

# TEXT\_Aquind\_ISH4\_Session2\_17022021

Wed, 2/17 12:34PM • 1:05:06

00:03

Okay, ladies and gentlemen, if we could move on, please. And we're going on to part two of the draft development consent order. That's the principal powers. And the first part on the agenda here is for the applicant to comment please on the examining authority scheduled changes to the draft development consent order in relation to Article seven, four, and the applicants view on the deletion of the time limit for determination by the Secretary of State.

00:32

That change will be made, sir. Thank you. Thank you very much, Mr. Jarvis. And could you go on in which case please to address Winchester City Council's proposed changes to part two?

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Yes, sir. I can so amendments are suggested to Article nine defence to proceedings in respect of statutory nuisance. The first amendment suggested related to the deletion of reference to vehicles machinery or equipment in Article nine one a, and the stated reason for this is that the wording is not clear. as detailed in the applicants response to the deadline seven submissions on behalf of Winchester City Council in relation to the draft ECS. Mr. Deadlines seven see on Monday, the applicant notes that the wording vehicles machinery or equipment specifically mirrors the wording in Section 79, one ga of the Environmental Protection Act 1990. It is the applicant's view that reflecting the wording used in primary legislation is the most clear way to refer to matters which that primary legislation relates to. For this reason, it is not agreed the wording used is not clear, and this amendment will not be accepted. The applicant also notes it article nine one C has been deleted from the version of the article submitted by Winchester City Council. So this is not referred to in the submission made for the reasons previously set out at length by the applicant. The applicants position is article nine one C is appropriate to be included in the decio and its removal is not agreed to thank you so

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much to come. Well. Is there anything to say on that?

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Come on. Are you with us? Sorry, sir. I Stephen coma from Winchester City Council. I was going to defer to my colleague faulted rich, sir, on this particular matter. Okay, thank you, Mr. Kendrick.

02:35

Good morning services filters Winchester counsel.

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Yes, I think the applicant is highlighted, we have a difference of opinion relating to

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Article nine one C, with particular reference, which particularly references to the exemption of court actions under Section 82.

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By aggrieved persons, during the use of the device, or use of the permission.

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As we discussed last hearing, we do have an issue

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with this and you know, we have explored different wording, we're back to a position where we fundamentally have agreed to disagree regarding that matter. I'm aware also that Portsmouth haven't and other local authorities have also made now representation and I've seen the representation made to Portsmouth where their position which I'm sure they can detail it is to strike totally article nine, we've tried to seek Sara, a degree of understanding and compromise. And that is why we have seeking the removal purely of Article nine one C, which is related to the use for reasons that we have explored previously in our position so on that hasn't changed in making that comment. I have seen that with the applicants response to your last set of questions regarding this matter. And I don't think those are particular arguments that satisfy us have a justification for the inclusion of the exemption for the use phase of this development. I could say if you wish to expand upon that but we did expand upon that previously so our position remains to to strike out reference to the words maintenance from nine one a nine one B and nine one D as existing and to totally strike out nine one C which relates to use and my happy to expand upon our our reasoning for that if you feel that is necessary. So

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thank you Mr. Idris. Now we have your submissions, which we fully understand we also had the submissions from this other local authorities you referred to. And we also obviously got the submissions from the applicant

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Mr. Jarvis is with we have gone through this before. Is there a specific reason you believe this particular proposed development would require the inclusion of the operational phase in Article nine, which I think would probably be quite seen as quite unusual in terms of similar made DCs recently?

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I don't think I'd agree with the comment that it's unusual. And I think we've provided our response to your further written questions which set out that this isn't unusual.

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In any event, opposition is that

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the heart sorry, Article nine, one C will only apply where the levels, the noise levels are being operated in accordance with those set out in the noise management plan. Everyone is agreed the noise management plan is appropriate. And therefore it's appropriate to prevent a defence to have a defence rather to proceedings in respect to statute nuisance where we're operating in accordance with the approved noise levels. And I think that really is a position that's reflected in many of the similar made decio is as evidenced by our response to the further written questions in this respect. Thank you, sir. Thanks, Jarvis. Is there anything else in relation to in Chester's comments?

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No, sir. Thank you. Thank you them shows Could you go on until the Portsmouth city council proposed changes in part two, please?

06:23

Yes, I can.

