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Issue Specific Hearing 1 (Morning)

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FULL TRANSCRIPT (with timecode)

00:00:05:11 - 00:00:14:14

Good morning, everyone. Can you all hear me? Yeah. Great. Can I check with the case team that the recording is now started and we're live streaming?

00:00:18:12 - 00:00:56:11

Thank you. Well, it's 10:00, and I'd like to start by welcoming you all to this. The first issue specific hearing into the Cottam solar project. This hearing will focus on the draft development consent order. My name is Rory Cridland and I'm the lead member of the panel of examining inspectors appointed by the Secretary of State to examine this application and report back with a recommendation. As mentioned a moment ago, a digital recording is being made. And so I'd be grateful if you could all identify yourselves before you speak. The recording will be retained and published on the project page of the National Infrastructure website for a period of five years following the Secretary of State's decision on the application.

00:00:56:17 - 00:01:29:17

So again, I'd be grateful if you could try and avoid referring to information that you wish to be kept private and confidential. If you do participate in today's hearing, it's important that you understand that you will be recorded and that recording will be published on the Internet. Now to avoid disrupting the meeting can ask you all to keep your microphones turned off until we invite you to speak. That applies both to those of you in the room today as well as those joining us on Microsoft teams. And for those of you joining us on Microsoft Teams, I'd also be grateful if you could try to minimize any background noise as well.

00:01:30:21 - 00:01:45:25

I'm going to hand over now to my colleague, Mr. Henley, who's going to introduce himself, and then he'll take us through some general housekeeping matters and safety words about how the hearing. That's the purpose of the hearing and how it will be conducted this morning. Darren, thank you.

00:01:46:08 - 00:02:02:21

Good morning. My name is Darren Henley. I'm the other member of the panel. As the examining authority, we are holding an examination into this application and will then write a report to the

Secretary of State with our recommendation on whether consent should be given. Our examination started yesterday following the preliminary meeting.

00:02:04:12 - 00:02:30:12

18 works alongside us throughout this process, and they are managed by Simon Ward, who is here today. They should be your first point of contact if you have any queries about the examination process or arrangements for hearings. I'll now run through some housekeeping matters. The hearing is of blended events, which means some of you are attending in this room and some are taking part by Microsoft teams. However you however you are attending, we'll deal with you fairly.

00:02:32:00 - 00:02:41:00

You switch off or mute your mobile phone if you're not using it to join the hearing. And please, could anyone join in by Microsoft teams? Try to minimize any background noise.

00:02:42:25 - 00:03:17:19

A lot of things. First about joining us by Microsoft teams. The chat function will not be enabled or in use, so please don't try to use that for questions or comments. Also, we will only use the raise hand function in Microsoft teams at specific points in the agenda when we invite general comments. We would also give people who are not able to use that feature an opportunity to comment at the relevant time. If you're watching the live stream, then please be aware that it will be stopped during any adjournments to the hearing and you will need to refresh your browser page to view the restarted hearing.

00:03:19:17 - 00:03:31:17

You would all find it useful to have the agenda that was published on the 29th of August 2023 and the Rule six letter the 10th of July 2023 at hand. Relevant parts of those will be displayed during this hearing.

00:03:33:12 - 00:03:49:19

Allow certain parties to introduce themselves. But firstly, please remember to unmute your microphone when you speak and if you're joining via Microsoft teams and are comfortable to do so, switch on your camera when invite you to speak, then please switch them off again and move on to the next speaker.

00:03:52:12 - 00:04:03:27

Microphone is available for anyone in the room that we invite to speak, but it doesn't have a static microphone in front of them. It is important that all contributions are made using the microphone so that they are captured for the formal record.

00:04:05:22 - 00:04:19:03

We are keen to make progress. And so there are several people representing a party. Please just call the lead speaker and shoot themselves for now. And you and your other representatives are invited to speak later to please introduce themselves at that time.

00:04:20:24 - 00:04:24:06

So firstly, please, who is the relevant speaker for the applicant?

00:04:26:26 - 00:04:49:13

Good morning, sir. My name is Claire Broderick. I'm a legal director at Pinsent Masons LLP Solicitors for the Applicant Cottam Solar Project Limited and can be referred to as Ms.. Broderick. I'm joined by a number of members of the applicants team today, and I'll let them introduce themselves because they may well be speaking at various points during the agenda today.

00:04:53:11 - 00:05:00:28

Good morning, sir. My name is Eve Browning. I'm a project development manager at Island Green Power. You are the developers of the scheme.

00:05:05:26 - 00:05:19:26

Good morning, sir. My name is Ian Douglas. I'm a for the applicant and planning consultant with Land Pro Consultants and have led the preparation of the application.

00:05:25:21 - 00:05:32:05

Good morning, sir. My name is Dave Elvin. I'm the head of projects at the Green Power Solar Project.

00:05:32:10 - 00:05:34:19

So I didn't catch your name. Dave. Elvin.

00:05:34:21 - 00:05:35:27

Elvin. Elvin.

00:05:36:06 - 00:05:36:21

Okay.

00:05:42:18 - 00:05:43:03

Jason.

00:05:43:16 - 00:05:49:14

Good morning, sir. My name is Ruth Taylor, an associate at Pinsent Masons Solicitors for the Applicant.

00:05:54:10 - 00:05:58:00

Appreciate the applicant. And that concludes the applicants team for today's hearing.

00:05:58:10 - 00:05:58:25

Thank you.

00:05:59:24 - 00:06:08:16

I think we'll direct our questions directly to you during the during the course of the hearing. And then if you want to pass on to any of your colleagues, then just let us know. We'll be responding. Thank you.

00:06:10:12 - 00:06:12:12

Okay. Lincolnshire County Council.

00:06:14:03 - 00:06:28:26

One, says McBride, head of planning Lancashire County Council. I'm joined today by Justine Prowler, who's an infrastructure manager with the council, and Martha Reece, who's a senior solicitor with the council.

00:06:30:28 - 00:06:37:18

And will they be speaking today? Probably not. So you actually a spokesperson? Yeah. Yeah. Okay.

00:06:40:16 - 00:06:42:00

In West Lindsey District Council.

00:06:43:00 - 00:06:48:29

Good morning General Shaikh of Council Act on behalf of West Lindsey District Council.

00:06:49:28 - 00:06:51:02

Uh, if.

00:06:51:12 - 00:06:57:07

I was Mr. Blake or Mr. Clarkson need to speak at any point. I'd ask them to introduce themselves at that stage. Thank you.

00:06:59:22 - 00:07:01:15

I'll tell you the local authorities presence.

00:07:04:21 - 00:07:08:07

Thank you. And I'll turn it to the Environment Agency.

00:07:12:12 - 00:07:21:04

Good morning, sir. And Harry Monger, planning specialist for the Environment Agency. I'm here to speak on agenda item six.

00:07:25:18 - 00:07:26:04

Thank you.

00:07:29:18 - 00:07:34:06

Can you please see your camera? Thank you. On the River and Canal Trust.

00:07:40:27 - 00:07:54:25

Good morning. Sophie Summers for the Canadian River Trust. And I'm here with Hazel Smith and I'll introduce her if she needs to speak. And we're expecting to be speaking on item nine. Protective provisions.

00:07:55:21 - 00:07:57:17

Okay. Are you actually the spokesperson?

00:07:58:01 - 00:07:58:16

Yeah.

00:07:59:09 - 00:07:59:26

Thank you.

00:08:03:26 - 00:08:09:16

Have you. Please turn your camera off. Thank you. And certainly Stoke Parish Council.

00:08:11:29 - 00:08:16:11

Thanks. My name's Carol Gilbert. I'm from Stoughton by Stow Parish Council.

00:08:17:21 - 00:08:18:06

Thank you.

00:08:25:18 - 00:08:26:23

7000 acres.

00:08:29:24 - 00:08:35:20

Good morning, sir. Mark Pryor for 7000 acres. Sorry I didn't catch your surname, Pryor.

00:08:37:22 - 00:08:39:18

And I'm happy to be referred to as Mr. Pryor.

00:08:44:01 - 00:08:44:16

Thank you.

00:08:47:02 - 00:08:48:03

Simon Skelton.

00:08:49:28 - 00:08:54:21

Money, sir. Yeah. Simon Skelton, Local resident.

00:08:57:05 - 00:08:57:20

Okay.

