



Trawsgrifiad Gwrandawriad

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Grandawriad:	Gwrandawriad Mater Penodol 6 (ISH6) – Rhan 5
Dyddiad:	11 Rhagfyr 2024

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Hearing Transcript

Project:	Mona Offshore Wind Farm
Hearing:	Issue Specific Hearing 6 (ISH6) – Part 5
Date:	11 December 2024

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FULL TRANSCRIPT (with timecode)

00:00:00:01 - 00:00:15:19

Seeing any raised hands. So we'll move straight into the agenda. And we were up to, um, agenda item um, six I think it was. Is that nine? Sorry. Yes. If you just bear with me one moment.

00:00:20:20 - 00:01:01:24

So today's, uh, item nine was to consider the draft DCO. Um, just to explain, the draft DCO is an important document. It's a draft piece of legislation which, if the secretary of State decides to grant development consent, forms a legal basis for the delivery of the proposed development. It sets and secures the standards which the development must be constructed, and it secures the environmental performance of the development. And that ensures that it does not exceed what is described as the Rochdale envelope assessed in the environmental statement. This hearing is being held on a without prejudice basis, so even if your position is that development consent should not be granted and therefore that the Secretary of State should not make the draft development consent order.

00:01:01:26 - 00:01:03:23

You can still make representations.

00:01:06:09 - 00:01:26:07

And that's important to us because even if we recommend that that the Secretary should not make the development consent order, we still have to provide the best possible development consent order to the Secretary of State so that if he or she wishes to grant it, they have that. Does anyone have any questions on that?

00:01:34:04 - 00:01:49:09

My plan is to go through the DCO in order. Um, in the first instance, we'll deal with it in parts, and I'll ask the applicant to explain what changes they've made to that part. Then we'll have questions, and then we'll move to anybody else who has questions on that particular part.

00:01:52:20 - 00:02:06:12

So we'll start with part one. In the first instance, could I ask the applicant to run through any changes that they've made to part one of the the DCO since we last met it. Issue specific hearing five, please.

00:02:08:09 - 00:02:41:19

Our dog. Good morning, Olivia Henninger on behalf of the applicant. I'm an associate solicitor at Burgess Salmon, and I'll be speaking through the DCO today. So we're starting with the definition of

commence, which, following discussions at issue specific hearing five has been reviewed and the definition updated in the deadline five draft DCO. The intention of that drafting change is to link the meaning of commence to all offshore activities, not just licensable marine activities, which is a defined term in the marine licence.

00:02:42:00 - 00:03:14:07

This is so that any activities taking place under both the standalone Natural Resources Wales Marine Licence and the D Marine Licence are restricted before the relevant requirements are discharged and in particular requirements three and 21. Certain activities will continue to be excluded from the definition of commence for offshore works, and those are noted in the definition as the non-intrusive pre-construction surveys. Unexploded ordnance surveys and clearance clearance of low order unexploded ordnance.

00:03:14:09 - 00:03:22:29

And finally, the activities will otherwise be controlled through the conditions of the standalone Natural Resources Wales Marine Licence and the Marine Licence.

00:03:24:16 - 00:04:05:09

Moving on to the next definition that's been updated most recently at deadline five. That's the definition of maintain again following discussions at issue specific hearing five. The applicant has reviewed the definition of maintain and updated it. We noted the examining authority's suggestion of reviewing the Sheringham Shoal and Dutch and extensions offshore wind farm order, but continue to consider that definition is unclear and overly restrictive. The applicant understands the intention of the drafting of that definition is to ensure that the undertaker could not replace the onshore substation building without seeking another separate consent.

00:04:05:16 - 00:04:43:14

However, in seeking to achieve that aim, the definition casts doubt on whether the onshore substation foundations could actually be replaced during construction in the event that a defect was identified. So our view is that the the definition that we have included, uh, sort of ensures maintenance is not construed to broadly such that it would provide for the ability for the whole of the substation to be replaced, but still allows the undertaker to carry out all necessary maintenance works to ensure safety, integrity of the construction works and the on the buildings.

00:04:44:13 - 00:05:13:01

The overarching control on all of the maintenance works still applies. That's in relation to restricting those works to only those which do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. So there are still suitable controls in place on that definition without it being overly restrictive. I was then going to move on from the definitions into article 47.

00:05:14:25 - 00:05:24:24

Which sorry, we just hold on that because I will we're going to just run through it in order I think. So we'll come to article 47 and then in the next in the next item if that's all right.

00:05:25:11 - 00:05:31:01

Those are the only, um, proposed updates I was going to make in terms of the definitions.

00:05:31:03 - 00:05:39:23

Yeah, that's absolutely fine. Um, just a few questions from from us on some of the, uh, definitions then, um.

00:05:42:13 - 00:06:07:08

Bank holiday. Now, obviously we have this definition in here because bank holidays are referred to in the, uh, construction working hours requirements. And you refer to the banking and Financial Dealings Act 1971. That actually doesn't cover Christmas Day and Good Friday. That's not included in that act. So I'm just wondering whether you need to just add that into that definition, because I'm sure that it's not your intention to work on Christmas Day or Good Friday either.

00:06:08:12 - 00:06:14:06

Olivia Henninger, on behalf of the applicant, yes, we will look at that and make sure that it is appropriate. Thank you.

00:06:17:27 - 00:06:49:13

Uh, if we could just move on to building. We discussed this last time. Um, and it was in relation to the fact that the the definition includes the words structure. And then there's an apparent conflict with requirement six, which then restricts all buildings to a maximum height of 15m. But you do have the lightning masts which will not exceed 30m. I'm just I don't think there's been any change to that since the last time we met.

00:06:51:00 - 00:07:09:00

Olivia Heidegger on behalf of the applicant. We did look at the definition and considered it would be more clear to amend the requirement. So it says now a maximum height of whatever it is, 30m for any structure excluding I remember.

00:07:09:02 - 00:07:23:25

So yeah, I think my, my concern is that your, um, definition of building includes the word structure. So are you saying that in the actual requirement itself, you say that a lightning rod isn't a structure?

00:07:28:11 - 00:07:28:26

I think.

00:07:31:25 - 00:07:32:15

That's the thing.

00:07:37:09 - 00:07:38:03

I, um,

00:07:39:19 - 00:08:07:17

we will take this away. I did we did look at it and felt that changing the requirement would be more straightforward in terms of ensuring that there was no unintended consequences in respect of the use of that term through other parts of the DCO. Yeah. Um, I think that was a deadline for update. I'm just trying to see if I can find it. Um, but yes, we'll come back on that one. Thank you.

00:08:07:19 - 00:08:08:06

No problem.

00:08:16:27 - 00:08:48:25

If we could just go back to maintain. You obviously explained to us that you thought the Sheringham Inn dungeon was too restrictive. And you've you've put wording in and one of the things that you've just said there was, um, you felt it was too restrictive because if you were needed to replace all of the foundations, for example, it would prevent you from doing that. I'm just trying to get my head around that, because surely if you were needing to replace the foundations, you are starting from scratch because you'd have to remove all of the Substation to start again.

00:08:48:27 - 00:08:54:22

If you were if you were putting foundations in. So is that not considered entire replacement of the substation?

00:08:58:25 - 00:09:39:26

Olivia Haining on behalf of the applicant. I think our view of the definition in the Sheringham Shoal DCO was that it it potentially could prevent you from replacing even one of the foundations. And I guess perhaps this is where I don't understand the intention in terms of construction and how you would actually replace a foundation, but it's, it's to make sure that through the process of construction, if there was a defect that was identified, you would be able to replace that part of what would then be the onshore substation building without having to seek a separate consent whilst you're in construction.