06:25

So the first comment was with regards to article three, one and how that should refer to including the requirements rather than expressly referring to sheduled. Two. And I don't have any issue with that amendment. And that can be made to the order that date can be made at deadline. I know that does align with the SLP DCA, so that's fine.

06:47

There are various comments on articles four, five, and six are bit all just confirming those are acceptable. We then come to Article seven, which is consent to transfer the benefit of the order.

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And and there's a suggestion that provisions from the Thames tideway tunnel decio should be imparted into the aquin version of Article seven.

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I will need to consider that further. Sir, will be I know there's not a general precedent for the approach taken in Thames tideway to apply to all orders, it is fact specific. And I expect in any event, they are the sorts of matters that the sexual state would take into account, which are in relation to the ability for the undertaker to carry out the project and have the funds to do so.

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But I'll consider that further. And if I think it's appropriate to make amendments I'll do so.

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The next comment which I think needs responding to is in relation to articles seven six A, which is where consent is not required from the secretary of state where the order is to be transferred to a person who is a holder of an electricity licence granted by the Office of gas and electricity markets. And I think on the basis that you've been granted an electricity interconnect to licence you've already been deemed an appropriate person to operate on. So it's on that basis that the carve out is proposed. And

I'm not intending to make any amendments to address Portsmouth's comments in this regard. Firstly, it's for the examining authority to consider that mask themselves when they determine the scheme.

08:20

And it's noted that PCC objects to the inclusion of subparagraph Seven, six C in relation to fibre optics, again, the applicant's position on this issue is known. I think we're in a difference of positions there, but you will understand that my position is that men will not be made.

08:39

And then article Seven, six a, again relates to the financial position of the person to whom any benefit to be transferred to against, I'll consider the terms position. The same applies in relation to the comments in respect of Article Seven, eight, a five, which is along the same lines, everything else I believe was acceptable in those comments.

09:04

In relation to Article eight,

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just in Article eight, too, it's noted that the cross references are not correct, and they will be updated. So thank you, Portsmouth City Council for identifying that.

09:17

And then in relation to Article eight for PCC reserves its position to comment on this I search for which is article 60 of the Thames tideway tunnel dcx provides the authorised development shall not commence in less than until the undertaker enters into the unilateral undertaking for securing off site mitigation and compensation policy and resources for local planning authorities. The suggestion appears to be that that should be included. So that PCC have a PPA with the applicant and the applicant has offered Portsmouth city council the PPA if they would care to comment on it, the applicant would be grateful to receive those comments if they would rather the applicant gives them a unilateral PPA that they haven't commented on the applicants also happy to do that. Thank you, sir.

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Mr. Jarvis.

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Let's go in anything on those points so far.

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whilst you're thinking, I guess you can hear me.

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Sorry, sir.

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Thank you. Um, so just in relation to Article seven,

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I simply would urge

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the the applicant to

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reflect those specific provisions in terms of making sure that there is no gap

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in terms of funding, because the

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there is a particular issue that has been raised by Portsmouth as well as a number of other interested parties that the funding

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evidence from the applicant is not sufficient. And therefore, whilst it, it may well be that the Secretary state would have to be sure that an undertaker who is to replace

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adequate and has was able to show that it had sufficient funds to deal with an address the compulsory acquisition,

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it would also be important to make sure that it could actually fund

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the scheme as granted. And so there doesn't seem to be any harm in making the claim to the Secretary of State what it is, and what is important for Secretary of State to take into account if that transfer was to take place. So we simply urge that that approach is one that is sensible and should be adopted, but would also go some way to addressing the concerns about funding. Sir, in terms of

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Article

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eight Joe's, grateful for the non on article three. But in terms of Article eight.

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So we're going to come back to the what I call and short the article 60 point

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later at is it requirements,

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agenda read agenda item 21. Because it's not as simple as discussing whether or not ppas are to be put forward. But so we will come back to that at that stage. And so there are already negotiations and discussions about how to address section 106. issue is I can again, summarise terms of Article nine.

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The obviously Portsmouth has said that that

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insurance, you shouldn't need it, if if there is going to be an effective set of provisions that should give no rise to statutory nuisance. However, the bottom line is

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it's the very last sentence of page eight of Portsmouth submissions on this.

