

SADEP_ISH7_21 JUNE PT4

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00:00:05:07 - 00:00:26:03

Welcome back, everybody. We're now resuming this next session of the hearing and we're on the agenda item regarding habitats, regulation assessment, uh, compensatory measures for offshore ornithology. I'm aware that the applicants team may have swapped around. Does anyone wish to introduce themselves, please?

00:00:31:01 - 00:00:34:23

Yes. Good afternoon. I'm Ross Bauer. From all apologies

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on behalf of the applicant.

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Thank you.

00:00:42:00 - 00:00:48:07

And Adam Farrow also rollerskating. On behalf of the applicant. Thanks.

00:00:49:01 - 00:01:20:27

Thank you very much. Thank you both. I understand that both natural England and the National Trust have sent their apologies, and that's accepted, in which case, under this agenda, item points two and 3rd May be skipped over, although I will obviously allowed the applicant time to comment. But turning to the first item on this is a new discussion about the new compensation measure for Blakeney rat eradication at Blakeney.

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And the simple question is to the applicant is what progress is likely to be made on in developing this measure in the examination. Time remaining, please.

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Uh, Ross Bower for the applicant. So just to give you a little bit of background to, um, to this additional new compensation proposal. Um, as you may be aware, we discussed during the Pre-application process with Natural England and National Trust the potential of providing compensation at Blakeney Point. Um, but at that stage, Natural England's position was that it didn't provide additional management to the kind of normal management practices.

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Um, and so on that basis, they, their view was it didn't meet additionality requirements. Um, so

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following that, the, the applicant obviously decided not to pursue, um, inclusion of compensation measures, obtaining points as part of the application. Um, so, and obviously that wasn't included with the application. And, but subsequently in, in recent weeks we had been approached by Natural

England and National Trust to reopen discussions on compensation at Blakeney point. Um, and that the reason for that, as we understand it, is that the, um,

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basically following in the 2022 breeding season Blakeney point um the sandwich turn population abandoned the breeding site there. Um and the key reason behind that they believe was the substantial increase in the rat population in the preceding winter to 2022, 2022. Sorry. Um, so for that reason, natural England and the National Trust are

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willing to reconsider compensation proposals at Blakeney. So our current position is that we are now taking up the opportunity to pursue those additional compensation proposals. Um, but just to reiterate that we are progressing those alongside the existing Farne Island proposals. Um, and, but we anticipate that one only one of those, but not both would be taken forward to the implementation phase alongside the compensation proposals at Lock Prime.

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Um.

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So subsequent to natural England's approach to us on that, we've held meetings with them on the eighth and 16th of June where we've discussed the proposals and at present the proposals would comprise a

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research and monitoring and implementation of trials to look at measures to control predators, primarily rats, but potentially also other predators.

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And assuming that those trials are successful, taking forward A.

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Um, taking forward those measures then to, to full implementation to deliver the required compensation. And in addition to that, we would be providing um, publication of best practice guidance to on completion of the trials, which could then be applied elsewhere within, within the site network. Um and just a good firm that natural England is of the opinion that this would meet the additionality test which they are concerned about obviously during the pre-application phase because their view is that it would the existing practice best practice measures have been exhausted and that these proposals are have the potential to deliver something above standard best practice and also provide best practice which could be applied as said to the to the wider site network.

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Um. So just in terms of the the your original question, guess in terms of the next steps we're proposing to update the sandwich term compensation document, which is 069, and that will be provided prior to the close of examination. Um, we've drafted an update to that document which we will be circulating to members of the um tomorrow, which is the 22nd of June with a view to receiving comments back from them on that by the 29th or 30th of June.

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Um, so we would then be providing the updated sandwich term compensation document by the end of examination by the 17th of July. In addition, we'll be providing the

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updated draft DCO to include wording to secure the compensation at Blakeney and also updating the derogation funding statement, which is app 076. Um, we've also got a further meeting scheduled with National Trust and Natural England on the 30th of June to discuss those matters once they've had an opportunity to review the draft document which said is being issued tomorrow.

