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Thu, 12/10 9:27AM • 1:02:01

00:09

Right is now 20 past four and the hearing is resumed. Is there anything from anybody before I continue with the agenda?

00:17

Okay, nothing head. On now on agenda item six schedule three procedure for approvals, consents and appeals. Agenda questions 6.1 refer to the various documents that will require approval and the means method timescales involved in obtaining those approving them. And the rationale behind the time period of 20 days for requirement discharges. Mr. Jarvis, I've obviously seen the tabular response that has been put in your deadline five submission. Is there anything that you wish to add to that? Mr. Jarvis?

00:58

Thank you, sir. No, nothing, nothing further about to what's been submitted. Thank you.

01:04

Thank you.

01:06

Within that document, or related to that document, I've also got the marine management Organisations deadline five response that specifically refers to appeals and arbitration and relates to and I can't, at the moment see the arbitration article written but refers to the arbitration article and requests the exclusion of the marine management organization from that. Just before we proceed in a discussion on that, Miss Ford, from the marine management organization, is there anything that you wish to add to what's been put in a deadline five on your behalf is forward?

01:54

Thank you. So yes, this is Jennifer Ford from the marine management organization. And we don't have anything extra at the moment from what we put in the deadline five, but we would like it to go on record that we fundamentally object and being bound by deadlines, and we have great concerns, procedures for appeals.

02:14

If their benefit, I can pass it over to my colleague either and to go through this, but we can also include more information or deadline six. Right? Okay. I don't think there's a need to go into it in more detail at the present time. If you wish to put more information in a deadline six, then that is up to you.

02:34

What I would ask now is that the applicant then responds to the deadline five submission as far as the can at the moment, Mr. Jarvis. But first of all, I just wanted to identify the fact that within the arbitration article within the DCO, there is an exclusion for Trinity house already. And we now have effectively the request for exclusion from the marine management organization. That's over to you for a comment, Mr. Jarvis.

03:07

Thank you, sir. With regards to the exclusion, the wording is, except where otherwise expressly provided for in this order, and it is otherwise expressly provided for in this order that arbitration is not applicable to the MMA because scheduled three is sorry, part three of scheduled 15 is not supposed to be applicable, which is the procedure for appeal. And so, I concerned that there is no intention for the MMI to be subject to arbitration. What we are, however, seeking is for the procedure for appeals to be applicable. And I'm aware that there have been quite detailed submissions on this already in that there are also quite detailed submissions on this point in relation to the north Vanguard DCO, which I understand examining authority will have regard to given the submissions that have been made. The one point I would point out, is that the North Vanguard decision and the decision in terms of the decision letter that was produced recommending that that procedure for appeal wasn't included in the order was premised on the basis that one could judicially review the MMOs decision not to approve within the timescale or to refuse. The point I would make is that if one were to judicially review any such decision, while there is a question whether there would be a decision to be judicially reviewed if no determination had been made, or B would in theory be in breach of the order, so potentially, but even if one did judicially review that you would go through quite a long court process. And the result would be that you'd be go, the decision will be referred back to the NIH. So ultimately, it would be a very pointless thing to do. No one would judicially review any search application because there would be no gain to doing so you would lose time in effect. And I think that's the reason why no one has judicially reviewed an MMO non decision today because ultimately it will be a pointless exercise. I don't think it's a good point to make that it's an alternative remedy. It's not an alternative remedy. I recognize that at the moment statute does not provide for such decisions at the MMO warehouse.

05:00

side of the DCA regime to be subject to appeal. But I also don't see why that precludes the option of taking it to an appeal, where a decision has not been made within the timeframes provided for, we specifically discussed the timeframes to be included in the DML. With the MMO, extended on the basis that they would be appropriate timeframes for decisions to be taken. In many instances, they are four months, which is much longer than any of the timescales included within the strap development consent order. The reason for that, as I say, was to ensure that the MMA had sufficient time to make a decision, it seems to me that if a decision can't be taken within the timescale of four months, The Undertaker does need an ability for an independent review of what's happening in that circumstance. And that's why Part Three procedure for appeal is included. And why we put forward that it is appropriate to include that.

05:51

Thank you.

05:53

From what has been said, it seems as though I thought initially there may be there may be further discussions that that may be warranted on this particular point, it could well be that the parties have come to have come to positions which they would wish to maintain on this. And so therefore, Miss Ford, if there is further information that you wish to put in it deadline six, then please do so on this particular subject. And then we as the examining authority would get a response from the applicant on that. But before we just actually go on to that, is there anything that you wanted to say briefly in response? Miss Ford?

06:33

I'm at the moment, I think we're happy to put our information in at deadline six. Thank you very much. Thank you. Thank you. Right. That was is there anything else from anybody else? On agenda? Question? 6.1.

06:52

Nothing heard. Thank you.

06:54

On to agenda item, question 6.2. Then, and in terms of that, then I have the representation, the deadline five submission from the applicant on that which goes through the console tees, I didn't have any particular points that I wanted to raise regarding that. Was there anything further you wish to say on that? Mr. Jarvis?

07:18

Just one correction, sir, which is in relation to natural England.

07:23

statement in paragraph 6.5, that naturally mean has no role in discharging requirements is not correct. They do have a role as the statutory nature conservation body in approving the biodiversity plans pursuant to requirement nine.

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Thank you very much. And was there anything else that anybody wish to say on agenda questions? 6.2.

07:45

Okay, nothing.

