

AUDIO_RAMPION2_ISH1_SESSION9_08022

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Fri, Feb 09, 2024 9:04AM • 1:49:06

00:05

Thank you, everybody. It's called pass three, that's resume.

00:09

We're now going to move on to the

00:13

item on the development consent order, where I have a few questions on it based on my own observations, but all of those relevant representations.

00:26

Thanks so good. Just before we start that, could I just just make you aware in terms of the team will be responding to your questions on that? We're joined online by Mrs. Mrs. Michelle Moss, who's the applicant's lead lawyer advising on compulsory acquisition issues. So I'm mindful that you said you had a fair few questions relating to the drafting of the DCO on compulsory acquisition matters. So Mrs. Moss will be replying to those one specifically.

00:58

Thank you.

01:00

Okay.

01:01

Just to remind everyone, I'm not going to be asking questions on the deme marine licence today. I'm aware, as I said yesterday, that there are a number of

01:13

quite a large number of issues raised by the

01:16

MMO. And actually England on the wording the powers within, they do extend to some articles in the DCO, Article Five, for example, the benefits of the order and article 20 on public rights of navigation. But I want to give the parties a chance to make quite some substantial progress on that. And I probably very likely will pick up the de marine licence at the May hearings.

01:48

So can I start please?

01:54

I should say that as I go through this, Mr. Mayor, and a small side, I will be seeking obviously, some guidance from you as well. On on how the powers are interpreted and etc. So if we can start with Article Two,

02:11

the interpretations I want you my first question is to West Sussex County Council. So I don't know if that's Miss Hara, who will be answering for them or if there's anyone from West Sussex County Council.

02:24

Good afternoon. Good afternoon. It'll be myself. Thank you. Now, in your representations, I'll start off with the definition of comments.

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And it is set out and on in our article to

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the West Sussex County Council

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only merely said that the they the definition of commence needs tightening. In what way? I think we had concerns that if you look at PE PD, zero 10. on page six, the definition of commencement, in part B, obviously carved out some operations and works activities, which also go on to page eight. In terms of onshore site preparation. I think our concern was that stakeholders need to ensure operations which have potentially environmental impacts our controls, and I think it's specifically within regards to requirements 12 provision of landscaping, and requirements 15 and 16, highways accesses, we felt that those carved out works activities should be included, so that we have certainty that those controls are in place. But those those three requirements. So I think it's a concern that they're quite broad. If you look at onshore site preparation works, for example, that has a quite a long list of definitions and works within that the we feel needs further explanation by the applicant as to any environmental impacts that they themselves may bring that aren't controlled by the DCA requirements. So when we would look for further clarification from the applicant, I suppose is ensure point verification of what the on site preparation works on? Yes, or just the justification for some of these carved out activities. Because there's quite a long list. I won't read them all out. They talk about site clearance, demolition, pre planting of landscape works, archaeological investigations, etc, etc. There's just quite a long list of them that we would just want to ensure

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you know, aren't missed and aren't uncontrolled by the DCA.

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Thank you. It's my job to respond to that. Please.

04:38

Yes, sir. Thank you. So Paul, male for the for the applicant.

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As the county council rightly said the definition of commence does carve out certain works as are defined within on on onshore site preparation works. And those are effectively works to be undertaken at an early stage either by way of

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So the site survey, an investigation or sort of working site establishment work. So those are the so that's the principle of what's covered by by that particular definition. I think in addition, in response to the County Council's relevant representation, the the applicant made some amendments to the draft development consent order to

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effectively bring certain requirements within the scope of any works, I works that weren't subject to that carve out. And it's done that,

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in particular in relation to requirements 19 for onshore archaeology,

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20 for public rights of way 21 Open Access land and 22 for the code of construction practice, and 24 for the construction traffic management plan. So that was the the applicants view of matters related to those site preparation works, where mitigation specifically for those site preparation works might be secured through one of the one of the plans or requirements that I just referred to, obviously, if there's any others that the county council would wishes to consider, we're quite happy to keep talking and consider those points.

06:29

Yes, I think you mentioned requirements 12 and 15, as well.

06:36

Yes, yes, those ones specifically, we would like discussions with the applicant in understanding some of the operations that aren't controlled. With the carve out of that removed specifically the highways accesses, we would appreciate further discussions. I would like to say however, sir, we do appreciate the applicant looking at some of those those areas of concern. So we do very much welcome that. Thank you.

07:03

Thank you. I'll see we've got some hands up already. Mr. Turney.

07:10

Thank you, sir. Richard tourney for the South Downs, National Park Authority.

07:16

We have sort of broadly similar point to the one you've just heard. I think our suggestion would be, or potentially would be that rather than amending the definition, in Article Two of the DCO, we can take the approach that the applicants taken to some of the requirements already to make clear that certain pre commencement works,

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nonetheless, trigger the requirements in question. And I think we're just emphasise for present purposes.

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Requirement 10 In terms of the programme of works,

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and requirement 12, that you've already heard, as Hera mention, we think is particularly important because although it's headed provision of landscaping, it is in fact, the lamp requirement.

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And we'd certainly be keen to ensure that site preparation, ecological mitigation works and the creation of new hardstanding couldn't be carried out until a lump had been submitted and approved.

08:22

And we also have a similar point about requirements 16. So I think there's a set there, where we think consideration should be given to carving out certain pre commencement works. Thank you. Mr. Toney. I assume you'll be making this all in writing, because I don't think we've had anything from the South Downs National Park as yet as to concerns with developed consent order. So I presume this will be following. Absolutely. Yes, sir. I mean, I don't know whether for today, you want me to comment or whether you prefer just to hear, hear or read that in due course.

08:57

But yes, it's all written down and ready to be sent to you in our written reps? Yes, I think. Yes, I think I'd like to keep today with asking the questions that I've got based on and then obviously doesn't preclude another DCO hearing in the May hearings. So thank you for that. Thank you.

09:16

I assume that in respect to those other requirements, Mr. Male you'll you'll take those away index are quite happy.

09:32

There was mentioned as well that the outline offshore operations and maintenance plans was not clued included in the list of plans within Article Two or within schedule 16. I think that was made by Natural England.

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Should that be added to the list?

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So I understand that that that that plan is not one of those as intended to be approved. So we'll I'll I'll take the point and have a look at it. Okay.

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Yes, the next one I want you to look at pleased is the definition of statutory Undertaker.

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Which says that means any person falling within sections 1278 of the Act, the 22 Planning Act of 1008.

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But unconscious, The Act also has definitions of statutory undertaking elsewhere, particularly sections one or section 1384. A,

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where it sets out another definition of statutory Undertaker and it just occurred to me or what I wanted to ask whether statutory undertaking here should mean any persons falling within section 1278. And one, two and section 1384 A of the title of the 2008 Act, given that it has a slightly different definition.

11:13

Certainly, so something I'll have a look at. I don't know whether Mrs. Moss has anything to say on that, given that there's a relationship there with powers relating to statutory undertakers in the CA section.

11:27

Thank you. So Michelle moss for the applicant. I think I'll need to also take that away to have a look at the definition and revert on that separately.

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Thank you.

11:51

Just going to go over what 138 actually says, I'm just

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hasn't loaded up on my computer at the moment. But yes, there is a there is a there's a there's a different definition to it. And I think it ought to refer to both. But I'll leave that with you. Thank you.

12:16

And finally, just a question of clarification.

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I have 1384 is loaded up now. It says in this section. This is the section to extinguishment of rights and removal of apparatus and a statutory undertakers. It says in this section statutory undertakers means the persons who are or deemed to be statutory undertakers for the purposes of any provision under Part 11 of the TCPA 9090.

12:44

That definition would not fit within that definition in your DCO, which is why I think it should be included. But I will leave that with you. Yes, sir. Thank you, we'll certainly consider that. Okay, can I just take you to

12:59

Article Two, two, which is just before part two. And I asked

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simply the question of that it starts with references in this order to rights Overland.

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The second paragraph, rights acquired or restricted covenants. Do you have that?

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That is something I have me.