00:09:39:28 - 00:10:09:12

I think the intention of the the our understanding is the intention of the definition is to stop a replacement of the whole of the substation, but it does seem to sort of creep out to any necessary parts that that might need to be reconstructed if there was a defect. We will have another look at it and see if there's anything else that we can do to tighten things up. Um, if there are concerns, if there are still concerns about the definition of maintain that we have included.

00:10:10:07 - 00:10:41:10

That that would be great if you could just I think, as you understand, it has been, um, a matter of discussion on quite a few examinations. And then the Secretary of State has also amended quite a few DCS in relation to this definition. So we need to get it right. And I think the reason being is that, um, we don't want to have all of the construction impacts that you would have through the normal construction. Again, if, if, if it were to allow someone to completely replace what's on site. Basically, I think that's the reason why these have been tightened up on, on others.

00:10:41:12 - 00:10:49:03

So if you can have a look at that then that would be great. And then obviously we will we will take a look at it and consider that in our recommendation as well.

00:10:53:16 - 00:10:58:28

Okay, Olivia. And on behalf of the applicant. Yes. Thank you. That's noted. We'll have another look. Thank you.

00:11:03:04 - 00:11:24:28

Um, another one that we raised with you, um, at issue five, was the possibility of adding a definition, uh, in first stage, um, such as a definition I think we gave you the Yorkshire Green made DCO as an example of of that. And I don't think you've decided to include it. Could you just explain why that is.

00:11:25:20 - 00:11:59:06

Olivia shining on behalf of the applicant? The definition, if I recall correctly, of stage in the Yorkshire Green DCO effectively just refers to the requirement which requires the Undertaker to submit a staging plan. So stage means whatever stage The Undertaker considers is appropriate and then is approved. We didn't think that there needed to be a definition that effectively replicates what the process of requirement for achieves.

00:12:00:07 - 00:12:00:22

Okay.

00:12:07:19 - 00:12:12:19

I think that was all that, um, I had for, um, part one. Do any of my.

00:12:14:27 - 00:12:17:27

Colleagues have anything on definitions? No.

00:12:20:21 - 00:12:30:18

Okay. In which case we will move to part two, which is principal powers. Could the applicant just run through what changes you've made to that since we last met?

00:12:37:13 - 00:12:48:23

Olivia. And go on behalf of the applicant. I wasn't intending to make any comments in respect of part two? If there were specific questions that would be helpful to discuss, happy to do so.

00:12:49:03 - 00:12:49:21

No problem.

00:12:55:23 - 00:13:00:07

Yeah. For me, I would like to turn to article eight

00:13:02:02 - 00:13:32:21

in the first instance. Um, and we spoke about this last time, our article, I think it's eight A and Etsi both require um, section 150 consent of the Planning Act. Um, and the regulator would be the council. Now, I know the councils have raised some concerns over the wording in this, this article. And I think that you've said discussions are ongoing in the statement of Common Ground. Are we any further forward with this, or are we likely to get consent of the councils to the this application of the Land Drainage Act?

00:13:42:00 - 00:13:44:00

Miss Sally, did you have? Yes.

00:13:44:14 - 00:13:46:07

Yes, yes. I was just checking it was okay.

00:13:46:09 - 00:14:24:27

For me to come in there. Uh, Thomson. Sally, uh, speaking on behalf of the councils, um, we did last discussed this at the last statement of common ground meeting that we had, where the applicant did helpfully point out, um, a few other controls that are in the application, um, uh, relating to, to, uh, the sort of information that might need to be secured in order to, to apply it. So, um, we are looking at that a bit further and hoping to have a clear position by the next deadline to put into the SOG, um, as to whether we can can agree it or not.

00:14:24:29 - 00:14:32:09

Um, we're hoping we can have a positive response on that, but we are sort of liaising with our other, uh, colleagues in the council.

00:14:32:20 - 00:14:33:05

Okay.

00:14:33:12 - 00:14:36:15

Thank you. Does the applicant have anything they wish to add.

00:14:37:05 - 00:14:58:09

Live behind on behalf of the applicant. Thank you. That's a very helpful update. And that reflects our understanding of the position as well. The applicant is aware that those provisions will need to be removed in the event the local authorities are not in a position to confirm that they agree. Um, so we will keep that under review and any updates that need to be made will be made for deadline seven.

00:14:58:14 - 00:14:59:24

Okay. Thank you very much.

00:15:02:13 - 00:15:15:05

Now I have a note here that Mr. Parry, you did raise um, some matters, um, on article eight de. Mr. Parry, is there anything you would like to say at this juncture?

00:15:18:22 - 00:15:28:14

Uh, yes. Good morning. Griff. Parry. Um. Parry. Wade. I well, it's part of a package of a wider things. I think that will be relevant later on. If that's okay.

00:15:28:23 - 00:15:36:16

That's absolutely fine. Are you referring to the, um, when we get to discuss the the articles relating to land rights? And so.

00:15:36:18 - 00:15:38:01

It? Yes. Okay.

00:15:38:03 - 00:15:41:10

Yeah. We'll talk about that then and come back to it. Thank you.

00:15:44:05 - 00:15:49:09

Um, just briefly on article nine, which is defense to proceedings. Could I just.

00:15:49:11 - 00:15:50:01

Ask.

00:15:50:14 - 00:16:14:05

The applicant to check the paragraphs of the Environmental Protection Act that you refer to? I'm not sure they're all entirely relevant to to this particular development. So I don't want to run through them and say what they refer to. But just if I could ask the applicant to just have a check up, which paragraphs you referred to and whether they are actually relevant to this development.

00:16:14:29 - 00:16:18:04

Livia. On behalf of the applicant, yes, we will check those.

00:16:21:05 - 00:16:30:14

Okay. In which case we will turn to part three, which is streets. Is there anything the applicant wishes to update us on on on this.

00:16:34:08 - 00:16:36:29

No updates on this one. Okay.

00:16:39:09 - 00:17:04:28

Um, if we could just turn to articles, um, 12 and 13, please. Then, um, we spoke a little bit about this, and perhaps Miss Seely, you can, um, join us at this point as well. And it was in relation to, uh, the fact that article 12 enables the stopping up of any street, not just those streets within the order limits. And I know last time said that was going to go away and have a think about that. Is there any update you can give us on that?

00:17:07:09 - 00:17:48:12

Thomson. Celia, on behalf of the councils, um, yes. We have reviewed the latest, uh, DCO and explanatory memorandum, which provides a bit further clarification on this. Um, I think given that clarification, we are content that there are sufficient control, uh, in using that article in terms of the council's um, consultation, which I believe is, uh, in instance, that it's within the order limits and approval of hits outside of the order limits. Um, so we have no concerns in principle. Um, I think we would just highlight to the applicant that, uh, it would be beneficial in terms of resource in the council if, if any such applications, um, are consolidated where possible rather than brought forward individually.

00:17:48:25 - 00:17:53:23

Um, but that's something that we can sort of discuss at that stage. Really.

00:17:53:25 - 00:17:54:11

Okay.

00:17:54:13 - 00:17:57:09

Thank you. Thank you. The applicant have anything they wish to add?

00:17:58:13 - 00:17:59:24

Uh, no. Nothing to add. Thank you.

00:18:02:04 - 00:18:14:05

Okay. That is all I had for that part. If we can turn to, uh, part four supplemental powers. Is there anything the applicant wishes to run through on part four for us?

00:18:16:28 - 00:18:20:08

Leave your hand and go on behalf of the applicant. No, nothing on this. Thank you.