07:47

Mr. Hughes.

07:49

Thank you, sir. My apologies, I actually meant to carry on 6.1. But the being too late to get your hands to the to the to the screen seems to be catching I'm afraid, particularly this time of day. I just, I just wanted to make a very quick points in respect of Article 10, if I may, which is the power to temp to alter the layout of streets and the 20 working days that that gives the street authority to determine that I do take your point that maybe the respected parties have settled on their positions on this. And all I would say is that, you know, with that 20 days, the entrance to the converter station as a giant isn't to the national park boundary. And I would expect the street authority to consult the National Park in those instances. I have seen a response from the applicant somewhere. I don't have the representation to hand I'm saying it's outside the National Park. That's correct. But it certainly has an impact on setting the National Park, I would just query where the 20 working days is enough to undertake that, that consultation. Thank you, sir. Thank you, Mr. Jarvis. Did you have anything in response to that at this stage? Yes, the approval of the access has to be approved in accordance with requirements six. And I'm just double checking.

09:04

That that is in consultation with the South downs National Park.

09:09

And it's subject to 40 working days in accordance with scheduled, three, three orders not 20 working days in accordance with Article 10. Okay, thank you, Mr. Hughes. I'm not sure if your hand is still up from our conversation a moment ago or not. If it's not, then it's gone down, and you're still muted. So, right. Anything else from anybody on agenda items under Section six of the agenda? That's 6.1 or 6.2? Okay, nothing heard. Thank you on to seven schedule nine modifications of compulsory purchase enactments for the creation of new rights and restrictive covenants.

09:47

There isn't anything particular from me on this is that anything that anybody else wishes to raise. And agenda question 7.1.

09:58

Okay, nothing heard.

10:00

Thank you.

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contraception eight agenda question 8.1. This requests the applicant to provide an update on progress of negotiations on protective provisions and likelihood of resolution. Now, I'm conscious that that has been provided for compulsory acquisition, hearing one, and it could well be that that is best discussed in compulsory acquisition hearing one.

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I would though, offer the opportunity for anybody who specifically feels that they need to raise anything on this agenda item 8.1. Now, so if anybody has anything they want to raise, please indicate

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Mr. Samikula?

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I believe,

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Yes, Mr. Sennett got a piece

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here on behalf of

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MJ county council. And so, we're here on this on this section 278 point. Now, we shared usually not submissions with the applicant, our standard section 278 agreement, and hope that this will be used to draft the protective provisions and to secure its requirements. And we've made the point repeatedly to the applicant, that there's a number of Section 278 matters that need to be either clearly expressed within these provisions or via some kind of kind of equivalent agreements. And so, in our view, that there are a number of points that are still not adequately reflected in the draft DCO. And a couple of examples, issue of the

11:34

indemnitees reinstatement of temporary accesses. If I could just if I could just come in a moment, obviously, getting into and need to get into some of the detail on this particular point. Are you content for this to be dealt with tomorrow at the compulsory acquisition hearing at which there would be a wider discussion on the protective provisions?

11:58

Yes, if that's the preferred approach of the of the authority, then we're more than happy to take it that way. So, thank you, I think I think it would be because that would allow the contribution from others on various points relating to the relating to the protected provisions. I completely. Thank you. Thank you. So, was there anything else that anybody had to raise on agenda? Question? 8.1.

12:23

Mr. Seven, cool. I can still see your hand raised. I think that possibly hasn't been taken down. Yes, it has no, thank you. Anything else on agenda? Question? 8.1.

12:33

Okay, nothing heard. And so, what I will do now, I will now hand over to Mr. Monde for agenda item nine. Thank you.

12:44

Thank you very much. Mr. Roscoe. moving swiftly on to agenda item nine, which is scheduled. 14 the certified documents?

12:53

Question 9.1. on the agenda was in relation to the environmental statement and the addition and changes to these, and what we should take as the environmental statement for the purposes of the DCR going forwards. We know we're very grateful for the scheduled documents document that was submitted at deadlines three and five by the applicant. These are very useful, but could the applicant very briefly just outline the proposals for taking this forward?

13:21

Yes, I have been giving this some further thought. My current thinking is that that document will set out all of the documents that comprise the document in terms of the most up to date versions of those documents will be reflected in a part of scheduled 14. And it will be split into parts with one part confirming the documents which comprise the s. And the second part confirming the rest of the certified documents. And the order will be amended as necessary to make the necessary references to where the documents are contained in that schedule.

13:52

Thank you. Does anybody else have a point to raise on this matter?

13:58

I see no hands. So, can I just confirm Mr. Jarvis that we are content with your proposed protocol for taking that forward? Sounds like a very sensible suggestion. Mr. Martin, just before we do that, there was just one point on this. And it was regarding the addition of crown land plans to the certified documents. That is common practice on other DC O's. I just wanted to raise that with Mr. Jarvis during the hearing, I don't need to have a response on it now. But just to identify that point, and to ask the applicant, whether that can be taken into account.

14:36

Yes, that will be taken into account. Thank you. Okay.

14:40

Thank you. Mr. Roscoe.

14:43

Does anybody else have any matters that we need to discuss today under agenda item nine.

14:50

No hands raised that I can see. So, let's move on to agenda item 10, which is scheduled 15. The team's marine license.