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And it highlights the fact that again in Thames tideway, the defence in the article was not have any effect after the completion of construction. Now, sir, as you would be aware, there are even

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greater issues about noise in the Thames tideway examination

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committee compared with where we are with this scheme, however, in those circumstances, it was seen perfectly appropriate once that construction had taken place to remove

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structure nuisance as a defence. So if it if it was relevant, then in relation to another scheme that deals with an awful lot of tunnelling, it should be relevant now to something that is, again, a scheme that post construction is supposed to have no impact on such a nuisance. So in that case, it doesn't need that defence anymore.

14:13

In any event, so we would again, urge that that is an approach that is relevant here. So that is all I would like to say about article nine. And that's it Xs Mr. layvin. Has anything else you'd like to add?

14:27

Thank you, sir.

14:30

Mr. laeven have anything to add? nothing further from Mr. Layton, sir. Thank you. Thank you. Mr. Jarvis. You didn't mention article nine, but I take it it's a similar response to the one we already had previously.

14:42

Yes, sir. It is. Just with regards to the references to Thames tideway tunnel obviously, that's a different scheme specific to its circumstances. I'm not aware whether there was a noise management plan in place for Thames tideway tunnel, but I haven't I have clearly set out the rationale. In relation to which this application I consider article nine ones

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see you as appropriate. Thank you, sir.

15:03

Thank you very much.

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Okay, Mr. Smart, you have your hand up.

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Thanks, sir. Yes, to brief points to support those submissions previously made in relation to Article seven and article eight. The first is consistent with our case, we would seek please the deletion of Article Seven, six C, because it relates to telecommunications.

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Secondly, in relation to Article eight for quite a late runner,

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there are two points to raise. Firstly, this seeks to apparently change parts of the country Planning Act. And the usual situation would be if there are proposed modifications as actually provisions for there to be an article explaining that situation under Part Two, the principle powers that's currently absent as far as I can see. And secondly, it's also logically circular with respect to the applicant, who perhaps might know better in different circumstances, to provide some kind of notionally advanced deeming land interest provision to enable execution in advance of a consent order being granted to be taken into account. To have such a provision that purports to, in some way create a fantasy land interest in advance of the provisioning being granted to enable that situation.

16:40

The long the short of it is that aquin does not currently own any land does not have any land interest, and is not in a position to facilitate its execution in advance for the grant of a decio at all. overdetermined consent planning obligation, and so we support Portland City Council's submissions, and I think they're made to essentially that effect, also, and that should be therefore we deleted Thank you, sir.

17:09

Sorry, I just want just my clarification, what are you suggesting should be deleted in that circumstance? It's article eight four, because as I understand it, Article eight four has been put in because the applicant has no land interest, and therefore cannot comply with section 106, the town country Planning Act. And it's essentially trying to sidestep that bar to it executing from for one to land interest, a planning obligation with the ports and city council. It's trying to essentially use the decio itself to change that position. But it's logically circular for it to do that, because in the ordinary Town and Country planning sphere, your recall, sir, that you normally have a resolution to grant but no notice, then you have a planning obligation executed, then you have a notice will in effect, the statutory instrument here is the notice which will chronologically post date the planning obligation here the decio planning obligation, and therefore the means by which the applicant seeks to enable its own execution and qualification under Section 1061 is logically and chronologically prior to the coming into force. So it's an instrument and therefore itself liquidates and therefore force to be deleted with consequential effects. I mean, this seems to be obvious. Thank you for explanation, Mr. Johnson. But I appreciate

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the submissions put in on behalf of the carpenters were quite longer than any published yesterday. Is that something you wish to respond to respond in writing after the hearing? I can respond today, sir, just to say that the reason for including article four is to ensure that planning obligations can be entered into in connection with the order.

18:53

The planning obligation will be entered into and then hopefully the order will be made much in the same way as a planning obligation is entered into and then a planning permission is granted as Mr. Waters set out entirely clear what the issue is, that's considered to arise from the applicant entering into section 106 obligations in relation to the order land which are binding on them, and specifically related to the decio. And Mr. Zwart would look at the draft section 106 agreements that was mostly that deadline six, he would see that they specifically confirm they do not relate to any of the development carried out by any other person on the order land for this specific purpose that they shouldn't affect it. They just float to the DCA. Thank you. So this is why if you have any outstanding concerns and that could you let us have those deadline eight. Yes, sir. Thank you. Thank you very much. Miss Cahoon.