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Sorry. There's no something I've come across before that second paragraph. Is that is that relatively new? Is that something?

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Or is that standard practice is not something I've seen before

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the Michelle muster the applicant? I'm not aware it's been included in other development consent orders. It is wording which is commonly found on the face of electricity at compulsory purchase orders

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to clarify beyond doubt that where the appropriate powers exist that the assignees or whoever has been authorised to acquire them may also exercise the right so it's clarified Katori.

14:11

And certainly, sir, I've seen it on the national grid Viking link, CPO and the National Grid London power tunnels to see POS to make it clear that these are

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land rights that can be transferred in that way.

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You just say that second one again, I didn't quite catch your Viking link. I got the first one. The national grid electricity transmission, London power tunnels to there are two separate CPOs from 2019 for two separate circuits, and curves that scheme.

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So we'll include the full names and the hearing.

14:58

Thank you

15:03

Several I want to move on now there's several in part two, which is, again, the MMO or require removal. But I will leave that for the moment.

15:12

That just for clarity, they're seeking removal of article 5558 and 512. And again, as I say, I will leave that with you to win the negotiations with the MMO. Can I now move on to Article Seven, please? This is the interaction with rampion. One.

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And I just want to be clear, in my mind that the additional wording that would be inserted into Article Three of that order of ramping one is set out in in

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paragraph three, notwithstanding Article Three, one no more than that's the additional bit, isn't it?

16:03

Yes, it is. Yeah.

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Now, you touched on this yesterday, but I think it's worth just asking this again today.

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Part of this order

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would be built on the air on the area that

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rampion one would be would have been built on if rampion. One had been extended to the fall to its full order, which I believe is 175, wind turbine generators.

16:42

This would be built being built on part of that site to one of a better word. That's correct. Yes, that's correct, sir. Yes. So.

16:58

So my question is, why is the article necessary? If the rampion one order cannot be built anyway? Because they can't build it because you're taking the site away from them. So why why is the article necessary?

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Thank you. So I think I think it's

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to cover off the theory, firstly, a theoretical position, that obviously, the rampion one order has been implemented, and is excellent. And so theoretically consents a number of turbines within an area, which have yet to be fully constructed.

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And in relation to

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other development, consent order applications.

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That theoretical

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possibility, even even though a scheme may not have been been fully built out to its to its consented parameters, has then been taken forward into environmental assessment work as as a highly precautionary position. And most notably, we've seen that in relation to the projects in the North Sea in relation to bird collision risk modelling. For example,

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in this case, because of the interrelationship between rampion, one and rampion, two, from a number of different technical disciplines, most notably SLV, AIA, and also shipping and navigation.

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The scheme has been designed essentially on the basis that rampion one remains as built.

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And so that's the that's the basis on which those environmental impact assessments have been undertaken. So the purpose of Article Seven is to amend the rampion one order, effectively, to make it clear that the Asbill position will remain in the event that rampion two comes forward. Yeah. There's then the proviso, which says, If it doesn't, rampion one is basically put back in the position that it's currently in and get retained his ex and consent. Yes. Yeah.

19:29

Okay, so it's more of a just as a precautionary position that you're taking, because I was the point I was coming from is if you're building on part of its site anyway, and therefore makes it impossible for rampion ones be built out. Then you the argument is the article is not needed. They go they couldn't do it, even if they wanted to ramp him on that is, I think that's that that's obviously it's a matter of practicality. Correct. So once we actually get to the point of building, but we aren't there, of course at the moment and we wouldn't be there between

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To the point of consent until the point of contraction starting

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and you happen to know that the company on rampion one, I know that I think you're all part of this parent company but I know that ramping up is a separate company to ramp in one isn't it is ramping one. Do you have you have you spoken to them? Are they content with with this to be inserted? Yes, they are, sir. And there's an appendix to the explanatory memorandum, which is a letter from them, consenting to the terms of Article Seven as inserted in the draft DC are very helpful. Thank you.

20:49

Okay, can we move on to article 18? Please?

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18 Four, specifically.

21:03

For B is this is this says no trial pits or boreholes. This is in relation to the authority to survey and investigate the land on shore.

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paragraph four B says inland no trial pits are boreholes are to be made under this article in land held by or in rights of the crown without the consent of the crown.

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My question is whether this is needed given article 49, which is a standard article of course in any DCO which does not permit any Undertaker to take land from the crown.

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If that is the case, then forby is not really needed, is it?

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The Michelle Michelle moss for the applicant

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article for be and undertaking survey powers would be a matter which falls under Section 1352 of the 2008 Act as opposed to the exercise of a compulsory acquisition of power under Section 1351.

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And article 49, whilst it is dealing with

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estates and rights and land for the crown and not interfering with any land. All right.

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In my view, it principally relates to Section 1351. So I think adding we're keeping the provision in article

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18 For B gives them additional clarity

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that we just saw, I'm I'm clear.

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I think I think you said that this, the power for for B was not in relation to CA It was in relation to

23:02

something else. Did I hear you correctly? That yes, it's the power of entry for surveys, not a compulsory acquisition Power Search. It's it's an additional power in the order. And therefore it would be a maximum which would fall under the consent mechanism in Section 1352 of the 2008. Act, then therefore, arguably falls outside of some of the provisions in article 49, which are principally concerned with compulsory acquisition in relation to land or interest in land held by the Crown.

23:39

Thank you.

23:47

Right, then, I note in article 20, this is another MMO concern. And I will leave that with you for the moment. Okay, now I'd like to deal with Part Five. And some questions that I have for you, Miss Moss, please. So just to set the scene, as I understand it, so article 22 is the general power of to compulsorily acquire land.

24:18

Article Three sets the time limit in which those powers are that they bite so in this case, it's seven years, and we'll be asking questions on that in just a moment.

24:32

And article 24 deals with the rights that you need, and covenants, which again, I will ask in just a moment and article 32 So article 24 With shedule seven sets out the rights the landlord seeking rights over an article 32 Is the temporary possession of land. And that is set out in schedule nine.

24:57

Yes, nothing there. misunder

25:00

Good, that's good.

25:02

So if I could start with article 23, two, please.

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The authority conferred by article 32, temporary use of land ceases at the end of the period referred to in subparagraph. One, that being seven years,

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except that nothing in this paragraph prevents the undertaker remaining in possession of the land at the end of that period, if the land was entered, and possession was taken before the end of that period. So I take that to mean that providing you take the land that you need, in other words, you commence the development, then you can hold on to land temporarily for as long as as long as you like. Now, how is that justified.

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But

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if it's not the case, that you can then remain in possession of the land indefinitely, you are correct for that you need to have exercise the temporary possession powers under Article 32, before the seven years have expired, and you need to have also taken temporary possession of the land for construction purposes, before they've yet seven years have expired.

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But there's then a restriction or a requirement

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in article 32 its cells

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and turning that off its articles 32 subsections. Four

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which requires the undertaker to have

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vacated the land within one year of the date of completion of the relevant works for which the possession was taken. So there is an end date.

27:03

But what the provision in article 23 Two allows you to do is ensure that you're not there isn't a cut an arbitrary cut off due to the compulsory acquisition time limit, by which point you must get off the land once you've taken temporary possession that works can continue. And then you're required to get off of the relevant mechanisms. That's there. There's also obviously article 232, for B.

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Which makes it clear that in relation to certain in relation to land that's not temporary possession only, you can the temporary serve a compulsory acquisition notice once you've taken temporary possession. But if you've gone past that time limit in article 23, that would not be available to the applicant. So they if the applicant knows that it will require some of that Latin permanently needs to have taken the appropriate steps before those seven years or up to 32 Sorry, by mistake. So 23 Two sets the overall power that you've got to have taken it by within a seven year period.

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And then we turned to article 32. Four, which then

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makes that that you have unless the owner of the land agrees once the development is completed you have one year in which to vacate the land and return it to the landowner that's that's correcting yes thank you

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pause there for a moment I'll make a note that cute.