15:00

We did ask a question 10.1 for the applicant to advise on the construct and content of the draft D marine license and how it relates to the DCA. We have the prehearing transcript. So, we're happy to take that as read and the reference for anybody else who wishes to read that is rep five, dash 058, I believe. Is there anything you wish to pull out of that transcript? Mr. Jarvis just to summarise it for us?

15:27

Not particularly, sir. No.

15:31

I would just ask if there has been some further correspondence between the applicant and the MMO if he would like an oral update in relation to those matters that are outstanding. But I will also just confirm that we are seeking to progress matters such that an updated position can be provided at deadline six. So, it may be preferable to wait for it in writing, either.

15:51

Yeah, I think question 10.2 covers us as well as Is there anything that anybody wishes to raise in relation to the construct or the formation of the marine license before we move on to that?

16:07

Nothing heard there. So yeah, in terms of the status of negotiations,

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we've seen the statement of Common Ground submitted a deadline for and we aren't aware of the meeting, you referred to Mr. Jarvis. And that the outcome of that meeting is not yet reflected in the statement of common ground.

16:25

Could you just give us some elaboration on when we might see something further on that?

16:33

So, there was correspondence from the applicant yesterday to the MMO. And I can't speak for the MMO in terms of response times, but I think we're all agreed in principle that we're working to resolve these matters as soon as possible. And were able to do so before deadline six in relation to any points we will do. So, I think I'm also correct in saying that, leaving the procedure for appeals point aside, there aren't any in principle disagreements between the parties. And there isn't any reason why we weren't able to reach agreement. But I'll obviously let the MMO comment from that perspective. Thank you.

17:07

Thank you. And I'd like to invite them to do so they've had a very long time they've been very patient. So, is there anything else you wish to add at this point moves forward?

17:16

Thank you. Yes. This is Jennifer from the MMO. Oh, yes, I agree. We were sent some further comments yesterday evening, which we're going to be reviewing. And we'll hopefully get back. Well, we'll get back as soon as we can to the applicant. And I agree with the biggest issue probably is the appeals and arbitration. And there are some outstanding matters, which are in the same no common ground. But yet, we'll be working with the application analyst, I think they will be discussed in the issue specific hearing three as well and environmental matters.

17:47

So basically, discussed and,

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indeed, thank you, we do still have some issues to discuss that

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all being well, and I appreciate your position. And would you be looking towards deadlines six as well to progress these matters with the applicant?

18:05

Yes, we're working towards deadline six, to responding back to the applicant on the statement of common ground. That's very cool. Thank you very much. That is, of course, the 23rd of December. Time flies, and we're already more than halfway through this examination, believe it or not, so the sooner we can get these things sorted, the better for everybody.

18:26

Is there anything else from MMO? or indeed anybody else in relation to question 10.2?

18:36

Lots of flashing lights, but no hands moving on them. So, 10.3? I think we can get through this one quite quickly. The applicant was asked to clarify the position regarding the outline, marine archaeological WSI, which wasn't on our list of certified documents, but now is I understand it now in schedule, 14. So unless the applicant wishes to add anything, we can just move on to the next item.

19:00

Thank you, sir. Thank you.

19:04

Question 10.4.

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with reference to historic England's written representation, could the applicant comment on suggested additions and recommendations for content within part two of the deemed marine license and whether amendments are to be made in any respect.

19:23

Unfortunately, historic England are not with us today. But from what we've heard from them recently, they do appear to be outstanding differences between the applicant and historic England on this.

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That goes back to the deadline for submission that historic England made. We understand they are still consulting with the Mr. Jarvis on a range of issues such as geo archaeological assessment. He is a methodology and the delivery of the working schema of investigation.

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The statement of Common Ground also suggests that there are a number of ongoing discussions between the two parties in respect of

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offshore issues. Could you give us your current views and an update on this, please?

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So as an update on this, we have responded to historic England along the same lines as what's included in the transcript that we've submitted.

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We understand historic England, we're waiting to see what the examining authorities' views might be today before they respond, because they didn't want to prejudice what you might say.

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But nonetheless, we're happy with our position, which is that all the matters that have been pressed, been requested to be called in the de marine license are already covered in the document that satisfied and therefore secured. And it seems unnecessary to then draw that detail out into the conditions themselves. Thank you, sir.

20:42

Thank you. Well, we'll continue to take that up with historic England, I think because we do need to hear their side too.

20:49

Just out of interest as the marine management organization, however, any particular deal on this matter.

20:58

Hey, Jennifer Ford here. No, we don't have a view on this matter. Immediately historical.

21:05

Okay, thank you very much.

21:07

Are there any further comments from anybody? I've got a hand whose hand is that.

21:20

Mr. Watson? Yes, it's Ross Hudson, for the applicant really just like an additional comment. And just to advise that we received a letter from Dr. Chris Pater, at historic England on the first of December. And as covered by Martin Jarvis, and, you know, the bikes regarding kind of updates to the DML. But I just wanted to add on the points he made regarding VGI ecological assessment, and our basically our, I guess, our assessment methodology. And because the latter also included updates regarding historic England's view on those to summarise and will obviously provide an update regarding the next reiteration of the statement of common ground, but they are content with our approach regarding geoarchaeology. And the provision within the WSI, which will manage that post consent, but preconstruction, and they also confirmed that they will content regarding our approach to assessment for

22:16

marine archaeology as well. So, we consider those subject to agreeing the update of the statement common ground with historic England, those two matters outside of the DML. To be, I guess, to be agreed?