00:09:02:03 - 00:09:03:15

And Emily Jackson.

00:09:07:07 - 00:09:12:10

Good morning. Emily Jackson representing Trent Valley Internal Drainage Board.

00:09:15:04 - 00:09:15:19

Thank you.

00:09:20:27 - 00:09:37:09

That completes all parties who have registered as speakers. So that's it for the introductions for now. But if you have to introduce yourself when there will be an opportunity to do to speak, please do so later when we do invite you to speak. So I'm now going to move on to agenda item two.

00:09:40:24 - 00:09:43:05

And he was concerned the purpose of the hearing.

00:09:44:24 - 00:09:53:05

The purpose of this issue specific hearing is also examine the draft development consent order and related matters and invite parties to make oral representations about it.

00:09:55:00 - 00:10:18:10

This hearing is held in accordance with Section 91 of the Planning Act, and it is subject of our powers control over its conduct. The event control consent order or the DCO is the order which the Secretary of State would make if they decided to grant consent for the application. It is a critical document. If consent is given, the share will govern how the development takes place and will be controlled.

00:10:21:14 - 00:10:46:14

This hearing is necessarily of a technical nature and is based on specific wording of the draft development consent order and the explanatory memorandum. We are considering technical drafting considerations relating to the compulsory acquisition and temporary possession of land to date. However, individual affected persons concerns about their land and rights will be addressed later in the examination in the compulsory acquisition hearing if one is required.

00:10:49:12 - 00:11:00:19

The draft is currently the applicants document. The version that we were referring to during this hearing is a version revision A which was submitted on the 24th of April 2023.

00:11:03:05 - 00:11:07:04

Examination timetable provides the applicant with updates to the draft eco.

00:11:09:23 - 00:11:16:23

The examination timetable also identifies a date by which we may issue a schedule of changes to the applicants draft for comments.

00:11:18:29 - 00:11:37:29

It will send our recommended to the Secretary of State with our recommendation report. Whatever our ultimate recommendation is, we must make sure that the draft development consent order is fit for purpose. If the Secretary of State decides to grant consent, as any consent will be subject to requirements, i.e. conditions that are set out in the development consent order.

00:11:40:06 - 00:11:52:03

We have structured the hearing today so that you want to raise anything relevant to this hearing when we invite you to speak at the relevant points on the agenda. Please keep your microphone muted until we invite you to speak.

00:11:54:03 - 00:12:06:03

Each time that you speak, please give your name and any organization that you're representing so that it's picked up for the formal record. And please direct all comments, questions and answers to us directly to any other party.

00:12:08:05 - 00:12:17:16

And we will cover the points in the agenda that was published on the 29th of August 2023. So please now call the case team, share a copy of that that agenda on the screen.

00:12:31:00 - 00:12:31:16

Thank you.

00:12:33:02 - 00:12:58:18

We're now just about to complete agenda item two, but there is one final point subject to progress. We tend to take short comfort breaks of intervals of around 90 minutes or so. We may take a longer break for lunch if the hearing extends into the afternoon and depending on progress, we may ask for responses to some of the questions in the agenda to be provided in writing rather than during the hearing. However, that is subject to change depending on progress.

00:13:00:11 - 00:13:26:27

We will shortly go into the main part of the hearing when we'll go through each agenda item in turn. And also, please, can the applicant provide a written summary of all its responses for deadline one from today on the 17th of October 2023? Another parties you speak today should also provide a written summary of the points they make today at that same deadline. So thank you and hand you back to the lead examiner. Rory Cridland.

00:13:29:00 - 00:13:29:16

Thank you, Tom.

00:13:31:06 - 00:13:46:15

We're now on item number three. Can I just remind you all to please keep your microphones muted until we invite you to speak Each time that you speak again, can you please give the name of the organization your name and the name of the organization that you're represented so you can so it can be picked up for the form of record?

00:13:48:06 - 00:14:03:14

Because someone from the applicant team. I'm not sure if it's yourself, Ms.. Broderick. Please provide an overview of the overall approach that you've taken to drafting the the draft development consent order, including a brief description of its structure, the schedules, as well as the role of the explanatory memorandum.

00:14:06:02 - 00:14:31:09

That project for the applicant. The draft has been prepared in the format of a statutory instrument and it has been prepared in accordance with Section 120 of the Planning Act 2008, taking into account the limitations, requirements and exceptions imposed by other provisions in the Planning Act, including sections one, two two to Section 125, so far as they are relevant to the scheme.

00:14:34:01 - 00:15:11:09

All of the powers provided for within the draft fall within the scope of Section 120 and schedule five to the 2008 Act. The applicant has taken account of Pin's advice. Note 15 draft entitled Drafting Development Consent Orders and the Infrastructure Planning Model Provisions England and Wales

Order 2009. Whilst there's no longer a requirement to have regard to the model provisions, the explanatory memorandum, which is document app 017 sets out where variations have been made to the model provisions and why they are relevant and necessary for this particular scheme.

00:15:12:26 - 00:15:49:03

The draft has been prepared in a similar form with a similar content and structure to that for other recently made energy development consent orders, including recently granted solar schemes such as the Long Field Solar Farm Order 2023. The form of DCA is also similar to the other solar discos that have various stages of the examination process, including the Seneca Solar Farm Order, which is currently in for determination and the recent applications for the Malabar Solar Farm and Gate Bourton, which are currently in examination.

00:15:49:21 - 00:16:16:04

In particular, the development consent order has been structured to align with the other development consent in the Lincolnshire area, including Gate Burton and the West Burton Solar Project, in order to ensure that there is consistency, which was a benefit to stakeholders, in particular the host authorities. However, there will be certain provisions that are bespoke for this particular scheme

00:16:18:05 - 00:16:20:04

in terms of the structure of the order.

00:16:23:02 - 00:16:56:29

It includes a number of provisions to enable the construction maintenance operation and decommissioning of the project. This reflects the integrated, consenting objective of the 2008 Act regime. Toft is split into six parts. The first part relates to definitions. The second part contains the principal powers. Articles 3 to 7 provide development consent for the scheme, which is kin to the planning permission and allows it to be constructed, operated and maintained by the undertaker.

00:16:57:22 - 00:17:29:04

Article six and eight relate to the application and modification of certain legislative provisions in order to enable the scheme to be constructed without impediment. Part three relates to streets and highways powers. Part four contains a number of supplemental powers relating to the discharge of water, human remains and protective works to buildings and surveys. Part five contains the powers relating to compulsory acquisition and also temporary use powers.

00:17:29:20 - 00:17:51:09

And Part six contains a range of other powers, including how the benefit of the order can be transferred to another person other than the undertaker. The certification of plans and documents, provisions relating to arbitration and protection for statutory undertakers through the protective provisions. There are then 17 schedules to the draft.

00:17:52:24 - 00:18:34:04

Schedule one sets out the description of the authorised development that comprises the scheme and is split into 11 different work numbers. These work numbers and then relate to the work's plans, which is one of the certified documents. Schedule two contains the requirements that apply to this scheme. These are the controls similar to conditions in a planning permission and schedule 17 then sets out the

procedure for the discharge of those requirements. Schedule three is the list of local legislation that has either been modified or supplied to enable the scheme to be constructed without impediment.

00:18:34:23 - 00:19:08:12

Schedules 4 to 8 relate to the streets and highways powers. Schedule nine is a deemed marine license for the section of the grid connection under the river. Schedule ten relates to compulsory acquisition powers and lists the plots and purposes for which new rights and new restrictions are being sought. Churchill 11 is a standard schedule which modifies compulsory purchase legislation to ensure that it appropriately applies to the acquisition of new rights in addition to the acquisition of land.

00:19:09:10 - 00:19:42:23

Schedule 12 relates to the temporary possession powers and lists the plots shown on the land plans and described in the book of reference. But only temporary possession powers are being sought instead of compulsory acquisition powers. Schedule 13 relates to hydro powers to 14 relates to the documents to be certified. Schedule 15 sets out an arbitration rules and the timescales in the event of any dispute. Schedule 16 contains a range of protective provisions for the benefit of statutory undertakers and drainage authorities.

00:19:43:18 - 00:19:48:04

And as I mentioned before, schedule 17 is the process for discharging the requirements.