00:18:26:18 - 00:18:38:10

Um, I will just turn to article 16. In that case, uh, again, Mr. Perry, you raised? Um, some changes you would like to see made to this article? Is there anything you wish to add?

00:18:42:16 - 00:18:45:02

Uh, Griff. Perry. Perry. Wade. Um,

00:18:47:00 - 00:19:24:20

the the point there was that there was lots and lots of protection protections for water and sewerage, undertakers, um, and drainage authorities. Um, in the in the event of a dispute. But there was nothing for landowners. It was it was sort of, um, take it or leave it. If it was, leave it then there was a, there was mainly CPO power. So I was attempting to try and find a way to put some sort of, um, you know, mediation or, or, uh, means of having some control over that rather than to leave the landowners just to be hostage to fortune with, uh, with whatever the promoter wanted to do.

00:19:25:17 - 00:19:31:19

Okay. Thank you. I'll ask the applicant if they can explain what protections are there for, uh, Landowners.

00:19:33:12 - 00:20:04:03

Olivia Heinen on behalf of the applicant. The intention of article 16 is that it covers public drains and sewers in respect of private drains. Um, appropriate controls would be um applied through any voluntary agreements where the need to connect into private drains or sewers will be agreed, and or they will be compulsorily acquired through the relevant powers under the DCO. So this this article is not intended to cover private drains.

00:20:06:20 - 00:20:15:07

Uh, lays down on behalf of the applicant, I'll just add, um, one thing to that. Um, article 16 three, um.

00:20:15:21 - 00:20:50:25

Requires that the consent, the discharge to any watercourse, public sewer or drain has to be with the consent of the person to whom it belongs. Such consent may be given to such terms and conditions as the person may reasonably impose pose., so it isn't a blanket ability to discharge into watercourses, public sewers or drains, whether they be owned by statutory undertakers or individual parties. That consent provision, uh in article 16 three uh ensures that that consent must be must be secured before those works are done.

00:20:53:19 - 00:20:55:15

Mr. Perry, does that help explain?

00:20:57:26 - 00:21:28:14

Um, to an extent, but I still. Sorry. Griff. Peri. Peri. Wade. I still think that there seems to be, um, lots and lots of checks and balances for statutory undertakers and drainage undertakers and, uh, sewage and water undertakers. But but as far as the landowner is concerned, it's it's. Take it or leave it still, um, you can try and agree if you can't agree, they, they sort of take these leads within the limits of deviation or the effects of that. So, so, so there's these uh, and they reserve the rights to, To.

00:21:28:16 - 00:21:45:12

Um. Take, take take temporary take permanent rights over them. And so there's not really much scope for negotiation with landowners on these sorts of things. Um, I think I can I'll, I'll, uh, I'll have to think about that a bit more for me.

00:21:45:23 - 00:21:50:00

Okay. Thank you. Any final points the applicant wishes to make before we move on?

00:21:51:20 - 00:22:02:00

Uh, les Dunn, on behalf of the applicant, I it is very clearly a consent provision there. And without the consent of the owner. Um, those works can't take place. I don't think we need to say any more.

00:22:02:09 - 00:22:02:24

Thank you.

00:22:05:22 - 00:22:58:19

Okay, if we could then move on to, um, article 17, which is the authority to survey and investigate the land. I don't think we have Miss Staples with us here this morning, but something that, um, she raised, uh, last time was with regards to the notice period that was included, uh, within this. I know we spoke about it, and I understand the applicant's position that the 14 days has been a standard period of time that's been applied in. I think the majority of DCS so far, but I do think that it's a valid point and probably something that we should listen to if we are getting feedback from, um, the National Farmers Union, that they have now seen this article in practice, and it's not working for many of their, um, agricultural businesses.

00:22:58:26 - 00:23:31:29

Now, I know Miss Staples suggested three months, which is quite far off from the 14 days. Um, I'm just wondering if there's a compromise to be made here. Having listened to feedback and how this works in practice for farming practice, for farming businesses, and whether there is something that would work in between those, those time scales or whether there's an alternative way, potentially, of giving, um, notice in draft of a rough and a rough idea of timescales, and then closer to the time and more exact date of when you're going to go onto land.

00:23:33:27 - 00:24:12:29

Live, Your Highness, on behalf of the applicant, in terms of providing a draft notice, I think given that it's a statutory notification, it would need to be sort of the one notice. But we do take the point in terms of timings. We will have another look at whether there is a compromise position that can be reached. But we do saying that still believe that 14 days is appropriate. Um, there might be circumstances in which the need to survey does not involve, uh, particularly invasive surveys and to be restricted to a 28 day or longer period, for example, would be potentially problematic.

00:24:13:01 - 00:24:18:20

We will, as I said, take it away and consider whether there is a compromise position that could be reached.

00:24:18:22 - 00:24:19:25

Thank you. That would make.

00:24:19:27 - 00:24:51:26

Sense. And actually what you've just said, I know you have added further wording to this particular article, haven't you? So that you when you're giving that notice, you actually let the landowner know what you are planning on, on doing on the land. So perhaps, um, just listening to what you just said. I'm trying to think think off the top of my head now, but maybe there is something where, depending on the type of of survey, the timescales given, you know, if they're not, if they're not intrusive, like you say, then 14 days might be acceptable because it's not actually going to impact the business so much. But something that is more intrusive might need a longer time scale.

00:25:02:28 - 00:25:42:24

Olivia hiring on behalf of the applicant. That does seem like a sensible idea and suggestion, and I think it would offer a suitable midpoint. Um. I've also been helpfully reminded that this is, of course, a minimum period, and landowners will already be in discussions with the project in respect of survey programs and other details in terms of entering onto the land. So we hope that at the point the notice is officially given, landowners will or have already been provided with all of the relevant information in a sort of draft form, as it were, but not officially through the the the the article.

00:25:42:26 - 00:25:45:22

Um, but thank you. Yes. We'll we'll have another look at that.

00:25:45:24 - 00:25:46:12

Thank you.

00:25:53:07 - 00:26:23:10

Uh, if we could just tend to, um, article 19 and that's removal of human remains. I'm not going to go over what we went over at last time. Um, we understand the applicant's position on wanting to to the reasons for wanting to keep this in. And I know we we spoke about the possible removal of this article. Just one of the things that I've had a look at since then is the wording that's in the, um, outline written scheme of investigation, and whether that actually contradicts the wording that's in this article.

00:26:23:19 - 00:26:42:10

Um, I think, for example, um, requirement 19 states that human remains must be removed completely, whereas the uh written state written scheme of investigation says that, uh, only if if it's necessary should they be removed. And I think also, um,

00:26:44:10 - 00:27:18:08

the written scheme of investigation says what happens next and that's that a licence must be obtained for example. Yet requirement 19 sets out a slightly different procedure. And also, um, the written scheme of investigation states that the development consent order sets out the process for remains. And third, less than 100 years ago, whereas that's not necessarily clear on the face of the order that that's what requirement 19 is referring to. I just wondered, I don't expect you to be able to do that now. Um, I just wondered if you could have a look at the two and just make sure that they don't actually contradict each other.

00:27:19:15 - 00:27:24:17

If you're hired to go on behalf of the applicant. Thank you for pointing those out. We will certainly take that one away and have a look at it.

00:27:24:19 - 00:27:25:07

Thank you.

00:27:32:07 - 00:27:46:25

Okay. In which case then we will move on to, um, part five, which is the powers of acquisition. Are there any updates? The applicant wishes? Um, to brief us on.

