



Hearing Transcript

Project:	EN010130 - Outer Dowsing Offshore Wind Project
Hearing:	Issue Specific Hearing 1 (ISH1) – Part 1
Date:	4 December 2024

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TRANSCRIPT_OUTERDOWNSING_ISH1_SESSION1_04122024

Wed, Dec 04, 2024 12:31PM • 1:44:42

00:07

Good morning. It is now 10am and time for this hearing to begin. Can I just confirm that everybody can hear me clearly?

00:17

I can see no hands. Can I also confirm with MS Haraway that the live streaming and recording of event has commenced.

00:29

Yes, it has. Thank you. I would like to welcome you all to this issue specific hearing one on the draft to development consent order in relation to the application made by gt are four limited for an order granting development consents for the ouster housing offshore wind project. My name is Mark James, and I've been appointed by the Secretary of State to be a member of the panel to examine this application. I'm now going to ask the other members of the panel to introduce themselves.

00:59

Good morning. I'm Rod MacArthur, and I'm the Lead member of the panel examining this application.

01:07

Good morning. Hi. I'm Gaurav Joshi,

01:10

good morning. I'm Gavin Jones.

01:14

Good morning. I'm Claire meganson.

01:17

Thank you. Together, we constitute the examining authority for this application. We are also supported online by Mrs. Haraway, the case manager, and Georgiana Hannigan, the case officer for the application.

01:32

Moving on to the agenda and logistics, the meeting will follow the agenda published on the national infrastructure planning website on the 26th November, examination and Library Reference, Ev, 5001,

01:46

it will be helpful if you had a copy of this in front of you.

01:52

The agenda is for guidance only, and we may add other considerations or issues. As we progress, we will conclude the hearing as soon as possible and as soon as all relevant considerations have been made and all questions asked and responded to. But if discussions can't be concluded, then it may be necessary for us to prioritize matters or defer other matters to further written questions. Likewise, if you cannot answer the questions being asked or require time to get the information requested, can you please indicate that you need to respond in writing. As

02:25

you're probably aware, today's hearing is being undertaken virtually using Microsoft Teams. We will make sure that if you decided to, if you have decided to attend today, you will be given a fair opportunity to participate

02:38

for those people observing or participating through teams, in order to minimize background noise, please make sure that you stay muted unless you are speaking.

02:48

If you're participating and wish to speak, please use the hand up function to draw your attention our attention to that fact,

02:56

please be patient, as we may not get to immediately, but we will invite you to speak at the appropriate time.

03:03

I'd also like to remind people that the chat function in Microsoft Teams has been deactivated, so please do not try to use this at any point. If

03:12

you do not manage to ask you a question or raise your point at the relevant time, there will be an opportunity at the end of the Agenda to Raise this under item 3.4 I

03:22

recall recording of today's hearing we've made available on the outer housing offshore wind farm section of the national infrastructure planning website. As soon as possible after the hearing is finished, with this in mind, please ensure that you speak clearly into your microphone, stating your name, who you are representing each time you speak,

03:42

a link to the planning spectrix privacy notice was provided with this notification for the hearing. We assume that everybody here today is familiar with this, which establishes how the personal data of our customers is handled in accordance with the principle set out in data protection laws. Please contact the case team if you have any questions about this.

04:05

Depending on progress, this morning, we may adjourn for a short coffee break at an appropriate time

04:11

as issue specific hearing two is due to start at 230 this afternoon, we were aimed to finish this hearing by no less than 1pm

04:19

to allow time for lunch as well as registration for the Saturdays hearing, which begins at 2pm

04:26

moving on to introductions, I'm now going to ask those of you who are participating in today's meeting to introduce yourselves when I state your organization's name. Could you please introduce yourself, stating your name, who you represent and which agenda item you wish to speak on. If you are not representing an organization, please confirm your name, summarize your interesting application and confirm the agenda item upon which you wish to speak. Can we start with the applicant and their advisors? Please? Applause.

05:24

We may be having some technical problems with the

05:29

applicants connection, possibly I

06:02

we pay stubs. Some technical problems. In the interest of time, I'll show ask other participants to introduce, introduce themselves.

06:13

In the interim, we have LINCS county council and their representatives. Are

06:19

you online at all. Please

06:21

Good morning, sir. My name is Stephanie Hall, happy to be Miss Hall. I'm Council instructors on behalf of Lincolnshire county council, and I hope that works, and the problem is with the applicants connection, rather than the system as a whole. Thank you. I can hear you loud and clearly. Thank you. Thank

06:42

you. And we have a representative for South Holland District Council, East Lindsay District Council and Boston Borough Council.

06:53

Yes, good morning, sir. My name is Sam Tuer, and I am representing the three affected local authorities, but I shouldn't be speaking unless I need to at some point. Thank you. Thank you.

07:06

And finally, on my list, we have Mr. Westman Smith, representing th Clement and Sons limited.

07:13

Yes, good morning, Sir Mark Westman and Smith King's Council, representing th Clementson in the room with me, I've got Fiona Barker, who's a solicitor and principal associate at Mills and Reeves TH Clements lawyers, and we are here mainly in an observational capacity, but there's just three points we want to make, and they are relating to agenda writing. 3.21,

07:42

and two.

07:44

Thank you.

07:46

Is there anyone else in attendance who wishes to speak at the hearing? If so, please raise your hand now.

07:58

Okay, I can't see any further hands. We'll just check to see if the applicant is now able to join.

08:13

Okay, I believe the applicant is now online. If you'd like to introduce yourselves, please.

08:22

You

08:32

we lost them

08:34

again. Yeah,

08:46

okay, given the continuing technical difficulties, I think we'll take a short adjournment for five minutes just to make sure we can get the applicant back online. So this hearing is now adjourned. Thank you.

09:01

Okay, thank you. I believe the technical problems have now been resolved, and we have the applicant available online. If you could introduce yourselves, please. Thank you, sir. Apologies for the technical difficulties at this end. My name is Scott McCallum. I'm a partner and solicitor at the shepherd and wider burn solicitors. And I appear today for the applicant GTR for limited trading as outdoor dowsing offshore wind. I'm joined in the room here served by a number of members of the applicant team who may have a speaking part to play today. So if I can do a very quick round of introductions, To my immediate right is Miss Emma Moyer, who is a senior associate at Shepherd and Wedderburn. And sitting next to miss Moyer is Mr. George Bruce, a solicitor at Sheppard and Wedderburn. And then going to my left is ms Emma Reed, a director at Sheppard and Wedderburn, followed by Mr. Chris Jenner, development manager for the project. Sitting next to Mr. Jenner is Mr. Greg Thompson, offshore.

10:00

Consents manager, followed by Mr. Stephen Hubner, who is a consultant dealing with property matters at shift, and Wedderburn. And then finally, at the table, Mrs. Sophie Brown, who is the onshore consents manager.

10:13

So we also have in the room here with us, Ms Beth Travis, who is the consent delivery lead and coordinator, and who is dialed in to teams in order to share any examination documents that that would be useful to put up on screen today. And then finally, we have one attendee from the applicants team online, Mr. Jay cause, who is the HRA delegation and compensation manager. Thank you, sir.

10:42

Thank you.

10:44

Moving on to the purpose of the hearing. This hearing is intended to address matters and questions identified by the panel through our reading of submissions to date regarding the applicant's draft development consent order.

10:58

If particular issues raised by interested parties do not appear in the agenda. This does not mean that examining authority will not take them to account or potentially raise them later in the process.

11:09

However, we remind you all that examination is primarily a written process, and so it may be the case that not all issues are addressed orally today,

11:18

as with compulsory acquisition hearing one that was held yesterday. A list of post hearing actions will be taken by Mr. Jones on the panel as they emerge. Please. Can we ask the applicant to also record action points as they arise? At the close the hearing? We intend to run through the list of actions to make sure that they are the accurate, and we'll publish them as soon as possible in writing after the close of the of the hearing,

11:43

unless agreed otherwise, posterior actions will be expected at deadline three on Friday the 13th of December. I

11:52

will now hand over to Mr. MacArthur for Agenda Item 3.2, regarding the development consent

12:00

order. Thank you, Mr. James. So I will start just by saying that

12:05

I have added one further item to the end of our agenda today, which is intended to discuss the wording of restrictive covenants. It's a matter which follows an issue that first arose at yesterday's compulsory acquisition hearing, and is intended to allow parties to expand on any points that they wish to raise in relation to this particular subject.

12:27

Now, the issues that need to be examined as part of an application for development consent often need to be considered in multiple different ways, and the drafting of the development consent order is an example of a hearing where issues overlap or, for example, mitigation or controls proposed through the DCO, which may or may not address concerns raised in relation to such matters as biodiversity, design, flooding or construction management matters.