22:30

Do you have a target for the time for delivering the stand next version of the statement of common ground? Um, I think we would be looking to work towards deadline six. And obviously, we would need to discuss this with historic England. But given the content of that letter, we would hope that that would be achievable. Thank you very much. Are there any other comments on this matter please?

22:54

Anything else on the dean marine license?

22:59

Which case we're going to move on to agenda item 11. And I'm going to hand back to Mr. Wallace.

23:06

Thank you very much, Mr. Man.

23:10

Moving on to agenda item 11. Then planning obligations and other agreements? Question 11.1 taken account of all the written submissions that deadline one can the applicant, just give us an update on any obligations been so under Section 106, or section 278 of the highways act? Mr. Jarvis?

23:35

apologies. So, I have set out the position in the transcripts. I'm happy to just come through that if that's helpful. So, with regards to Hampshire County Council, I think it's been acknowledged during the hearing today that we're working towards agreeing a section 106 agreement to include

23:51

combat provisions in relation to compensation for tree loss.

23:56

In addition to that, Hampshire County Council have also requested ministry contributions toward mitigating the impacts of the proposed development on bus services within the county. And discussions are ongoing. Albeit I would note that the assessment work that has been carried out show minor delays to buses and as such, it's not entirely clear on what basis that is being requested as being needed or necessary. And our position at the minute is that the impacts that are identified don't necessitate a contribution in that regard or a service level agreement as it's being sought. And then the applicant's position and its discussions with the relevant bus operators is also summarized in our submission and has been summarized to date in the responses.

24:37

And then as I say, we have had initial discussions with Hampshire County Council with regards to Section 278 agreements as may be required, in relation to work for road purposes, which for the purpose of this development would principally be the access at the converter station.

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The temporary accesses that are to be provided in connection with the work to be carried out which are required

25:00

To be reinstated in accordance with the relevant provisions of the order further to a comment that was made earlier.

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I'm just going to check whether that's part of requirements 10, or if that's secured elsewhere.

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Elsewhere, if you bear with me one second,

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I might need to come back to that written submission. I'm reasonably confident that restoration is secured, most likely by Article 10. Three.

25:44

And then I'm concerned if you are to take the transcript as read at this stage, just not maybe perhaps if there's anything further or any additional changes to any positions, since you submitted that transcript?

26:01

No, there's no change in relation to the position. Thank you, sir.

26:07

And Does anyone else wish to say anything on this item at this time?

26:13

Mr. McGuire, first of all, please.

26:21

Mr. McGuire, if you're there you are mute at the moment.

26:26

Thank you. So, apologies technology. Just a small comment from Bothell City Council. Just noting the applicant transcript, obviously PCC have raised as is recognized within that a number of matters in our weather and representation. And we'll continue to engage with the applicant on matters of the section 106 as they emerge from the settlement of our statement of common ground. And obviously, the specific hearings that we are currently dealing with thought worthwhile mentioning there is obviously a number of issues that have been flagged from our own representation onwards, that we feel do need require do require further work, and we will continue to exist the examination on that basis. Excellent. Thank you very much. It's good to know these discussions are ongoing. Mr. Samikula, your hand is raised

27:15

Mr. Joel Samikula. Hampshire County Council. So, we just want to agree that stress that point again, that the scope of the section 106 here is yet to be agreed with the

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discussions there are moving forward. And just in response, for example, on the point about the impact on buses. We take the point very shortly that that's not that we don't agree here that the impacts they are minor. But we won't take go into detail there and

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will allow that point to be taken to be discussed even further on when it arises again on the agenda on the agenda on Monday.

27:51

Okay, thank you very much for that. Mr. Jarvis. I'm assuming there's no further comments at this time.

28:00

Thank you. Okay. Thank you.

28:04

Question 11.2.

28:07

This is in relation to Section 278 agreements. We have, of course heard those discussions may be ongoing along with protective provisions. So, unless there's any party wishing to make a comment, my proposal move forward. But first of all, does anyone wish to make comment on this?

28:28

Mr. Samikula, your hand is raised.

28:32

Joel Samikula, Hampshire County Council, so take this point, just again very, very shortly don't want to belabor it. But

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we want to make clear that we should there's insufficient provision within the DCO for the section

28:45

278 matters. Effectively, what we have is the applicants doing works on our highway, these works would normally be subject to a section 278 agreement. And while there's there is quite a provision for items, for example, such as approval there, there's no provision for a number of other outstanding items. And it's really important to us that this drafting issue is dealt with.

29:08

Right. Okay. And Mr. Jarvis, any response at this time?

29:15

Just to sort of out that will continue discussions with Hampshire County Council on this point that submissions made or noted and will seek to reach agreement with them on a position. Thank you.

29:25

Thank you very much. And moving on then to question 11.3. And could the applicant explain the progression, if any, on planning performance agreements? And could you set out the content of any PPAs to date and with which authorities they are intended? And how are they secured for the DCO or its requirements place?

29:50

Thank you, sir. There has been sort of general discussions in relation to the form of those and we are producing drafts

29:58

what the actual content

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is somewhat dependent on the final form of the requirements in terms of what needs to be approved.

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But I think we are in a position where we've got far enough progress to be able to move that forward.

30:12

As I'm sure you will appreciate, there is only so much time and we're trying to close down as many issues as possible. And for one reason or another, the PPAs haven't been the first thing to be discussed, but they are very much in people's minds. And we do have timeframes in mind with those being entered into before the end of the examination.

