, tailored, that they may need to be in order to fit into our DCO would a achieve some different level of practical outcome. And B would not involve duplication of what would be achieved under the environmental permitting regime. It might help move things on, if that is set out and explained clearly in writing, so that we could then respond to those points, because it seems to me that that's where it ultimately crystallises. And that might help you and your colleagues if if you need to form a judgement about where justice lies business. Thank you. Hopefully, you

1:11:37
got that's is the hunter Jones, and you have the opportunity to respond on that. Yeah, thank you very much. Thank you. Good, thank you. So let's move them back to the protective provisions. And as I said, we'll go through from Part Four onwards. But just before I do that, there was one issue, which is common to a number of the protected provisions submitted that deadline for and that's the deletion of clause to be under indemnity, saying that any direct or consequential loss or loss of profits by the party would be removed in this case. Could you explain the thinking behind that in each case, please?

1:12:35
I get asked Mr. McDonald to deal with that. Thank you.

1:12:39

Yes, sir. Thank you, Ed. That has been deleted from a number of protected provisions as you've identified links to discussions had with various parties. And the position of the applicant is that it's content to include an indemnity in the form which does account for those indirect and consequential losses in the protected region set out

1:13:08
thank you. So if we can move on to part four, which is for the protection of our products? Is there anyone wishes to speak on this? I'm afraid my attendance list has just disappeared my screen Hello, says Mr. Darwish. Yes, sorry. Yes. Okay. Thank you. Since you have comments on the current set of provisions,

1:14:24
only insofar as to repeat those comments I made earlier being that the applicant and our products have of course between between themselves, agreed that substantive representations will wait until late later in the programme. Now we of course hope that a compromise can be reached but to the extent that it is necessary, we will set out detailed submissions in due course, which will contain our full comments.

1:14:51
Thank you. So you're also separately negotiating an asset protection agreements alongside protective provisions as well.

1:15:00
That is correct. So yes. Okay, that's

1:15:03
fine. So nothing further to add at this point, negotiations are continuing.

1:15:09
Correct. Thank you very much,

1:15:10
sir. Thank you. Mr. Hill. Paul, you happy that summary? Yes.

1:15:15
Generally speaking, we're going to try and avoid taking time this afternoon airing points which are still subject to negotiation. So you'll probably get a similar response to me on many of these items.

1:15:32
Fine. Good. Thank you. Cuts North Sea limited. So I think we did have Mr. Manuel listed but he doesn't seem to be here.

1:15:45
Is there anyone else from cuts North See, we should speak. Now, so we can move on from that one. cf If fertilisers. Turn things in unlisted on them. One. That was part six, long.

1:16:09
Excel them seal sands, we have a presentation on this I do now.

1:16:16
Yes. Good afternoon, Sir David bird with EBV.

1:16:19
Thank you. Do you wish to set out your position?

1:16:25
Yes, please, as I think was Mr. Phillpotts now said, That's perhaps not the need to rehearse the arguments regarding the outstanding points openly here, we are negotiating an asset protection agreement with the promoters solicitors, as well. Alongside this, I would say that we had hoped to get that resolved by this point, in order to avoid negotiating the protective provisions in the DCO. In parallel, I wasn't aware that the protective provisions were going to be updated in the DCO. Indeed, that wasn't what we were led to believe, from the outset by the promoter. So it came as a bit of a surprise. In the latest draft, what appears to have happened is selected provisions from our preferred protective provisions have been incorporated into the draft DCO, but not all of them. Indeed, there are points that we consider that have been agreed between the parties and the Asset Protection Agreement haven't been transferred across. So what I'm concerned about now that we've opened up a second front with a promoter here, and that we, in order to protect the clueless position is going to have to start negotiating the protective provisions in the TCO in parallel, the Asset Protection Agreement, which was down effectively down to the last one or two points in order to both protect excellence public position, but also in case we don't get agreement on the Asset Protection Agreement, so I'm left not having had time to go through the the new draft to pick out all the bits that are missing. I'm left wondering whether we ought to submit our own draft and, and hold the negotiations in public through the through the inquiry or or for the promoter with disgust and as a method of resolving this situation, because there's those missing from the draft now that there was to begin with? I feel it's a step back.

1:18:51
Okay, thank you. Beautiful pots to respond.