12:51

However, the main discussions on such matters will take place in the issue specific hearings on environmental matters which are scheduled to commence this afternoon. Once this hearing is concluded, it

13:02

may be helpful to bear in mind that if our discussion moves on to the subject of mitigation, for example, what we are focusing on today is not what mitigation may be required, but rather, if it were to be required, how it would most appropriately be secured, and whether the DCO, as currently drafted, would deliver that security. I therefore ask you to consider this when answering the questions as it may be more appropriate that the points you wish to make or the questions that you were expecting to be asked are better placed as part of a later issue specific hearing when such points can be considered in more detail

13:38

to begin with, can I just confirm

13:43

that everybody has access to the latest version of the draft DCO and in asking that a laws go at this stage ask the applicant to

13:53

confirm following the acceptance of its change request related to the offshore restricted build area, which We will from here on in call the orba

14:03

could ask the applicant to confirm which of the submitted draft DCO versions that were submitted at deadline. Two

14:11

should be referred to as the current DCO, if you like. Thank

14:17

you, sir Scott McCallum, for the applicant, the current version subsequent to acceptance of the orba is a document reference, rep, two, hyphen, 008,

14:31

thank you, Mr. McConnell, that

14:35

is very is what I was hoping you would say. That's, that's the one I've got down to so that that's, that's a good start to the morning.

14:43

So the reason for asking that everybody has the that version of the draft DCO in front of them is that this is not a document that I was proposing that we share on screen.

14:55

If people don't have access to the document, I can ask the.

15:00

Applicant to share it. But due to the nature of the way the draft DCO is structured, we may find it easier if you all access your own copy. I'm aware that in historical hearings there have been some technical issues with sharing draft DCOs on screen, and given the start of the morning, I'd rather not

15:20

risk technical difficulties if we can avoid them.

15:24

So moving on to agenda item one, within 3.2 of our agenda.

15:31

For the benefit of this hearing, I'd like to start by asking the applicant to provide us with a brief walk through of each of the parts of the draft DCO, to provide us with an understanding of the power sought and to establish the context for the discussions this morning, please. Now, given that we have no members of the general public attending today, the applicant, if it would prefer, can be fairly this can be a fairly light touch, high level run through. But if the applicant team wants to submit the full script. If you, if you have a full script prepared, if you want to submit

16:07

that at deadline three, rather than run through the entirety and just give us kind of an overview at this stage that that would be absolutely fine, and you'd be welcome to submit your full script to Deadline three. Thank

16:20

you, sir. Scott McCallum, for the applicant. That's appreciated, sir, the order is separated into seven parts and a further 22 schedules. So I propose just to take a canter through each of each of the parts and outline the Main articles within them. But as you say, we will suggest that we can submit a fuller script in writing thereafter.

16:43

Part one contains the citation, commencement and interpretation, setting out what the order will be called, the details of when it will come into force. Will then be inserted Once the order is confirmed. And finally, importantly, this part provides a glossary of the defined terms used throughout the rest of the document.

17:03

Moving on to part two, this sets out the principal powers sought under the development consent order. In summary, this order would provide development consent for the outer dosing offshore wind farm, which is an offshore renewable energy generating station with an anticipated capacity of around 1.5 gigawatts, together with offshore and onshore transmission assets to connect the offshore wind farm to the national grid,

17:27

the order would provide the necessary powers to construct, operate, maintain and decommission the project at the end of its life, with the principal provisions granting these powers set out in articles three, four and five.

17:41

Article Six addresses the benefit of the order, in particular, who has the benefit and how that benefit can be transferred or shared.

17:50

In this case, the benefit of the order sits with the applicant. GTR four limited. Article Six enables the powers granted in the development consent order to be transferred in whole or part or to be shared by others that may be interested in the project. One example, sir, just for context of such a transfer, is the transfer in due course, to an offshore transmission owner via a regulated sale process. So the transmission assets are will have to in due course under the current regulatory regime, be transferred at some point

18:26

that, just as a safer information and context, sir, is due to regulatory rules requiring generation and transmission assets to be unbundled and operated by separate entities. So we'll come on in the next agenda items, the detail of the works to be carried out and contained in schedule one. But in summary, when we refer to transmission assets here, we're referring to the offshore substations export cables running from these substations via the reactive compensation platforms and then onshore onto the project substation, and then thereafter, the cable is running to the national grid connection point

19:07

in the knowledge that this transfer is going to happen, sir, the DCO has been structured in a way that allows that transfer to be as easy as possible. So for example, as we'll come on to, there is a separate marine license which deals with the transmission assets that then allows that to be transferred in due course to to the Opto

19:27

still within part two of the order, Article Seven disapplies or modifies certain cases of existing legislation to ensure activities authorized by the DCO are not inconsistent and or do not breach these enactments.

19:41

Article eight provides a defense to statutory nuisance and respect of noise from the project. Moving on to part three, which sets out the powers and processes to address the works to and restrictions to be placed on public highways and streets which might be necessary to facilitate the project. This includes certain powers to carry.

20:00

Out street works and locations specified in schedule two, for example, to lay cables under roads, to temporarily stop up and divert public rights of way. Set out in schedule three, to temporarily stop up and divert other streets. Set out in schedule four or certain others, with the consent of the street authority, to create new accesses at the locations set out in schedule five or other locations within order limits with approval of the highway authority to alter the way out of a street with the consent of the street authority and to introduce restrictions to control traffic at the locations specified in schedule six and with the consent of the relevant Traffic Authority.

20:40

Part four contains some supplemental powers around discharge of water site investigations and rules for removing any human remains discovered. And

20:50

then we move on to part five, containing a number of important articles dealing with compulsory acquisition of land and rights and powers of temporary possession.

21:00

In particular powers of acquisition of land contains in Article 20 and rights in land, including by the creation of new rights in Article 22

21:09

with the land on which only new rights can be acquired specified in schedule seven.

21:15

The time limits for exercising compulsory acquisition powers are also specified in this part, and it also provides mechanisms to overcome inconsistent private rights and sets out the rules of engagement for any interface with statutory undertakers and their apparatus.

21:31

Schedule eight makes some changes to underlying compulsory acquisition legislation to ensure it can be properly applied to compulsory acquisition under the order

21:40

in addition to compulsory acquisition powers, sir, as was discussed yesterday, the compulsory acquisition hearing, this part also authorizes certain temporary use of land for construction of the authorized project, which is Article 28 or for maintenance article 29 in both instances, the inclusion of these powers of temporary possession help to allow for a more proportionate use of compulsory acquisition powers proper, only exercising temporary possession over some areas and potentially being able to vest land or rights in land over a more targeted area once as laid positions are understood

22:19

importantly, this Part of the order also provides mechanisms to compensate for interference with land interests.

22:26

Moving on to Part six, the purpose of which is to grant deemed marine licenses for the elements of the works which are offshore and involve licenseable Marine activities. In terms of the marine and coastal Access Act 2009

22:39

we'll come on to the detail of these marine licenses, sir, under the next agenda item, but in terms of structure, very quickly. Schedule 10 has the marine license for generation assets. Schedule 11 for offshore transmission assets. Then we have four marine licenses under which two artificial nesting structures can be constructed. So that's schedules, 12, 13, 14, and 15. But just to make clear, the reason for the four marine licenses there are because the final preferred location of an artificial nesting structure isn't known, but it's not possible to construct more than two artificial nesting structures across

the four marine licenses. And then finally, we have schedule 16, which is another possible habitat compensation measure in this case, for the creation of biogenic reef.

23:36

Then moving on, sir to Part Seven, under the catchall heading of miscellaneous in general. Article 33 is a fairly standard provision overriding the application of incompatible landlord and tenant law. Article 34 is a provision added post application to disapply certain other inconsistent local enactments and by laws. Article 35 has the effect of allowing certain permitted development rights under 10 country planning to apply to the land on which developments to be situated in articles 36 and 37 deal with felling or whopping of trees or shrubs interfering with the development in schedule 17 to the order of certain rates, the important hedgerows that can be removed under Article 36

24:21

still within part seven. We then have article 38 which gives effect the protected provisions which are or will be included in schedule 18. Again, there's an agenda item later to update on that, sir. And then we have article 39 which the dispute resolution provision, and provides that most disputes or differences arising out of the order are to be settled by arbitration, with the more detailed arbitration rules set out in schedule 19,

24:48

Article 40 and schedule 20 deal with the procedure for approvals under the development consent order and discharges of requirements, including providing that approvals should not be unreasonably withheld or delayed.

25:00

Five. Article 41 deals with certification as true copies by the Secretary of State of certain documents listed in schedule 21 after the order has been granted, so that these documents can be referred to later, for example, when considering requirement discharges under the order.