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They wouldn't be secured through the DCO. But it would be confirmed that they have been entered into and their effect would be subject to the grant of the DCO. And as such, they will be private agreements which are enforceable in that manner. I would also note that Portsmouth City Council in their representations have suggested that this is a matter that could be dealt with through section 106. And that would get around section 93 of the local government tax. I would just point out that section one a six isn't appropriate, is not an appropriate mechanism for a PPA, and that an agreement is made pursuant to Section 106 has not been the rest of the law does not apply. Thank you, sir.

31:08

Thank you very much. I'll be asking for Portsmouth's views on that in a second. But just two supplementary questions for myself. In terms of the planning performance agreements, I mean, are they accounted for budgeted for in in the funding statement in any way?

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Mr. Jarvis.

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I would need to double check that on the basis that the funding statement is dealing with pre consent costs, I would say that they are not but also that the fees to be included with them in the context of a 1.3 billion pound project aren't so high that they would cause any particular issue. Thank you. Thank you. And then just a second to that if the planning performance agreements are not secured by the government consent order and fall outside of its process, what confidence can the examining authority take

32:00

that these will be completed and acted upon properly? And how should we deal with these matters when we form our recommendation, please,

32:08

Mr. Jarvis? I do recognize that if they hadn't been entered into then it would be difficult for the examining authority to take confidence that those matters would be covered. In those circumstances, I would have to consider alternative methods of securing that payments for costs incurred are secured. And that would potentially be through the DCO, albeit I confirm the preference is still to enter into PPAs to cover that matter, because they can then be more specific to the individual authorities that they're entered into with. Thank you.

32:36

Thank you very much. Miss Colquhoun. You heard reference there to Portsmouth's position. Is there anything you wish to add at this time? Um, Mr. Laven is going to deal with this point, actually, sir. Okay, perfectly fine.

32:51

Thank you, sir. Yes, Mr. Laven for Portsmouth City Council. We disagree with the applicant that section 106 is an improper mechanism to secure the discharging and enforcement costs. We feel that the legal tests in both statute and case law can be met to secure payment properly. And that is an important point. We still haven't received the draft PPA for posting sent, and it would be subject to private law termination provisions that we have not seen, and the examining authority would have no oversight over. In that regard. We think that section 106 brings it within your purview and is something that is everyone can be much more comfortable with in terms of transparency and enforceability is really quite important obligations for the future of Portsmouth city, ensuring this development is brought forward properly. And it also presents an exceptional burden on the authorities' resources, which is another reason that we say it is appropriate to put in section one a six agreement. And it does also avoid as Mr. Jarvis alluded to the disagreement that we also have in relation to Section 93 in terms of discretionary and non-discretionary functions of local authorities.

34:01

Okay, just a supplementary point for yourself on that one. Would a planning performance agreement be easier to modify, update and agree additional funds through as opposed to a section 106 agreement that would require sort of a deed of variation if additional funds were required?

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Mr. Laven? Yes, thank you, you're taking moments to think that over and either way the process of written agreement between the parties is

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key. But we feel that it is secured crucially also in perpetuity, if you've got an order that is also concerned with the assignment of the benefit. We want an agreement that runs with the land well isn't merely personal with the applicant, I would say.

34:56

Does that answer your question, or have I answered something else?

35:01

It partially answers it was more about the flexibility to change, modify and update, where plan performance agreement perhaps offers the ability to change quicker, perhaps to secure additional funds as opposed to a 106 that require data variation processes. Do you have any views on that at this stage? What I would say to that and service that section 106 indeed, variation process is something that local planning authorities are familiar with. It's something that we can do already. And I would

suggest that actually, the PPA process so far has demonstrated that it is not a process that people are necessarily familiar with. And it's not advantageous as compared with section one, a six-digit variation.

35:45

Okay, thank you very much for confirming that. Mr. Jarvis. Any views at this time?

35:54

Just that I would ask Mr. Laven, to have a look at section 1061 of the town and country Planning Act and confirm, which is the paragraph A, B, C and D, the payment to PPA fees would fall under and therefore could form a planning obligation. Thank you, sir.

36:08

Thank you very much. Perhaps that is something that they can be brought up at discussions outside of the hearing. But does anyone else have any views on this point at this time?

36:24

Nope, none heard. In which case, I will now hand back to Mr. Mahon for the remainder of the agenda.

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Thank you, Mr. Wallace.

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We're up to agenda item 12, which is basically any other business any other issues relating to the draft DCO? I'm sorry, I have three more questions. But hopefully they'll be relatively quick. And then we'll go around and see if anybody else has any final matters they wish to raise in relation to the draft DCO today.

36:55

My first additional question is to the applicant. And it's we have an examination of final signed statement of common ground between the applicant and the maritime and coastguard agency, which was submitted to us by the applicant the deadline one, this suggested to us that all matters have been agreed, however, a deadline for the MCA has raised 11 issues in relation to the draft DCO 10, of which relate to schedule 15, the deemed marine license. Could the applicant please clarify the situation and provide a response to the points raised by the maritime and coastguard agency?

37:33

Thank you, sir. If I may, I will refer this question to Ross Hobson, please.