00:19:50:00 - 00:20:22:16

The explanatory memorandum explains the purpose and the effect of each article and the schedules to the draft as required by Regulation five, Subsection two. Subsection C of the regulations and the explanatory memorandum also explains why each article is required for this particular scheme. As previously mentioned, it also explains why there have been departures from the model provisions and where there is precedent made in other May and why they are relevant for this particular project.

00:20:23:24 - 00:20:46:00

As for the draft, the explanatory memorandum has been drafted in a similar form and structure to that submitted for other projects in the Lincolnshire area, and the applicant considers that the explanatory memorandum for this scheme is clear and easily navigable with the appropriate references to understand the drafting and the reasoning for the draft development consent order.

00:20:48:04 - 00:20:51:29

Please let me know if you'd like any further information at this stage on the overview.

00:20:52:27 - 00:21:29:22

Thank you, Mr. Broderick. That was quite comprehensive. Thank you very much. Do just have one follow up query. And it's on the point that I think you made in respect of the explanatory memorandum a moment ago and the drafting of the development consent order. More generally, I think you said that it was structured to align with other orders being examined in the area. The Burton in the past think. You mentioned in particular and I was just wondering as those both as those projects go through examination, there will be changes to that draft development consent order in each of them. And what is the applicant's approach to continuing to align those if there are amendments to carry across all of those projects?

00:21:31:24 - 00:22:26:29

The applicant yes, the applicant is monitoring the progress of other applications in examination, including the updates being made to the draft development consent order for those projects where changes are being made that have been agreed with stakeholders such as the host authorities or with statutory undertakers and agreement has also been reached for this particular scheme and is relevant for this scheme. Then the same drafting will be used in this draft development consent order as has already been put in the draft development consent or so for example, There have been some changes agreed to schedule 17, which is the procedure for the discharge of requirements in the Gate Burton examination and those same changes will be carried across into the next version of the draft development consent order for the Cotton project.

00:22:27:22 - 00:22:49:08

So overall, we're trying to ensure that there is consistency for the benefit of other parties involved in the process and we're talking about protective provisions later on in the agenda. But that's another area where the the applicants are working together to try and agree a consistent approach with all affected statutory undertakers. Thank you.

00:22:49:15 - 00:22:57:21

Thank you very much. Inevitably, there will be some repetition in all of the examinations in terms of how we examine the development consent order, but that's very useful. Thank you.

00:22:59:13 - 00:23:10:14

And we'll be going on to the detailed provisions in part five. But for the time being, does anyone present wish to comment on the applicant's overall approach to the draft development consent order or its structure?

00:23:14:05 - 00:23:17:03

No one person in the room. Anyone on Microsoft teams?

00:23:20:12 - 00:23:38:19

No, Thank you very much. Let's move straight on then. Try to number four. Ms.. Broderick, could you provide us an update with on the matters that we've asked to be included in the report on the interrelationship between this project and other projects? And think Annex C of our Rule six letter set out the information that we've asked you to include.

00:23:42:22 - 00:24:29:18

The applicant? Yes, there have been a number of meetings and discussions with the developers for the other projects that have been mentioned, and a report is being prepared. The intention is that this report will be submitted at deadline one as requested in the Rule six letter, and the report will deal with the matters that have been mentioned, including in particular, the approach to mitigation to ensure collaboration and consistency of approach and also the approach taken in each project on cumulative impact assessment, setting out where there are differences and explaining the reasoning behind any differences in approach to the cumulative impacts assessment.

00:24:31:02 - 00:24:39:13

And in terms of the regularity of the updates that you're providing to this examination, how do you envisage a what point would you envisage updates being provided?

00:24:41:20 - 00:24:53:18

Pet project, the applicant. At the moment we are envisaging providing updates at each of the deadlines with a further update given in the aurally at the hearings in December.

00:24:55:21 - 00:25:09:25

On that basis that they will be nearly closing one of the examinations at that point. So it will be there'll be an actual update point when the Gate Burton examination closes. But then in respect of the other

00:25:11:12 - 00:25:24:27

two projects in relation to West Burton until bridge, that will be ongoing updates particularly noting when the two bridge application is submitted, then there'll obviously be further information available at that point in time.

00:25:25:13 - 00:25:32:09

Thank you. And think, if I recall correctly, we've asked for a final update on the last deadline as well. Thank you very much.

00:25:34:10 - 00:25:42:16

Do we have any representatives here today from other nationally significant infrastructure projects who are in a position to provide any further updates of what this project has said?

00:25:45:09 - 00:25:49:15

Don't think so. Okay. Thank you all very much. Does anyone else wish to comment on this item?

00:25:51:24 - 00:25:52:21

Mr. Skelton.

00:25:55:03 - 00:26:33:25

Thanks. Simon Skelton, Resident. Something that I've touched on yesterday, but I'm not sure. I got very far with it. It's basically the list of projects and the interrelationship between the Cottam and the other five, which adds up to six. But there's actually ten in Lincolnshire which are now in on the national infrastructure planning website. So I don't understand why all ten aren't considered and just the six, because some of the ten are a lot closer than Mallard, for example.

00:26:35:03 - 00:26:35:18

Thank you.

00:26:38:14 - 00:26:48:12

The ten that you're referring to. Where is that? Are you saying that if understand you correctly, that the ten that you're referring to isn't included in the applicant's cumulative assessment?

00:26:51:15 - 00:26:55:20

So list of cumulative projects can find the reference of that. Useful.

00:26:56:13 - 00:27:28:29

So I'm Skilton resident. I'm just looking at Annex C and it's the integration with all the projects at least five and with the cotton project adds up to six. Um, but there's ten in Lincolnshire which are on the national infrastructure planning website, so don't understand why they're not considered like say Mallard passes, Colin said. And that's, that's on the board of Lincolnshire. So it's a lot further away. It is in my opinion.

00:27:29:01 - 00:27:33:10

It doesn't highlight the unprecedented amount of solar in Lincolnshire.

00:27:34:26 - 00:27:43:29

Would you be? Would you be able to give us the list of the ones that aren't included? Do you have that with you today, Mr. Skelton? Give us a bit of context. Yeah.

00:27:44:01 - 00:27:55:14

So I'm Skelton. Um, yeah, I've got Beacon Fen, Springwell. Foss Green. And I think the other one's called Temple Oaks.

00:28:07:19 - 00:28:08:04

Bear with me.

00:28:08:06 - 00:28:08:21

For a moment.

00:28:27:24 - 00:28:34:21

Yes. Can see Beacon Fen hasn't been submitted yet. Presumably there isn't any information available on that. Is that.

00:28:36:10 - 00:29:09:05

The applicant? Yes. The number of projects since the cotton application, a number of other projects have come forward for scoping. So the projects mentioned into just now, including Beacon Fen, Springwell and Fullscreen, were escaping. Opinion was published for the first two projects in May of this year and then for the third project in July of this year. So information at the scoping stage is now available publicly and

00:29:10:22 - 00:29:48:04

the applicants team, as part of the kind of ongoing environmental impact assessment, is reviewing the information that's available to see whether there any update is required to the cumulative impact assessment that has been prepared for this particular project. But there was obviously a wide range of different available. The information available about those projects is is very high level early stage compared to the projects that are in examination at the moment where the more detailed interrelationship report is being prepared because there is sufficient information available about those projects in order to provide that level of detail.

00:29:48:06 - 00:29:58:08

So there will be a differing level of detail provided by the applicant on cumulative impact assessment depending on where those projects are in the consenting process.

00:29:58:10 - 00:30:09:07

But presumably as those projects move forward, if more information becomes available, data then fall into the cumulative assessment. And the interrelationship report that we've asked for and updates will be provided on those as well as the others.

00:30:11:03 - 00:30:22:16

The applicant yes, the applicant envisages this to be very much a live document that will evolve over the course of this examination depending on what happens those other projects.

00:30:23:27 - 00:30:42:20

Mr. Skelton. Does that answer your question? These projects are quite new. And when the applicant put their application in, they weren't. The information on them wasn't available. As more information becomes available. I think this project has just said that those will or may fall within their cumulative assessments, and that's something that we as an examining authority will be monitoring as well.

00:30:44:22 - 00:31:12:02

So was the president. Yeah. Understand that they are further down the line or whatever than the projects listed. But, um, it's just the fact that there's so much in Lincolnshire and think that needs to be on the list, even though there's a the applications will not go in until a few or several months time. I just think it needs to be on that list because they are closer than Mallard Pass and in.