25:16

Article 42 is a fairly standard provision allowing for notices requiring repair or removal of offshore works that have been abandoned or fallen into decay.

25:27

Article 43 is a standard saving provision for Trinity house, ensuring that their ducs are not interfered with by the order. Article 44 provides protections for Crown interests. Article 45 ensures that compulsory acquisition powers can't be exercised until appropriate guarantees for compensation are put in place. Article 46 gives effect to the habitat regulations compensation measures proposed in schedule 22 and again, which we'll come on to talk about later in the agenda. And finally, Article 47 is a boilerplate dealing with service of notice

26:02

that concludes, sir, my high level description of the DCO and my second help with anything further.

26:09

Thank you, Mr. McComb, no, that's very helpful. We will move on to go into a little more detail on a couple of articles particularly, but

26:23

the the examining authority asked a number of questions in our in our written questions, first round of written questions, examining Library Reference, PD, 013,

26:34

in relation to the draft DCO, and the examining authority is grateful for The responses received as a result of those responses,

26:42

hopefully you'll be relieved to know that we have a relatively limited number of questions for this hearing,

26:50

but I will move on now to discuss Article Two in a little bit more detail, if, if I may, Article Two contains a definition for both authorized development and authorized projects. Authorized development is defined as the development works set out in part one of schedule one of the draft DCO and associated development, which is defined as within being within the meaning of Section 1152,

27:16

of the Planning Act. 2008,

27:19

authorized project is defined as authorized development and ancillary works.

27:26

Can you or can we begin please with an explanation of why two definitions are needed and what the essential difference is between these two definitions, please. Thanks.

27:42

SARAH SCOTT McCallum, for the applicant

27:46

taking that reverse order, sir. As you see, the only real difference between the two definitions is that authorized project contains both the authorized development and ancillary works, which in effects are the works which do not constitute development,

28:07

which are authorized under the order because they have been assessed within the environmental impact assessment. So that's the difference, in essence, sir, between the two definitions in terms of which definition is used in which circumstance, the primary

28:28

definition that's used for most things is authorized development, because it tends to be dealing with authorizing powers where, where development is is required And but there are some circumstances in which Sir, that is

28:44

of preference to refer to the authorized project so that it's clear that ancillary works are then included. If helpful, sir, we can perhaps provide in writing after the hearing a more detailed note of which term is used where, and the reason for that

29:06

that would be helpful. Miss McConnell, thank you. Yes, I'll just

29:12

you may be able to expand on that that note once, once we get to the or may you wish to expand on that note once we get to the end of this topic. But I want to go a little further into ancillary works, which which are therefore part part of the authorized project.

29:28

Ancillary works are defined as the works described in part two of schedule one, and any other works authorized by this order. Could you go into some more detail as to what the other works authorized by the order would be

29:46

Thank you, sir, Scott McCallum, for the applicant, sir, about that that is essentially referring to other things which are not specifically narrated in schedule one as scheduled works, but which are author.

30:00

Authorized via the various articles. So an example, sir, might be a your street works, for example, may involve moving road signs and things like that, which would be ancillary development or ancillary works which which don't constitute development, but which are authorized by the development consent order, just not specifically name checked within schedule one.

30:24

So is it right to say that

30:28

the within the overall heading of any other works authorized by the order these works are not set out anywhere.

30:36

They're not listed, sir in terms of a list of works. But they are referenced by,

30:45

by reference to the various articles giving the powers to to carry out the activities.

30:53

So the again, within the the overall heading of any other works, you're satisfied that within, within the draft DCO as a whole, they are covered, and therefore there's nothing.

31:08

There's nothing that. What I'm getting at is that there's no opportunity for misinterpretation of what may constitute any other works that are authorized by this order. There's no potential for somebody to misunderstand a work that may be carried out as being authorized by the order.

31:29

Thank you, sir. Scott McCallum, for the applicant, no, we don't think so. We think that it is clear, in terms of the order as a whole, as you see, what what works are are authorized, and they're all obviously also limitations placed on that in terms of what has been assessed under the project's environmental statement. So I think looking at the documentation, so the development consent order, and also, if necessary, the certified documents, is very clear what works this, this order is authorizing.

32:03

Thank you. I think to to help us with with further clarity, if the note that you submit Could, could signpost the articles that that cover these, any other works which, the which the order authorizes, that would be very helpful.

32:19

Thank you, sir. We'll take that as an action point. I point.

32:23

Thank you. Coming on then to the

32:29

definition of commence for works in the authorized project, other than those which are C WORDS OF mean high water springs.

32:37

It's defined as any material operation, except for onshore preparation works.

32:46

And in this context, why is authorized project used rather than authorized development? I

33:05

thank you, sir Scott McCallum, for the applicant. So I'm

33:17

just having having a look the terms you can give me one minute.

33:24

Take your time. Don't worry. Thanks,

33:41

sir Scott and Callum for that. Callum for the applicant, sir, my immediate instinct is that it perhaps should be authorized development on the basis that commencement relates to the carrying out of development, rather than ancillary works. So perhaps we could take that away and work out whether a slight tweak to that draft thing is required

34:06

by all means. Thank you. We'll add an action point for you to respond in writing on that matter, sir.

34:15

Now

34:17

staying with onshore preparation works.

34:22

The list of onshore while the list of onshore preparation works, is quite extensive, the examining authority notes that it currently excludes demolition works. Why is that?

34:39

Thank you, sir Scott McCallum for the applicant, just for the simple reason that the applicant hasn't identified any demolition works that are required as part of the project.

34:50

Okay, that seems reasonable enough so. But

34:54

does the applicant believe that there there will be no probability of encountering.

35:00

Need for demolition works. Is that also reasonable to say thanks

35:06

Dr Scott and Callum for the applicant? Yes, that's correct.

35:10

Thank you.

35:12

Now staying with onshore preparation works. The definition includes environmental surveys.

35:20

Can you clarify whether this is really intended to cover all types of environmental surveys? And again, what I'm driving at here is whether there should be a distinction drawn between intrusive environmental surveys and non intrusive surveys.

35:38

And if so, should intrusive surveys be defined, for instance, as as they were on the east? Anglia DCO,

35:56

thanks, sir, Scott McCallum for the applicant, sir, I think it's intended to cover potentially both intrusive and non intrusive survey work, and the applicant didn't see the need to distinguish between the two.

36:14

I think if

36:17

would, would the applicant not agree that there's a benefit to defining what if, if, if it, if it indeed covers both, there's a benefit to defining what an intrusive survey is, if it's helpful. The the the East Anglia is DCO defined intrusive surveys as well. I'll just read, I'll quote from it. Intrusive means an activity that requires or is facilitated by breaking the surface of the ground or seabed, but does not include the installation of fence or signage posts.

36:48

Thanks, sir. Yeah, Scott and Callum for the applicant, yeah. I mean, I think from the applicant's perspective, onshore preparation works were intended

36:57

to allow both. And as we'll come on to Sir, there are various management plans that have to be submitted in advance of onshore preparation works, including relating to ecology and archeology. So in that way, any any impact of those works themselves are mitigated. So onshore preparation works, as I say, Sir, are intended to allow intrusive survey works, and also, if required, allowing non intrusive survey works in order to get ready for the development proper. And we will take away, sir, whether, whether there's an advantage to separating these out purely for for clarity. But as I say, Sir, I don't think there's a difference in terms of what we're seeking permission to do. I think the only advantage may be, sir, is you see if there was an ability to carry out certain non interests of surveys without going through that process of having to submit plans, because they are, they're pre. Pre works, if you like, that won't have any impact at all. Then I can see a potential advantage to that. So we will take that away, sir, and refresh our memories of East Anglia on North and two to see how that was was formulated, and then come back in writing. If that's okay,

38:17

that's fine, I think just to reinforce, to reinforce. The issue that

38:26

concerns me more at this stage is if it is intended to cover, if the definition is intended to cover both intrusive and non intrusive, and there is no definition of what an intrusive survey is. I think that is something that we would like to have greater clarity on.

38:47

Understood, sir, thank you.

38:50

Thank you very much. And then

38:54

we're nearly at the end of

38:57

Long, short preparation works, but also excluded are works such as footpath creation, erection of welfare facilities. Why is that not within this definition?

39:11

Why are those not within that definition?

39:22

I thank you, sir. Scott McCallum, for the applicant, my assumption, sir, is that for the types of work that are planned, was thought that those facilities weren't necessary. But again, sir, if we can take that one away and just check with engineering team to make sure that there's there would be no no benefit to having those and can report back in rating on that as well.

39:45

Thank you. That'd be helpful

39:48

at this stage. That's that's the end of my questioning on Article Two. I will just ask

39:56

the interested parties that are with us whether they have anything that they would like to raise.

40:00

On Article Two, specifically at this point.