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Okay. The correct me if I'm wrong, but you said you'd provide the sandwich turn, um, compensatory document on the 17th of July, basically. Deadline. Is that right?

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Yes, that's correct. We we'll be providing that by by the by deadline eight.

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Okay. You know.

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That causes me some degree of concern. Um, you'll be aware of the Secretary of State's decision letter on Hornsea Project three, where it was said that the development consent process is not designed for consultation on complex issues like SRE to take place after the conclusion of the examination and that an applicant or indeed the examining authority should not place any reliance on consultation been undertaken post examination.

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Now to that end, if you provided it on. They close the examination? Deadline eight. We would be making our recommendation to the secretary of state. Without the full picture, without Natural England's comments or National Trust's comments on that. So I would explore with you now and most strongly if you could provide that by deadline seven to at least allow those comments to be made officially by those organisations.

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Do you have any views on that place?

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Julian Boswell for the applicants. We understand the point that. That you're making, sir. As you as you can see, this has arrived rather unexpectedly very recently. Um. We our headline position remains, as Mr. Bowers just indicated. The same, i.e. that it's centred on Loch Ryan and the fans.

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Given that it came from natural England and National Trust, we felt that we should engage positively even though it was late in the day. I think the most that it makes sense for me to say on the sort of specific procedural and timing point you've made is that we will we will give that careful consideration and we will do our best to assist in terms of offending as little as possible that the Hornsea three letter that you reference, I think is also very similar wording is in the the new draft national policy statement.

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That's probably so we are we are reacting to events as best we can as you as you can probably gather. So definitely noted your your point.

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So thank you very much that that your reassurance there gives me a reassurance that you're doing everything you can to to assist the examination on that. So thank you.

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Um. In terms of the next two items on the agenda. Both were for views from Natural England and National Trust. Um, but there's the the applicant wish to offer any views on either the the the effectiveness of the proposed measure or any risks of the proposed measure at Blakeney. Please.

00:10:45:07 - 00:11:19:13

Um, Ross Bauer for the applicant. Um, firstly, obviously, just to reiterate the fact that natural England and National Trust are have brought these message forward and, and also by inference, are supportive of those. And I believe it also reflects the written submission that they provided to you for the hearing that they are supportive of those which indicates obviously that the um, they consider that the measures are likely to provide something that is suitable and effective in terms of compensation.

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Um.

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Also just to to reiterate that the the measures of Blakeney are what has been referred to by national lenders as secondary measure. So secondary to the primary measures that are being delivered at

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Loch Ryan. So in that sense, they are forming part of the wider package. So and provide reassurance really that that those measures will be effective as part of that package. Um.

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Also guess to to reiterate that the measures are being developed and will be secured through the sandwich tern compensation implementation and monitoring plan. And obviously the detail of that would would be agreed as part of the part of the consenting process. So that provides an appropriate mechanism to ensure that the monitoring and effectiveness of the measure is is delivered as required as part of the as part of the delivery of the compensation as set out.

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Um. In in response to question 9.3.

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Again, just in terms of terms of risks. Again, just to reiterate that the.

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The fact that it's delivered as part of a package of measures, I think provides should provide real reassurance to the examining authority that that together that package will deliver the required compensation. But in terms of of specific risks, I mean, obviously, there are risks associated with with the delivery of compensation at that location. Um, specifically, as you as you may be aware, the birds, there are two breeding colonies at North Norfolk coast.

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The one at Blakeney Point and the one at Scott Head. And, and as we know, the birds can move between those two different colonies. So in some situations, as we had in 2022, there may not be birds present at Blakeney Point, which obviously could prove challenging in terms of delivering additional measures for them at Blakeney. Um, and guess the other, the other key risk could be if in the event that, um, the trials that are proposed as part of the compensation at Blakeney in the unlikely event that those trials fail to provide a successful outcome, then obviously there would be a risk that then that wouldn't then deliver the, deliver the required compensation.