29:02

Thank you

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Now, if we could turn to article 32 Please

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now, if we go to article 32, one a mismas it or the 31 that the undertaker may in connection with the carrying out of the authorise project for subject to article 23, which we just discussed, may take land temporarily on the land specified in columns one and two shedule nine

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what I don't understand is this any other any other Overland Park two of a 238 to

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again, the process of CA requires you to be quite

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I precise doesn't into saying which lands you need for for purchase, which lands you need for rights, which lands you're taking temporarily. So why is this power here that requires you that gives you any other order land to take temporary possession of

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the Michelle moss for the applicant.

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This is a provision which, which we'll find in the majority of recent orders, in fact, probably going back as far as the Thames tideway tunnel

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order, which effectively allows a promoter of linear projects in particular, where there's a degree of flexibility required over the final land

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requirements for permanent rights to take temporary possession first of the land, which you need, for example, in this case, the work number nine in order to

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construct the cable, so it will allow you to take temporary possession of a wide working corridor. And then to permanently acquire the easement over the narrower corridor, when you know where that particular layout is going to be. So in this case that the standard was expected to be 40 metres for the working corridor in most cases, and then 20 for the permanent easements. So this power allows proportionality, it ensures that the applicant does not need to take permanent acquisition powers over an exercise its permanent acquisition powers over the entire 40 metre or so corridor and ensures that it's honed down and it's a it's become a very common approach, particularly with these sorts of projects that

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I I'm don't doubt that it's a common approach. I'm obviously still entitled to question it.

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I will ask, though, if we if we look at that in practice. So if you decide or an undertaker decides that they want to take more land into temporary possession as that, as that identified in sheduled, nine, and that would have been and that land which would have been approved by the Secretary of State? What is

the what is the rights of the owner of the land to resist that or to be consulted upon it to have any form of saying that? How is that protected? Or is it not protected? Is it is it a case of you can say, well, I need the line? I'm gonna take it.

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So sir, it's it's the purposes

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for which this power is expected to be used

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mirrors the construction rights packages, which are sought in shedule.

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In the right schedule, so the order, which sheduled seven, therefore, what if there, I'm just trying to turn up

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the cable rights package the cable rights package and shedule seven, allows the undertaker to construct instal retain,

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maintain the authorised development as you would with a standard easement. So the purposes for which the temporary possession would be taken over that land were the cable rights that are consistent with the nature of the of the of the rights packages. So therefore, it it is known, it's already clear upfront that that is the

34:00

part of the rights which the applicant is seeking. It's just the article 32 A. Subsection two provides that flexibility in the mechanism by which the applicant may may implement those powers. And so there's there's greater explanation in the statement of reasons.

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Certainly paragraphs 6.9 and paragraph nine point 11 contain the explanation of how the applicant intends to make use of this power. But it is very much for the purposes that it's already seeking the rights in sheduled seven. So

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what you're saying is, if I'm right, again, please correct me if I've not heard this correctly. But the any other all the land that you're referring to,

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is land identified within sheduled

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seven of which you are seeking CIA powers anyway, is that is that what you're saying?

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It will be land that's in shedule seven, but it would also apply to pink land, freehold land. But there's obviously very little of such land. So it's, it's principally the sheduled, seven land

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in which that forms part of any other order land. So the first limb of that article search to a one, the land specified in shedule. Nine is the green land as shown on the land plan. So that's the temporary possession only. And then any other Lord bought the land would apply to Blue land on the land plans and pink land on the land bonds. Is that clear? Do you think in your opinion, the any other order any other order land? Is it? Is that what

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lawyers would automatically think? Or is it open to interpretation?

36:05

And in other words, any other order land means the igloo land or the pink land, it can't mean anything else is that that's where I'm, that's where I'm heading with this. It

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it would flow back through to the definition of borderland

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which would be the land within the limits of land to be acquired or used. I think that the the only area that could be

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potentially raising a question

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is the land which is shown yellow on relating to the existing national grid substation of bolney, which is not proposed to be a compulsorily acquired, I think what we would, I would perhaps this need to take away

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and draft is ensure that

37:01

it didn't apply to that, because it's certainly not not intended by to that okay, with you, then I, I did wonder whether it would be any other lords land within sheduled seven would would take care of that. But I will leave that with you, too. I think he can get the point that I'm making now I just I want clarification to any other order. Land can only mean land, which which has a purpose anyway, and it

can't be land which isn't identified for a word which you can then suddenly walk in and take over. That's, that's, I think, where I'm, I'm going with that. That's very helpful. Thank you very much.

37:43

Now, again, if we can stay on Article 32, please and move on to paragraph 10.

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Now, as I read into this, Miss Moss,

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this is at the end or during during construction, you can change your mind over temporary possession, lands sheduled, not shedule nine land and decide that you're going to acquire it for right. That's that's that power. That's what that power is there for isn't it?

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The mission was for the applicant

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only in relation to a number of very specified specific circumstances. So there are a number of parcels of land that are both listed in the temporary possession sheduled shedule. Nine

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and are also identified in shedule. Seven for new rights. And so the reason why they have been treated in that way.

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And in the way they've been treated differently to the any other order land point, for example, is because the proposed permanent rights purpose is very different from the purpose for which temporary possession would be taken.

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So for example,

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there there's land that I got a note of plot 228 which is required first for work number 12 temporary duct stringing. But thereafter, it would form part of an operational access for which a permanent write would be needed. And therefore it's been put clearly into both. But so you would, the applicant would not be entitled to use that provision in article 3210. A, in relation to any other land it's very much controlled by shedule nine and shedule seven

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Let's see your order in relation to limited plots that fall in base.

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So could you just take me through a game? Where in this were in this order? Does that article limit only to those certain plots?

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It doesn't say in the opening, you know, subject to certain plots are subject to, I don't know if there's a scheduled seven, part two off off the top of my head at the moment, or something where you can go in say are right, okay only refers to these three or four plots. The power seems to me to be quite wide and relates to everything in scheduled, seven, and schedule. Nine.

40:42

So, in, in the first instance, because article 3210 is dealing with temporary possession only land, we have a limited number of parcels. I think Greenland on the land plans, we have only a limited number of parcels in schedule. Nine, and then article that subsection 10, a makes it clear that that power for acquiring new rights over temporary possession only land only applies where

41:18

the land that's in charge online also appears in scheduled. Seven, admittedly third that requires a comparison to see which ones are in both. And that is not in the order. In terms of that ready comparison, but it has been set out in the statement of reasons there. I believe in Section 911 of the statement of reasons.

41:45

Yes, unfortunately, Mrs. Moore sent things that set out in the statement of reasons in the explanatory memorandum are quite often more explicit than what they are actually in the DCO in terms of the powers. So perhaps I could leave that with you. I would I, I think, to reflect on whether that wording could be tightened up to say that it is very clear that it only applies to certain plots. I will also just draw your attention, as far as I'm aware, the Secretary of State has, has he not in three in a number of orders, when a five by five windy harbour, for example, struck out this power, hasn't he

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amending the draft temporarily removing power to create undefined new rights in land described being for temporary possessions? Is that are you aware of that?

42:47

There I'm not aware of the circumstances in which they were struck out i whether it was a general provision, for example, and there hadn't been identified parcels and purposes for which it was for which was required.

43:02

What's the take away as look at whether we can

43:09

put a sub part to the relevant schedule so that the two things can be viewed easily at a glance because the wording and the operation of it restricts it, but I appreciate that. You've then got to match it through

and do that do that trawl to ensure to see which plots it relates to And whilst that's in the statement of reasons, there are specific circumstances I think they should be justified and set out more clearly, especially if the Secretary of State has already struck this power out. So I think if the Secretary of State was to consider leaving it in, it would need a specific explanation that there are certain plots it only applies to and for certain reasons. So I will leave that with you to reflect on that.

43:56

Thank you.

43:57

Finally, my question on on on CEA is relates into various areas within part five but I'm sorry various

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locations within the the DCO but primarily within part five is words to covenants and they've been used quite a lot and and the words restrictive covenants, covenants and restrictive and other covenants.