40:07

And I'm seeing no hands which,

40:12

but I'm seeing but I am seeing Miss Hall, oh, sorry, you were seeing me shake my head. Sorry, so you see me shake my head. Stephanie Council, no, thank you, sir. Okay, no problem. There's no need to do that. I will simply in future, I'll just wait to see whether a hand is raised on teams, and if, if no hands are raised, I will. I will take that as a fairly strong hint that nobody has anything that they wish to say but, but thank you for making it clear. Coming on then to Article 19.

40:42

Can I begin by asking the applicant to set out why it believes this article could be required.

40:54

Thank you, sir. Emma Moyer, for the applicant, the applicant is not anticipating and encountering any human remains along the order limits. However, in case such remains were encountered, that thinks it's appropriate to have a procedure in place to deal with those in that event.

41:11

Thank you. I mean, I think

41:14

in the same vein as we were just discussing where items are not have not been defined

41:22

under Article Two, because, essentially, there is no need for them. I suppose the question therefore is,

41:30

has the applicant any reason to believe that it Well, I think you've covered that the applicant has no reason to believe that human remains will be encountered. And therefore, again, the question remains on that basis, following the same logic as was just applied in for Article Two, the question still remains, why? Why is Article 19 required?

41:57

Thank you, sir. Emma Moyer, for the applicant, the article is considered to be required, because if no such article was in place, and in the unlikely event that human remains were encountered, there would be no procedure in place setting out how to deal with those and that, in itself, could cause further delays while that is figured out. So if there's a procedure in place that sets out clearly the steps to be followed in those circumstances, that provides certainty to the applicant that that issue can be dealt with expeditiously and in a timely manner.

42:28

Are the

42:30

both onshore and offshore written schemes of investigation, don't they? Don't they cover

42:36

dealing with human remains. I

42:53

Emma Moyer for the applicant, sir, we'd like to check that, take that one away and come back to you, if possible.

43:00

However,

43:02

if such documents do deal with the encountering of human remains, it doesn't necessarily overcome the legislative hurdles that would have to be overcome to seek the removal of those

43:15

by all means do check. I mean, I think the examining authority

43:20

is is fairly well satisfied that the those written schemes of investigation do cover

43:26

the potential encounter of human remains, and actually that the legislative provisions for how to deal with those are addressed to some extent with within the written schemes of investigation. It actually leads me on to the next point

43:44

within this question, which actually is that

43:49

for the applicant's comment on whether the existence of Article 19

43:54

actually gives rise to any potential conflicts with other sections of the draft DCO, and particularly, I'm thinking of the written schemes of investigation,

44:11

thank you, sir. Scott McCallum, for the applicant, sir, that that's certain, certainly something. We will go and check to make sure that both mechanisms are consistent, as I say, Sir, I think it is appropriate that where we are seeking to ensure that certain legislative provisions do not apply in relation to procedure being carried out under the development consent order that that is contained on the face of the DCO, rather than in the written scheme of investigation. But absolutely agree, sir, that the processes that we're proposing have to be consistent across the documents. So we will, we will certainly take an action to confirm that.

44:50

Thank you. That's helpful. Can I confirm as well? Is article 19 intended to apply seaward of mean high water springs?

45:20

Thank you, sir. Scott McCallum, for the applicant, sir, I think the focus of this drafting was for any human remains discovered onshore. But again, we will take, take that away and check it does currently apply to

45:35

the specified land, which is land within the order limits. So arguably, sir, it does. It does cover the whole of the order limits.

45:46

Thank you for confirming that. I think that you've touched I think you perhaps have read the room where I'm going with this. I think the definition of specified land,

45:57

as you say, that means the land within the order limit. So so it could be taken to mean

46:03

offshore as well as as well as onshore, and coming back to the potential for conflict within with Article 19 and the offshore written schemes of investigation. Now you may not have identified,

46:20

but there remains the risk, nonetheless, of encountering wrecks within, within the seabed. Now, and I'm sure you don't need me to tell you that wrecks on the seabed are war graves. So you're you're

46:37

not simply the fact that the issue of human remains is an incredibly sensitive subject anyway, but if you also add in the potential conflict with dealing with war graves, I have some concerns about the way that article 19 is interacting with the written schemes of investigation at this point. And yeah, I'd be grateful if you could take those away and give some further thought. Thank

47:00

you, sir. Scott McCallum, for the applicant, we will do that. Thank you. Thank you. Before I move on, my colleague, Mrs. Megason, has has a point that she would like to raise as well.

47:12

Thank you, Mr. MacArthur. I think I would just like to draw the the applicant's attention to the long field solar farm decision specifically paragraph 9.2,

47:23

of that decision, where the Secretary of State removed the equivalent article on human remains. In that decision, it stated that the Secretary of State has removed article 16 from the draft order, which sought

to mandate that the applicant remove and rebury or cremate any human remains from burial grounds within the order limits. There are no known burial grounds within the order limits. So the secretary of state considers this article to be unnecessary, and provision for any human remains should be included within the written scheme of investigation. So just another bit of context for you to consider as you look at the where, where the best places to deal with this issue, thank you. Hand back to Mr. MacArthur.

48:10

Thank you, Mr. Meganson, Mr. McConnell, anything that you'd like to comment on that at this stage.

48:17

Thanks, sir Scott McCallum, for the applicant. No, sir, we will take that away and look at the decision referred to and the different ways we may be able to deal with this and come back and writing it at deadline three.

48:29

Thank you. Thank you very much. We will move on.

48:33

At that point, well, we will move on unless any

48:37

any other interested parties have anything that they would like to raise on the matter of Article 19, and

48:46

again, I'm seeing no hands on teams, so we will move on then to schedule one of the draft DCO requirements and the demarine license conditions.

48:58

Can I ask the applicant whether they have prepared a statement for this agenda item, please.

49:06

Thank you, sir. Scott McCallum, for the applicant, yes, we have indeed, very happy to take a run through each of the requirements and conditions attached to the DMLs. If helpful, please do the floor is yours. Thank you, sir,

49:20

as mentioned sir in Article Three of the development consent order that the operative provisions are set out which grants development consent for the project schedule one. Part One then sets out the detail of the works forming a part of that authorization,

49:35

looking briefly at each work number in turn, starting with work number one, which is the offshore wind farm and cabling between turbines. So that is the offshore Generating Station, which has a capacity over a 100 megawatts and therefore constitutes a nationally significant infrastructure project. The wind

farm will include up to 100 turbines fixed to the seabed, and those parameters are specified within that requirement.

50:01

Eight. The then follows series of works numbers authorizing development associated with offshore wind farm generating station, namely, work number two, which provides for an offshore accommodation platform fixed to the seabed. Work Number three, which provides for up to four small offshore transformer substations, or up to two large offshore transformer substations fixed to the seabed.

50:23

Work Number four, which provides for a network of interlink cables between the substations and platforms. So effectively electricity cables running between platforms. Work Number five, which provides for up to four export cable circuits back to shore. Work Number six, which provides for offshore exit pits for the trenchless technique, which is in layman's terms, are effectively the drill exit points to create the tunnel for the export cables to come from offshore to onshore. Work Number Seven provides for up to two reactive compensation platforms fixed to the seabed on the export cable corridor. Work Number Eight provides for a temporary offshore works area for vessels and wet storage. Work Number Nine provides for offshore artificial nesting structures, and work number 10 provides for the creation of biogenic reef. So nine and 10, as we said before, relate to HRA compensation measures, and

51:21

then we start to come on shore, sir. So Work Number 11 is between mean high and mean low water springs and in the county of Lincolnshire, and consists of landfall connection works of up to four underground cable circuits and up to six cable ducts. Then moving further on shore. Work Number 12 continues the cable circuits and ducts. Work Number 13 continues the cables and ducts, and also provides for drilling launch pits, for the trenchless works out to the offshore exit pits. And also provides for other works to facilitate construction, including temporary works and storage areas and construction of a whole road.

51:58

Work Number 14 provides for the transition Joint Base, where offshore cables are joined onto the onshore cables. And then work number 15 is your onshore cable works from the transition joint base all the way to the project's onshore substation.

52:15

This works, number consists of up to four underground cable circuits link boxes and Joint Base along the way, compounds to launch drain Swiss drills to go under obstacles or avoid sensitive areas. Drainage works, storage areas, a whole road and access tracks together with bell mouths and footpaths.

52:35

That then takes us up to work number 16, which is the project substation, together with cable works in this area to bring the cables into and subsequently to take them from a work number 15 and then back out again

52:51

work number 17 then picks up with two underground cable circuits connecting to the national grid substation, which is to be consented and constructed by National Grid.