00:27:52:22 - 00:28:22:27

If you're hiring or on behalf of the applicant at deadline five, we updated article 26. And this was in order to ensure that the article would apply in the case of serving both a general vesting declaration or

using the notice to treat notice of entry processes. It's a it's a correction to make sure that the intent of the article is is properly noted within the text.

00:28:22:29 - 00:28:29:05

And we think that this covers off those both of those avenues. Um, yes. Thank you.

00:28:29:12 - 00:28:45:03

Yep. That's the only the only change, isn't it, I think. Um, I'd like to bring in Mr. Parry at this point, just because Mr. Parry has raised quite a few, uh, points in relation to the articles contained within part five.

00:28:49:09 - 00:28:56:25

Uh, yeah. Griff. Parry. Um, Parry. Wade, um, will you be going through them article by article or, um, do you just want to know on it?

00:28:57:09 - 00:29:14:24

I think it would make sense to go through them article by article. So I think the ones that I have written down that you have have, have raised comments on. Uh, we have article 20, 21, 22, 26 and 29 and 30. Is that correct?

00:29:15:27 - 00:29:18:04

Yes yes yes yes. Do you want to.

00:29:18:06 - 00:29:20:07

Start with article 20 then in that case.

00:29:21:01 - 00:29:24:29

Um, yes. It was a suggestion that, um.

00:29:30:12 - 00:29:30:27

Um.

00:29:34:16 - 00:29:44:25

Um, so the for the, um, the original Land Clauses Consolidation Act, dating in 1845 and in the neighborhood Neighborhood Planning Act 2017, albeit um.

00:29:46:27 - 00:30:20:29

Um, not yet enacted in the form of an appeal. There was a provision for a counter notice to be served in the event of temporary land being taken, but there was nothing for permanent land. I wondered whether it'd be possible to have some. Obviously, the promoter and I have had some considerable disputes about the meaning of required and the amount of land required, and the meaning of of the word required and the meaning of necessary. Um and Um, which I believe is leading to considerable inefficiencies with how the land is being used.

00:30:21:22 - 00:30:27:15

Um. Um. I wonder whether it's possible to have something in there in the form of a counter notice where.

00:30:29:16 - 00:30:59:20

If, uh, the landowner didn't agree with the, um, amount of land being taken, then then it could be, um, referred to a third party for determination of whether whether that was a reasonable amount of land to take in light of, in light of what's required. Because at the moment the promoter's saying that the design isn't done and they need, they need, um, carte blanche, um, powers over a considerable area of land which, which will be necessary by the time they get to serve these notices in any event.

00:30:59:22 - 00:31:03:03

So it was just a way of trying to, um.

00:31:05:08 - 00:31:09:15

Put that on the table as something that could potentially be considered, please.

00:31:10:01 - 00:31:20:22

Yeah. Could you just explain in a little bit more detail just so that I fully understand your your point. What what is it about the the word required that you are seeking changes on?

00:31:21:28 - 00:31:31:27

Not necessarily the word required. The word required has been tested, um, quite seriously in, uh, in the courts and, and um.

00:31:34:09 - 00:32:21:09

It's, it's it's really, you know, these inefficiencies I think when I in my deadline two submission, when I pointed out how the it based on 100 meter working area, the the promoter was looking to have sort of 60cm tall soil bins. And they were also looking to run a sort of two lane major highway through the middle of the two to to bunches of cables, um, and having very wide um spacings between the cables, um, which, which they're saying for the time being, they have to have the flexibility to be able to do that because they don't know what the detailed design will be, but by the time they get to serving either a temporary notice or a permanent notice to treat, um, they will have that information.

00:32:21:11 - 00:32:33:26

And if they then creep to a wider area, then could there be a um, a means of, um, sending that to a third party to be considered?

00:32:35:20 - 00:32:38:18

Okay. I'm going to ask the applicant to respond, please.

00:32:39:27 - 00:32:42:15

At least done on behalf of the applicant. Um,

00:32:44:11 - 00:33:21:13

I think that the the wording of article 20, um, is clear and it has very clear precedent, um, in orders. Um, as I understand it, um, there were obviously a number of points Mr. Perry made, but if we focus on the points around the drafting of this article, uh, as I've said, it's it's, well, precedented, um, the wording as is required obviously follows the legislation in terms of of what is there. And I think at issue specific issue specific hearing for we went into a lot of detail around the justification for the land and the land take.

00:33:21:15 - 00:33:54:12

I'm not intending that we go through that again, and that is all set out in the applicant's application, um, and in the, uh, hearing notes following that. Um, in terms of, of a third party or an affected party's

ability to, um, challenge, um, the, uh, the seeking of um, land that is required in that, in that. So I think it's also worth just pointing out here that this article relates to the compulsory acquisition of land.

00:33:54:22 - 00:34:27:18

Um, it also then ties to article 22, which is compulsory acquisition of rights. So here we're talking about the permanent rights that are being sought or the land that is being acquired. And in both cases when the Undertaker seeks to exercise the compulsory acquisition powers to either secure that permanent acquisition of land, or those rights, or those permanent rights they will need, through the general vesting declaration process, to be able to demonstrate that that land is required.

00:34:27:20 - 00:35:12:18

If, at that point, a third party considers that there's more land being taken than is required for the project, clearly that is when you would challenge the exercise of that notice on the basis that it isn't justified and within the powers that are being sought. So so that is the point at which the, the, the necessity of the permanent land take is being uh, is being uh, would be, would be engaged. So on that basis, there are suitable controls through the development consent order and through the compulsory acquisition process for the exercise of powers that ensure that it is the land that is required for the project to carry it out or facilitate it or incidental to it that are taken at that point.

00:35:12:20 - 00:35:16:22

And we don't think any further changes are needed to those articles.

00:35:18:27 - 00:35:29:04

I think we've heard both both of your points, points of view on that. Mr. Parry, are you okay? If we move on to article 21, is there anything further you want to add on article 20?

00:35:29:06 - 00:35:33:22

No, I'll take that away. And uh, because that further. Thank you, thank you.

00:35:33:26 - 00:35:46:06

Okay. Um, article 21 I think your your points on this without you wish to have the period of seven years reduced to three years, is that correct?

00:35:47:25 - 00:36:17:03

Um, well, certainly reduced from seven years. Um, I, I, I think three years would be sufficient. Um, but but, um, the, the certainly the, the model provisions and the standard, the standard term is five years. Um, The promoter is relying on precedents to uh, further schemes to, to to justify seven years. But

00:36:18:28 - 00:36:24:11

I can't I you know, I have got something on, on on precedents. But, um,

00:36:26:00 - 00:36:42:14

I don't think that's a, I don't think that's reasonable. And also it conflicts with section 67 of the compulsory purchase in Wales, the Cultural Down Rules 2020, where there's an urgency for landowners to be, um, not to be sort of left in limbo.

00:36:43:27 - 00:37:15:19

Okay. Thank you. Um, before I come to the applicant, I think my understanding as to why the seven years is that is that the applicant is also seeking seven years in which to commence the development. So this timescale ties in with that timescale. Now, obviously, that is something um, I'm not sure whether you I know you weren't in attendance, but if you watched issue specific hearing one at the very, very start of this examination, um, we did actually discuss the the time limit for commencement of the development.

00:37:15:21 - 00:37:44:09

And, and we had a discussion there. So it might be worthwhile watching that back. Now, that's obviously something that the examining authority would need to take away. Um, and consider anyway, the commencement period for which this applicant is considering and also for the Secretary of State to make a decision. Now, normally what would happen is if we were in a circumstance where the Secretary of State decided to reduce the commencement period of seven years to five years, this period would also be reduced in line with that.