1:18:56
Well, so what I don't want to do is to sort of go behind the negotiations take place, because I'm not involved in those directly myself. My understanding is that we are committed to negotiations with smcl sounds as indeed, all the other parties with whom were seeking to negotiate protective provisions. The idea, of course, is as you would expect, that the updates are intended to be helpful to move matters on and if any party wants to submit alternative forms of words, they're perfectly entitled to do so. But this is not intended as a substitute for negotiation. But as you might expect, in parallel with negotiation, we're seeking to make sure that if for any reason that doesn't succeed, that there are protective provisions that will allow the Secretary of State to make The older with an appropriate form of protection. And if there's any dispute about what that should be in the absence of agreement, parties can put forward alternative versions with submissions as to why there should be preferred. But we sincerely hope that it

won't come to that. So this is intended to be helpful. If it isn't, I suggest we take that up outside the hearing to discuss the concerns that have been raised. Thank you.

1:20:29
Just don't give us thermistor

1:20:31
it Yes, it does. Thank you. And I think that's where we're gonna end up I would just say, and I think, perhaps on both parties part, apologies for not submitting a statement of common ground. I think we both thought we might get there on the Asset Protection Agreement, negating the need for it, then there's obviously we will negotiate something completely different on the asset protection side. It seems pointless and Eric that in that statement, a common ground I think over the next two weeks, I think the deadline next deadlines in two or three weeks time, try and get something across to you on that front.

1:21:09
Thank you very much. Okay, so next is part eight, which is NES nitriles limited, no one have. That's Adi, same with Marlo foods we can move on. And both of those part 10 is Network Rail infrastructure services such trend to take that can be dealt with tomorrow. Same with Northern power grids, northeast and northern power with limited they'll be dealt with tomorrow. NPL Waste Management's and I don't think there's anyone here to talk about that. So we'll move on our 13 PTTs ports limited. That would it's just filled with tomorrow, but Mr. McLean. Do you wish sensing now on that?

1:22:15
Yes, sir. Thank you. It's relatively brief. Similar to the the other parties, discussions are ongoing, between ourselves and the applicant. They are quite productive. And the revised draft was circulated last week to the Belgian solicitors to review so I'm not proposing to go through in detail the points that are between us we are hoping to settle those in the next few weeks as I understand it, but we are waiting for a revised draft BRAC from the from the parameters.

1:22:46
Okay, thank you. Oh, 14 read carpal tunnel limited. I think. Mr. Webster.

1:22:56
Yeah. Good afternoon, sir.

1:22:57
tonnes of update, I say the following that RBT is negotiating protective provisions with the applicant. These are unexpected plots due to two plus two to three which form a couple of terminals terminal operational area. You've warned me sir about leaving matters for tomorrow in terms of compulsory acquisition arguments. But But as you're aware, we are resisting powers a temporary possession over those plots, and obviously agreement those protective provisions is without prejudice to RBTs position. However, we also have interests outside of the immediate term operational area, which has plots which include those over STD C land. RBT is presently unable to negotiate protected provisions on those, there's still an absence of information regarding the impact on RBTs road and rail access, utility cabling

pipelines, communication cables from those plots. This impact is not addressed and protective provisions provided by the applicants within the draft DCO. We've had one meeting help to date on this between Augustine applicants, which occurred in mid June. So at the request of RBT, and further work is required to understand the impact of the project's on those interests and how up to US interests will be appropriate protected. We have provided at deadline for our submission rep 4042 which provide some annotated and plans which shows our abilities road rail access to two connections of communication capable routes, both inside and outside of our terminal operational area to illustrate this to examining authority, and to assist matters generally, it's RBTs. We tend to submit the examination protective provisions which cover both RVTs interests within its promotion area and it's interest outside see without prejudice to a position on plus two two plus two to three. These were negotiated as part of the side agreement between RBT and the applicants over the Next week's RBT with intent draw visions would be submitted at deadline five. And that is what I have served at this present time.

1:25:10
Thank you. And did you say you are attending to compulsory acquisition hearing tomorrow? Yes, sir. Thank you. Just feel free to respond on any of that.

1:25:23
I don't think instantly. So now we've we've picked up the point from deadline for about interference with utility cables, pipelines, media connections, where they've got an interest, we're considering that and we'll discuss that with them in the usual way through negotiations, because I'm

1:25:41
thinking Moving on then to part 15, sabich. UK, petrochemicals, 10 things, anyone here speak on that? And then part 16 moves on to some core. Is there anything Mr. Pious that you wanted to pick up on that? Now?