37:40

Thank you, Mr. Hudson. Hi, Russ Hudson for the applicant. Yeah, we were in communication with the MTA. And the plates predominantly kind of

37:52

revolve around and reference today's weather working or calendar or just days, which we feel is something which is easily resolvable. I know the other one is also regarding within the DML. There's a number of references to requirements for issuing notice to mariners. And they would like that wording to be changed so that it doesn't reference noticed mariners, but basically local notifications to make a differentiate between I think national noticed mariners and local notifications to mariners. And so, I guess in summary, and we are engaging with the MCA we feel as though they are easily resolvable through drafting changes. And there's something which will work with our legal team to implement, and in the next iteration of the DCO DML. I would see.

38:43

So, your proposal, Mr. Jarvis will be withdraw that statement of common ground and replace it with a new one?

38:52

Yes, I think I think we will need to do that. And we will the least withdrawal statement of common ground. It's been submitted at deadline six, but it's Mr. Hudson has pointed out, the matters that have been raised are not the most major. And, and it is considered that they can be resolved reasonably quickly. So, the intention would be to seek to resolve the matters to provide a new statement of common ground that does concern that matters are now agreed. Thank you. That will be very useful. Thank you very much. Does anybody have any other comments on that?

39:25

Which case my second additional question, and this relates to the inclusion of Article nine in the draft development consent order, which has raised concerns with some of the local authorities. We understand from the applicant's submissions, this is a variation of the model requirement. And obviously we've seen that, and we have noticed that the similar articles are included in recently made orders for energy projects.

39:51

Could the applicant nevertheless please explain to us three matters. Run through the three and then ask Mr. Jarvis to comment on

40:01

First one is does the deadline five explanatory memorandum is 619

40:07

intend to suggest that the recently made orders quoted, and those are the East Anglia three offshore wind farm order 2017. And the Southampton to London pipeline order, which you've got is 2017. But I suspect you'd be 2020. Do these? Are you saying these provide a precedent for the inclusion of the operational phase in relation to any DCO providing a defense against proceedings in respect of statutory nuisance? In fact, Mr. Jarvis, do you want to go through these one at a time, which we'll go through all three first?

40:40

If I can take them one at a time just to make sure I cover them all off? That would be appreciate Yes, it's been a long day. He's probably getting this fading as mine. So, let's do one

40:49

more to do this evening as well. So

40:52

I'm not necessarily saying that no, I think what I'm saying with regards to precedent is that it shows precedent for referring to control documents within article nine, which is the approach that's been taken such that we're referring to the documents that are approved pursuant to the requirements, which then set the parameters against which whether a defense that's true Newton's is applicable, relate thank you sir.

41:11

You won't be surprised the second part of my question goes on to say, can you give us the rationale behind the proposed differences between those precedents and other reasons, energy DCOs. And the one draft you put forward to us in the addition of the phrase and operation of three places in Article 918191, a two, a nine, two, when all of those recently made orders refer only to construction and maintenance of those corresponding clauses.

41:41

The rationale behind that is that there has been a considerable amount of work undertaken to confirm the noise levels of the equipment that effectively can create noise, which is the Convert station and the optical regeneration station. The document that has been produced that controls this from memory is the octave band and boys broadband noise criteria document. And the view that's been taken is that given the stringent requirements that are set out by that, where they are achieved, no nuisance will occur. That, however, would not stop someone seeking to bring a claim to such a nuisance that the undertaker would need to deal with irrespective of the merits of that. Now, that's not to say that the local authority would entertain that and tissue it but really, it's just confirming that the operation of the interconnector in accordance with the relevant controls that apply to it could not give rise to statutory nuisance. Bearing in mind the levels that are to be achieved would be well below those that could cause effect.

42:35

this addition is justified in this case above other precedents given that this would give a permanent defense in a situation which I think generally is designed for temporary construction or maintenance activities. And should nine B one be relied on for operational noise, which allows for the agreed mitigation and the requirement 20?

43:02

I think

43:06

Sorry sir, you refer to nine, B one. I don't have a nine B one. Can I check that reference

43:18

there. Or do you refer to nine one a?

43:24

Article 9. Where it could well be met at this time of night misquoted.

43:29

Can you just repeat the question? So please, if it's myself that's making a mistake? Yeah. So I'm questioning whether it's reversed for a DCO to give you a permanent defence in a situation which is generally designed for temporary construction or maintenance activities, or whether you should rely on other parts of the article on I was quoting nine B one for operational noise, which allows for the agreed mitigation and the requirement 22.

44:02

Thank you.

44:05

Apologies, it's me misleading, you know, it's not there. It's just that changes have been made to numbering that fine.

44:14

And I think I think the intention actually that there probably does need to be some amendments is that nine, one a one and what is now 9 1 a 2 will relate to construction and maintenance. And

44:30

there will be a separate sort of separate provision that relates to operation with regards to whether it's justified as a permanent defence in relation to statutory nuisance. I would say that in the circumstances where the position has been agreed such that it needs to be complied with for the operational lifetime of the development. It would be unfair. If something were to happen in the future that would require the developer to achieve levels which are lower than those that had been agreed to be appropriate. Particularly where it's not sort of

45:00

necessarily the case that it would be possible to achieve those. And really what this seeks to do is just to confirm that where the controls that are to be applied are achieved, that there will be a defence. So, it is very narrow in scope, very much linked back to what's decided as being acceptable in terms of the levels of noise, and therefore, in our view is appropriate to include in this order. And also, on the basis of its narrowness, it's not considered that it would really set any sort of dangerous precedent that could be used by other orders without them providing clear justification for its inclusion.