00:37:46:03 - 00:37:46:27

Does that make sense?

00:37:47:06 - 00:37:48:11

Okay. That's why I.

00:37:48:13 - 00:37:53:10

Think for seven years. Um, does the applicant have anything they wish to add, or have I got that wrong.

00:37:54:03 - 00:38:14:05

Uh, list done on behalf of that, can we don't have anything further to say? I think we've explained the basis on which we fill the seven year period up for exercise of those um, CCA powers and for the implementation of the consent is appropriate and needed for this project. We haven't got anything further to add.

00:38:14:11 - 00:38:15:10

Okay. Thank you.

00:38:18:24 - 00:38:21:12

Mr. power, are you okay if we move on to article 22?

00:38:22:03 - 00:38:22:24

Yes.

00:38:25:06 - 00:38:36:07

Uh, again, I think on this article, you are asking for, um, paragraph three to be removed. Could you just explain why you feel that this should be removed?

00:38:37:23 - 00:39:14:12

Um, well, the promoter has suggested that the trying to protect the rights of section eight in, in, in article 22 rather than what I thought, um, which was to take it out. And I think that might be correct. Um, for article 22, but it's certainly not correct for article 26, which will come to in, in, in the while, but it's not really, um, relevant because um, to an extent it's academic because a counter notice under

section eight or schedule two wouldn't be able to be served until notice to treat or notice to intention to vest was, was served anyway.

00:39:14:22 - 00:39:28:03

Um, whereas the um promoter will be serving those those final landowner notices for permanent rights until, you know, year seven potentially. Um, and so

00:39:29:29 - 00:40:00:04

um, by, by year seven, obviously all the, all the noisy, um, inconvenience and, and amenity impacts of the scheme will be historic. And so by the time the notice to treat is served, um, it the circumstances will be that they will never pass the test for material detriment anyway. Um, so so it's it's they they bypassed it a different way really. But it is, it is in that I think I think I can see that it is actually in article 22 now.

00:40:00:20 - 00:40:09:04

The other thing I wanted to say about article 22 is that there's no provision in there for sections 53 to 58 of the Land Compensation Act 1973 for an.

00:40:19:02 - 00:40:23:00

Applicant to respond to those points Mr. Parry has just made, please.

00:40:23:12 - 00:40:58:17

Uh, list on on behalf of the applicant, I understand um, I understand from what Mr. Parry said that actually he agrees that, uh, article 22 three um, is correct. Um, and and the response that we've given to that, uh, is right. I think what Mr. Parry is, is talking about is, um, so this article relates to the compulsory acquisition of rights. So it's the drawing down of rights. Um, once the, uh, once the, uh, infrastructure has been constructed and then the drawing down of those permanent rights.

00:40:58:19 - 00:41:29:22

I think Mr. Perry's concerns, uh, are about temporary possession, um, which is not covered by this article. Uh, in terms of how that would I think most of the comments were around that, um, the other references around compensation. Um, I don't know that they've been raised before, but, um, compensation is dealt with obviously through the statutory framework. Um, uh, if he wants to put those two specific references in writing, then we can respond to them.

00:41:29:24 - 00:41:40:15

But we're satisfied that that, that that statutory framework around compensation is appropriately engaged through the DCO and those statutory provisions.

00:41:43:09 - 00:41:44:03

Mr.. Parry.

00:41:44:24 - 00:41:45:09

Uh.

00:41:45:11 - 00:42:21:00

Griff. Parry. Parry. Wade. Um, section 53 to 58, the Land Compensation Act 1973 deal with um, a form of material detriment for agricultural land. um, as opposed to section eight of the of um, the, the um, uh Compulsory Purchase Act 1965. It's got nothing to do with compensation. Um, and the notice

to treat uh, the, the the temporary powers obviously, which would come to as article 29, they, they don't have a separate material detriment provision.

00:42:21:02 - 00:42:30:13

So effectively the promoter is sidestepping the material detriment rules by, by using temporary notices. It's something we'll come to perhaps later.

00:42:30:15 - 00:42:32:23

Okay. Okay. No problem.

00:42:36:09 - 00:43:03:18

Okay. Uh, we'll move to article 26, which I believe is the, uh, another article which has been amended since, um, your submissions. I don't know whether you've had a chance to have a look at the latest version of the DCO and the amendments that have been made to that. Um, I'm not sure. Uh, I think initially your concerns were that you felt like paragraph 2 to 4 should be removed. Is that correct?

00:43:11:16 - 00:43:12:01

This is.

00:43:12:11 - 00:43:19:00

To. This is the acquisition of subsoil. Uh, article 26. I think your submissions are that you, um, felt that

00:43:20:23 - 00:43:24:09

paragraphs 2 to 4 should be removed.

00:43:25:26 - 00:43:26:11

Um.

00:43:32:11 - 00:43:33:14

Yeah. Um.

00:43:35:02 - 00:44:09:11

Brief period. Um, the. Well, the the this is where the soil rights are taken, and the promoter is seeking to exclude itself from section eight of the Bush Purchase Act here. Uh, the the the fact is that the text material detriment dealing with, them. Convenience. Consider convenience impacts such as access, parking, noise and vibration, and amenity impacts, dust and fumes, visual intrusion, privacy, security and views, and even the owner's ability to sell the property.

00:44:09:13 - 00:44:47:21

And it considers them in four stages, which is the impact of the property, the impact on the on of the unaffected land adjacent to the, uh, affected land. It considers the impact on that land, um during construction. Post-construction. Um, and it also considers a wider tier of considerations, which is the impact of on on the the land affected on the land and affected adjacent to it. Um on the wider scheme during construction so it could involve roadworks or works in other land adjacent um and also post construction.

00:44:47:23 - 00:45:21:04

So there's quite a broad test there that quite a lot of things that get picked up from material detriments. Um, whereas in the promoters response to me at rep for one 20.7 or so. Uh, response to the panel, the

um promoters said in the majority of cases, the acquisition of the subsoil only below a house, building or factory would not interfere with the continued use above ground of said house, building or factory. And it is therefore reasonable and proportionate to apply schedule to a um.

00:45:22:00 - 00:45:53:29

But clearly they're only considering the continued use of the impact of the underground, uh, cables, um, once they're in situ, whereas all the construction impacts and all the, um, other tests for material detriment need to be applied to the supplying all those tests. But if they if they're saying here in, in rep for one 20.7 that Please. There are no impacts from the underground cables.

00:45:54:01 - 00:46:03:19

Then why not let schedule eight just run and, um, allow the test to be applied as they would be normally in a in a normal situation, isn't it? There's no need to supply that.

00:46:06:26 - 00:46:12:07

Thank you, Mr. Parry. Um, could I ask the applicant to respond to those points, please?

00:46:13:26 - 00:47:08:03

Please. Dan, on behalf of the app, can I have to say I'm slightly struggling to follow the points there, but I think, um, so I think in respect of, of article 26, article 26, again, this is about the acquisition of permanent rights. Um, at the point at which those rights are taken. So we have to disregard temporary possession at this point because it isn't it isn't engaged through this article. And this article as as we've responded to Mr. Parry, is is designed in this way to ensure that when an applicant seeks or when when exercising those powers and taking those permanent rights, you don't have to take the whole you can actually just take part of the subsoil without needing to then take those those other elements and effectively have a disproportionately large effect on, uh, on a property because you are taking some subsoil rights.