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But having said that, there's a very high level of scientific certainty that um, eradication of or management of predators at the nesting site will result in an increased population for the, for the sandwich terns. So that high level of certainty think provides us with with reassurance that the compensation at that site is likely to be very effective.

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Okay. Thank you for that. And and remember with the the foreign islands, there was talk about when Loch Ryan was establishing that the fan islands would deal with any mortality debt accrued. Um, if the fan island's not pursued and Blakeney is pursued, would it deliver the same rate or resilience, if you like, for mortality debt?

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All right. Ross Bower for the applicant. Obviously, at this stage, we don't want to quantify the the numbers of birds that the Blakeney compensation would deliver. And that's something obviously that will be developing as part of the part of the compensation package. But.

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I think just to highlight that that delivery, these measures should be rapid in terms of in terms of the time period they'll be delivered in. So it should, you know, after only perhaps 1 or 2 years of the trialling methods, we'd then be able to implement the measures and the response to those should be should be very quick. And in that respect, we think that, you know, and as a previous stated, you know, there's a high level of confidence that practice control will would achieve an increase in the population.

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So in that respect, we're confident that if we were to implement measures at Blakeney, that they would provide that quick response, as it were, in terms of in terms of increasing the sandwich tern populations for the North Norfolk coast.

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Okay. Okay. Thank you. Um.

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That brings us to the to the final point on this agenda. Now, this is isn't necessarily specific. So to sandwich terns in particular, but it's the wholeness of your compensatory case. Um. And just some context for this. Obviously I appreciate the guillemot and razor bill proposals are on or without prejudice basis, but we've seen during the course of the examination a change in focus from the northeast to the southwest in terms of looking where the compensatory measure may be effective.

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And now of course, we're looking at being no induced situation, if you like, where the sandwich tern compensation has changed. Um, now the competent authority, ultimately the Secretary of State will need to be satisfied that all the necessary legal, technical, financial and monitoring arrangements are in place with this changing, this sort of shifting sand, as it were, regarding compensation.

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What confidence can examiner authority have and what can we give to the Secretary of State that actually the package of compensatory measures is suitably developed to offset the harm that will be caused by the proposed development?

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Julian Boswell for the applicant.

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I think the core point here is, is what we have said from the beginning and at the time we made the application and the pre-application discussions we had with the Planning Inspectorate whereby we we set out in our discussions with with natural England as well, of course. So we had extensive pre-application discussions with natural England in particular, but other other parties in relation to Loch Ryan and so on. And we developed a plan that was necessarily going to take a significant period of time to to mature in the way that we explained in the application documents.

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And we were encouraged, as I remember saying back in the January hearings, to make the application at that point by Natural England. And we were mindful of the the the general point that you've just made, sir, around the need for the package to, to be examined. Um, when we asked specifically for a meeting with the Planning Inspectorate to take them through, um, where we, where we were at that time, mindful that they would have an acceptance decision as to whether the application was in, in correct shape or good enough shape for, for examination.

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And we, we were given a clear indication that we were in acceptable shape in those terms. And we went ahead and submitted and we were duly accepted and no issues were raised on this aspect at the point of acceptance, as you know. So we set out in the application documents. And the different steps we were taking to to take those different measures and different elements of the package forward.

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We promised to give you regular updates, which we have done. And there's another update that has gone in yesterday at deadline six. Yes, of course, we acknowledge that completely to our surprise, given that. Looking at things at the at the sight of the or within the vicinity of of of of North Norfolk was inevitably top of the list when we were scoping out possible compensatory measures.

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Going back gosh, however many years you like anything from 2 to 4 years in relation to that. And to our surprise, this has come as a late possible addition. But it is only a possible addition stroke replacement and I've already responded to your entirely legitimate question of a few minutes ago around

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needing to have as much as possible during the examination from officially, as it were, on the record so that that can be taken into account. As you know, sir, the development consent order draft is set up on the basis that it is facilitating a package or different packages sweeping in the without prejudice scenario scenarios as well that that the full detail of which will be will be signed off post consent in practice.