00:31:13:05 - 00:31:37:09

Thank you. Thank you Mr. Skelton. Think this project was was clear that they'll be monitoring it. And as more information becomes available, it will be added to the interrelationship report, which as understand will be considered as a live document both by the applicant team and by ourselves. And we will be looking to get the most up to date information on cumulative impacts as we can. At the end of the examination.

00:31:39:08 - 00:31:46:19

Does anyone else wish to comment on this point on this item? Mr. McBride, did your hand go up there? No. No, it didn't sway.

00:31:48:20 - 00:31:49:17

Nope. Okay.

00:32:00:04 - 00:32:35:21

And in that case, let's move on to item number five. And we've set out in the agenda a number of detailed questions on the drafting of the draft development consent order. Before we go on to deal with these issues, I just want to make clear that this is not a full or comprehensive list of questions that we have on the draft development consent order. These are just the ones that we've chosen to focus on at this hearing today. You will see in our first set of written questions a number of other questions and potentially a considerable number of other questions that we have, which we will be asking of both the applicant and other parties to aid our understanding of the operation of the DCO.

00:32:37:24 - 00:32:39:28

So with that clearly in mind.

00:32:41:24 - 00:32:45:22

If we can go on to the first article, which is Article two.

00:32:53:27 - 00:33:20:25

The project, you'll see that we've got a few issues to raise on this on this particular article. And the first one is the way in which the term apparatus has been defined. It's defined in the order as having the same meaning as the 1991 act. And then alphabetic gives a list of number of other things that are included in it. And I suppose what we're wondering really is if you could explain why. Firstly, why the additional items are necessary and why you've chosen to define it in the way that you have.

00:33:23:17 - 00:34:00:24

And collaborate with the applicant. The definition of apparatus has been expanded to ensure that it's sufficiently broad to encompass all of the types of apparatus that the Undertaker will need to construct this scheme. It also has a second purpose, which is to provide protection for statutory undertakers. And it's the applicant's position that the definition in the 1991 act isn't necessarily wide enough to include all of the various different types of apparatus that the scheme may encounter that belongs to other statutory undertakers.

00:34:01:05 - 00:34:42:25

So, for example, the definition of apparatus is used in Article 32, which provides a protection for statutory undertakers. The applicant notes that the definition does have precedent in a number of energy use, including the Longfield Solar Farm Order, the Southbank Energy Centre order, the Riverside Energy Park Order Immingham Open Cycle Gas Turbine Order and the Drax Power Generating Stations Order would therefore suggest it's fairly well used term for energy, and as said, its primary purpose is to ensure that everything that's required for the scheme is captured.

00:34:42:26 - 00:34:49:03

But then also all apparatus that belongs to statutory undertakers is also captured and protected.

00:34:49:21 - 00:35:21:06

Thank you. Yes, think our point really and understand why you've included the additional parts. It was the mechanism really. It seems that in order to understand what that definition means, you have to firstly go to the 1991 act and then you have to work out what the definition is under the act and you have to come back to the DCO and you have to add all of these things on and then you have to go through the to find the specific context in which the term is used within this development consent order. In order to get to that definition, I wonder whether there's an easier way of perhaps defining it.

00:35:21:08 - 00:35:30:24

And I'm mindful that it has appeared in a number of other development consent orders. It's just that it does seem somewhat cumbersome to work your way through that each time you need to understand the definition.

00:35:34:12 - 00:35:50:13

That was it. The applicant? Yes. Your concerns are noted. We can definitely give some thought as to whether it would be appropriate to list the wording in. In part three of the definition that's included in the 1991 act.

00:35:52:04 - 00:36:08:03

My concern is guess that we don't want to elongate this the definitions at any longer where the statutory drafting preferences that if there is a definition in another piece of legislation, then that should be utilized to the extent that it's suitable to do so.

00:36:08:06 - 00:36:15:20

Yes. If you perhaps take it away and have a look and see how much of a change would be required, and then perhaps you could respond to us a deadline one. Thank you.

00:36:17:06 - 00:36:20:18

And the next one we have is authorized development and.

00:36:22:09 - 00:36:31:14

I think the point really here is about whether this definition goes beyond the scheduled one. For what's included in schedule one and if so, why?

00:36:35:26 - 00:36:58:20

The applicant and the applicant has sought to list all of the works required for the scheme and in schedule one. But it is not an exhaustive list. It doesn't list in detail or individually every single operation that could be considered to be a building or an engineering operation and.

00:37:01:16 - 00:37:42:24

Into the Town and Country Planning Act and therefore it is the additional wording is used to ensure that consent for. And all of the works that would constitute development for the purposes of the 1990 Act are both consented within the draft development consent order, but also that they are controlled by the various controls in the draft development consent order, for example, or the requirements apply to all works required for the scheme that would consent to constitute development under the Town and Country Planning Act, but may not have been individually listed on the schedule.

00:37:42:26 - 00:38:01:03

One seeks to group the types of works that are required for the scheme into works numbers. It also provides a list of other associated development that may be required, but it doesn't list in detail every single engineering operation that's required. Yes,

00:38:03:01 - 00:38:28:21

however, it does, uh, it does have as say precedent in other, um, in other and the, the wide range of different energy that I mentioned for the definition of apparatus. Also use this particular definition for the definition of authorized development. So we would consider it to be fairly, um, standard drafting in energy. In any case.

00:38:29:14 - 00:38:31:05

None of the solar discos have it though.

00:38:31:07 - 00:38:34:03

Do they believe it's in the long field?

00:38:34:24 - 00:38:57:02

I don't think it is. Think it was meant in long field and it long field. And as I understand a little pro or quite similar it's the wood and it was replaced there. Long field as recalled says um authorized development means the development described in schedule one, which is development rather than and development. And that particular paragraph was deleted if recall correctly.

00:38:59:04 - 00:39:01:00

I don't think it's in Cleeve Hill.

00:39:02:24 - 00:39:05:20

So as far as I can see, it's not in any of the others.

00:39:09:09 - 00:39:17:09

The applicant will double check the point, believe it was in a number of previous years, but we'll confirm that point in writing.

00:39:17:24 - 00:39:25:22

In fact. And just make the point that Cliff Hill is even more precise and think that just refers to schedule one and there is nothing after it.

00:39:28:13 - 00:39:31:08

And. Date of decommissioning.

00:39:33:24 - 00:39:46:09

Or we can. See this is either an error or you're anticipating changes to requirement 21. To include notification provisions because as I've read it, there aren't any notification provisions in requirement 21.

00:39:52:08 - 00:40:18:12

The applicant? Yes, the intention of the definition was to provide certainty for the relevant planning authority as to when the time frame for submitting the decommissioning plan for approval commenced. There was a drafting admission that that definition doesn't appear to have been used in requirement 21, and that will be updated and corrected in the next version of the draft that's submitted.

00:40:19:05 - 00:40:24:28

And in terms of that correction, is the idea that you would include notification provisions in requirement 21.

00:40:25:27 - 00:40:31:24

The reference laboratory for the applicant? Yes. The intention is that a notification requirement will be added.

00:40:33:03 - 00:40:41:25

Ms.. I do have one other issue on here, and it wasn't on the agenda that we published, and it's the definition of maintain. I just wanted to ask 1 or 2 questions around that

00:40:43:14 - 00:40:54:11

and wondered whether firstly, under this definition and it seems quite, quite a broad definition, it's possible for all of the panels to be replaced, even if that was at different times throughout the lifetime of the project.

00:41:07:07 - 00:41:12:25

And clear project of the applicant. The definition of maintained would allow individual panels to be replaced. Yes.

00:41:13:00 - 00:41:35:09

And so individually they could all be replaced at different points during the lifetime of the project. So, for example, just so I'm clear, in 20 years from the point of construction or data final commissioning, we could have a scheme that has panels that are very or completely different to the ones that were installed originally. At least in theory.

00:41:38:07 - 00:41:47:15

A clever project and the panels. If a panel is replaced, it could be different, but it would still need to comply with the.

00:41:49:27 - 00:41:54:28

Parameters that are set out in the concept design and parameters and principles. So the.

00:41:56:15 - 00:42:21:14

There are certain parameters that have been assessed for the purposes of the environmental statement and those are secured. So whilst the technology may have evolved, if, if a, um, if a failed panel is replaced, it maybe could be potentially be replaced with a panel of a higher specification or an evolved technology, but it would still have to comply with the maximum height. Yes. Parameters, for example, that are secured in the draft.