00:47:08:05 - 00:47:40:24

So the the intention behind this article is to minimize the impact on, uh, on existing operations and those elements. Uh, so we're not intending to make any changes to this article. It's it's very well, Precedented, uh, and it serves to protect parties in that respect. Um, in terms of references to material detriment. Um, madam, I'll leave it to you as to how far we go with those, but those are ultimately compensation matters and they aren't matters to be considered within this DCO hearing.

00:47:40:26 - 00:47:42:26

So I'll just put that down as a mark.

00:47:43:07 - 00:47:43:25

Thank thank.

00:47:43:27 - 00:47:44:12

You.

00:47:47:02 - 00:48:04:02

Mr. Perry, I suggest, should suggest we move on. I think from our perspective, we have we have your points of view and we also have the applicants response for that. And ultimately it will come down to to us as an examining authority to adjudicate on that when we when we make the recommended DCO.

00:48:05:11 - 00:48:05:26

Thank you.

00:48:09:19 - 00:48:20:19

Okay. Well, let's move on to articles 29 and 30, which I believe you feel should be deleted in their entirety. Mr. Parry.

00:48:22:17 - 00:48:54:19

Yes. Um, Harry Wade, um, in my deadline for submission, I suggested that the, um, on on the DCO because I was unable to make the hearing on the 24th of October. Um, I suggested the, um, promoter be asked to clarify under what, um, what provision they were relying on for for the temporary powers for the land. Um, to clarify what statutory provision it was relying on to support the inclusion of articles 29 and 30 in the draft order.

00:48:54:29 - 00:49:38:01

In its response in to me to to to the panel in in in rep for uh one 20.8 that submitted a deadline for the promoter makes reference to temporary powers being enabled by section 20 of the Planning Act 2008, particularly subsection three and subsection five c uh section 120, clarified by paragraph 17 of the Guidance Note Planning Act 2008. Um content of a Development Consent Order required for nationally significant infrastructure projects, and also paragraphs 207 to 2 one three of the Planning Act 2008 explanatory notes, neither of which make any um reference to temporary possession powers.

00:49:38:17 - 00:50:08:27

Subsection four of the section 20 of the Planning Act directs readers to schedule five of the 2008 act, which lists the items that subsection three and consequently subsection five C can insert provisions for. Um, so section 125 C is only a conduit by which the other other provisions from other acts can be brought into the, uh, DCO. Part one of schedule five refers to the acquisition.

00:50:09:03 - 00:50:14:03

Acquisition of land compulsorily, compulsory or by agreement. Um.

00:50:15:19 - 00:50:48:12

Uh, the precursor to the 65 Compulsory Purchase Act was the 1845 Land Clauses Consolidation Act. Um. And that legislation contained powers of both the compulsory acquisition of land and the taking of temporary possession of, for certain purposes in the railway parts of the of the act showing there was a distinguished moment by Parliament, um, for those two very different powers. This is supported by the model clauses in the Infrastructure Planning model provisions England and Wales Order 2009.

00:50:48:14 - 00:51:03:18

For instance, in model clause articles 28 and 29 and 35, and these are carried through into articles 29 and 30 of. Of this DCO, subsection nine states.

00:51:05:23 - 00:51:24:06

Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it. So clearly Parliament still believed that they were separate in 2011. And also the promoter does by its inclusion in this section.

00:51:25:21 - 00:52:07:11

Um, so temporary powers of occupation are therefore not an acquisition of land, they are merely consent for something that would otherwise be a trespass. If temporary powers were an acquisition of land, and either a notice to treat or a notice of intention to vest would need to be served on all the

persons interested in or having power to sell and convey or release the land. In line with section five of the Compulsory Purchase Act 1965 or the General Vesting Declaration Act. Rather than be authorized on 14 days or 28 days notice, as in the model clauses, and so schedule five of the 2008 act does not provide for any form of acquisition of land at any other form of acquisition of land, either temporarily or permanently.

00:52:07:25 - 00:52:34:12

So, since section 125 C is only a conduit to other acts, the promoter should therefore please kindly confirm which other acts which are the statutory provision from which act is relying on to bring into the DCO. In using section 125 C to give the temporary powers that is seeking to rely on in article 29 and 30 of the DCO. Ah ah.

00:52:35:13 - 00:53:14:09

Okay. Thank you Mr. Perry for that. That's informative. Um, before I hand back to the the the applicant, just to respond on that, I do want to say something from the examining authority on these matters. Um, I've heard what you had to have to say on the, um, the the lawfulness of this, um, what I would say is the powers of temporary possession have been provided for, uh, in most, if not all, um, DCS made to date, pretty much in the form of the articles that are before us in this DCO.

00:53:14:11 - 00:53:48:15

And the lawfulness, nor the validity of those articles have been, as far as I'm aware, ever challenged or successfully challenged. Um, it's actually section 120 of the the Planning Act, I think, that the applicant has referred to and that is, I think, where the powers for temporary possession stems from. Um, and that's section 123, which provides that an order granting development consent may make provision relating to, or on matters ancillary to the development for which development consent is granted.

00:53:48:25 - 00:54:08:06

I'd refer you to schedule five, part one of the Planning Act 2008, which identifies the matters that may be included in a development Consent order, and in particular, I draw your attention to paragraph three of that which refers to the interference on land.

00:54:12:18 - 00:54:18:22

Now ask the applicant if they have anything they wish to respond to on that as well. Please.

00:54:19:06 - 00:54:33:15

Listen on behalf of the applicant. No, madam, we have nothing further to add to that. We've made the position clear. The statement of reason sets out the basis on which we are seeking the powers. As you say, they're well, precedented. And we don't have anything further to add.

00:54:36:21 - 00:54:43:23

Mr. Paris. That's something you wish to come back on now? Is it something that you maybe wish to take away and respond in writing at deadline 16.

00:54:44:14 - 00:54:44:29

Um.

00:54:47:14 - 00:54:51:10

I do have more to say on it. Um, I wanted to just.

00:54:53:15 - 00:54:56:28

Um, talk about precedents. Um.

00:55:00:27 - 00:55:01:23

The.

00:55:03:24 - 00:55:04:09

Um.

00:55:07:01 - 00:55:38:24

The the the the, um, promoter seems to put a high degree of reliance on precedents elsewhere. Um, for instance, in rep, one rep for one 20.2 read temporary powers that they say that, uh, acts 2930 have established precedence and in rep for one 21.24 ten powers. Again, they say that this is precedented. And then they were also in rep for 1 to 2.5 Refunding. They also say the strong precedence for that, however.

00:55:39:29 - 00:56:12:00

That I'd like to draw the panel's attention to nationally significant infrastructure projects. Advice note 15 drafting development consent orders from July 2018 and justifying the approach. Um 1.1 the Explanatory Memorandum is an aid to the examining authority, to interested parties and to the Secretary of State as a decision maker, to help understand what is proposed in the Development Consent Order, why particular provisions have been included, and from where that wording has been derived.

00:56:12:22 - 00:56:44:03

Uh 1.2 says a thorough justification should be provided in the explanatory memorandum for every article and requirements, explaining why the inclusion of the power is appropriate in specific cases. Um, and then in 1.5, um, to cut to it, it says it is not sufficient for an explanatory memorandum to simply state that a particular provision has found favour with the Secretary of State. Previously, the examining authority and Secretary of State will need to understand why it is appropriate for the scheme applied for.

00:56:44:21 - 00:56:45:06

Um.

00:56:48:00 - 00:57:13:00

So the point is that it's not it doesn't seem to be sufficient in the guidance that that it that it just because it's been done elsewhere. Um, it's, it's okay to to to do it in this instance. Um, on the actual construction of 125. See, I would like to just dwell on that if I can for a minute as well. Um.