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Could you could you just explain to me please what these what you envisaged by these covenants. And what's the difference between a restrictive covenant, a covenant and a restrictive and other covenant?

44:43

Sir Michel Marth.

44:46

I believe the drafting is intended to all be referring to the same thing, but they may have slipped through that the bids not been drafted clearly enough. The intention is for it to be referred to a restrictive covenant in all cases.

45:00

Being the

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the the restrictive the restriction that can be put on on land, such as the cable restricted coven of witches sorts in shedule. Seven to the border. So it's intended to restrict the use of the land for example

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it may be said that with drafting of the order detects

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it that it's not been as forensic enough to ensure it's referring to a restrictive covenant in all places and I'll certainly take that away and and also when I note as well in the definitions going back to Article Two there's no definition of covenant or restrictive covenant as I see it.

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And I question what that I know what a covenant is, but what I'm restricting is if you have power to to impose any covenant you feel like

45:59

I mean I'm what I assume it to mean is that your covenants are to do with ensuring landowners don't plant trees over the top of the cables or things like that, or don't obstruct

46:11

your

46:13

view the operation of you having to inspect the cables or maintain them or replace them or whatever it might be. And what you don't want to is in other words where the cable route is you'd want to write to ensure it's kept clear and but

46:29

that ought to be I think set out in the order as well I think that should have a definition that that's what you mean to restructure means power to

46:40

maintain the cable routes or something like that. Because otherwise the power seems to me to be quite, quite wide. You could do the pile you can impose whatever covenant you Are you like

46:53

a no no.

46:55

You know, Maha don't to speculate, but it could be anything so I'm glad you're going to look at that again. So I'll leave again I'll leave that with you. Okay.

47:12

Okay, can I now move on to part so thank you, Mrs. Moss, I'm now done with CA I would now like to move on to article 43 and on trees, felling and lobbying of trees I just wanted to bring Mr. Hower in again please from West Sussex County Council.

47:33

Now I've noted

47:36

your response to this where you feel that

47:43

the words the third line of that which is subject to you know, the end at the undertaker may fell a lot or cut back roots within the order limits or near any part of the authorised project. I think that does need

tightening personally and I'll come back to that in just a moment. But your your use of it that actually it should say within the approved plans to plus 25 metres maximum easements I believe is that correct?

48:12

I'm just wondering why you say that.

48:17

And just and doesn't the article itself just give the overall power to remove trees, but it's in fact, the barrel cultural impact assessment or method or the approved method statement would be the vehicle in which to restrict where those trees removed? Thank you, sir. Amy Hara West Sussex County Council, I'd like to invite my colleague, Mr. Walker, to provide a response. He's the county of agriculture list.

48:46

Thank you.

48:49

Good afternoon. Jordan Walker County arboricultural. US West Sussex County Council. I hope you can you hear me all right.

48:56

My internet slightly lagging

48:59

we can hear you. Excellent. Thank you. Yes, I think that was a comment that was put in the 25 metres per metre for ran the easement with respect of limiting it in some way. However, upon reflection, there, you are correct. And that the AIA throughout the the agricultural impact assessments,

49:20

particularly the control documents, which will be produced, which would be the agricultural methods statement and tree protection plan

49:27

would potentially limit the construction phase works. However, the ongoing maintenance and operational use wouldn't be restricted. So that's such

49:41

sorry, I didn't mark them. Thank you. That's very helpful. Thank you.

49:47

It's about coming back to the definition here. Subject to article 44. The Undertaker may fail a lot or cut back the roots of any tree or shrub or

50:00

overhanging lands within the order limits or near any part of the authorised project. What does that mean?

50:11

Thanks. So, Paul male, for the for the applicant, I think in terms of the

50:17

power in relation to land within the order limits, I think that's that that's defined. I think your question is probably more aimed at land near to any part of the authorised product that specifically Yeah, I understand the first but I'm under what what does or near any part of the authorised project mean? Well, I think I think this is this is obviously a general power

50:42

that's found in many orders. But I think if I speculate on where it specifically might be used in this particular context, I'm thinking if if, for example, there may be any trees on third party land, which may prevent access

50:59

for particular loads to a particular area of the project, then it would allow the applicant to lop that tree, for example, in order to be able to gain access with that load.

51:16

That would already form part of the tree so they would knit of the trees that are being removed. We heard that yesterday that there was a totality of number of trees.

51:25

So they could be more than this power would allow even more than that to be removed as so Is that correct? Well, I think I sorry, sir. I think I think in terms of what we heard in the arboricultural retention plan, obviously that relates to the way in which the development is undertaken and regulated in terms of the way in which it's constructed. But that doesn't necessarily give it the give that give the the the undertaker the power, in order to remove or lock though the trees concern. So I think the general permissive power under Article 43 is intended to be simply a general permissive power subject to the regulatory regime that might come forward in the in the plans that you've referred to under the crcp.

52:24

Mr. Mr. Walker

52:30

again, it's just

52:32

Jordan Walker County arboriculture for West Sussex County Council, it's just to say that we do feel that still excessive, being near any part of the authorised projects going forward. It goes beyond that. And

the fact that this could be applied to any ancient woodland, ancient veteran trees without control, as we feel it goes beyond what's would be restricted within the control documents previously stated.

53:01

Further to that there's there's no statement of any code of practice that that might follow or British Standards, which generally is applied for other planning applications, to restrict the quality and of the works carried out through surgery works.

53:20

You want to respond to that. Mr. Mouse was just specifically on the point of that it's unqualified and wouldn't follow any code of construction practices or British standard. I think So Paul, miles to the applicant, I still believe that those works would be subject to the COC P and the and the method statements and the plans that are referred to in it. So I don't I don't think there is a there is a gap between what is authorised under Article 43. And the regulatory mechanism that comes forward through requirement 22 in the cicp mechanism.

53:59

Certainly, there's not intended to be

54:03

Thank you. I'll reflect on that. Mr. Walker, and and, if necessary, take this further, but I will reflect on that. Thank you. Can I further my comment just to raise to subparagraph. Four, within article 43. With this, the same principles applies for the removal of any headrow

54:25

It seems to suggest as any edge hedge row and that it's stated within schedule 30. In part one, the interpretation could be that it's any hedge row or any hedge row and those stated within schedule 13. And there is concern that that might lead to excessive hedgerow loss. To some extent, Mr. Walker, I do I can understand agree what you're saying. I think these orders have been approved by the Secretary of State in the past

54:56

and particularly where I've worked on the

55:00

and his schemes which

55:04

were these this power is there, but it is subsequently quantified or qualified by the requirements and the aboral come out surveys and and restricted to those hedgerows. So I do you understand I do share your your, your your concerns, but I might I think that this is prison that the power is there to give the power to remove hedgerows and trees and then that is subsequently then refined and controlled in the requirements. So, so I'm probably doing the applicant's job of answering for you there. But, but but that that is it is generally what they do and what the Secretary state's accepted. So

55:48

thank you, Mr. Speaker. Yes. Okay. Thank you.

55:54

Okay, finally, on the articles.

56:04

Article, can I just go on Article 57, please, Mr. Mao, and

56:10

I just a bit

56:12

confused on what is an inconsistent planning application planning permission? Sorry.

56:20

Firstly, are you aware of any inconsistent planning permissions in or adjacent the order limits? And why why this is why this is necessary. And this is inconsistent the correct terminology.

56:38

Thank you. So this this

56:42

article has been introduced. And it's been introduced in a number of

56:46

bcos recently that are largely probably still in the course of examination or awaiting determination in response to a case that was heard in the courts during the course of the last year, which ruled that where there are two planning permissions which relate to a particular site, and one of them is implemented, to the extent that it is that it will be inconsistent to implement the other one, then the the unimplemented planning permission or the benefit of it is lost.

57:21

And so what this is article is seeking to

57:27

do is to avoid that risk associated being

57:31

the coming coming coming through in relation to the development consent, this authorised by this order.

57:39

And so it might so there might not currently be any inconsistent planning permissions, but of course, there may be some, by the time this order might be implemented.