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And that what we have been endeavouring to do which of course is exactly what happened with with Hornsea three and and other decisions what will be the history was different and that the whole point of the Hornsea three decision and the new national policy statement wording, assuming it comes in and it's in its current form, is to ensure that there is a meaningful examination of the proposals during the examination. And we we, we think that we have satisfied that test such that you are in a position to make a meaningful evaluation of the credibility of the proposals that we are putting forward, whilst at the same time acknowledging that we haven't got to the point, but we were never going to have got to the point by the end of the examination of having every element of that package in place.

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And so I think in headline terms we are broadly on track with where we had expected to be based on the programme that we set out in the application documents which we had previewed with the

Planning Inspectorate before we submitted. We are still on track in terms of the the engagement that we have with, with natural England and and so on. Yes, there is a difference of opinion on the foreign islands. I acknowledge that and that has kind of come and gone a bit.

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And so we have we have maintained our position on that. And then Blakeney may or may not evolve further, as Mr. Bowes indicated.

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And we've put.

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In something on that at D6, and there will be obviously more to come before the end of the examination. So if we just step back and revisit some of the more general complexities, if I may, of the, the evolving position for, for offshore wind, um, submissions had gone in on this at different times in relation to, to questions that you've posed. You're well aware that we are pursuing not only a project level strategy but a coordination, sorry, collaboration sort of dimension to the overall package and potentially an overarching intervention from, from government with the Marine recovery Fund that is in front of Parliament.

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And there's an awful lot of work going in at government level in relation to that. So. As an applicant that by chance, as it were, happens to have been promoting a project at this point in a very complex, evolving legislative and I guess, ecological situation where inevitably any given project will have some issues that have that are bespoke to it, which for the most part sandwich turn is and also the the me the without prejudice me position is is pretty bespoke to to this project.

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But then other issues are caught up in a much bigger evolving picture, namely Kittiwake and the guillemot and raise bill. And then I mean let's be honest, quite an unusual twist with Guillemot and Razor bill with the Hornsea four position whereby hopefully that decision isn't delayed further and we do find out before the end of the examination which way that goes and we will do our best to, to put in a further submission in the light of that decision, assuming it does come out on time. And so as a single developer caught up in a very complex, evolving situation with the recognition, I think by government and by natural England, that developing these measures is is a complicated business that does does take time that we I think we have certainly our position that we have acted responsibly.

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There was a major delay to the application to allow our position to mature in different respects. We were complimented on that fulsomely by by natural England at the time. And so overall, we think we have in responding to the different complexities of this evolving situation, acted, acted appropriately, put in a comprehensive application, matured the different measures in the way that we have updated you and we are broadly, broadly where we expected to be.

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And so, yes, in theory we could have been further down that track. But I think that we are within comfortably within the expectations that that base, as was and is now was setting, remembering that of course the comparator was where literally nothing had been done. So Hornsea three Orsted were that position was that they were not causing an adverse impact on integrity and everything was being done from scratch and, and that, you know, we are a million miles away, a million miles away from that.

00:26:38:09 - 00:26:55:10

Thank you very much for that clarity on that on the position. Thank you. I'll not complete my. Questions under this agenda item. I'll just see if there's any other points and members of the panel or other people in the room who want to say anything.

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Um, Mr. Betts, I believe. Is that your hand raised?

00:27:04:19 - 00:27:05:04

Uh.

00:27:06:01 - 00:27:37:29

Thank you. Just one point. Notwithstanding the comments that Mr. Boswell's just made, but throughout the examination today, and indeed in the written representations made in response to the questions raised by the Norfolk Parishes movement for an offshore transmission network, and reference has been made to the national policy statements and indeed the draft national policy statements. And it seems to me that they have.