00:57:15:04 - 00:57:18:11

An order granting development consent may,

00:57:19:27 - 00:57:55:12

um, in section C says include any provision that appears to the decision maker to be necessary or expedient for giving full effect to any other provision of the order. So obviously, we've got a number of disputes about the meaning of necessary standing with the promoter. But expedient is an interesting one, because expedient, uh, can be defined as refers to a method, means, or a method that is advantageous for achieving a specific goal, particularly when it may not be the most ethical option.

00:57:55:19 - 00:58:26:11

So that, um, obviously involves an element of downside, uh, and therefore a judgment as to whether it's appropriate to be, um, applied or not. So there is a test for this which I've managed to find in um, Lord open spaces secretary open Spaces society versus Secretary of State for the environment, Food and Rural Affairs relating to section 1196 ABC of the Highways Act 1980. But that's to do with the diversion of a public footpath.

00:58:26:13 - 00:59:06:18

But it's the test is still relevant where Lord lives, he says in in the Court of Appeal, in deciding whether it is expedient to confirm a public path diversion order in the exercise of the power conferred by the section of the Highways Act, the decision maker must have regard to the effect of the matters specified in three tests, which were in um, A, B, c of section six, uh one nine, six, um and may have regard to any other relevant matter, including, if appropriate, the interests of the owner or occupier of the land over which the path passes.

00:59:07:13 - 00:59:51:14

Um, so the Court of Appeal, um, took the view that that's a very broad range of issues when determining whether or not expediency should be passed, was taken. And um, on in particular, the relevant matters would obviously be the negative impact of the landowners, um, who are affected by the temporary occupation which would suffer, how they would survive. So, um, just, just, just just to run through some of the disadvantages of the temporary powers of the landowners. Um, one, there's no early valuation date for assessment of compensation for the permanent acquisition, ie losses arising due to the temporary powers possession rather than the notice, the ultimate notice of treat or notice to entry.

00:59:51:16 - 00:59:54:11

And so they are lost to the landowner, um,

00:59:55:27 - 01:00:29:13

because they're down to the temporary notice and rather than to the notice of treat or notice, notice intention to vest and notice that the following so that notices. For those two, there's no internal no early entitlement to an advance payment of compensation to section 52 of the Land Compensation Act 1973. Um three safe for any time limit in the enabling power, such as the seven years or five years that the motor 70 is motor seeking, there appears to be neither a need nor an incentive on a statutory undertaker.

01:00:29:22 - 01:01:11:02

Promoter. To serve any notice to treat this is likely to occur to the promoter when seeking to a seven year notice serving window for um. In losing possession of the land and being denied any advance payment, landowners are left with the uncertainty of knowing how long occupation will last and how much land will permanently be taken. Five the affected owner or occupier, um, is now is not provided with the financial means to acquire substitute land um under the temporary powers, only under the um a final land land rights taking um.

01:01:11:09 - 01:01:48:09

So the application of the mitigation duty to find substitute land becomes very uncertain. Um, there's a very vague obligation to pay compensation under the, um, well, the model clauses that the promoter has applied, Um, it does not set down any rules regarding what for. Um, and it doesn't put any timescales for when, when they can be paid. Um, and, and also um because no notice to treat as has

been served then they're all there's no entitlement to the, um, mature detriments that we touch on earlier.

01:01:49:01 - 01:02:22:07

Um, it just seems very, very strange that Parliament intended that the land could be occupied indefinitely, ie seven years can be held in abeyance for the seven years during the notice serving period. Then notice can be served and and works and commence. Um, I think from, you know, for many, many years hence a decade or more on only 14 or 28 days notice with no checks and balances and protections. Um, in this clearly exceeds what was intended in the legislation.

01:02:22:29 - 01:02:43:25

Um, the use of these temporary powers on plots at zero six, 103 to 105 will cause, at the very least, long delays to Robert Parry's scheme, at the end of which he is likely to find the permanent rights taken sterilised the prime section of the land. In any event, the redress available to him will be derisory in relation to the actual loss suffered. Um.

01:02:47:09 - 01:03:17:14

Barry Danny Green interestingly, goes on to say that, um, there should be geographical time limits onto how temporary powers can be used. Um, he he says that no temporary powers should be permitted over land where permanent rights are intended to be taken, or alternatively, that a temporary protection power have a life of a maximum of 12 months for which a notice to treat or intention to vest has to be served. Um, so the

01:03:19:08 - 01:03:29:18

upshot is that the the model clause is that the promoter is seeking to rely on to in the. In in these uh articles um.

01:03:31:22 - 01:04:07:19

Have been repealed. Repealed. Anyway because um as the promoter says itself in section 1.4.11 of the explanatory memorandum, um, and so is the Planning Inspectorate vice now 13 as well? I think since then, um, but they're using the excuse not to apply the albeit enacted yet, the Neighborhood Planning Act 2017 powers on the basis they're not yet enacted, but they're still seeking to use the powers which are farm more owners or landowners, um, of the Model Clauses Act.

01:04:07:21 - 01:04:12:19

So my suggestion is, why don't we why don't we just use the, um,

01:04:14:11 - 01:04:26:25

uh, National Planning Act 2017, chapter one schedules uh, sections 18 to 31 instead of the model clauses for, for for, um, temporary powers.

01:04:27:22 - 01:04:28:07

Yeah.

01:04:28:12 - 01:05:01:05

Thank you, Mr. Perry. There was a lot of information there, and clearly, uh, done your homework on this. Um, I'm not going to ask the applicant to respond to all that at this stage. I'm also concerned that we're going to spend a disproportionate amount of time on this one article when we've got the rest of the the echo to go through. Um, we understand your points. I think I would just like to make it clear

that, um, I think what you're asking us to do is your arguments are basically saying that every DCO made to date, which includes these articles, are unlawful.

01:05:01:11 - 01:05:29:14

And every Secretary of state decision, whether it has included them, are unlawful, which is a very strong point to make. Um, as I've said, we have listened to you. We do know what the, uh, and the applicant's points as well. We'll have to take them away. But what I would ask is if you could, um, summarize those points that you've just made Meet, me to us in your, um, post hearing submissions and then we can take a look at that. And also the applicant can respond as well.

01:05:30:19 - 01:05:31:04

Thank you.

01:05:31:29 - 01:05:36:26

Is the applicant have anything they wish wish to add? I'm quite keen to move on if I'm honest.

01:05:38:29 - 01:06:04:26

Liz Dunn, on behalf of the applicant. Madam, all I'd say is that we've fully explained the reason for the approach that we've taken, set out in detail in the explanatory memorandum and the statement of reasons why the use of temporary possession powers actually seem to minimise the impact on permanent impact on landowners. Um, and it's it's fully justified. Um, in, in the documentation that supports, supports the project.

01:06:05:00 - 01:06:05:26

Okay. Thank you.

01:06:13:03 - 01:06:24:16

Okay. I think that is all I had to raise on part five. Um, any further points from anybody on part five before we move quickly on to part six.

01:06:26:24 - 01:06:35:01

Okay, let's move on to part six. Is there anything the applicant wishes to brief us on on any changes made to part six.

01:06:36:25 - 01:07:08:21

Libya on behalf of the applicant? Yes. We wanted to talk through article 47, which, as you'll see, has been updated again. So following the very helpful discussions we had at issue specific hearing five, and we further considered the drafting of the article to make some additional updates. The purpose of including the article remains the same, which is to avoid any issues arising in respect of implementation of the DCO. In the event the DCO overlaps with a separate planning consent. So the origin of that risk is the case of Hillside Parks.