57:51

Thank you, and you were referring to the courts? And has that so that terminology inconsistent planning permission is what is the language being used in those cases? Is it

58:04

in I was just responding to as you just said, The these these court cases that are going on? Certainly, so that's the term that's been used in the majority of articles that I've seen dealing with the issue? I'm not sure off the top of my head, whether that was the specific terminology that was used by the court, I can certainly have a look at that and and let you know the answer. Thank you.

58:31

Okay, can I move on to the requirements now, please?

58:40

I'm too many questions here. I did have a few for mid Sussex counsel, but they are not here.

58:48

Firstly, if I could deal with part three, the requirements as this is requirement two.

58:54

Now, we talked a little bit yesterday, I'm not proposing to necessarily repeat what we discussed yesterday regarding

59:02

the attempt by the amendments she made at the pre examination procedure deadline to give certainty or clarity that the turbines would be of a uniform size. I put it to you that I didn't think the wording did that or certainly didn't reflect the

59:20

explanatory text. And I've invited you to, to put something more affirmative enrich on the lines, it's an action point that the turbines must be of a must be of the same height site design and or height, size and rotor diameter. And I'm going to leave you to reflect on that,

59:44

too. I don't need to deal with that. Now. What I am slightly puzzled by is the changes to the DCO made at the pre exam patient procedure deadline has various various points, taken out the words

1:00:00

to exceed or not exceed and replaced to be more than or no more than what why was that done? There's no explanation for that in your in your subject in your explanatory text to it just a bit puzzled why the word exceed was deemed to not be acceptable?

1:00:27

I think so that there was an amendment that was made in response to Section 51 advice where

1:00:33

the we were, we were advised that consistent terminology should be used and that was the terminology that we chose, I suspect we could have

1:00:42

used exceeding in other areas where no more than was was was said, but that was the that was the purpose.

1:01:14

The clarification point, please. Natural England said that, in respect to require I think is requirement to five see

1:01:25

that they required updated wording to list the maximum extent of scour protection per turbine or substation, and a maximum total.

1:01:37

But the explanatory memorandum says that you've instead done that within requirement to six.

1:01:46

Is there a reason? Was it an error on any part? Or did you just feel that was the better place to to provide that clarity? In two six for example, you've aside from the removing XC to be no more than you've added the words with a maximum footprint of 405,000 square metres and your explanatory test says that is to address the Natural England concern raised

1:02:11

but they seem to have raised it within article two five see.

1:02:20

Yes, I think I think the intent behind

1:02:23

that requirement to six is

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is to give an overall limit

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within the turbines within within work number one, rather than a a per foundation

1:02:41
response

1:02:43
limit.

1:02:46
The so your answer was that to respond to naturally and that was the better place to to make that amendment. Yes, sir. Okay, thank you. I'm sure Natural England will will respond accordingly Kip.

1:03:13
So the next round of questions, were to mid Sussex who are not here.

1:03:20
Oh, if we can go to requirements. Well, please. And I'm asking really for your interpretation or your thoughts in the absence of natural England's

1:03:32
Natural England advised I think that the landscape and environmental management plan should account for terrestrial ecology and the landscape advice provided but I wondered if they were referring to the document itself rather than the wording of requirements 12 Is this something you can

1:03:51
assist with? I know this will be a question for Natural England but I just wondered if you had reached the same conclusion they're actually referring to the document itself and not the requirement? Yes. So that was the conclusion that we reached.

1:04:33
Okay, can we go to requirement 22 Please.

1:04:39
The code of construction practice.

1:04:43
Paragraph or sub paragraph five to 20 to five

1:04:52
should this list refer to temporary construction compounds and soil storage works? These works numbers 10 and 11.

1:05:01
She also set out in the code of construction practice as well.

1:05:17

We'll review that sir and and check.

1:05:27

Thank you

1:05:44

Okay, for the moment. That's the question. That's the questions on the requirements. I've got a few more on the remainder of it. But the next question is to Aaron District Council and Horsham District Council. And if they're online, appreciate it's getting late.

1:06:05

Hello, Mr. Porter.

1:06:08

You said it also made in comments that you had concerns regarding security of mitigation, I think, in general in a number of requirements, although I don't think you were specific in which one. And these may refer to the commitments, registered commitments themselves, that they're too ambiguous. So I just wanted to clarify for you, is it the requirements themselves that you have a concern with? Or the commitments in the commitments register, or whether they're, whether they're ambiguous?

1:06:42

So I think it's both I mean, the comment you're referring to is quite an overarching comment in a relevant rep. But for the purposes of just now,

1:06:53

there are some issues around substation so requirement. Eight, this is the onshore substation is the Yes. Run through if you feel it's the right time. Okay, is in which requirement? Are you referring to specifically,

1:07:11

eight to so this was very article eight to where we've got reference to towards neutrality. So what I understand from what's written there is that it's limited to building fabric water efficiencies, but the appellant or sorry, the applicant has

1:07:33

offered up an alternative solution towards charity, which is a contribution pay to the council's impending offsetting solution.

1:07:45

So I think that just needs to be better refined, within the wording of that requirement.

1:07:54

The conventional way we dealing with it in planning applications is through you. So your would expect them to contribute to the future trading system. This is with without prejudice, because obviously we our position is that that's not an acceptable solution for water neutrality.

1:08:14

And also within the timing of the Heritage asset mitigation. So what we're seeking is advanced planting. So we are going to suggest that one D changes. Again, you just be specific of which we are referring to place. So this is still requirement eight hours of call one day.

1:08:44

Well, there's just landscaping we were suggesting that the wording changes to include areas identified for advanced plant in locations and delivery timescales are in relation to heritage mitigation.

1:09:02

So sorry, I'm being picky on the terminology. Mr. Paul, do you mean requirement eight, one D. They're not article eight, because that's a different thing. So resign? No, no, I

1:09:14

fully understand I just want to be absolutely clear that I'm reading the correct bit of the DCO that you want me to so it's requirements eight one d it does just say landscaping. You want that to be quantified a bit further. Yep. ticularly around the advanced planting for the heritage impact.

1:09:36

Thank you very much indeed. So undecided the applicant, just with regards to the advanced planting did design and access statement, which is referred to in those requirements does contain reference to providing the further detail of advanced planting and seeking to maximise that opportunity, obviously subject to construction and

1:10:00

requirements, but there is coverage within those principles with which that detailed design shall accord. Could you just just so that

1:10:12

we're absolutely clear which requirements are you referring to the refers to the design access statement and requirement eight. Requirement eight. I thought he said though there was a different

1:10:24

whereabouts the list is

1:10:30

is a unit talking about eight one a there's there's no refresh reference design exit statement there is there is I just wanted to be absolutely clear for Mr. Porter, so he can

1:10:44

thank you. So, so, requirement eight. Two says that the details submitted under

1:10:53

requirement, a one must accord with the principles set out in the relevant part of the design and access statement. So what submitted and I think we did touch on this yesterday, what's submitted under requirement eight, one D in terms of landscaping, would pick up upon the pre construction planting requirements that are set out in the design and access statement.

1:11:21

So if you don't respond to that, Mr. Porter, I think what's missing is for delivery timescales. So we have

1:11:29

an air the areas identified, but to get the element that's missing is making sure we've got a structured time scales to when the planting will go in. So that's why we wanted the reassurance of having it more explicit

1:11:45

within DCA water itself.

1:11:51

Thank you. So we take that point, we can take it away and have a look at it. And whether it's said whether it's explicit on the face of the DCO or through a through a document that's that's referred to in the requirement will will will consider that point.

1:12:03

Thank you very much. Sorry, there was one more point just about ideally, we were after a parameter plan to fix the developable area within eight, one, A to F.

1:12:19

I mean, we have

1:12:21

been presented with an indicative layout, but

1:12:25

I think there's probably enough certainty within the environmental constraints that we could reach a point where there is a developable area that can be fixed with more parity.