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The applicant has used that to justify their position and would like to question the validity of that approach is think it's entirely inappropriate. Thank you.

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Okay. Well, certainly in terms of decision making, um, the, the government have set out that the national policy statements are the basis for any decision making in line, of course, of the various acts, particularly the conservation. Um, forget, forgive me that the act that governs the habitats regulation assessment process and that is the basis in policy terms.

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Um, if you like the national position taking precedence over the local position, that's not to say the local position is not important and relevant, but that's just the policy hierarchy. I don't know whether the applicant wishes to come back with with anything further on that. By way of an explanation, please.

00:28:45:01 - 00:29:16:20

Julian Boswell for the applicant, I suspect the point that Mr. Betts is, is particularly flagging is what status is given to the draft national policy statements and. Yeah, under section 104, which I imagine he's familiar with. Um, the Secretary of State is, is required to make the decision, quote, in accordance with an adopted, um, national policy statement. Those are the 2011 national policy statements.

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But there's also a later subsection which says that, um. He should have regard to things that he considers important and relevant. And it is established that emerging national policy statements, i.e. that will in due course replace those existing national policy statements, are capable of being important and relevant. And then it's in practice its and there are multiple examples now since the September 21st drafts came out, we've obviously got now the March 23rd drafts that have superseded those.

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There are a number of decisions that have been made since the September 21st drafts came out which indicate the the approach which the Secretary of State has has adopted in looking at those emerging policies. But it is in practice. It is it is a it is a matter for him as to exactly how he does that. And so and in theory, the existing national policy statements could have been formally suspended.

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There is power for that to happen pending the review that the secretary of state didn't choose to go that route. And so we have it's entirely legitimate for us or anybody in this examination to reference the draft national policy statements and to make a case that and to urge, as it were, onto the Secretary of State, consideration of those precisely what weight he chooses to give. That and the panel choose to give that in. Their recommendation is, is essentially it's going to depend on the topic and it's going to depend on

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how the secretary of state sees that. I think that's, in essence, a matter of discretion. But it's it's not hard to pick out examples where it would seem very strange if the fact that there was new policy emerging wasn't being taken into taking or there wasn't some acknowledgement of the direction of travel, particularly when the existing national policy statements are as old as they are.

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Thank you very much. Thank you for that that clarification and hope that that helps. Um, in which case that can completes that agenda item. We'll now move on to the next section in relation just to confirming the hearing action points that have been coming to today. There are

00:31:50:17 - 00:32:33:17

12 actions that I've recorded and as stated at the beginning of this hearing, these are likely to appear in, in written questions following these hearings. Um, to avoid any unnecessary duplication. So look out for them there and all our. Um, actions for deadline seven unless otherwise stated. Excuse me. So moving on. The first action point is that the the passage planning guidance referred to by Trinity House and the Chamber of Shipping and respective agenda item 41 is to be submitted to the examination.

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And that is regarding the the nautical mile clearance to to wind farms. That's an action for the Chamber of Shipping and Trinity House.

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Uh, action for the applicant. Is that evidence to be provided from regulators and shipping stakeholders, including charts to show where they they navigate and route in respect to proximity to wind farms to be provided?

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Action three again for the applicant is more detail coming showing the workings on how that 3% difference for collision risk data is derived between developing DEP n and not developing dep. N. If that could be provided.

00:33:24:22 - 00:33:25:07

Uh.

00:33:25:16 - 00:33:37:19

An action for the for the applicant is that details and calculations to be submitted for the localized assessment of collision risk for the sea channel west of Deep North.

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Action four again, related to that is for the applicant to submit the chart for the future scenario, that being the post development scenario showing the adverse weather route for that that ships and would navigate through.

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Then an action for both the applicant and the Maritime Coast Guard agency notwithstanding. The applicant has said they'll think about this, but it's to provide without prejudice wording to secure an obstacle free zone within the DCO. Should the examining authority decide the zone is required and the applicant to set out the implications of any such obstacle free zone in terms of the capacity and ability to build DEP north in full or not the environmental effects should the buffer be imposed.