00:42:22:14 - 00:42:33:02

But it could generate additional electricity to over above what and think that's the applicant's intention in not putting a capacity limit on it and potentially that it could also have a longer lifespan.

00:42:35:06 - 00:42:36:12

The applicant? Yes, that's correct.

00:42:36:14 - 00:42:47:10

Yes. Thank you. And presumably the same would apply to other replacement or individual parts of the the development or proposed development as well. So the battery storage, for example.

00:42:49:12 - 00:43:29:18

Very clever. The accent. Yes. As as we would say, is appropriate for a nationally significant infrastructure project. Any maintenance works would comply and take into account the best technology available at that point in time. Subject as said to the controls that are specified in the requirements which seek to ensure that the parameters that were assessed for the environmental statement are mundane during the the operation. So the discharge of the requirement provisions that we will be coming on to later require the discharging authority to have regard to the effects that were assessed in the environmental statement.

00:43:30:01 - 00:43:46:11

Yes, Yes, I understand that. Thank you. I think that's all I've got from the on Article two. Do you have anything on article to do? Any of the interested parties present wish to comment or make any observations? Excuse me, on the matters that we've discussed under this article.

00:43:51:07 - 00:43:53:15

Don't present to anyone on Microsoft teams.

00:43:55:27 - 00:44:00:27

Okay. Thank you. And let's move on then to part three Streets and Article 11.

00:44:02:03 - 00:44:02:18

This project.

00:44:02:27 - 00:44:26:17

I suppose the main point here is whether it's better to separate these two things streets and public rights of way out. Having them together does get a bit confusing because certain terminology is used in the world of public rights of way that doesn't always apply in the same way to streets. And I just wonder if you could give that some further consideration and perhaps identify a prior precedent in combining them this way in a development consent order.

00:44:30:19 - 00:45:09:25

The applicants. And yes, the intention of combining it was to avoid duplication. A number of the provisions in the draft. Two so to keep the the drafting shorter and also because we feel it's clear what which provisions apply to streets and which provisions only apply to public rights of way or which provisions apply to both. And there is precedent for this approach In the South Humber Bank Energy Centre Order 2021, Article 13, and the Drax Power Generating Station sort of 2019, which is Article 12.

00:45:13:01 - 00:45:23:11

It does broadly align with the model provisions. And as you say, although it applies to public rights of way. In addition to just addition to streets.

00:45:24:10 - 00:45:30:11

I made a mistake and thought that the model provisions, not that they're in force, obviously, but thought the model provisions actually separated them out.

00:45:33:29 - 00:45:37:01

It deals with streets in one point and public way separately.

00:45:39:08 - 00:46:07:07

Elaborate with the think it's slightly different. Powers that are sought in the in the model provisions. But but as the same provisions apply broadly to public rights of way and streets for this particular project, it was felt sensible to to deal with them together. There aren't too many public rights of way within the order limits here, but we can give it further consideration if it's felt that the powers are unclear combined.

00:46:07:23 - 00:46:31:24

And we'll take that away with us and have another look at how it operates as well. And it might be easier if we take the next two points together. Essentially, if understand what Article 11 one does, if understand it correctly, it provides the undertaker with the ability to authorize the use of motor vehicles on public rights of way where there's otherwise no public right to do so and it can do it for any reasonable time.

00:46:33:27 - 00:46:45:03

I wonder if you could explain why this power is necessary in the context of this particular project and why it's unlimited, both in terms of the public rights of way it's exercisable over and in terms of duration.

00:46:47:20 - 00:47:30:14

Clever check the applicant and the power has been included to ensure that both construction and maintenance vehicles are able to reach the sites in the most appropriate and least impactful way. It's considered that it is proportionate approach because the power to put a vehicle over a public right of way is considered to be a lesser power compared to, for example, taking temporary possession of the entirety of the of the right of way, for example, or seeking to acquire a permanent right against the land owner.

00:47:31:10 - 00:48:03:16

Article 11 for does place restrictions on the use of this particular power requiring consultation and. With the street authority for the purposes of those listed in Schedule six and then consent for the purposes of any other public right of way. So there are controls. There are also other controls on the use of this power via the requirements, for example, the construction traffic management plan and the operational

00:48:05:03 - 00:49:00:11

management plan, which are 353 and 135, which will also seek to manage and control vehicle movements during the construction and operational phases of the scheme, both of which will need to be approved by the relevant planning authority. And requirement 18 also requires a public rights of way management plan to be approved prior to commencement, which must be substantially in accordance with the outline public Rights management plan, which was app Dash 136, and that outline management plan contained a number of provisions, particularly in paragraph 3.5 of the types of management measures that would be put in place to ensure the safety of public rights of way users where construction vehicles were also using that public right of way at the same time.

00:49:00:13 - 00:49:21:27

So the outline plan also sets out the effect of public rights of way and gives an indication of the likely number of construction vehicles in that area, which are fairly low. And so it's felt that there are suitable controls via the requirements that will limit this general power, which is a sort of a highway power given in Article 11.

00:49:23:01 - 00:49:43:18

Thank you, Miss Product. You mentioned that one of the reasons for using this power was because it would be a letter or less interference than, for example, taking temporary possession. Think with your

example, but under a temporary temporary possession power, there would normally be reinstatement provisions, but I've not seen any reinstatement provisions here for any damage that occurred. For example, footpaths.

00:49:46:28 - 00:49:48:13

That project for the applicant.

00:49:51:06 - 00:49:51:25

Article.

00:49:54:20 - 00:50:01:02

11 five. Does deal with compensation. However, my understanding is that the the.

00:50:03:08 - 00:50:13:14

Obligations to ensure the maintenance of public rights of way will be via the public rights of way management plan in terms of ensuring the.

00:50:15:15 - 00:50:24:16

During construction, the maintenance of the service at the surface of the public right of way, for example, would be secured by the public rights of way management plan.

00:50:24:27 - 00:50:42:17

Suppose there are two separate points. The one they show the the the subparagraph five is around compensation, but that's compensation for owners. That wouldn't be that wouldn't really relate to users of the public right of way with it and not, as I understand it anyway and.

00:50:44:05 - 00:50:53:02

The of maintenance. That's about maintaining the surface during construction. Is that is that the point that it's about maintaining rather than reinstatement?

00:50:55:14 - 00:51:03:09

But let me rephrase that question. Do you mean by your use of the word maintaining that that would encompass reinstatement as well of any damage?

00:51:05:09 - 00:51:22:09

Back to the Atkins. Yes, that's my understanding, that the, um, the public rights of way a management plan would, to the extent that reinstatement was required, then that would be set out in detail in that in the final version of that plan. I'll just double check.

00:51:22:20 - 00:51:27:22

And suppose my question then my follow up question would be who would decide on whether or not reinstatement was required?

00:51:55:11 - 00:52:25:24

The applicant and. We will find the reference in the public rights of the outline, public rights of way management plan and provide it in the summary submitted at one. If we are incorrect and there isn't a reference to that in the outline plan, then the the plan will be updated. Definitely the intention of the

applicant is that any damage caused to a public right of way would be during construction, for example, would be reinstated. So it may just be that that needs to be added if it's not already in there.

00:52:26:08 - 00:52:26:23

Thank you.

00:52:28:11 - 00:52:29:08

Don't you have anything?

00:52:31:04 - 00:52:37:26

Does anyone else present have or wish to make any comment or any observations on the matters discussed under Article 11?

00:52:40:23 - 00:52:41:18

Mr. McBride.

00:52:43:28 - 00:52:44:13

Thank you, sir.

00:52:44:15 - 00:53:10:20

Neil McBride, Counsel. Um, not just in relation to Article 11, but some of the preceding articles as well. So articles eight, nine and ten. Um, the, I suppose a thrust through those, um, the way that they're currently worded, a concern of the council as highway authority.

00:53:10:22 - 00:53:11:18

Is.

00:53:11:20 - 00:53:12:10

What.