1:12:42

Thanks, so pull me off the applicant. Again, our our response to that will be that it's something that's contained within the design and access statement, that will we'll take that take that point away again, and look at whether there's anything that we can do to be even clearer about that. Thank you. I'll just ask perhaps Mr. Porter, over next, prior to you submitting your local impact report and written representations, if you could just perhaps, review the design and access statement again, just to see if

if reviewing it a second time does does in with with the DCO as well article, a requirement. I got me on it now requirement a that does address your concerns, or at least mostly can address your concerns, but you can let me know in writing if it still doesn't.

1:13:25

Yes, we'll do so. Thank you.

1:13:33

Now Natural England also say there's no requirement for the surveying of European protected species, which is normal practice in DCIS. Is that something that is omitted or it was is deliberately not there?

1:14:09

So I think our answer to that is that it would come through the documentation that's supplied as part of the COC P.

1:14:22

Is that Is that normal?

1:14:26

for projects like this?

1:14:36

Think there's a couple of answers to that. So certainly, if the if there's if there's a relationship with the licencing process, obviously, the the the the necessary surveys will need to be undertaken in accordance with that, that licencing process. And then and then what you have here for the code of construction practice, are there barriers mitigation measures, which set out how the how the developer will go forward?

1:15:00

What I perhaps can offer that the applicant will do is look at what's in the outline see OCP. And by way of reference to the surveys that might be undertaken in order to inform the detailed plan to that end submitted under requirement 22 and see what that might do.

1:15:20

Thank you.

1:15:26

The next point is just a clarification point on the requirements. Again, Natural England have said they expect to see changes to the design requirements once agreed. And the XA presumes, therefore, that discussions are ongoing between yourselves and Natural England. And we will be updated in due course of those discussions and whether there is any changes to in other words, you're aware that these discussions you're aware of these issues around that Natural England have and you're you're working with them to resolve it? Yes, sir.

1:16:06

And West Sussex County Council raised in their pads, clarification of its role in discharging the DCO requirements. Is this something that you have that you want to respond to?

1:16:23

Or would you like with Mr. Howard to perhaps just explain a bit further what she means by that? That will be helpful, sir.

1:16:30

Yes. What? What asked me, sir, is that in your principal, your principal areas of disagreement statement, you, you stated that you sought clarification of your role in discharging the DCO requirements? Perhaps you very briefly explain what you mean by that. Thank you, sir. Ami harrow West Sussex County Council. I think we are now clear on that point, sir, regarding our role in the discharge, and that that is primarily directed towards our functions as the highways authority and the LLF, a lead local flood authority. So I don't think we have anything else to add on that at this time.

1:17:08

So is it an issue that you've now clarified or you still seek? You clarified? Okay. Yes. Thank you, sir. Thank you. Okay.

1:17:23

Okay, I think before I move on to protected provisions,

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it might be a point here to

1:17:32

ask whether there are any questions of the applicant on the requirements or articles

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that I've either raised. Does anyone have any questions? Mr. Fisher's net.

1:17:52

Can somebody put on the microphone, please?

1:17:56

You just just wait a second. I think someone's coming. There we go.

1:18:19

Thank you.

1:18:22

I'd like to, if possible put up

1:18:26

on the screen. So it's David Fishel on behalf of myself and he says official loads of sweet or fun.

1:18:32

I'd like to put up she 26 of the land plans on shore. Up on the screen. She's document reference, a pp 007.

1:18:44

That would illustrate my point.

1:18:48

I mean, Mr. Says, where are you? Where are you going with this? Because I just you've not, I don't think put anything in writing. So far have you about the concerns you have with the DCO? Or any point? So is it a specific article or requirement that you it's

1:19:07

essentially, the point is inconsistencies between the environmental statement and the commitments registered on the one hand and the dcl on the other.

1:19:18

And the greater flexibility that the applicant is seeking over our land

1:19:23

in comparison to other parts of the cable route. I think that might be something you need to put in writing to me so I can see it and digest it and the applicant can respond to that. And very, if there is inconsistencies are very happy to take that on and investigate. But

1:19:41

obviously I this being a primarily written process, I think it would be helpful to me if if there are inconsistencies in the commitments register in the DCO in the plans, that you're able to put those in writing and then we can actually I can actually see those in more clarity is that

1:20:00

That being

1:20:02

said, I think I mean, having read the relevant representations of a number of other landowners, I think what we're about to say or what I would have said would be common to a number of landowners. Okay. But perhaps just as a, is it a particular article or or, or something in the DC? Is it to do with the compulsory acquisition powers that you've it's

1:20:21

essentially the the

1:20:24

the inconsistencies between the the environmental statement and what is in the DCO corridor? On the one hand, secondly, that the the applicant is taking a lot more flexibility in Atlantic is much bigger

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than the land and the applicant actually needs. Yes, I don't think that's a matter for now. But I think it is a very important point, I think it's more for this compulsory acquisition hearing, we will be holding one of those very light to be holding one of those, the May hearings, and we will, that's where the point we will be looking at the powers that the applicant seeks, actually on a physical scale. So why do they need the land that they they're saying they need for? So I think that's very much for that hearing. So, if you could

1:21:13

make put that in writing to me. And we will all take that forward and if necessary, discussed that the May compulsory acquisition hearing. Thank you. That sounds very, sounds fine. Yeah. Okay. Thank you, Mr. Turney.

1:21:29

So I appreciate you want to wait for written representations. On the detail. I just wondered if it was appropriate just to briefly raise one one overarching point, which is that in the DCO,

1:21:44

the South Downs, National Park Authority is not referred to in a number of the schedules where the districts are instead referred to for example, for the identification of locations of footpaths. And we think there's a sort of general piece to be done about updating references to ensure that STN PA is referred to properly. And there's a consequential point as well, which is that we think that in certain areas, SDN pa should be the discharging authority, where at the moment is identified as being a highway authority.

1:22:16

So that's specifically in respect to public rights of way. And the

1:22:21

South Downs Way in particular. So I just flagged that as a general point, because it goes to sort of overall approach to drafting and obviously, we'll put that in our risk representation in due course.

1:22:40

Yes, thank you, Mr. Chairman. I think that's very helpful. And I think the applicant will have heard that and yes, that yes, where the South Park authorities the discharging authority, they will need to be included. I'll leave that with you to to review that place. Thank you for that Mr. Turney.

1:22:57

Any other points on the requirements?

1:23:01

Module?

1:23:03

Thank you. So Sarah Marshall for national highways, its requirements and and the draft on the DCO. Some brief points which I will confirm in writing and national highways need to be received the National Highway has to be defined in the in the DCO. Network Rail is defined but we would also seek for national highways to be specifically defined in the development consent order.

1:23:31

Article Two refers to a definition of highway authorities. But of course, there's the local highway authority and the Strategic Highway Authority. Their national highways would think that that definition is amended or sorry, a definition is included for the Strategic Highway Authority.

1:23:53

The part three which is concerned with DRI, are generally in the DCA there's no reference to the A 27 A 27. Sorry, at all in the DCO.

1:24:06

So we'll leave that with the with the applicant and yourself there.

1:24:14

We have a question or a concern, the A 27. Miss Miss Marshall, sorry to interrupt you there.

1:24:23

Normally that we would this would you would respond to written representations here. The money the questions I've had today have been from people who have written organisations that have already written in to inform me about their concerns. National Highways, as far as I'm concerned hasn't done that to date. Only in respect to protective provisions is I will hear it if the list is quite short. If you've got quite a long list of concerns, I would prefer it if you were to make those in writing in the first instance so that I've got a chance to actually go through it in more detail and with the with the cop

1:25:00

For the DCO, the applicant will have a chance to respond to it in writing. And then I can take it forward from there, either in written questions or within within the next hearing.

1:25:11

There's a shortlist. It's a shortlist. Okay, I will let you do a shortlist, we might have to have a discussion on what short is.

1:25:21

Okay, I will trust you that it's a short list. I've only got two more to go. Okay.

1:25:27

And schedule one. Part one

1:25:31

refers to works. My clients are concerned. There's no reference or detail given to governance of the project generally.