53:04

There are then a series of works numbers that provide for some of the construction activities around about installation of the main bits of kit described. So works number 20 provides for permanent accesses to access the transition joint Bay and also to access the substation at the other end. Works. 21 provides for highway widening, passing bays, culverting and drainage works. Works. 22 provides for the reinforcement or replacement of a bridge works. 23 provides for landscaping works and works. 24 and 25 provide for drainage and access. Those

53:39

then, as we discuss our provision for certain necessary or expedient general development associated with the specifically scheduled works. And these activities have to fall within the scope of the environmental statement. There. Then follows a series of coordinates specifying where the offshore project is to be located. And then schedule one part two notes some ancillary works that have been subject to EIA and are authorized, including temporary moorings, marking buoys and planting of hedge rows and trees.

54:12

Schedule one part three then narrates a number of limitations and controls on the authorized development in the form of 32 requirements.

54:21

Taking a quick counter through these sir. Requirement one allows five years from the date of the order coming into force for works to commence. Requirement two narrates a number of detailed parameters for the offshore wind farm generating station, including limiting turbine dimensions and foundation types and dimensions.

54:41

Requirement three controls the parameters for the offshore platforms, so the substations, accommodation platform and artificial nesting structures. Requirement four restricts the total number of gravity based structure foundations that can be used and now also sets out.

55:00

Is a new paragraph in requirement for introducing the build restrictions within the offshore restricted build area.

55:09

Requirement five limits the total volume of scour protection. Requirement six restricts the parameters for offshore cables. Requirement seven prohibits commencement of offshore works until a decommissioning program in accordance with section 105 of the Energy Act 8004 has been submitted for approval.

55:31

Requirement eight prohibits commencement of onshore transmission works until a written scheme of the stages of the onshore transmission works have been approved by the planning authority.

55:44

Requirement nine prohibits commencement of the substation works until details of the design in accordance with the design principles, document have been submitted to and approved by the relevant planning authority. This requirement also ensures, sir, that the cable landings are completed using trenchless techniques.

56:02

Requirement 10 prohibits the onshore transmission works until a landscape management plan for the relevant stage of Works has been approved.

56:11

Requirement 11 provides for maintenance of that landscaping. Requirement 12 secures an ecological management plan prior to the relevant stages of onshore transmission works, and as mentioned previously, sir, that also provides separately for management plan prior to and for onshore preparation works.

56:30

Requirement 13 provides for approval of permanent defenses before the relevant stage of onshore transmission works commence. Requirement 14 specifies that detail of temporary enclosures must be included in the code of construction practice. Requirement 15 prohibits commencement of the substation works until an operational drainage management plan has been submitted and approved by the planning authority. It also provides for an operational emergency flood response plan. Requirement 16 requires a written scheme to deal with contamination of any land to be approved before the relevant stage of works commences. Requirement 17 requires a written scheme of investigation before commencing a relevant phase to be approved by the county council.

57:17

And again, that's that written scheme of investigation must must accord with the outline, and it's separately. This requirement separately provides for a specific written scheme of investigation and respect of onshore preparation works.

57:31

Requirement 18 mandates a code of construction practice which must accord with the outline which is before this examination. And again, that code of construction practice is wide ranging. It must include an Air Quality Management Plan, a surface water drainage strategy, a noise and vibration management

plan, Health and Safety and Environment plan, a stakeholder communications plan, a site waste management plan, a flood management and response plan, a pollution prevention and emergency incident response plan, an artificial light emissions plan and a water quality management and mitigation plan.

58:09

Requirement 19 controls onshore construction hours and traffic movement hours. Requirement 20 prohibits construction of new accesses to highway until a plan has been approved by the relevant Highway Authority. Requirement 21 prohibits commencement of an onshore stage until a construction traffic management and travel plan have been approved. Requirement 22 requires approval of public access management plan in relation to work that would affect a public right of way. Requirement 23 requires reinstatement of any land used temporarily for construction within 12 months of completion of the relevant stage of onshore works or such other period agreed. Requirement 24 requires an onshore decommissioning plan to be agreed and implemented after permanent cessation of operation of the onshore transmission works. Requirement 25 specifies operational noise limits, including monitoring requirements. Requirement 26 requires approval of an operational artificial light emissions management plan. Requirement 27 provides for aviation warning to be exhibited. Requirement 28 requires approvals under requirements to be given in writing. Requirement 29 provides for amendment of approved details under requirements, but only where the changes are immaterial. In other words, changes which are unlikely to give rise to any material in new or different environmental effects from those assessed in the environmental statement. Requirement 30 requires approval of a skills supply chain and deployment plan. Requirement 31 requires approval of a soil management plan prior to commencing a relevant phase. And requirement 32 is a NAS radar mitigation requirement, so that prohibits any part of a wind turbine generator other than foundations to be.

1:00:00

Erected into a primary radar Mitigation Scheme agreed in advance with Nat song roots PLC has been submitted to and approved by the Secretary of State. It thereafter provides, sir, that no part of the turbine is to be erected until the scheme has been implemented. Just one brief update here, sir, subsequent to including that requirement within the draft DCO. There's been further discussions with NATs, and it has been agreed with them that this requirement can be tweaked to slightly so that operation of the scheme is only restricted to the extent that you can't hang blades on turbines until the scheme has been implemented, so a slightly later stage. So we would propose, sir, to make that tweak to the DCO at deadline three.

1:00:49

That brings us to the end of the DCO requirements. Sir, no doubt you're getting sick of my voice, so I'm going to pass over if you want to run through the marine license conditions. Now to ms Emma Reed, you

1:01:07

Yes, Mr. McCallum has already provided an overview of the structure of the development consent order and the seven deemed marine licenses that are contained within it. To recap very briefly, there is one deemed marine license for the generation assets at schedule 10, one deemed marine license for the

offshore transmission assets. At schedule 11, four deemed marine licenses for up to two artificial nesting structures across two areas of seabed. At schedules 12 to 15 and one deemed marine license for the creation of biogenic reef in specified areas within the inner dowsing race bank and North Ridge, especially aerial conservation,

1:01:45

turning first to schedules 10 and 11. These contain the deemed marine licenses for the generation assets and the transmission assets, respectively, and follow the same structure. Part One sets out the licensed marine activities under the relevant license, and the structure I'm about to set out is followed for part one in each of the deemed marine licenses at schedules 10 to 15. That is to say, in respect to the generation assets, the transmission assets and the artificial nesting structures, this structure is also largely followed for Schedule 16

1:02:15

within part one paragraph one provides interpretation of certain words and phrases used in the license and contact details for key organizations relevant to the content of the license. Many of these are identical to those used in Article Two of the order. Paragraphs two to four specify the licensable marine activities which are authorized by the relevant license. Paragraph five sets out the grid coordinates for those works within the deemed marine license.

1:02:40

Paragraph six confirms that the deemed marine licenses to remain in force until the scheme has been decommissioned. Paragraph seven confirms that section 72 seven and eight of the marine and coastal Access Act 2009

1:02:53

relating to the variation suspension, revocation and transfer of licenses, does not apply to a transfer of the deemed marine licenses falling within Article Six of the order.

1:03:03

Part paragraph eight confirms that where any condition requires a license to activities be taken out, be carried out in accordance with plans approved under the license, the approved details are taken to include any amendments that may subsequently be approved by the marine management organization. And paragraph nine notes that any amendments to approve details must be in accordance with the principles and principles and assessments set out in the environmental statement. Turning to part two. Part two sets out the conditions applying to the relevant

1:03:32

license. Schedule 10 is subject to 23 conditions, and schedule 11 is subject to 22 conditions. Conditions one to three specify the design parameters associated with the works comprised within the authorized scheme. This largely replicates requirements two to six of part three of schedule one. However, the licenses also include some restrictions which are not included in schedule one of the order. This is because it is considered more appropriate for these parameters to be controlled within the

deemed marine licenses due to their nature in particular parameters associated with deposit volumes, such as the volume of cable protection,

1:04:07

condition four confirms that the undertaker may maintain the authorized scheme except for the terms of the license or an agreement made under the license provides otherwise no maintenance works whose likely effects are not assessed on the environmental statement may be carried out unless otherwise approved by the MMO, and such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

1:04:37

Condition five obliges the undertaker to issue to operators of vessels under its control a code of conduct for the protection of marine mammals.

1:04:46

Condition six confirms that any time period given to either the MMO or the undertaker may be extended with the agreement of the other party in writing.

1:04:54

Condition seven provides for system of supplying copies of the licensed agents and contractors.

1:05:00

Restricting the use of contractors and vessels to those notified to the MMO and publicizing commencement and progress of the licensed activities.

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Condition eight provides for various matters to aid navigation in the vicinity of the authorized scheme. Condition nine sets the color of structures from highest astronomical tide to a height to be directed by Trinity house and the color for the rest of the structure.