00:53:12:12 - 00:53:42:12

Mechanism is in place to ensure that um, sort of normal street works and permits and procedures that would normally be expected are still going to be captured in a way that the Highway authority, um, has some ability to, um, to check and control those sort of matters. I think in relation to Articles nine and ten that

00:53:44:05 - 00:54:26:15

there's currently drafted, there is some concern by the Highways Authority, um, in terms of um, basically allowing powers to alter streets without highway approval and necessary design that would normally be subject to a two, seven and eight agreement. And think what the highway Authority is looking for is some sort of assurance that those sort of procedures would still be captured in a way that would give, um, the highway authority control to look at that and to make sure that things are done in an acceptable way, give them very much.

00:54:26:17 - 00:54:45:24

Obviously at the moment, um, we're almost at an outline stage in terms of the details. Um, we'd be looking for some sort of assurance to make sure that there is those ability that we would normally have a Section 278 agreement to, to capture that.

00:54:46:29 - 00:54:47:29

So this pause before.

00:54:48:01 - 00:54:51:18

I go on to Article 11, or do you want to continue?

00:54:51:26 - 00:54:54:23

Yeah. Yes. I'll come back to you on Article 11.

00:54:56:12 - 00:55:31:13

Would you like to respond on that point and before you do? It was something that having or be having the first set of written questions, you might want to just address this as well. One of the points Mr. McBride makes in terms of Articles nine and ten, um, I have noted in Schedule five that the description of the alteration is generally quite broad and there's not any specific detail there. And I was wondering whether or not you intend to leave it as it is or include further detail in that schedule as we move through the examination so that it's clear to all parties the extent of the alterations that are being proposed.

00:55:31:15 - 00:55:39:09

I think as it's currently drafted, it refers to the location of the alteration but not the actual extent of it.

00:55:42:15 - 00:56:27:28

For the applicant. And the intention is that the detail of the access works that are permitted via article, the articles and also referred to location on the plans that you mentioned in the schedule would be secured by the discharge of the construction traffic management plan, which would set out the detail of the works that would be required for each of the access points. And in that construction traffic management plan and its requirement 15 and that's a pre commencement requirement and would require the uh, it to be approved before, um.

00:56:28:29 - 00:57:07:23

Commencement of the development. There is a separate point which has arisen under the examination of the Gate Burton draft in terms of who is the appropriate discharging authority for various requirements and there going to be some amendments made to the draft in line with those on the assumption that Lincolnshire and West Lindsey would like the same approach to be taken for this particular project as to who is the appropriate discharging authority for each of the each of the requirements with the highways related ones being, for example, within the remit of Lincolnshire.

00:57:10:19 - 00:57:34:04

Yes, I see what you say. You mentioned at an earlier point in the hearing how you've used the drafting or other development consent orders. But my understanding is some of those consent orders have a bit more detail in them, even though they are using the Rochdale envelope approach. In terms of the specifics on the alterations being proposed. And I just wonder, is there a reason in this examination why we can't have that detail at this point? Is it known?

00:57:53:15 - 00:58:23:21

Clare Project, the applicant. My understanding is that a degree of flexibility is required at this stage, but we can take that point away and see whether any further detail can be provided either in the drafting of the DCO or what is more likely in the outline construction traffic management plan, where we would consider that it would be more appropriate to put that level of detail, particularly if it refers to detailed drawings, for example, of the layout of the alteration.

00:58:24:06 - 00:58:41:25

Yes, I suppose. Wonder having Mr. Lee reviewed the long field why there is a difference between those two schemes. It was in the long field one, and you've already said that you've used that as a precedent for drafting. Why would it be moved into the. The requirements in this one, rather than having the detail in the schedule.

00:58:43:04 - 00:58:46:13

Collaborate with the applicant. Whilst we've obviously used the

00:58:47:28 - 00:59:22:15

structure and the drafting of some of the more general provisions, there is consistency of approach with that. But the actual detail of the specifics for this particular project will obviously vary. For example, on the Cottam project, there is a significantly longer cable grid connection than there was, for example, on the Longfield project and therefore some flexibility in terms of where is the most appropriate place to put an access point. For example, for the grid connection works may not be known until the detailed design stage.

00:59:22:17 - 01:00:07:16

So we've included a number of places where access could be taken and that's been assessed. But the actual access points that will definitely be used will be determined in the detailed design stage and those will be approved via the discharge of the construction traffic management plan. So the parameters of this particular project are different in terms of the nature of the sites being a combination of four separate sites with a much longer grid connection corridor. So there is, as a result of the scale, for example, of the project and its spaced out nature, a need for potentially greater flexibility in certain areas than there is for other projects which perhaps have one main site and a much shorter grid connection route.

01:00:09:09 - 01:00:13:26

So the answer is you don't know the detail at this stage. Really? Is that the point?

01:00:13:28 - 01:00:15:05

That's my understanding. But we will.

01:00:15:07 - 01:00:22:18

Double check with the we don't have our transport consultants with us today, so we will double check that point and confirm in writing.

01:00:22:29 - 01:00:34:18

And I suppose this goes to the Article three power, which doesn't have limits of deviation and allows you to construct it over anywhere within the area identified on the works plans. Is that right?

01:00:36:02 - 01:00:50:28

Claire Project the applicant. Yes. So there is a there isn't a separate limits of deviation, but there are distinct work number areas on the plan. So it could be constructed anywhere within that work area that's shown on the plan.

01:00:52:15 - 01:00:54:18

You can put it anywhere within the order limits. No.

01:00:55:05 - 01:01:25:10

It's within within that particular area. And then there are issues around microsite and and different things as well. Yeah. I think the point is that it makes it difficult for the Highways Authority to understand the extent of the alterations that are being proposed. And I think this goes to Mr. McBride's point when there isn't that level of detail in the development consent order. And so what protections are in place for the highway authority to ensure that they still have some level of control over it? And don't know if you'd like to respond to Mr.

01:01:25:12 - 01:01:26:18

McBride's points on those

01:01:28:16 - 01:01:29:05

applicants?

01:01:29:15 - 01:01:49:02

Yes, at the moment the intention is for the discharge of the requirement to provide that level of control. Article 14 also enables agreements to be entered into, which includes the types of topics that you would typically find in a section 27 eight agreements. So in terms of the

01:01:50:19 - 01:02:05:27

the nature of the works, the payment of the works, um, period of time for maintenance, etcetera. So there is that mechanism within the draft that would enable an agreement to be entered into if it was required, along with principles of a section 278 agreement.

01:02:08:18 - 01:02:16:04

And some project. I've got Article 14 up and have to help. Street authority would encompass a highway authority as well.

01:02:18:12 - 01:02:20:15

A with the applicant? Yes, that's correct.

01:02:21:15 - 01:02:23:24

Mr. McBride, do you have anything that you'd like to add there?

01:02:27:01 - 01:02:29:19

Yeah. Thanks to County Council.

01:02:29:21 - 01:02:32:12

So sorry we're having a bit of feedback.

01:02:36:01 - 01:02:39:15

It seems. You look like, you know, so.

01:02:42:13 - 01:02:51:12

So I'm awfully sorry. I'm really sorry, Mr. McBride. We're having a problem with the microphone and wonder if someone from the technical side could see what's happening.

01:03:19:07 - 01:03:30:12

Thank you, Mr. Ackroyd. I think they've given you the. The roving microphone for the time being. But ask if someone can have a look at that when we take the adjournment to make sure that it's all safe and working properly.

01:03:32:12 - 01:04:08:09

Named Liberal Lancashire County Council. So yeah, think that that's helpful. We'll obviously review or take into consideration those sort of the points that have been made. I think that on this matter has arisen that the other two examinations currently taking place in Lincolnshire and I think at the moment there seems to be two different approaches as to how that matter is being dealt with. I think there's a one mechanism for Mallard Pass and a different and some amended wording that's going into the draft for birds.

01:04:08:11 - 01:04:20:08

And so there seems to be, um, at the moment two different ways of dealing with this point. So I think we'll just need to give that some consideration and make our submissions at the appropriate deadline.

01:04:21:25 - 01:04:30:03

Thank you. Mr. McBride, you mentioned Mallard Pass. In terms of Mallard. Pass is that is the wording that's been agreed there, agreed with the local authority. Is that is that the point.

01:04:31:00 - 01:04:43:05

In terms of Mallard passes? Understand it. There is a separate legal agreement that's going to be outside the and I think that agreement is still being worked up. So don't think that that has been concluded.

01:04:43:07 - 01:04:44:01

Yet but that's.

01:04:44:03 - 01:04:50:03

Not happening in respect of this examination with Lincolnshire. No, it's probably. Is there a reason for that?