1:25:40

My final question, Article concerns article five national highways as a strategic highway authority would seek to be consulted if the applicant wishes to change anything or to do any any works on this strategic road network. And that is that is it for my questions. I'm grateful for you. Thank you very much, indeed. Apologies that they weren't put in writing prior to. Thank you, sir. That's okay. And I'm sure you will, you'll do so at the next or the next deadline? That does smile. Do you want to respond to that now? Or do you want to? Do you want to wait for their written representations? I think they've given you a heads up gives you something to work on, at least but it certainly does. It gives us something to work on. It gives us something to discuss when we're discussing protective provisions as well. But I would like to still see the detail in written representations into courser, please. Okay. Thank you.

1:26:37

There's nothing further then I got to further matters to

1:26:44

YES to deal with protected provisions and legal agreements. If I could start with the protected provisions, this is mainly

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an update really, and as I see it.

1:26:59

There the current draft, and I know that you'll be adding to it but there's current draft has no protected provisions for electricity, gas, water or sewage Undertaker's. There's no protected provisions for National Grid, electricity or gas.

1:27:14

There's no protected provision for the Environment Agency yet. And there is no protected version for national highways. Although I know it's national highways, his comments. And I've also seen and have a copy of national highways is preferred, protects provisions wording that you would seek to go in it.

1:27:34

National Grid national highways Network Rail, Southern gas networks and Southern Water have all made representations so far, about the need for protective provisions. So could the applicant just provide me with

1:27:50

the latest position with regarding protective provisions and when I can see an update to the DCO with those particulars and aliens included and be where they're substantially agreed.

1:28:05

Thank you. So Karen Martin on behalf of the applicant.

1:28:09

You're quite right, we have had a number of establishments take his make written relevant representations so far, I'm pleased to confirm that we're in dialogue with all of those parties. In terms of electricity and gas Undertaker's. Generally, we've got part one that deals with those on a generic basis. And we're in quite advanced dialogue with national grid electricity transmission to finalise protective provisions with them. And of course, once they're settled, they'll go into the DCO. And there'll be carved out from the generic provisions in part one.

1:28:45

Just to cover what we have got in there at the moment, as well, we've got some generic provisions for the operators of electronic communication code networks, than than any detailed engagement with parties on those provisions at present. But that's fairly standard. And we don't anticipate any problems with the retention of those provisions as they are. Obviously if we are approached by anybody who who does want specific provisions, then we'll be in a position to try and progress any negotiations that are required.

1:29:16

We've got some provisions in here at the moment for rail operators on a on a more generic basis. Having said that, we are again in advanced discussions with Network Rail in terms of some specific provision. So we're anticipating that little bit there will need to be some amendments to the text that's in there at the moment, but possibly not very substantial. So yes, we've made quite a lot of progress with with Network Rail recently in particular.

1:29:44

So as I said, and get we're making good progress with likewise Scottish and southern electricity. I think the issue of the late letter has prompted some flurries of activity between us

1:30:00

selves in some of these Undertaker's in the last couple of days. So SSE is one of those. Likewise southern gas networks. So we again, both of those parties in fairly advanced discussions with, particularly southern gas networks and meetings proposed to take place very shortly with them. And with all of the above parties, we've got no concerns that there'll be other than the

1:30:23

we'd have any concerns that there will be outstanding issues at the end of the examination, and hopefully at a sooner deadline to provide you with updates to protective provisions, as soon a deadline.

1:30:36

As you've heard national highways, I think Mrs. Module confirmed yesterday that she'd had a recent email from us to try and advance those discussions in those protective provisions.

1:30:49

The only thought comments I'd add to that are that the interaction between the project and the strategic net road network is fairly limited. And also, as I think you heard yesterday, there's detailed design work going on in relation to the junctions and we'll be sharing that shortly and hope to progress those discussions on both fronts to conclude matters satisfactorily.

1:31:11

The other two parties I just wanted to mention where Southern Water, we're in dialogue with them. We haven't had their standard template protective provisions yet, but we are in discussions with them and hope to progress those shortly.

1:31:24

Environment Agency, we've had confirmation from them that they don't need any protective provisions based on the the approaches taken in the drafting of the order. So far, Portsmouth water have also had confirmed they don't want any.

1:31:36

You've We've also discussed earlier this afternoon that there's a position been reached with rampion. One, and they've confirmed that they don't need any protective provisions on the face of the order at present.

1:31:48

And the only other final person to mention is Aqua, and and there you've seen correspondence that has been submitted.

1:31:56

We're in dialogue with that party in terms of whether there is actually a need for reciprocal protective provisions in both orders, if made. And there's a meeting taking place next week to see if we can discuss that in terms of a side agreement outside of the formal determination processes. Well,

1:32:13

yes, I was going to ask you back when and where that was leading, given the communications? Obviously, they've got a concern with their DCO, which is not before this examining authority, it has we have no jurisdiction as to whether they should have protected provisions for yourselves or not.

1:32:31

And you've always

1:32:33

been open to having protected provisions for Aqua wind in this order. And as I'm saying this for the record, in case you're listening, that's as far as this examining authority can take that so there's really no further to go. So could you

1:32:48

just very briefly summarise for me, then we've got three parts at the moment. Could you perhaps just summarise so I can make a note of it? What other protective provisions I'll be expecting? See, subpart four would be what part five would be What are you in that position to be able to tell me that?

1:33:06

Yeah, there's just different parties that don't know which order they will come in and read out that the the other potential reason I'm we'll be expecting to see. Yep. So the Network Rail ones will will be an advanced version of what's in at the moment about basis.

1:33:21

And get a National Grid electorate at 50. Networks. Scottish and southern electricity.

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Southern gas networks. Hang on. Sorry, Scottish Angus. I'm gonna write with

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Southern

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energy. Scottish and southern electricity lectures.

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Yep. Southern gas networks. Yep.

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National Highways.

1:33:46

Yep.

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Probably Southern Water.

1:33:57

I'm sorry, positive. Sorry. I just wanted to check. It wasn't going to possibly aqua and

1:34:03

yep, that's it.

1:34:08

Sorry, there's one other party that we're in negotiation with US UK Power Networks, but they have confirmed they don't want

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anything on the face of the order. We're having a commercial. I appreciate it. Maybe side agreements going or asset agreements as well.

1:34:22

So you confirmed the Investment Agency don't want one and neither did Portsmouth water you confirm that? We've had confirmation in writing from those parties.

1:34:32

Okay, you you mentioned southern gas networks, but what about National Grid gas today? Are they having one or

1:34:40

we haven't had any indication at present that they require any? Okay.

1:34:44

Okay, thank you.

1:34:47

Not even necessarily inviting comment was Marshall, but as you're here, is there anything you wanted to say specifically about the protective provisions?

1:34:56

Thank you. So Sarah Marshall for national highways.

1:35:00

I think I previously said at the other hearing, we have our standard template, which we would we would want to stand on the sit on the face of the order. And then we will deal with project I call them project Pacific protection provisions that we will deal directly with the applicant. And they can be dealt with by way of a side agreement. And because you know, those can then just apply perhaps parts of our standard template that wouldn't be appropriate for this project. Thank you, sir. Thank you, and if you could keep the examining authority updated throughout the examination on on on the progress of that, and we will indeed, thank you very much indeed.

1:35:43

The kitty wait issue we dealt with earlier today and you confirmed that should the Secretary of State I'm repeating this for those persons who may be only listening to this part of the the hearing that if the Secretary State were to find the adverse effects on insect integrity for migrating Kittiwake on the Flamborough and finally coasts, could not be excluded? The Secretary of State would insert schedule 17, as you as you've put it in into the DCO. That that would be his power to do where he defined was he not to accept your your case that there was a that he could be excluded? So that's also that's therefore, indeed, sharing what I will say is that obviously, there will there may be without prejudice discussions on the terms of that particular schedule. So yeah, in the event that there's an update, it will

be again submitted as an update on or without prejudice. Understood. Thank you very much indeed. So finally, from me, is the issue of legal agreements under Section 106 of the TCPA.