1:05:23

Condition 10 relates to aviation safety and requires the undertaker to notify the defense infrastructure organization regarding the construction of the scheme and its parameters.

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Condition 11 sets standards that must be met by the undertaker in respect of the chemicals and other substances that can be used, how they can be stored and transported and where they can be disposed of.

1:05:45

Condition 12 provides for the notification of deposits made in an emergency.

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Condition 13 provides for the submission of various pre construction plans and documentation to the MMO for approval prior to the commencement of licensed activities. These plans include a design plan, construction program, monitoring plan, construction method, statement, project, environmental management plan, marine mammal mitigation protocol, written scheme of archeological investigation, offshore operation and maintenance plan, and a need to navigation plan.

1:06:18

Condition 14 requires each of the documents for approval under that condition to be submitted for approval at least four months prior to the intended start of construction, unless otherwise stated, and that each approved document must be complied with.

1:06:32

Condition 15 provides that no part of the authorized scheme may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN 654, and its annexes.

1:06:49

Condition 16 requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities.

1:06:58

Conditions 17, 18, and 19 contain provisions relating to pre construction, construction and post construction surveys and monitoring, respectively, and set out an indicative list of the expected surveys.

1:07:11

Condition 20 provides that where pile foundations are to be used. The Undertaker must provide information of the expected location, start and end dates of impact pile driving to the marine noise registry and thereafter notify the MMO.

1:07:25

Condition 21 provides that any cable protection to be installed following completion of construction. In locations where cable protection was not installed during construction must be deployed within 10 years of completion of construction, unless otherwise agreed by the MMO in writing.

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Condition 22 provides that before piling activities can commence a project specific southern North Sea site integrity plan, which accords with the in principle, site integrity plan, which is current application document, PD, 1048,

1:07:56

must be submitted to and approved by the MMO, in consultation with the relevant statutory nature conservation body, the condition sets out what the SIPP must contain and that it must be submitted to the MMO no later than six months prior to the commencement of piling activities.

1:08:11

Condition 23 of schedule 10 requires a close out report to be submitted to the MMO, the maritime and Coast Guard agency, the UK Hydrographic Office and the relevant statutory nature conservation body to confirm the date of completion of construction and final details of the wind turbine generators installed. The condition prevents any further construction activities from being undertaken under the generation asset marine license following completion of construction,

1:08:38

schedules 12 to 15, which contain the deemed marine licenses for up to two ANS is in two areas follow the same structure as I've just outlined. I wouldn't propose to go through the detail of each condition again for that reason, unless absolutely fine. No, I think unless there are any

1:08:56

vastly different areas that you wish to highlight at this stage, I think it's absolutely fine to not, not repeat essentially, what you've just said.

1:09:05

Thank you, sir.

1:09:07

Nothing to highlight in particular at this stage. Okay, thank you. Thank you both for that, for that run through that's that's been helpful.

1:09:17

Does that conclude what you have to say at this stage,

1:09:23

Scott McCallum, for the applicant, yes, sir, it does indeed. Thank you. In that case, I will. I will move on to invite comments from any of the interested parties that are with us on,

1:09:38

I think most likely, on the requirements rather than the conditions of the Dean marine licenses given who we have with us. If there are any comments and I see Miss Hall, you have your your hand up, please.

1:09:55

Please proceed.

1:09:57

Thank you, sir. I've got comments on.

1:10:00

On a few of the requirements. So I'm in your hands as to whether you'd like me to sort of do one and then pause for the applicant to come back, or whether you'd like me to give you my full list, and the applicant can sort of take a note and come back at the end.

1:10:14

How long is the list?

1:10:17

Five Points,

1:10:21

I think it's probably fair to do one and have the applicant respond rather than I expect them to. I'm sure they're capable, but I think,

1:10:32

yes, okay, thank you, sir. I'll do that then so that the first if I could take the first. Well, my first point is two requirements, but the same point arises in relation to both requirements 10 and requirements 11.

1:10:46

So they both concern landscaping, the provision of and then implementation and maintenance of landscaping. Our only comment here is that and the applicant will be well aware of our position, but so just to make the XA aware that the Lincolnshire county council has asked to be defined as the relevant planning authority for the purposes of these requirements, and

1:11:12

that, as I said, on the call, will be well aware of why. But essentially, although subject to anything that the districts want to say on this hearing, they hadn't been

1:11:25

as involved in this process as the county council until subject to anything that is it. Ms duo wants to say today, we had raised with them that we would be making this request of the XA and of the applicant that we would like to be essentially the discharging authority.

1:11:43

We have greater resourcing for this point. There are obviously cross boundary matters in relation to landscaping and other effects that we say we are best placed to handle the discharge of the requirement in this particular instance for

1:11:58

in terms of the effects, essentially county wide. So rather than have the same details be submitted to the different districts, we consider it would make sense for the document to come to us, and also we are better resourced to both discharge that requirement and to enforce any breach of it should that happen. So that's that's our request for requirements 10 and 11, and probably I'll pause there, because the next the next point I have is about requirement 12, and although that also is on our list of

requirements that we would like to be discharging authority for, we have a further and slightly different point to Make in relation to ecology.

1:12:41

Thank you, Miss Hall. I believe that Mr. Before I come back to the applicant, I believe that Mr. Durer has, has now left us, but I will just double check in case he's been able to to hang on a little bit longer.

1:12:53

It doesn't look like it. So I will, we'll just record an action point for Mr. Dewar to to also comment for the for the district councils on what you've just said, and then I will come to Mr. McCallum for the applicant to respond. Please.

1:13:11

Thank you, sir. Scott McCallum for the applicant, sir, the applicant was aware that the County Council were discussing with the district councils who would be best placed to discharge and enforce this particular requirement from the applicant's perspective, sir, we don't mind who the discharging authority is, provided that that's that's agreed by the relevant parties.

1:13:33

So again, we just wait, wait to hear the outcome of those discussions. Sir. Thank you. Mr. McCollum,

1:13:39

coming back to you miss Hall. What is the process for, for coming to to the agreement on, on who is the,

1:13:48

who is the, the relevant planning authority from from this point onwards, then, well, I think we, we've got an outstanding request to them, which is probably just as in the form of an email. It's the relevant people at the district seeking their agreement, and at the moment, we haven't heard back. So if they reply and say, That's fine, then there's nothing more needs to be done, other than the applicant has agreed in those circumstances to change the wording of the order to define relevant planning authority as LCC. For these purposes, we obviously would run into a slight roadblock if we didn't get a reply in time, or the reply was negative, and at that point, we would require somebody to to make a decision about it, because, because there'd be, there'd be a sort of slight dispute as to who the relevant planning authorities should be. I should imagine actually the applicant would just need to take a view on it, and we'll take it from

1:14:41

there. Does that sound reasonable Miss McCallum,

1:14:46

sorry, yes. Scott McCallum, for the applicant, that's that's fine, an applicant's perspective.

1:14:51

Thank you. I think I will, I will raise a further action point, I think, for

1:14:57

for both Lincolnshire county council and.

1:15:00

The district councils to provide an update at deadline three on the progress of those discussions.

1:15:08

I think I've no doubt in terms of just simple DCO drafting, the sooner that there's clarity on that matter, the better.

1:15:18

If there are no further points on that matter, I'll, I'll ask you to move on to your next point, please. Thank you. So Sue ecological management plan and requirement 12 at the same point arise in terms of discharging authorities. I don't need to go there as a fallback. Obviously, if we were not going to be listed as the relevant planning authority, we would like to be named as a consultee. So that's that's the sort of our plan B scenario

1:15:46

as foreshadow that we've got a slightly further different point in relation to requirement 12 and ecology. It's not in relation to the drafting of what's on the page that our point is really about what's not on the page, which relates to biodiversity net gain. So I understand that our discussions with the applicant is they we have said through our through our written documents, that we and our discussions with the applicant that we would like to see something in the requirements about net gain. And the applicant has decided that they prefer not to have anything secured on the face of the DCO in relation to net gain, we just raise a query about that because, and this, this has come up in other in other forums, but essentially, if net gain, whatever percentage, or in terms of just the principle of there being a net gain, if that is being relied upon as a benefit of the development, then we say it should be secured. So if it is not secured, that's a that's a choice for the applicant. But what they can't do, essentially, is do both. What you can't do is say this is a benefit that weighs in the planning balance to secure consent, but is not going to be secured. If it's not going to be secured, it isn't a benefit. We say that they can rely upon. If it is going to be relied upon, it should be secured. And it's as sort of simple as that. There are a number of places in the documents where the applicant does say that they are committed to delivering a biodiversity net gain. So for example, in their comments to the X A's first written questions. I think that's rep two, zero, 51 that phrase appears committed to delivering a biodiversity net gain, but their commitment isn't on the face of the DCO. So that's not a commitment that is secured in any meaningful way. The applicant relies upon the bng principles and approach document, which is app 302,

1:17:46

and my reading of that document, it is entirely lacking in any commitment to delivering either the principle of a net gain or a particular percentage of net gain that the phraseology that's used in that document, for example, paragraph 55 of that document refers to a commitment to exploring opportunities and and that that document a is not a not an approved document. There isn't a specific

requirement. And even if that document were to be approved, our position would be that the wording is inadequate to secure a commitment to delivering a net gain. So that's our position on that if they get, if it's going to be promoted to the XA as a benefit, that they're committed to delivering a net gain, then that commitment needs to mean something.