19:45

Sir, thank you. This is a matter that we were going to come back to but

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the bottom line is in very simple terms, that just because a draft DCF

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seeks to modify section 106 does not provide the The Undertaker or any Undertaker, including adequate and with the power to enter into section 106. Now.

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So all 106 will have to take place if this provision is to work once the decio has been made. So, as Mrs. Walker was explaining chronologically, you've got to have your one to six or you would have your 106 prior to whatever decision whatever the development consent was made, or planning permission was given, which is why and sorry to bang on about Thames tideway. Again, the approach that was adopted in that was to have an article that said, there would be an undertaking on the face of the decio that explained that there would be a promise to promise in other words that you have a formal undertaking on the face of the order that attaches a series of 106 is, and therefore you can bind those 106 is and you can make them effective. So that is what we were going to discuss later. But I thought since we've started talking about it, it's probably better to have it for you Now. Now. That was that was very useful. Thank you Miss Kuhn. I think

21:24

if we understand it correctly, it's to do with the chronology and the order in which these things will come about Mr. Jarvis, if you could take it away, give it some thought. And if you feel any action is necessary again, come back to us the deadline on that.

21:37

Yes, that's fine, sir. Thank you. This is what did you have another point?

21:44

No, thank you, sir.

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Your hand is still up. This is what

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I'm sorry. So I was going to raise under any other business but I'll I'll be quiet until that comes up. Thank you. Thank you very much.

21:58

Is that any other business in relation to part two or any other business full stop

22:03

in relation to part two, so go ahead do it now.

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Thank you, sir. And it relates in in essence to the terms of article three one,

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which we contrast for your notes with the simpler terms of the recently granted project for the vanguard wind farm, which included an interconnect to add a converter station you recall from its description development, which we provided to you and that article three one provider simply quote subject to the provisions of this order and to the requirements the undertaking is granted dot dot dot nice and simple. Here, we've we've got the applicant saying that subject to the provisions of this order and shedule to

the undertaker is granted dot dot, and we would request that the x a, carefully scrutinise the interrelationship of sheduled, two with the other terms of the order and simply delete quote and schedule two and replace it with the requirements. And we're given the example of the

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not perhaps chaos, but interesting situation which arise which is this.

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If you go to sheduled, two, on page 45, you will see that there is a shopping list of minor definitions under

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paragraph one of sheduled, two.

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So therefore,

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article three, one, in addition to to one is introducing a host of other potential development through as it were not even the back door, but the front door. And there are two aspects. One is that

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under one seven, there's a proposal for discharging requirements in phases will obviously, our client being an affected party on a key site is quite concerned about how those phases might impact upon its ongoing business and its life there. So question, what might those be and perhaps in due course, the applicant could break those down and explain that. And then secondly, you'll see, for example, that under paragraph one, four, there's a provision about where and the requirement identifies a parameter for a building or structure. That parameter identifies the envelope quote, unquote, for that building, and does not include any external projection, they said, etc. So I take away from that construing, this provision, that if there is not an envelope, then you can have a host of other infrastructure including telecommunications, infrastructure, access structures, and so forth, granted through article three, one, and so if you want an example with your three dimensional knowledge as a landscape architect of where there are no overlaps

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You only have to go to requirement five for the table w when to maximum parameters. And you'll see a whole list there of parameters were only a few of them, I'll give an envelope so and the rest have given heights. So it seems to me that there's a whole shopping list, frankly, of

25:19

development, which is potentially sought to be imported through article three, one. And we would remind you so in line with our submissions that this is meant to be a project in the field of energy. But it's pretty clear to us as we've submitted that it's being sought to carry with it a project in the field of commercial telecommunications. Thank you. So we'd ask you to adopt, therefore, the vanguard article

three one simple subject revisions of this order and requirements. And that would then exclude paragraph one as the example and be in the usual orthodoxy simple approach. Thank you. I'm going to start in the first instance. Could we ask Mr. Jarvis, if he wishes to comment now to do so. But also take away those thoughts and see whether any changes will be beneficial?

26:04

Yes, thank you, sir. I've already confirmed in response to Portsmouth City Council's comments that I will amend it to stay under requirements. So I assume the points being addressed sir. Thank you very much, Mr. Jarvis.

26:18

I have nobody else's hand up or any other matters that parties wish to raise in relation to part two of the draft development consent order.

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Nothing seen there. So I'm going to hand over now to Mr. Wallace to deal with part three of the consent order.