45:36

Thank you M.r Jarvis, did I conclude from what you just told me that you're going to look at the wording and potentially take operation out of 9 1 a?

45:46

Yes, so it is a matter that has also been discussed with Winchester city council over the past few days and their comments, as well. So, we are considering a few amendments that could address the concerns that have been raised.

45:58

Thank you very much. That's very useful. I see Miss Colquhoun's hand is raised. So, go to you first, and if any other party wishes to raise a comment on that, please raise your hand as well on this.

46:09

So, it's really that that

46:12

Portsmouth would support reconsideration of the notion of requiring

46:19

this sort of

46:22

extensive defence during operations, especially where, for example, with the ORS. It is, it is deemed to not be operational at anything above or anything close to something that's going to create a statutory nuisance, and therefore it should be unnecessary. I mean, the country argument to having this sort of level of defence available, is that it would be

46:52

in the event that there that something does arise, it would be it would be something extraordinary, not something ordinary, that would trigger a statutory nuisance, and therefore there shouldn't need to be protection for something like the ORS, which is supposed to operate it at the background noise levels. But if it's being looked at that's fine, sir. And the point is understood. Thank you for making and I'm sure we'll get a response on that. Can I just also ask Mr. Cornwell to make his point before I get back to the applicant?

47:25

Sir, as Ms. Knight, the head of legal services at Winchester City Council, I just want to confirm that we are in discussions with Mr. Jarvis, the City Council welcome your comments that the operational requirement of operation should not be included. And also, welcome the last speakers' comments that is not necessarily the statutory nuisance, because it currently worded goes way too far. And the city council does not support it. Unfortunately, our environmental protection officer who was the officer who be implementing, and working with this particular article, has gone home for the day, we told him he could go as he had an interest in the morning. And then that was that and he's been sitting around for a while. So, he was hoping to speak on Tuesday if it comes if the matter comes up. So, it's certainly something where you can raise again on Tuesday.

48:16

thank you very much.

48:18

That's it. Anything else from anybody on this matter? Before I go back to the applicant?

48:26

Yes, I do, sir. And I can see Mr. Oh,

48:29

forgive me, sir. It's Selena Colquhoun couldn't carry on. It's a very small point. But, um, if this this article is being looked at, again, Article

48:41

nine, four, which has been recently amended refers to Section 65. I think it is meant to be section 65, eight of the control of Pollution Act, not the EPA. But also, section 65 doesn't exist anymore. It's been revoked.

48:59

So, I think section 65 of the EPA is something completely different.

49:06

Thank you very much for that comment. Mr. Jarvis, you've heard that on the other comments is anything you wish to come back on now?

49:12

I will check the point about section 65 as being repealed, I would just make the point that it's more of an agent of change point really, in the levels that the development needs to achieve, or those that are set out in the world around the development will change over time. What we shouldn't be is in a circumstance where encroaching development causes a nuisance and the developer is then or the applicant rather, is in a position where they're causing a nuisance and need to address that and they're not able to do so. So yes, it's correct that the noise levels to be achieved now will not cause a nuisance to the receptors that are surrounding it. It's not necessarily the case that that would be the case in 50 or so years' time. Thank you, sir. And keep that point as well. This is going your hand is still up

50:03

Miss Colquhoun, do you have another point to make? Or have you completed that one?

50:08

Thank you.

50:11

I find your question you'll be very pleased to hear.

50:14

Again, not on the agenda set an additional question and again to the applicant sorry, Mr. Jarvis.

50:20

The draft ECA would rely on a number of outline or framework management plans being detailed and approved in order to secure mitigation measures used in the EIA, and we've heard about a number of those today.

50:31

You're very kindly supplied the updated mitigation schedule, which has been very helpful to us in mapping the measures from the environmental statement through to the draft development consent order. We do have some remaining detail concerns, but we will raise these through our further written questions. But there is one more general matter of principle I would like to discuss today and get you a view from me on. Could you give me your opinion as the applicant on whether it's appropriate or indeed robust to include measures relied on in the operational stage within the construction management plans. So, to give you one example, the climate change resilience and resilience measures, do you have amended the documents to secure operational mitigation measures in the construction environmental management plan. Also, for instance, the countdown show outline construction plan relates to the design and operational effects relating to electric and magnetic fields. Is this appropriate? And would the necessary measures be properly secured as a result?

51:35

In relation to the points that have been raised, which are climate resilience in EMF

51:42

I think it's more correct that they are design matters rather than operational matters, because it's the design that is approved, and this is built that has

51:52

that sort of secures whatever the mitigation is there.

51:57

I do consider that there is an argument that they would need to be secured in a separate document rather than a construction environment management plan, which is principally focused on mitigating the impacts of construction, rather than focusing on the design of the development. And I confirm that we will look at that further, sir. Thank you. Maybe I should add that it's, it's not a small task. And there is quite a lot else that we do need to do for deadline six. So, it might be the case that it follows after deadline six. Thank you. Yeah, I think I understand your point. It's important we secure it in the best way possible is perhaps and you could look at the design and access statement for Are there any other comments in relation to this matter?

52:45

I've got a hand from

52:52

No, all the hands have gone down? Was it a hand raised? Sorry, hands were going up and then disappearing. Any further comments in relation to this matter? or indeed, any further comments from any parties relating to the draft development consent order today?