1:18:38

Thank you. Miss Hall. We in terms of the principles and the nature of

1:18:46

biodiversity net gain, and how it is set out within the examination at this stage will form part of our examination and part of tomorrow's hearing agenda. So I don't intend to go too far into

1:19:01

the the applicant's approach to biodiversity net gain.

1:19:07

But I think it may be useful at this stage to state that I think the examining authority would take a broadly similar view, that

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if, if, if a commitment to something is not is not defined in the development consent order, and is not, or is not secured, or documents that relate to such a commitment are not secured within the development consent order. We would,

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in the balance, apportion fairly little weights to that as well.

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But I will come back to the applicant to respond at this stage. Mr. McCallum, please. Thank

1:19:48

you, sir. Scott McCallum, for the applicant, sir, just address two of Miss Hall's points in terms of the County Council's Plan B, about being a name.

1:20:00

Consultee on the ecological management plan requirement. Should they not be the discharging authority? I can confirm that the applicant would not have a concern with that. So that is something that we could could accommodate

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in terms of the wider point, sir, in relation to biodiversity net gain, obviously,

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as you see, sir, there's an agenda item for future issue specific hearing on this point, the general position of the applicant is that they are

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trying to deliver net gain. The difficulty with any form of requirement is the metric that's to be used and that things have to be measured against. And because it's not considered that going into too much detail, sir, it's not considered that the current metric is appropriate for long linear schemes, and that's causing a bit of difficulty. And new metrics are being developed. So in that way, sir, the applicant has instead taken the approach of outlining what activities that they are going to do under the OMS, which is a document. PD, one, hyphen, 054,

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and the applicant is continuing through the examination to update that document, to specify the activities that it's doing, to add a biodiversity enhancement. So that is the reason why the applicant has not chosen to seek to impose a specific requirement in relation to biodiversity net gain, but instead to describe the details of activities within the plan instead. Thank

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you, Mr. McCallum, coming back to you miss Hall for your next point please. Thank you, sir, yes. The next thing on my list is requirement 17, and archeology

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onshore, specifically onshore archeology, we don't,

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we don't take issue with anything offshore. Essentially, we're dealing with things within our area, so that the issue here is, again, something the applicant will be aware of, and so no doubt the XA will be aware of having followed the written questions and our local impact report. Essentially, we'll, we'll come on to this tomorrow for my archeologist to give the XA exactly why we don't think that the outline written scheme of investigation is sufficient for our purposes. But that being the case, we have an issue with requirement 17 that essentially all it does is tie the applicant to that document. So obviously, any any problems we've got with that document are just being embedded into the DCO. So it's really a debate about the contents of the written scheme of investigation,

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which is for another day, but given that we do have an issue with the context of the written scheme of investigation did it? Essentially, it's a lack of detail point and a point about the lack of pre consent trial trenching,

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which we say should be first and then the written scheme of investigation should follow after. So we have a point of principle in terms of trying to put the cart before the horse, and define a written scheme of investigation without doing sufficient trial trenching, because you are necessarily dealing with things that are quite vague because you don't know what you're going to find. So we would prefer,

and I think we have proposed in our written representations, that the the applicant is tied to providing us with a methodology for that further trial trenching. And I understand that the applicant is, is sort of agreed in principle, that further trial trenching is, is required. And in fact, I think they are on with it. It's just that at the moment, the document and the promises about how that will be done and not part of the DCO so we don't have any control over the degree of further trenching, the location of that further trenching and so that, and what sort of flows from that. So although there is a promise for some further trenching, we don't know where, we don't know how much, and there's no control over that, because it's not in the outline written scheme of archeological investigation. So we would ask for a more detailed requirement to be imposed on the face of the order. And I think the one that we've suggested is a good principle to follow, is that, using the mallard past DCO decision, it's requirement 10 of that decision, which essentially says, well,

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that there's a there are further, few further steps that could be included in this requirement, for example, delineating the extent of further trial trenching and agreeing that with the county council in advance of doing it, and then submitting a revised outline written scheme of investigation for our approval at that point. So it's including a.

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Full of further additional steps, which would require sign off by the county council, and that's our proposal for how to deal with that debate. Now about the substance of the debate is the accuracy and the adequacy of the written scheme investigation, we say it can be solved by imposing a more detailed requirement instead of requirement 17.

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Thank you. A more detailed requirement instead of requirement 17 or or more detailed requirement 17, just, just to be clear, would include further steps within you can call it requirement 17. It would include further steps before you get to the provisions which essentially secure the current outline written scheme of investigation, and that so at the

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moment, requirement 17 is essentially a promise to submit a further final written scheme of investigation, which must accord with the outline written scheme of investigation. We would include some prior steps to that to agree extend to further trial trenching and results with us before you then submit a revised scheme of archeological investigation based upon those results. So it's a it's an addition to and a slight tweak to requirement 17.

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Thank you. And and you noted that you you had submitted your preferred, perhaps not your preferred wording, but, but essentially, what you've just said, you've submitted to, to the, could you just remind me of the examination Library Reference Number of of where that submission resides? You're going to ask me this. I'll have to come back to

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you. So yes, by all means, come back. In the meantime, I'll ask Mr. McCallum to respond on behalf of the applicant. Please.

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Thank you, sir Emma Moyer, on behalf of the applicant, and it may assist to go through the mallard pass DCO requirement and explain why and how the current requirement in the draft DCO covers these points sufficiently as the applicant's view is that the mallard pass DCO would not be appropriate in this circumstance. So the first limb of the mallard past eco requirement does as MS Hall sets out, require further trenching to be submitted to the County Council for approval.

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Additional trial trenching is committed to by the applicant in the outline written scheme of investigation for the onshore works, which is PD, 1052,

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and that is set out in Section 9.2

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of that document. And within that it is acknowledged that the trial trenching will be informed by results of trial trenching that's been ongoing in 2024

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and that this will include targeting of blank areas in reference to all baseline data, in order that trial trenching is proportionate and undertaken in areas of potential.

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So our position is that additional trial trenching is committed to and is secured in the outline WSI,

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moving on to the next limb of the mallard pass requirement that then requires that additional trial trenching to be carried out, as approved by the County Council under the first limb.

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As noted this morning in the discussions, the DCO permits onshore preparation works to be carried out, which does include archeological investigations prior to commencement of the onshore transmission works. So the additional pre construction trial trenching will form part of the archeological investigations that would take place under the remit of those onshore preparation works. Any

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archeological investigations that would be carried out as part of the onshore preparation works must, under requirement, 17, as currently drafted in the DCO, only take place in accordance with a specific written scheme of investigation which must accord with the outline which has been submitted to and approved by Lincolnshire county council, and that would be in consultation with Historic England. So

within that specific written scheme of investigation that would set out all of the detail of the planned works for LCC to have final approval of and sign off before those works could commence.

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And then turning to the third limb of the mallard past eco requirement that then requires the outline plan to be updated with the results of the further trial trenching undertaken,

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whereas requirement 17 one

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of the draft DCO as drafted currently requires a written scheme of archeological investigation which must accord with the outline, but also has to be informed by the results of any archeological Trial trenching or archeological investigations undertaken as part of the onshore preparation works,

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and again, that must be submitted to and approved by LCC in consultation with the relevant planning authorities and Historic England before any stage of the onshore transmission works can commence. So as such, a further written scheme of investigation, again setting.

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All of the required detail will be issued to LCC for approval in advance of each stage of the onshore transmission works.

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Our view is it's not therefore necessary for the outline plan to be updated, nor would it be usual practice for construction to proceed based on an approved outline as opposed to a more detailed scheme approved under the remit of that outline plan. It's

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considered that the approach that is set out currently in requirement 17 for both article archeological investigations carried out as part of the onshore preparation works and during each stage of the development and construction works, provides a sufficient level of oversight for LCC as the approving authority of the WSI is under this requirement.

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Thank you, sir.