26:38

Thank you very much. We are moving on to part three relating to streets. And the first question under this part is in relation to Article nine a. And we've referenced two paragraphs of Portsmouth City Council's submission at deadlines six, just relatively if the applicant could explain briefly, the scope and extent of the application of the highway permit schemes as they relate to the framework traffic management strategy. the roles of the ATMs, the permit schemes, and the relevant parts of the new roads and streetworks act in the proposed event should be explained, as well as how each one will be applied and secured. Mr. Jarvis. Thank you, sir.

27:21

That's provided for it section 32 of the traffic management tax 2014. a permit scheme is a scheme which is designed to control the carrying out of specified works and specified streets in a specified area. The permit scheme does not authorise the carrying out of works in a street. carrying out a street work is Authorised by the new roads and street Works Act 1991. And the provisions of the new roads and street Works Act 1991 or applicable in relation to how such works are undertaken. A permit scheme then provides further process in relation to how street works, for which authority is provided by the new roads and street Works Act 1991 are undertaken. The position advanced by Portsmouth City Council in their submissions at deadlines seven that the permit scheme somehow replaces the provisions of the New Earth and streetworks act 1991 is clearly wrong. The permit scheme does not provide statutory authority for undertaking works in streets and further does not override the primary legislative provisions of the new roads and streetworks Act. The permit scheme applies to works which are undertaken pursuant to and in accordance with the new roads and streetworks act. That is the relationship between the two. This is evidenced by pccs own report dated the 16th of July 2020 and produced by Stacy grant, who is advising Portsmouth City Council on the application seeking approval to implement the permit scheme for street works and roadworks to replace these and existing notices system, which at paragraph 4.2 states and I quote, all current new roads and street Works Act and

traffic management tax legislation, codes of practice and any future amendments to that legislation apply to this permit scheme. It is noted that this same wording also appears at paragraph 233 of Portsmouth City Council's permit scheme. In the case of the application, it has been necessary to produce the framework traffic management strategy to detail the parameters of the traffic management measures which are to be undertaken in connection with the construction of the authorised development so as to outline how the impacts of the works in the highway will be reduced. This is necessary because in accordance with regulation 14 and schedule four of the infrastructure planning environmental impact assessment regulations 2017 and environmental statement must include a description of the measures envisaged to avoid prevent reduce, or if possible, offset any identified significant adverse effects on the environment and where appropriate of any proposed monitoring arrangements. Having identified these mitigation measures, it is important that they are properly secured by the decio. It is also the case that the nature of the measures which provide constraints in relation to when works may be undertaken in specific locations along the route so as to ameliorate the impacts of construction means the applicant requires certainty that it will be permissible to undertake the

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works in accordance with them, where it is not the case and where other constraints potentially applicable, there will be no certainty and it will be very difficult to plan and deliver the works in a coordinated manner. Turning to how these matters are addressed in the decio. Article 11 provides statutory authority for the undertaking to undertake street works within the order limits without the need to attain any of the consent from the Highway Authority. In this respect, consent is required for the undertaking of streetworks outside the order limits, which consent must not be unreasonably withheld or delayed when necessary for the purpose of carrying out the works. requirement. 25 provides that no phase of works and and before the onshore cable route on the highway may be undertaken until a traffic management strategy in relation to those works has been approved by the relevant Highway Authority. traffic management strategies must be in accordance with the F TMS as search the traffic management strategy will detail how the carrying out of the works will be controlled from a traffic management perspective, ensuring This is done in accordance with the mitigations which the residual effects detailed within the environmental statement are derived taking into account and therefore that the works within the scope of the approval of traffic management strategies is to be undertaken in accordance with the process provided for it sheduled three to the draft development consent order. As the traffic management strategy will have been approved, there is not a need for a permit to replicate those controls, and it would not be appropriate for controls to be imposed on the work by a permit which are different to those secured in the traffic management strategy approved in relation to them. This would have the effect of frustrating the works, which is not acceptable. Taking this into account. Article nine a applies to permit scheme at the request of the highway authorities so that the works are permitted through the same permitting system as other works in the highway. The reason for this is to ensure the Highway Authority is able to more easily document and coordinate all works on the highways for which it is responsible through a single system. Article nine a has therefore been drafted to confirm the relationship between permits and the traffic management strategies. With the traffic management strategies approved taking precedence in relation to how the works are undertaken in court. The approved traffic management strategies must be complied with and the applicant requires certainty that it will be undertaking works in accordance with the traffic management strategies