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With me one moment.

00:34:41:10 - 00:34:42:02

Apologies.

00:34:43:00 - 00:35:05:18

The next two actions are for the applicant and historic England. They are for the statement of common ground with historic England to be submitted a deadline seven And if historic England could review the agenda for today, the recording of today and respond and provide responses in full to what has been discussed.

00:35:07:18 - 00:35:14:27

Uh, another. Item. It's an action eight or Dennis does hark back to an earlier

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action point is that evidence from from shipping operators that they do not have concerns about navigational risk.

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Then a couple of actions for Perenchio and Perenchio to consult its engineers in order to give a view whether 1.01 nautical miles is sufficient distance to allow for takeoffs. And then also to consult the engineers on the 1.34 nautical mile distance for the approach and the effects on flights as a as a result thereof.

00:35:55:10 - 00:36:28:25

Then an applicant action is to provide the sandwich term compensation measure at deadline seven so that natural England and the National Trust can respond by deadline eight. And then the final point is for the National Trust and for Natural England. Appreciate. We've got some holding notes in lieu of attendance at this hearing. But if they could respond fully to the questions on the agenda, um, so that the examiner priorities fully proceed of of the positions of those parties.

00:36:29:12 - 00:36:36:06

Um, they're the action notes I have recorded. I'll look firstly to the panel to see if there's any additional action points.

00:36:39:19 - 00:36:40:04

Okay.

00:36:40:06 - 00:36:41:27

I'm saying nothing heard there.

00:36:42:13 - 00:36:43:17

In which case I'll just.

00:36:43:19 - 00:36:47:15

Turn to the to the room and see if there's any queries or questions on those.

00:36:52:14 - 00:36:55:28

Julian Boswell for the applicant. Are these going to be issued in writing?

00:36:57:12 - 00:36:58:01

Yes.

00:36:58:04 - 00:37:04:00

Previously. Sorry, Mr. Wallace. As previously, these will be embedded in written questions for.

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Okay. Thank you.

00:37:07:11 - 00:37:12:12

Which those that complete the action points from today's hearing. I'll hand back to you, Mr. High.

00:37:16:06 - 00:37:48:17

So I'll just open it up. Are there any further comments from anyone either in the room or virtually. Fairchild of the applicant. I'm conscious that the think the timetabled date for fourth written questions if required is Thursday next week. So it's a week and a day away. Yeah. Um. Just a procedural point. If the actions from today can come out earlier ahead of those questions. I'm conscious, as you are, of time ticking.

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Uh, the purpose of actually reading the action points today so that you have them ahead of the written questions. Um,

00:37:59:05 - 00:38:30:16

what would be the purpose of us issuing the hearing actions before then? That's yeah, that's fine. Sometimes the questions have come out and they have been slightly different from the actions that's taken on the day. That's different. Yeah. So they, there's supplemented with further questions to the action. So it would be the action taken on the day, followed by further questions. So it would be exactly the same as us issuing the hearing actions today or tomorrow and then following that up with further written questions as we process that information.

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Okay. If there'll be yeah, the same as what's been read, then that's fine.

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No, they will be in the form of written questions and they may be more in requiring more information than we've said today. But yes, in essence, they will be hearing actions that have been read out to you today, supplemented with any further information that we might supplemented with a further question that we might want to ask you. Yeah. Okay. Let's understand. Okay.

00:39:01:10 - 00:39:02:18

Any further questions?

00:39:07:06 - 00:39:07:28

Okay.

00:39:11:02 - 00:39:13:11

Okay. The time now is

00:39:14:29 - 00:39:25:07

for 30 9 p.m.. Just want to thank everyone for attending the hearing today and look forward to seeing many and most of you tomorrow.

00:39:25:26 - 00:39:28:03

I will proceed to close this hearing.