1:26:03
Not specifically, sir, we the the important objections we've got in respect of compulsory acquisition over the pipeline corridor is set out in our written representations, there are negotiations ongoing as there are with other parties. I think, one of the messages I had for my instructing so this this was, was just to seek to ensure there's sufficient bandwidth to respond to our latest comments, but I appreciate it from the other comments that have already been made that lots of people are asking you for bandwidth. So as soon as we have our response, we'll be in a better position to to come back to the examining authority.

1:26:39
Thank you very much. Thank you. And next is your potash, Anglo American. Miss Thompson.

1:26:53
Yes, sir. Thank you. So just two points. Firstly, very positive. Points start with the negotiations are proceeding a pace, I think now on the both side agreement and protective provisions. And we have now received the property agreements, which are necessary in order for us to conclude our site agreement. So that's proceeding well, if that doesn't proceed, as I anticipate, then we will submit our own set of

protective provisions to you, in due course. Second point is that I just don't understand the approach to protecting provisions in the draft DCO, because we have parties, there's been some considerable amendments in the in the protective provisions for the latest version of the DCO. But for other parties, including ourselves, there'd be no amendments. And yet these protective provisions in the detail at the moment are very far removed from the ones that are currently under discussion. And I'm just trying to understand what the approach is of the promoters to as to why some have been amended and others haven't. Because I wouldn't want it to be taken because ours hadn't been amended that there aren't very many issues between us on the protection provisions that are in the DCO itself, because that wouldn't be right.

1:28:12
Now, I've certainly seen your representations on that understand the opposition. That's perhaps mystical Park and come back and explain. Yeah, so

1:28:19
the simple explanation is that where we think that we're in a position to make amendments, in other words, that they're sufficiently developed, to make it appropriate to put them forward in the revised draft TCO where we've done that, where we don't think we're in that position we haven't done so as you can see, there are occasions where changes are put forward where the reaction is not necessarily positive. And so we're trying to strike the balance in each in each case. I suspect the answer to this is probably good communication behind the scenes to manage expectations. So I hope that clarifies the general approach. Beyond that, I think it's probably best dealt with party to party outside this hearing.

1:29:07
Understood. Thank you. Are you concerned about Mr. Thompson? Yes, thank you, sir. Thank you very much. Part 18 As soon as Recycling and Recovery can no one was aware heard speak on that one. Then part 19 t's work as TDC Mr. Hanson, there's something you wish to comment on this point.

1:29:34
Thank you, sir. Nothing in detail. As I've said earlier, we require time to consider the implications of these, but I would say at this stage is that we, we can see that the revised provisions appear to allow for future development on the T's worksite that's something that's critical to us. So we welcome that. And we do require those to be on the face of the order. So again, we do We welcome that that's now taking place but we'll need to consider and come back to you on the matters of detail. And as with other parties, if we're unable to reach agreement to the Protect provisions inside agreement, we'll ultimately submit our own version of the PPS pass an appropriate deadline. We note finally that the revised protected provisions make provision for the tea stock road issue, which we will return to in the compulsory acquisition hearing tomorrow.

1:30:32
Thank you. Good part 20. Any US UK SNS limited note that says changed the benefits of the prayer pipeline owners. That's fine. Part 21. Tea side wind farm limited. Part 22 Low Carbon limited and nothing new one, part two and three Huntsman polyurethanes. Looking for further No parties representing them. And part 24 Navigate to terminals another new one by an Laylat last few are 25

Northumbrian Water limited statutory undertaking with her own provisions. And Northern gas networks had part 26 also statute taken so they will be dealt with tomorrow. Necessary. And the final one is our 27 for the protection of North tees limited. North Israel limited and North T's land limited. Don't think we've anyone we're presenting today. So they were coming now. So any final comments on those reps, those protective provisions as drafted at the moment and our wishes to say them further? No. Okay, thank you I think then before we move on to Ofsted and the issue of protective provisions, which could take a little bit longer, perhaps we'll have a break now for Boyle. We call into the right

1:32:40
areas time now is 22 minutes past three.

1:32:46
We have just under 20 minutes. That'll bring us back here is 340 and we'll adjourn and see you back here at 340.