01:07:08:23 - 01:07:44:26

And we explained that case in a bit more detail during the last hearing. I'm not proposing to repeat that, but if there are specific points that would be helpful to discuss, we can we can do that. The position under that case continues to be the same. So just to clarify. Nothing has changed in terms of the reasoning. Um, a full explanation of article 47 has been set out in the explanatory memorandum, which is document reference rep 5008. Um, I've got some paragraph references that we can add to the hearing summary as well. It's noted in those paragraphs that the drafting follows what is in the lower Thames crossing order, which is currently in the decision stage.

01:07:45:28 - 01:08:21:17

Effectively, the sub paragraphs within article seven bring together provisions which firstly alleviate any risk of a breach arising under the Mona DCO, and that would be a breach arising as a result of a third party planning consent, which affects lands within the order limits. So that's contained within paragraph one, and is based on the principles which have been approved in a number of previous DCS, including the A303 Amesbury to Berwick Down development consent Order. That was 2023. Secondly, the article specifically deals with matters arising out of the hillside case.

01:08:21:19 - 01:09:04:12

So these are the risks that are posed by overlapping consents. The article now ensures that where there is a separate consent under the Town and Country Planning Act 1990 and all, there are conditions attached to a consent under the Planning Act, so the Town and Country Planning Act and that consent conflicts with the Moana DCO. The inconsistency is to be disregarded, and this would mean that there would be no barriers to implementing the third party consent or the Moana DCO, so otherwise those would be caught potentially under the hillside case as overlapping consents, which would prevent implementation, uh, where there is consistent inconsistency.

01:09:05:04 - 01:09:38:24

The article also provides for enforcement not to be undertaken in respect of third party consents, so it ensures that any inconsistency is sort of not enforceable as a result of the the conflict and the overlapping consents. So third, and finally, where the article provides for no enforcement and the ability to implement in respect of third party consents, it does the same in reverse for the Monaco, so it ensures that both consents can be can be implemented um, without risk of enforcement.

01:09:39:11 - 01:10:14:03

Uh, it seeks to alleviate risks, um, to the undertaker and also those third the holders of that third party consent. In particular, the applicant considers that this is necessary in relation to the interactions at the onshore substation where the order limits are expected to overlap with the national grid border within substation extension. Um, we understand that it's going to be a Town and Country Planning Act application, and the article will ensure that there's no implementation issues. Therefore, for National Grid or Moana in respect of where those two consents concepts would overlap.

01:10:16:23 - 01:10:44:25

He's understood. Thank you. And I note that you've, um, expanded upon that in the explanatory memorandum as well. There is just one little point that I just want to draw your attention to for, um, article 47. In subsection three, you refer to, uh, 57 B of the Town Country Planning Act. I think it is 50. Yes. 57 B that there is no B, I think it might might be 57 one that you.

01:10:46:28 - 01:10:47:15

Take that.

01:10:47:26 - 01:10:56:10

Leave your hand and go on behalf of the applicant. Yes. We'll look at that. We think it might actually may be a footnote. Um that's not come up in the formatting correctly. So we'll check.

01:10:56:12 - 01:10:57:13

That. That's fine.

01:11:01:23 - 01:11:08:03

Okay. Uh, just very quickly, if I could just go back, uh, to article 35. Um.

01:11:10:16 - 01:11:37:06

I'm just wondering why. Um, the wording is different in article 35 as it is in article as to article 36. So in article 35 you say, um, it's land within or near any part of the authorized, uh, uh, project, whereas in 36 you talk about encroaching onto. I'm just wondering why the two are different. I think encroaching is the more normal wording found in this article.

01:11:38:26 - 01:11:46:23

Live. You go on behalf of the applicant. Um, I suspect that that is not an intended difference. We will have a look at that and ensure that it is clear and consistent.

01:11:46:27 - 01:11:47:12

Right. Okay.

01:11:47:14 - 01:11:48:02

Thank you.

01:11:50:24 - 01:11:58:20

And I just checked there's no intention of gaining consent from the local planning authority as part of these articles or the highway authority as they're.

01:12:02:20 - 01:12:04:27

Living on behalf of the applicant? Nope.

01:12:06:04 - 01:12:07:07

Okay. Thank you.

01:12:14:27 - 01:12:26:09

I think that brings, um, us to the end of the questions we had on, um, articles. Does anybody else have any points they wish to raise on the articles before I move on to schedule one?

01:12:29:04 - 01:12:44:04

Nope. Okay. In which case we'll move on to schedule uh, one. The authorized project just had a few, um, comments to make. Is there anything the applicant wishes to update us on? I know you've made a few changes and a few tweaks to some of the work's numbers.

01:12:46:17 - 01:13:05:16

Olivia hiring on behalf of the applicant in the schedule of changes, we explained that those tweaks are just for consistency and clarity. They're not intended to provide for any changes to those work numbers. It's just so that it's clear that they are meant to be the same throughout. But beyond that, I didn't have anything else to add.

01:13:05:27 - 01:13:08:03

That's fine if I just make one.

01:13:08:05 - 01:13:08:24

Small.

01:13:09:02 - 01:13:14:08

Comment is that you see you've added decommissioning to work three.

01:13:16:15 - 01:13:24:21

Just wondering if it's been added to work three should that not have also been added to work for as well, which relates to work three.

01:13:25:19 - 01:13:56:19

Olivia Henninger on behalf of the applicant. No. In that case, it is intended that the two are different. So work number three relates to a package within the, um, the rights package with, uh, our schedule 7 or 8. Apologies. I can't remember which one specifically, but it's to line up the, um, the work number three area with the package of rights for which, um, compulsory acquisition powers will be used in respect of work.

01:13:56:21 - 01:14:07:08

Number four, that is, um, is only intended to be for construction if there is any um, any. Yeah. So it's only meant to be temporary.

01:14:07:26 - 01:14:08:24

I understood.

01:14:08:26 - 01:14:09:13

Thank you.

01:14:11:09 - 01:14:32:12

Okay, that brings us to the end of this section. And the next section we will be dealing with schedule two and schedule 12 of the draft DCO. But I'm going to suggest that now would be a good time to take a short break. Um, we'll take 15 minutes and return at 11. Oh, sorry. I see we have a raised hand. Is it Mr. Chambers?

01:14:34:24 - 01:15:24:11

Yeah. Martin chambers, tell him on this. Good morning. Well, um, unfortunately, I've had to tell Mr. Steven I will be leaving the meeting just before 11. Um. My point, um, which clearly you can cover when I've disappeared, um, relates to schedule two. Um, very much about. And I've just sent Mr. Steven an email on it, so if he knows where that's gone. Uh, really relates to item uh, nine, which is a construction code of practice. And it was just a request that the panel, um, put to the applicant that's under item H of that, the construction surface water and drainage management plan that the title and the focus of that plan be extended to specifically and explicitly include groundwater.

01:15:24:21 - 01:15:26:06

Uh, okay.

01:15:28:06 - 01:15:48:00

That's absolutely fine, Miss Chambers. What we'll do is I'll ask Mr. Parker to forward that email to us now, and I'll have a quick read of it during the break so that we're aware of it, and then we can have it when we get to that, um, section. And then obviously this is recorded, um, and a transcript provided. So you will be able to catch catch up with that.

01:15:48:03 - 01:15:49:18

Okay. Thank you very much.

01:15:49:20 - 01:15:56:08

All right. No problem. Okay. Um so we'll break now and we'll return at 11. Thanks, everyone.