approved. It is the case that because the permit scheme is applicable, the undertaking will need to coordinate with the permitted works IE it will not be able to obtain a permit to work in a location where someone else is working at that time. Taking into account the control secure through the ftms which detail when works may be undertaken in locations along the cable corridor. It is imperative The Undertaker is able to appropriately forward plan when works are undertaken and to reserve road space for this purpose. And it is considered this is also beneficial for the highway authorities who also need to coordinate when works are undertaken. For this reason, Article nine to D provides where a provisional advance authorization has been granted to the undertaker in advance of the grant of the permit in relation to the construction of the authorised development. The relevant street authority may not grant a permit for any other works in the location during the time period to which that provisional advance authorization relates, say that nothing will restricts the ability of the local Highway Authority to grant a permit for emergency works. As such, all persons can have certainty regarding when works in the highway are to be undertaken and how they are to be undertaken. It is not correct to characterise the undertaker as seeking to keep open the potential to undertake works in specified locations for its exclusive use over a long period, as is suggested by PCC. The provisional advance authorizations obtained will relate to work at specific times at specific locations, and that they are in place and document when the works are to be undertaken in advance of them being undertaken is of benefit to all parties. Thank you, sir.

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Thank you very much, Mr. Jarvis. That's very useful and very, very clearly put.

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I'll come to Portsmouth City Council. First, as I said, the question kind of arose from their submission at deadline six Miss Cahoon, is there anything you wish to comment on them from what you've just heard?

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Sorry, there's nothing going on.

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Sorry. So there's some hilarity going on in the background.

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So

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clearly, Mr. Jarvis was reading out something he'd written down. And it would be probably sensible for us to respond properly at the relevant time when we've seen that in terms of the in terms of the effects of the permit scheme and how it fits within the statutory regime of the Traffic Management Act, and nurser. Clearly, part of the process

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despite what Mr. Jarvis was saying includes

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The control that is deployed either through nursery through the nursery system or through a permit scheme.

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It is not simply

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under under nursery Undertaker's have rights to carry out works. But that is always subject to supplying and notice. These change that was brought through the TMA and permit schemes means that that right is curtailed because an undertaker cannot carry out works until such time as they have availed themselves of a permit. So that is how the control is, is, is delivered through a permit scheme. Now, it is accepted that there are rights that Undertaker's have but but the way that it was characterised as I was listening to Mr. Jarvis seem to suggest that this was simply

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a method. That permit scheme is a permit scheme, you have to require a permit. And that is where the Highway Authority,

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which has a series of duties and

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the relevant data, I think it's both NASA and the TMA, which has it hit they have a duty to talk coordinate works of all kinds on the highway. And there is a duty on Undertaker's under Section 62, to cooperate in that process. So there is actually quite a fundamentally important part of nurser and the TMA that needs to be reflected in this article and indeed, in articles nine a and 10. So that is why

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the local highway authorities are concerned because there are specific duties that need to be addressed. If the local hiring authority was simply to sit back and say, well, there is a system or there is a a series of works that have been defined and have been described within a dceo that is not going to be sufficient to meet the local highway authorities use which is why we have that sought in detail to respond to this. So I'm, as I say, we will go away when we see what Mr. Jarvis has written recently that he was reading out. But I thought it was important to understand the context in which

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Portsmouth is making these comments. Okay, thank you very much. Mr. Cahoon. Before I go back to Mr. Jarvis. I'd like at this point just to perhaps bring in Mr. Attorney for Hampshire County Council. Appreciate it wasn't your your point originally. But is there anything that you wish to add on this matter?

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No. So I think on the main debate, probably not. I just want to make one observation there, which is that

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in dealing with nine,

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forgive me nine A to D. There was reference to

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provisional advance authorization. I mean, granted, one of the issues that's raised by Portsmouth is about the priority that's given to this project. We have previously said to the applicant, that the reference should not be to emergency words, but it should be to immediate words to include those words which are required, for example, to reconnect a property which has been disconnected from mains water supply.

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And that should also be included not just those where there's a threat to life. So we do seek that change? I'm not sure whether that has been formally responded to yet by Mr. Jarvis. But aside from that, I don't have any further comments to those made by Portsmouth.