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Thank you. Ms Moore, Mrs. Hall, is there anything that you'd like to respond to that you've heard from the applicant there? So I think it turns into a debate that's possibly best had tomorrow about the adequacy or not of the outline written scheme investigation. I'm sure those points are best made by my archeologists rather than me. So it so I think you've got the XA has got our point about the drafting, and you understand the fault line, but that decision is going to turn on the adequate the x's view of the

adequacy or not of the outline written scheme of investigation, and whether that can deal with the points that are between the parties at the moment. So I don't propose to go into the substance of it. So I do think that's probably for tomorrow. I'm glad you said that I was, I was becoming a little bit concerned that we were heading into territory that this hearing is not, is not intended to cover. Did you manage to find that examination Library Reference. I did say yes, it's in our li are, which is rep one, oh, 52 and and it is on the pages are not internally paginated, but it's PDF page 80 of 82

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and the comment is that, as against requirement 17, there's a there's a reference to the mallard past TCO and and a lift of the that requirement into the table. Thank you. If you'd like to move on to your to your next point, I think you've got, do you have two more?

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So, because I dealt with them, 10 and 11 together. This is the final, final point. Better, yeah, which is actually about schedule 20 and discharge of requirements. So I'm not sure whether that's a point you'd like me to wait, wait for another section, or whether now is the appropriate moment.

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I think,

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why not? Why not raise it now, I think we might as well.

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Thank you. So it's about time scales. So we've got a couple of points under this heading. The first thing to note is that

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there are a couple of time different time scales going on here. The first point is that there are that Lincolnshire county council highways team are going to get across their desk a number of documents or a number of requests for discharge.

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Firstly, they are going to get documents that are submitted to them under Articles 12 to 16, so and the time period for discharging that under the article, which has its own discharge procedure, is 56 days. So we just, we're grateful to the applicant for extending that to 56 days. But just to put a marker that that that's that time period is 56 days, we then have some slight

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practice points, really, and it's probably just something that we can I'm flagging so to the XA now, but it's really something that I expect we will be able to deal with the applicant offline. That we have some concerns that if that is all wrapped up in the same document as matters under the requirements that relate to highways, that is going to be difficult for us to manage. If there are parts of a, for example, construction traffic management plan that fall under Articles 12 to 16, but other other parts which fall

under the requirements and divvying it up and having different time periods for determination and different processes. So obviously, things submitted under the requirements would have a have a bespoke procedure that's provided for in the DCO. And I'm just, I'm aware that the general practice might be to wrap up a lot of this in a transport management plan, and that would require some pulling apart on our part.

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So we just, we just say that. But I think, as I said, it's probably a point for us to discuss practicalities with the applicant offline.

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The second point about timescales in relation to schedule 20 is, sir, you will have noted that our request is for 13 weeks for the.

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Discharge of the required documents coming in under a requirement whilst we think we can get through some of the slightly lighter transport matters coming in under Articles 12 to 16 in 56 days. That's not the case with matters coming in under requirements which, well we've asked for 13 but so I would note that the a couple of the most recent DCOs in Lincolnshire. So Mallard passes 10 weeks, and gate Burton is also 10 weeks. So that that although our ask is 13, we have landed on 10 weeks as a number of other in a number of other extant orders.

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So, and I think really, that's our point. That's a debate that the XA will be aware of.

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So sorry. I'm just, I'm just, you'll be aware that the way these things work is you get instructions via WhatsApp and things as we go. So I've just been asked to reiterate that when, when the debates about the definition of relevant planning authority that really sits in obviously, that goes to Article Two and the definition of that term rather than anything else. So although I raised it under requirements, it feeds back to the definition in Article Two.

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Okay, thank you. That's that's understood. Mr. McCallum, anything to respond on behalf of the applicant.

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Thank you, sir Scott McCallum, for the applicant. So first of all, I agree with Miss Hall's suggestion that the sort of practicalities of discharge, of traffic management issues, is something that we can take offline and see if there are, there's any practical comfort that we can give on that point. I

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suppose, sir, is worth just sort of touching on the sort of discharge times generally. Because I think, sort of, from the applicant's perspective, there's a balance to be struck here. The starting point, from the

applicant's perspective, is the urgent need for the realization of this critical infrastructure project for that's where we take support from various parts of the national policy statements, including in PSE n1 at paragraph 3.3 point 58

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which refers to the urgent need For new electricity incepts to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises,

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we appreciate, sir, that that urgency has to be tempered by practical reality and understand the resource constraints that approving authorities are under.

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We also appreciate that some matters may be more complex than others, the applicant has and will continue to give decision makers a heads up where it can to a resource to be planned. And that's the sort of practical comfort that that we're offering up. And it's also obviously set out a number of quite detailed outline plans, I think so that there is a balance to be struck. An applicant considers that a it has struck that balance that has extended the periods that it's offering for for discharges, and in a number of locations where it feels that there was added complexity, and again, it thinks extending those further are getting into the territory of having an inefficient discharge process.

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All of that said, Sir, we are happy to continue discussions with the county council to see if there is any further comfort that can be provided. But as I say, as things currently stand, that's that's where the applicant's coming from, in terms of trying to keep it to a reasonable period that is preceded or slightly longer than that has been the case for other similar offshore wind development consent orders.

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Thank you, Mr. McCallum, I think at this stage the examining authority will

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will keep a watching brief to see how things develop. Miss Hall, is there anything final that you wish to add at this stage before we move on. So just to note that obviously the two examples given, malapas AND gate Burton are also renewable generating projects, and so benefit from the say they fall within the definition of critical national priority infrastructure, just in the same way that this application does. And indeed, a third one that was consented in Lincolnshire is cotton exactly same technology and as the other two examples, and that had 13 weeks. So that balance has been struck between critical national priority infrastructure and timescale for discharge on three other projects contented in Lincolnshire, all of which have gone for 10 weeks or over. So we'll obviously update the essay on where we get to with discussing that with the applicant. Thank you, but I think those are all of my points. So thank you, sir. Thank you very much. Miss Hall. Mr. McCallum, anything final that you wish to add before I move on? Thank you, sir. Scott McCallum, for the applicant. No nothing fuller for now. Thank you, sir.

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Okay. Then coming to.

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Mr. Westmore and Smith, now I'm conscious of time. We've been going for almost an hour and 45 minutes.

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I will suggest that we

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that we have a break, but I will leave it in your hands, Mr. Westmore and Smith, whether you whether your points are fairly brief and you'd like to get them in before we have a break or or whether you're happy for us to break now at this point, Mark Westman Smith, TH Clements is a very short point,

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so if I may, I'll just raise it now.

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I raise it in the spirit of

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raising the issue with the applicant and the county council to reflect upon, and then we can come back with submissions later in the process. But it relates to requirements 18 and 31 both of which prevent onshore transmission works from commencing unless and until a plan is submitted and approved by the relevant planning authority. 18, dealing with the COVID construction practice and 31 the soil management plan. Prior to approval, there's a requirement to consult,

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and it's consult specified bodies. It doesn't include landowners and obviously, in particular, the air quality management plan under the code for construction plan and the soil management plan, in their final forms, are key, reflect key concerns and key aspects of mitigation for landowners and agricultural businesses. So there are potential real consequences on the ground that spring from getting those plans right. So at this stage to just float the idea of some form of landowner or agricultural business consultation, and leave that with the applicant and county council in light of the importance of the issues to agricultural businesses. In short, it would be the agricultural businesses that feel the impacts of any failures in the mitigations proposed in those plans.

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Thank you.

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Thank you. Mr. Westman Smith, Mr. McCallum, is there anything that you would like to say in response at this stage?

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Thank you, sir. Scott McCann, for the applicant, sir, in the applicant's response to examining authorities first written questions against land use one point 16, the applicant did set out that it was happy in principle to consult with landowners during the preparation

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of the soil management plan.

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So I think, in principle, we don't have a concern with with taking, taking on board feedback during the preparation of that plan. But I agree we can, we can take away and discuss further with with

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relevant landowners to see if that that addresses concerns. And the proposal, sir, would be to update the outline soil management plan and code of construction practice to reflect that, that commitment.

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Thank you. Mr. McCann, Mr. Westman Smith, how does that sound in principle to you? So that that's helpful, and I was aware of that indication. Of course, it's about the final plan, but we're very happy to have that conversation with the applicant outside of the examination. Has not detained you any longer of this point.

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Thank you. That's that's very good of you, Mr. McCallum, anything final that you would like to add before we we adjourn. Thank you, sir, Scott and Callum for the applicant only a correction to the reference that I provided to you a second ago, and the applicant's response was against Lu one point 18 rather than one point 16. Thank you, sir.

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Thank you. So

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as I said, we've been going for a little over an hour and 45 minutes. Now I presume I propose that we, we adjourn for for 10 minutes at this stage, so we will come back at Well, little less than 10 minutes. We'll come back at 1155 do.