01:04:52:07 - 01:05:06:18

Claire If the applicant don't believe we've been, that's been requested, but perhaps it's a conversation that could take place between the applicant and Lincolnshire outside of the hearing as to whether that type of agreement is something that would be necessary on this particular project.

01:05:06:21 - 01:05:11:20

Just think back to your point on consistency in approach, and that might be something that would be useful.

01:05:15:15 - 01:05:21:22

Excuse me, sir. My colleague, Mr. Phillips, is just going to respond on that particular point, which has more information. Thank you.

01:05:22:14 - 01:05:24:07

Good morning, Gareth. It's the applicant.

01:05:24:11 - 01:05:53:11

I'm advising on the other projects as well on this point. Think there's general or broad agreement between the council and the applicants? We're trying to align the approach so that we don't have one approach that's different on one to the others, but it is very much work in process and I think the principle is agreed. It's a case of just because the applications are at different stages, as we all know, they've got to catch up with one another. But don't think there's an issue here and we'll hope to update in due course.

01:05:53:18 - 01:05:55:02

Thank you, Mr. Phillips. That's really helpful.

01:05:57:12 - 01:06:07:13

Mr. Project, one other point. You mentioned Article 14 and that as I'm reading it, the Street Authority and the Undertaker may enter into agreements, but it doesn't require them to enter into 20 agreements till it.

01:06:09:08 - 01:06:15:02

So that would that would be by agreement between the parties. And presumably the undertaker would need to agree to that.

01:06:16:14 - 01:06:45:15

Uh, the applicant? Yes, that's correct. There may be certain works that don't necessitate a formal agreement. However, obviously the the intention is that if an agreement was required as part of the approval process, then that would be entered into at that time. So yes, it enables the parties to enter into it, but it doesn't impose a requirement because it may not be necessary depending on the detailed design of the works.

01:06:46:13 - 01:06:47:11

Thank you very much.

01:06:51:05 - 01:06:56:16

Mr. McBride, do you have anything else? Are you going to come in on 11? Didn't you apologize?

01:06:57:20 - 01:07:45:29

Thank you, sir. Neil McBride, Lancashire County Council. In terms of Article 11, some of this may be, um, points that you've already identified, so there might be slight duplication, but the issues of concern really relate to temporary closures. Um, we don't feel there's sufficient data about the notice period or the time frame for such diversions and closures. Also, the word reasonable appears quite a lot and we feel that at the moment it's undefined and that might lead to potential tensions in the future if the, um, that isn't defined in a in a sort of more, we're a bit more clarity.

01:07:46:20 - 01:08:17:05

Um, also in terms of question about what is the trigger for closure and diversion is um, there is provision in the Road Traffic Regulation Regulations Act 1984 to provide more certainty. Um, and perhaps some sort of similar wording might be written into the, to give that clarity in terms of a period of say for six months or something like that.

01:08:17:07 - 01:08:56:00

So there's that, um, that clarity there. And finally, just in terms of as we perceive it at the moment, there's no requirement to reinstate the public rights of way. And um, basically whether the public rights of way are potentially suitable for some of those works that have been identified in terms of storage and things like that. Um, so we feel that a similar wording that's set out in terms of that for the article, the streets or so should apply for public rights of way.

01:08:58:03 - 01:09:32:04

Think this McBride think Mr. McBride has raised some of some similar concerns to the ones that we have as the examining authority have and think you've already said you'll go away and have another look at this article. Can also suggest that perhaps you have a discussion with the local authority outside the Huron and perhaps come to some kind of arrangement on the wording of this particular article and the approach to it. And then if you're unable to agree between yourselves, you could come back and let us know at one of the deadlines and we'll have a look at it perhaps in a bit more detail, either via written questions or at a further hearing.

01:09:34:21 - 01:09:48:12

Yes, we'll look at that. We'll also consider where where is the best place to put any further provisions, whether it should go in the drafting of the article or whether those sorts of notifications would be better placed in the management plan instead.

01:09:50:10 - 01:09:55:11

Mr. McGrady, are you happy with that approach to discuss it outside the hearing? Perhaps you can come to some kind of agreement there?

01:09:55:13 - 01:09:57:20

Yeah, it sounds perfect. That's all, sir. Thank you.

01:09:57:23 - 01:10:00:29

Okay. Thank you. We'll take that away with us and keep an eye on it as well.

01:10:03:09 - 01:10:05:01

Does anyone else have anything they wish to add?

01:10:09:08 - 01:10:10:20

Morning how Gilbert.

01:10:10:25 - 01:10:11:24

Gilbert Thank you.

01:10:11:27 - 01:10:18:21

Stoughton by Stow Parish council just to pick upon the word of reasonable but reasonable.

01:10:18:23 - 01:10:19:08

Yes.

01:10:19:10 - 01:10:19:25

Yeah.

01:10:19:27 - 01:10:22:29

I've don't know if you might want to move that microphone a little bit closer.

01:10:25:27 - 01:10:29:19

If you go too close, they get very loud. But if you go too far away, then they don't pick them up.

01:10:30:20 - 01:10:32:03

Oh, is that the Goldilocks point?

01:10:32:05 - 01:10:33:12

That's great. That's great, right?

01:10:33:27 - 01:10:43:26

Um, yeah. To to pick upon the word reasonable. Um. Ten .6. C, So a reasonable person.

01:10:52:04 - 01:10:53:06

Yes. See?

01:10:54:09 - 01:11:03:22

Just wondered. Who would be classed as a reasonable person. You know, what would be the definition of a reasonable person?

01:11:05:02 - 01:11:16:24

My understanding is there is a legal meaning to that term. Think this project will respond to that. But the courts have put down definitions of what they consider to be a reasonable person in various different contexts. This project.

01:11:19:07 - 01:11:47:20

And the app. Yeah. So the term reasonable use is used in a number of different provisions. Just coming back to the use of it in the context of Article 11, it does state at the beginning that it has to be

for the purposes of constructing or maintaining the authorized development. So it does need to be linked to the delivery of this project and therefore it's what's reasonable in the context of the delivery of this particular project.

01:11:47:27 - 01:12:02:19

The point that you're going to take up with Mr. McBride outside the hearing think Ms. Gilbert's point is the meaning of reasonable person under Article ten. I think that's that's not linked to the project is that's more widely defined term. As I understand it may be mistaken.

01:12:03:05 - 01:12:15:00

Yes. So in respect of its use in Article ten. So paragraph six, that's looking at what a court would have regard to in the event of

01:12:16:21 - 01:12:19:06

providing a defense to the.

01:12:20:23 - 01:12:42:22

And in relation to the paragraph above. So it would be for the court to determine what was reasonable in those circumstances. Not it's not a decision for the applicant, it would be for the judge in the event that there was an action taken and the applicant was seeking to put forward a defense and the court would decide what's reasonable. So it's not not a decision for the applicant.

01:12:42:24 - 01:12:48:01

If I'm correct, this project that's that's quite a well defined. There's a lot of case law around that in whichever context it may be.

01:12:48:03 - 01:12:50:01

Yes. Don't have the particular case. No.

01:12:52:01 - 01:12:56:03

But yes. Would it's a well understood yes. The applicant.

01:12:56:05 - 01:12:56:21

Deciding.

01:12:56:23 - 01:12:58:16

It would be the court deciding.

01:12:59:20 - 01:13:00:15

Does that answer your question?

01:13:02:12 - 01:13:11:22

Yeah. Thank you. Does anyone else have anything that they'd like to come in on at this point? On this particular article. Anyone online?

01:13:13:15 - 01:13:35:16

No. Okay. Thank you. Well, I'm moving on to Article 12. This project seems maybe mistaken, but it seems like a somewhat novel provision. I'm not aware of a prior precedent in any of the energy CEOs and expect the Secretary of State will want some further justification, both for its inclusion and its extent. And we're on Article 12 Private Roads.

01:13:39:24 - 01:14:06:11

The applicant. And we believe that there are precedents for this particular provision, including the very recently granted Boston Alternative Energy Facility Order 2023 and also in the Southampton to London Pipeline Development Consent Order 2020 and will provide the references to the relevant articles in the written summary. So we do believe there is precedent for it as a principle. But in terms of

01:14:08:00 - 01:14:11:27

why it's needed, it's it's to create a power.