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Thank you very much, Mr. Attorney, Mr. Jarvis, your thoughts on these

39:04

and the permit schemes applicable and section 660 of the new rules and streetworks act with regards to coordinating works as applicable.

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I'm struggling with regards to PCC points made to understand why they don't think it's necessary to coordinate works on the highway and why the proposals to do so aren't acceptable. Clearly, because of the way the F TMS works, works can only be carried out in certain places in certain times. And it's important that everyone knows when those works are to be carried out at those times in accordance with the F TMS and that they can be carried out at those time periods. I think anything that would suggest otherwise would appear to be looking to frustrate the works.

39:45

And then just with regards to the point made by Mr. Attorney, emergency works is expressly defined at article 987. And that does refer to cause danger to persons or property. And I'm not entirely clear if he

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considers that does address the point he's raised if he could just confirm and then if not, I can consider any further amendments that he's requesting. Also just acknowledging that I like Portsmouth City Council have asked for inclusion in the definition of urgent works, which I'll also need to give further consideration to Thank you, sir. Thank you, Mr. Jarvis. Mr. Attorney. Well, if it helps, Mr. Jarvis, the point I think is the same one, as I understand it urgent works are those to reconnect someone out of

service and a immediate works is the is the phrase used for both emergency and urgent works. So as it stands, the 987 doesn't do enough because it would only be if there's a threat to property. So for example, if

40:47

a house was disconnected from electricity or water supply,

40:51

the upwind works would take priority or potentially take priority over the works to reconnect that, and that's obviously not what aquin didn't and, and wouldn't be appropriate. So we just need to have that clarity and 97987. And hopefully, Mr. jobs can provide that.

41:08

Thank you very much, Mr. Jarvis. Does that clarify the point being made there? Yeah, yes, it does. I'll give it some thought. I think the situation described would be causing danger to persons. But in any event, that's not the intention. So I will make sure the position is clear. Thank you, sir.

41:25

Thank you very much. Before I move on to the next question on the agenda, does anyone have any further points on this one?

41:34

Okay, nothing heard. Moving on, then we now come on to the examiner authority sheduled of changes to the draft development consent order in relation to Article 10. To Mr. Jarvis, you've seen these any thoughts on that at this time?

41:55

Thank you, sir. And so the amendment suggested is not agreed with and this is for the following reasons. It is correct. The level of reinstatement to be undertaken where the undertaker carries out streetworks is to be in accordance with the specifications for the reinstatement of openings in the highway. And this position is already applicable in relation to streetworks by virtue of Article 12 two I article 10, however, relates to alterations to streets that are required for the purpose of constructing and maintaining the authorised development where any temporary alteration is made, the street must be reinstated following this article 10 does not authorise street works in the same manner as article 11. Accordingly, the measures which may be required to reinstate a street following works authorised to be undertaken by Article 10 may encompass different matters to those where street works are undertaken, and a street needs to be reinstated in accordance with the specification for the reinstatement of openings in highways. Furthermore, section 70 of the new roads and street Works Act 1991 provides for more than just requiring the reinstatement to be undertaken in accordance with the specification for the reinstatement of opening in highways, which is the rationale for the amendments requested. It's not necessary for all of those processes to apply to works undertaken pursuant to the authority provided by Article 10.

43:11



The applicant would note that it has not been necessary for the proposed wording to be included in any other decision that it's aware of to date.

43:19

And just say that the African expects the higher authorities may also have a view on this wording and the amendments proposed and I'd be grateful to hear their views on this matter today if they're able to provide those. Thank you, sir. Of course. Thank you very much, Mr. Jarvis. That was that was clear that's been useful.

43:35

I'll take that opportunity. Whilst we're on the question. First of all, let's come to Mr. Turney and see if he has any views on what we've just heard.

43:50

Say originally for him shake hands down. So I'm going to take that point away. If I may. We didn't have any comments on the ex aude proposal. But I think we need to reflect on what Mr. Jarvis just said and see if that changes our view.

44:05

Thank you very much. Miss Cahoon, any any views from Portsmouth on what you just heard? So other than the comments that we've made in our, our document as it were, so which as you will note,

44:24

page 10, Article 10 to we've endorsed your suggested amendment. But I will go back to those instructing me and see if there's anything further that we wish to say.