53:09

Mr. Samikula

53:12

Joel Samikula, Hampshire County Council. So, it'll be clear, from what the authorities heard today that there's quite a lot of issues that remain between

53:22

us and the applicant. And it's our view that there should be a further DCO hearing to discuss those outstanding issues and get them resolved.

53:31

Thank you, Mr. Samikula. Miss Colquhoun.

53:38

Thank you. So, we would support that as well, that that but the reason I raised my hand in particular with it was a small drafting point. But it could be significant. The obviously, Portsmouth has confirmed its view that the allotments that are covered, are not, they don't they're not fuel or field garden, and therefore are not special category land. And that's been amended. However, we do consider that. The allotment acts need to be looked at and potentially disapplied. If

54:15

if there's any concern about them, so it's something just to double check.

54:20

Perhaps some, we can bring it up tomorrow. If there's any issue that wants to be discussed with the with the applicant. I think that will be an appropriate place to discuss that. Everyone's content with that.

54:33

Okay, I've got no hands race. I'm assuming everybody's content. Anything finally Mr. Jarvis?

54:41

No, thank you. So

54:43

which case Can I ask Mr. Roscoe just to run through with you the points, the action points and notes he's made today?

54:53

Thank you just this actually relates to what we're calling post hearing notes. It's not necessarily a complete list.

55:00

action points coming out of this hearing. But it is the points on which we have requested, or it's been offered to come through in more of a substantive response. Now, what I'll do, I will work through the list in chronological order. If any parties consider that I've missed something, please indicate when you actually believe that I've missed it. And then I'll again ask at the end, for any that anybody else has got noted. So, the first post hearing note then concerned, HDD, and basically the response to Agenda question 3.5.

55:38

The second one, then,

55:41

post hearing notes dealt with the, and that was from the applicant, sorry, the second post hearing note also from the applicant, concerned the Southampton to London pipeline tree articles in Section 278. And that came up in agenda question 312.

56:03

Also, in agenda, question, 312, there was a post hearing note offered by Hampshire County Council and this concerned trees, and again, section 278. And in the same agenda item 312. was a post hearing note offered by Portsmouth, again concerning trees. And section 278 matters.

56:31

Further post hearing note was offered by the applicant under agenda item 316. Concerning the 20 days requirement, discharge period.

56:46

Once again, can we go back to 314?

56:49

We can. And Mr. Jarvis, did you have a post hearing note intention for the differences between stopping up and temporary closure? I had taken that as an action in terms of a response. Okay, fine. Thank you. Well, it's if this Mr. Jarvis, were you indeed offering a post hearing notes on that?

57:12

I think I can adequately cover it in a response actually, without needing to be a separate note. So, if that's acceptable, I'll seek to do that. And then if there are any further questions, I expect they can be raised in your further written question, sir. Thank you. Thank you.

57:29

So, I'm now going on to Agenda question 317,

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at which a post hearing note from the applicant was offered in terms of responses to question 317 but also to question 319. So that was effectively combined between those two questions.

57:53

And then going on to

57:56

Agenda questions 324.

57:59

Were a post hearing note was offered from the applicant in terms of the responses that were given to that question.

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And then going on to Agenda question 334,

58:19

which was a post hearing note offered by the applicant in terms of tree data.

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then going on to Agenda question 4.3

58:36

or a post hearing note was offered by the applicant

58:41

in terms of their responses, specifically, including the increased footprint of the converter station, if commercial FOCs were removed as the telecom building wouldn't be required.

58:53

And also, later on in that response, relating to FOC capacity, and ORS need.

59:07

I'm also then going on to Agenda question 4.8, where there was reference by the applicant to NGENC statement of common ground where there was reference to DCO powers, works to extend the Love Dean substation. Now this is a matter where I'm not convinced that it was put forward as the offer of a post hearing note. And so, it was said to be from the applicant. Mr. Jarvis, is that something that you believe that you offered at the time to be a post hearing note? No, I think I discussed that we'd submit an updated statement of common ground and what would be attached to that the correspondence with MGET which sets out

59:56

rather than the station works have been assessed and the rationale for the change

1:00:00

clarification.

1:00:02

I think my view would be that, given it's coming from both parties that would still be appropriate, because that will contain all of the information that would otherwise be included in the post hearing note.

1:00:12

Thank you. I've revised my note on that.

1:00:15

That was then the final post hearing notes that I had indicated, although I accept that it had been getting quite late in the day, I had the possibility of one and a 12.1. The response to the maritime and coastguard agency, but I had taken that as simply the submission of either the positions of various parties or correspondence.

1:00:41

Mr. Jarvis is that what you had seen in 12.1? as well, agenda question 12.1? Yes, I think we'll be lifting to address that through the statement of common ground with ignoring the current statement of common ground and providing a new one. Thank you, sir. Thank you. So just to I won't summarise those, but I've worked through them all in chronological order. Just asking, are there any other post hearing notes that any attendees believe they are aware of?

1:01:09

Nothing heard. Thank you very much.

1:01:13

Thank you, Mr. Roscoe.

1:01:16

A bit like the development of a vaccine that was more of a marathon than a sprint, you'd be pleased to know that we can now bring this issue specific hearing to a close. Can I remind everyone the next formal deadline is deadline six on the 23rd of December 2020. And those of you who have spoken today, please ensure that any written summaries of your oral submissions reach the examining authority by that date. I would very much give my heartfelt thanks to everybody for your attendance and contributions today and particularly your patience, and we look forward to seeing at least some of you again tomorrow. This hearing is now closed.