01:14:13:26 - 01:14:25:26

For the purposes of the temporary construction area. It's limited in its nature of use. And it's a similar point in the sense that it is considered to be

01:14:27:25 - 01:15:09:07

appropriate in order to deal with the highways powers that exist. But it is also subject to the controls that I mentioned before in relation to construction traffic management plan and the construction environmental management plan. It also requires the undertaker to compensate for any person that's liable for the repair of the road so that there is that protection for the landowner is a power that's not considered necessarily in isolation, but it gives you a highway power in conjunction with some of the other powers, such as temporary, temporary use, power and those sorts of points.

01:15:10:24 - 01:15:26:24

I said that about prior precedent. Did see that there is something similar in the three, but noted in that case it was construction only. And so in the two that you've mentioned as prior precedent, those construction only, or do they extend to maintenance as well?

01:15:30:12 - 01:15:34:03

I believe that they are for maintenance as well, but we will double check that. Thank you.

01:15:38:10 - 01:15:45:10

And are you able to identify the roads affected? Provide details of any discussions that have taken place with the owners of those roads.

01:15:47:16 - 01:16:18:17

The applicant. So the applicant is proposing to update the access plans which were submitted with the application at deadline one to identify which roads would be subject to this particular power. However, where tracks the ownership of the track is is known. The applicant has has discussed the use of private roads as part of the general discussions with landowners as part of the voluntary property agreements.

01:16:18:19 - 01:16:39:11

However, there are a number of private tracts where the landowner is unknown and those have been identified in the book of reference. So be seeking this power to apply to unknown tracks as well as those where discussions have been had with landowners and hopefully voluntary agreements will be entered into such that you wouldn't necessarily need to utilize this.

01:16:40:17 - 01:16:47:21

But the landowners affected the unknown. You have had discussions and they are aware of these provisions being included in the DCO.

01:16:50:22 - 01:17:05:03

By the applicant. Where you have voluntary agreements in place and those voluntary agreements will govern the usage of that land by the applicant and take precedence over. Yes, the powers that are included in the.

01:17:05:20 - 01:17:20:23

Voluntary agreements in place. The parties that you're discussing them with at this time, there are there'll be a number of rules where there aren't voluntary agreements already in place, and they're aware that powers in respect of private roads are being sought within the as well as a separate article.

01:17:22:24 - 01:17:24:20

Like the applicant.

01:17:26:08 - 01:17:45:25

I don't know whether the precise article has been raised with them. Obviously, they've been notified of the making of the application and all have had the opportunity to review the draft. I don't know whether the particular article has been brought to that every landowner's attention, but the use of private roads as a general concept would have been discussed.

01:17:45:28 - 01:17:46:24

Okay. Thank you.

01:17:54:24 - 01:18:03:09

Desideratum content would need to limit that power to. The particular roads over which you are seeking to exercise it.

01:18:07:20 - 01:18:09:27

You may have already addressed this point and made a mistake, but.

01:18:13:00 - 01:18:17:20

I kept it with the applicant and the intention is that it would apply to

01:18:19:10 - 01:18:38:24

all private roads within the order limits which which we've mentioned would be identified on the plan. The general reason for for doing this is that it is. Typically preferable to use an existing track than to build a new track over a field for certain works where it's.

01:18:41:05 - 01:18:52:02

Required or it may be suitable to use. Um. Uh, maybe. Maybe preferable from a highways perspective to use an existing entrance point rather than to create a new one.

01:18:52:28 - 01:18:59:10

And again, see, you have powers in that to to compensate, but no powers to reinstate.

01:19:01:26 - 01:19:11:23

If you damage those private roads, for example, for someone who uses them regularly. They'd be compensated for the damage, but there's no obligation on you to reinstate them.

01:19:21:06 - 01:19:21:27

The club was with the.

01:19:21:29 - 01:19:22:21

Applicant and.

01:19:22:23 - 01:19:39:18

We will review the construct outline, construction traffic management plan and the outline construction environment management plan to mean there are general provisions in there relating to reinstatement. So we'll just double check whether those specifically refer to the use of private road.

01:19:40:00 - 01:20:01:22

But again, may be mistaken here, But the construction traffic management plan is something that's approved by the local authority under the requirements. And so if there was an issue around reinstatement, it would be for the local authority to enforce against you rather than those individuals who are affected. And these are private rights rather than public roads, and so does the traffic management plan actually do the job there?

01:20:04:06 - 01:20:35:12

The applicant. So in terms of compliance with the requirements, then, yes, that would be a matter for the relevant planning authority to enforce in in the event that the applicant had failed to comply with those requirements. And then as against the individual landowner, it's the compensation. Measure that would apply and that would be typically appropriate that you would compensate rather than than be compelled to actually carry out the works as between a landowner.

01:20:36:21 - 01:20:47:25

Yes. And suppose that goes back to the point that all the landowners are aware of that that they would then have to carry out the works themselves for any damage caused by the undertaker in maintaining or using those roads for maintenance and construction.

01:20:58:18 - 01:21:14:21

The applicant. Yes. Mean that's correct in the sense that they would be, in theory, liable for the repair. However, we we would envisage the practicalities would be that the applicant would carry out the repairs itself.

01:21:15:12 - 01:21:17:01

There's no requirement for you to do so.

01:21:17:06 - 01:21:26:05

There's no requirement in IT property context. But there would be the requirement in the planning context under the reinstatement provisions.

01:21:26:07 - 01:21:55:09

Yes. You see what I'm getting at? An individual who's who's in that track for. I think we heard yesterday about from a lady who is using it to take. Take cattle down it and then there's damage to that road. She may not wish to have the compensation and the liability of repairing it. She may wish for you to put it back the way it was before you damaged it and just want to make sure that they are those parties are aware that in these circumstances they would be responsible for that repair. Have they been made aware of those points?

01:21:57:27 - 01:22:12:05

Publish it to the applicant? Yes. Take the point. Think for the point I'm trying to make is that if there's an obligation to reinstate under the requirements, then it would be a criminal offense for the applicant to not comply with that. So the likelihood that.

01:22:12:07 - 01:22:27:01

Individual has to go to their local authority to enforce against you and they can't enforce directly against you. Whereas if you put a requirement to reinstating this, then the requirement to reinstate is in the DCO and they don't have to go, as I understand it, via the local authority.

01:22:34:20 - 01:23:06:11

Membership the applicant. We can take the point away and consider it further. It would be all of the compulsory purchase compensation provisions are by way of compensation, and that is a standard practice for for under the compulsory purchase regime, you are given a monetary sum for damage and loss, an inconvenience. It is not usual practice for the acquiring authority to be compelled to carry out works. It is a system that's designed by way of giving people monetary recompense.

01:23:06:13 - 01:23:20:11

In that context, however, that does need to be read in the context of the planning requirements that are being put in place, which as failure to comply would be a criminal offence, the applicant would be complying with.

01:23:20:20 - 01:23:37:29

And take the point in. Do you understand how the how the system works? I think the point I wanted to really get at is that those individuals that are affected are actually aware of these things and have been consulted on that basis so that if they wish to come forward and make any points around this issue, they have the opportunity to do so during the examination.

01:23:41:12 - 01:23:49:21

The applicant. Yeah, we will respond in more detail on that. We don't have the land agent who's been in discussions with each of the landowners here today.

01:23:49:28 - 01:23:58:02

That's useful. Thank you very much. Does anyone else present wish to comment on any of the points raised under Article 12 Private Roads, Ms.. Gilbert?

01:23:58:28 - 01:24:21:18

Thank you, sir. Um. It's just the applicant know whether or not the potential affected parties are aware. Have they had individual conversations? Because it's highly likely that the individuals that may be impacted have not read the documentation in its entirety.

01:24:23:18 - 01:24:33:03

He's good. Think that's the point that I'm getting to as well and think this project has responded to say that they will look at that they'll have discussion with the land agent and they'll come back to us on that point.

01:24:33:28 - 01:24:34:13

Okay.

01:24:34:24 - 01:24:38:13

Okay. Thank you. Does anyone else wish to come in on Article 12?

01:24:40:21 - 01:24:41:17

Anyone online.

01:24:46:11 - 01:25:06:19

So it's now 11:25 before going on to the next article, which might take a little bit of time to go through. I'm going to suggest that we take a short break. So if we take 15 minutes and we come back at 1140 and. If no one has anything else for the time being, then the hearing is now adjourned until 1140. Thank you.