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Now, we've seen relevant representations from West Sussex County Council, South Downs, National Park Authority, Horsham District Council, and I think Brighton City Council. I think they were alluding to it

1:37:05

are looking for Section 106 contributions towards compensatory made measures. I'm hoping that in written representations, they will set out what contributions they're seeking and how they meet the tests in the national policy planning policy framework.

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But I would like to ask the applicant, the I think your initial view was that you did not

1:37:31

intend on undertaking any section 106 agreements. But I just wondered if, if that's still the case, or whether you've, you're now open to or in discussions with parties about mitigation.

1:37:46

Thank you. So Paul, male for the applicant. I think as I as I indicated in the in the preliminary meeting, the the applicant position was certainly not that it was a flat no to a section 106 agreement. We're aware of those requests that have been made in written representations. We will look at those.

1:38:07

Consider them carefully and enter into discussions with the parties that have that have raised them. So certainly, it's something that the applicant is open to considering, as you say, sir, subject to the relevant tests are being satisfied. Thank you.

1:38:26

To the relevant authorities in question, want to respond to that at this moment in time? Miss Misawa?

1:38:35

Thank you, sir. I'm Amy Hara West Sussex County Council. Just to clarify, Mr. Brown males comment there. We have had limited discussions so far with the applicant, but we have received a 106 Principles Document from the applicant, the consenting team, which, although welcomed, currently doesn't as we sit in our relevant representation, really meet the requirements and our aspirations. So we have agreed through discussions with the applicant that we as you rightly say, will be submitting our local impact report with full evidence of where we currently see that gap and where we would

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continue discussions with them now will be submitted at deadline one. We hope that at subsequent deadlines, we can report on positive progress.

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Thank you, and I will look forward to reading your local impact report on that. And presumably Mr. Tony, that's going to be the same on the South Downs national park as well.

1:39:30

Richard, sorry for the Southdowns. Yes, I think pretty much the same position. We've identified in the local impact report that will be filed in due course, a number of areas where we think contributions are appropriate. And

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hopefully the applicants indication means there'll be some discussions before you next have to hear from us on those.

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Thank you very much.

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Mr. Porter

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is just likewise for us.

1:40:04

So I think we're where this is left, then for the moment is that we, the examining authority and the applicant will be needing see the local impact reports and identifying where one or six contributions are sought. And your position. Mr. Male is that you're open to that you're open to us not a flat? No, you're open to discussing with the authorities in the hope of reaching an agreement within the examination time, then I can report to the Secretary of State.

1:40:35

Quite so sir. Thank you.

1:40:38

That is all the questions I had as a site for the moment on the defendant consent order. I'll remind again, I haven't touched on the deep marine licence. I will want or may want to do that at the late two hearings, but

1:40:52

realise that that those words are still ongoing. And fill your answers. If I had lots of questions would be we're still talking so. But I urge you to certainly progress those matters. So does any other any other party online or in the room want to talk about the DCO? Any other moments? Otherwise, I'm going to move on with the agenda.

1:41:17

This morning?

1:41:23

Hello, yeah, this is Colin Moran. Yeah, oh,

1:41:27

I'm sorry, I'm doing I am registered. But I've had multiple failures of microphones today. So I have to use this particular laptop.

1:41:36

If I if I may just go back to the conversation that was had about the sound underwater can can compare two divers and the sound pressure levels that are important, and they end the exclusion zone during construction. miserable. Is that is that a different item on the agenda? It was? It was on the agenda, but earlier? Yeah. Speak upon it. I can't take that. Now. Unfortunately, the that items moved on the applicants experts may well not be here. And I would only suggest that you put that in writing. We've got a deadline one coming up for written representations of all the parties

1:42:19

that you that you make that in writing whatever you're about to say, you can put it in. So is that okay? Unfortunately, as I say, I can't sort of go back to the previous points of the agenda. Okay, thank you. I'm sorry.

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Okay, is there any other any other matters on the DCO?

1:42:42

Now?

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Okay, so are there any other any other business that anyone wants to raise before I draw this here into a close?

1:42:54

Nothing online.

1:43:00

And what I couldn't do action points, but my action points would probably have been that the DCA is going to be reviews at various articles and requirements and but review, I'd probably be helpful for you to actually just to run through where you are just maybe for the for the record.

1:43:16

So talking the writing is not my forte, so Mrs. Martin has been keeping a list hopefully. Okay. Sorry. Karen Medan for the applicant. So I've got

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a reasonable list here. Firstly, we've undertaken to continue our discussions with West Sussex County Council, and sassafras National Park Authority in relation to potential carve outs for commencement definitions and what activities can be undertaken at an early stage.

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Then we're going to provide you with some clarity on the

1:43:49

offshore operational management plan and its status.

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We're also going to take away the point to look at the definitions of statutory Undertaker and see if it needs to be broadened out to the second provision from the Planning Act. To ensure that it's fully encapsulates everything we needed to cover, we will check the wording that's intended to refer to the national grid.

1:44:13

So that is not intended to refer to the national grid in the CEA provisions. In terms of the yellow London, this is most referred to

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consideration of article 3210. And whether it could be clearer and be tracked in any way to show which of the plots that the both schedule seven and nine apply to

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make sure we're consistent in our wording in relation to restrictive covenants, covenants and other covenants. So that that's clear throughout the document.

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Take away a point to check in the Supreme Court decision in hillside and Snowdonia National Park. In terms of weather it refers to inconsistent planning permissions, and make sure that the terminology is correct in the article in the

1:45:00

Order

1:45:02

will take away the point about clarifying the uniformity in terms of size of the turbines

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check against the code of construction practice in requirement 22 And whether it needs to refer to works 10 and 11 for construction compounds and soil storage areas.

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Consider how we can be more specific about advanced planting at the substation, either on the face of the order or in the design and access statement and similarly, consider what clarification we can provide about the layout or parameters of the substation at that location. And then finally, I hope

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checking where we can signpost the protected species licences in the construction practice.

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Centre order

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sure where the where SDN PA is referred to appropriately. Policy All right, yes, I missed that one. Sorry.

1:46:13

Okay, so if there's I'll go again, any other business?

1:46:19

Now hands up. Okay, good.

1:46:22

Okay, so may I remind you that the timetable for the this examination requires parties provide the post hearing documents on or before deadline one, which is Wednesday, the 28th of February, which is the same date, of course, for the submission of written representations and local impact reports. May I remind you, that the recording of this hearing will be placed on the inspectors website, as soon as practicable after this hearing?

1:46:51

On behalf of my colleagues, I want to thank the applicant, local authorities and statutory bodies and interested parties for their participation in the hearings. We've covered a lot of ground in the last two days, and many of our initial questions and clarify clarification points have been answered. So I do thank you all for for that.

1:47:12

And saying that it's obviously clear that there there's still much work to be done and additional explanation evidence needs to be submitted. These will be set out and obviously in the action points that we will publish in the next few days.

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But to draw on a few of them. What's clear to me in the

1:47:33

is the additional justification for the route choice and why the alternatives that fall in dungeon s were raised by Mr. Lightbourne were discounted other than just the viability issues. Additional Statements on the effects of the proposed minimum on the south down National Park, which is the excise preference or a signposting document setting out how the positive effects and mitigates the special qualities traffic information for the use of Kent Street and explanation of how it would affect the character prints of the rural lane. substantial progress on the heads of terms in respect to the land rights, substantial progress towards the deemed marine licence, progress on seasonal restrictions and noise mitigations for fish receptors, and the proximity to wildlife protocol in lieu of the outline vessel management plan.

1:48:24

Those are the key ones I've picked out.

1:48:28

So we as I say we thank you again, we look forward to quite considerable progress being made by the time we meet again in May.

1:48:37

And once again, thank you very much for attending. We should of course consider all of the responses very carefully, and it will inform the examiner authorities decision of what further written questions we will ask at the appropriate time. So thank you again. The time is now five just just before five past five, and this hearing is now closed. Thank you very much.