44:37

Excellent. Okay, that'd be much appreciated from from both highway authorities if we could have some ranking in writing on that position. But thank you all for your contribution on that unless there's anything further from any party.

44:52

I'll move on to the next point then. In article 13, three, the phrase

45:00

Reasonable access is in twice in its wording that the applicant advisors who determines what is meant by reasonable access, and how this be objectively assessed. Mr. Jarvis.

45:13

Thank you, sir. And so as a starting point, I just like to highlight that the placing of traffic management in a street does not constitute a temporary closure of that street necessarily. A temporary closure would occur only when the whole width of the street is closed, and therefore, when persons may no longer pacify to cross it, Article 13 is therefore not necessarily relevant to how access is provided to properties for residents when the works are being undertaken in accordance with the traffic management

strategies or be in circumstances where there is a closure it will be the position regarding the measures to be taken in relation to access to residences, businesses and community facilities where traffic management measures are in situ is to be confirmed in the traffic management strategies to be approved in accordance with requirement 25. I would just highlight requirement 25 one D, which requires this information to be included in a traffic management strategy.

46:05

The DCR is made will be law and therefore the ultimate arbiter of what is reasonable access would be the courts. Noting this The Undertaker will liaise with any persons going to offer on premises or putting a street to a public right of way affected by the temporary closure, alteration or diversion or restriction if they would otherwise be no reasonable access to confirm the arrangements to be provided, and will determine what it considers to be reasonable in the circumstances with that person. Should any person not consider this legal requirement is being met by the undertaker. They may raise this matter with the Undertaker and where they are still not satisfied may seek to address the matter through other channels. For example, referring the matter to the court is not considered that the wording could be amended in a manner which provides more clarity on what is required. The wording cannot be amended to cater for all specific circumstances on an objective basis as to circumstances of when reasonable access needs to be provided is fact specific. The phrase reasonable access is used in equivalent provisions of a number of other recently made DC OHS including the Avon Brittany two coalhouse development consent order 2021 article 53, the a 38 Darby junctions development consent order 2021 article 53 the riverside energy Park order 2020 at article 33 the cliff hills solar Park order 2022, Article 33 to Great Yarmouth, third river crossing development consent order 2022 article 53, the North Vanguard offshore wind farm or the 2022 article 11 three and the Thames water utilities limited Thames tideway tunnel or the 2014 and Alas, recent article 52. Taking this into account, it is not considered the wording is not sufficiently clear. And no amendments are proposed to be made to the DCR in this regard to be submitted to headline a. Thank you, sir.

47:52

Thank you very much. That's most clear. Does any other party have anything to say on this particular question?

48:05

Okay, nothing heard. I have nothing further on that. I think we've we've thank you for those

48:11

precedents as well there. Thank you very much. Moving on, then to the next point and the applicant, if you could Mr. Jarvis just to go through portion of City Council's proposed changes in part three, and those that are still remain in dispute.

48:26

Now, yes, thank you, sir. So the first point to comment on are the comments in relation to Article 9828 B. And this is the premise of the F TMS and other approvals.

48:38

And the point made is that without examples of conditions that might conflict or a clear rationale for what might be considered to conflict as opposed to control, it seems that problems may not be realised until a permit is issued.

48:50

traffic management strategies can only be conflicted with where they've been approved, it will be self evident from the approved traffic management strategy approved by Portsmouth City Council, whether anything in a permit to be issued by Portsmouth city council will conflict with the traffic management strategy approved by them, there will be no such a notice in reality and therefore boss point is made it's not agreed with and no amendments will be accepted to those articles in that respect.

49:15

in respect of Article nine A to C PCC objects to the blanket exclusion of a section of Section 58 and section 58 A of the new road and street Works Act where aquent wishes to undertake its works. And were such worse that you moratorium to apply pccs permit scheme at section 10 a one allows an application for a permit to be made specifying the grounds on which consent is sought and decided accordingly. This is not agreed with this would be a potential impediment to the delivery and its removal is not accepted by the applicant. It is noted that the position accepted in the SLP decio was that section 58 and section 58 A should not apply. It's also a point that I'll just raise which is that section 58 in its exclusion is specific to the aquent works and it would

50:00

Apply after the adequate works being carried out.

50:04

We've already discussed the comments made in relation to the definition of emergency works, urgent works and immediate works. I will look at all of those definitions and figure out how I can address the points raised. But I confirm there is no desire on the part of the applicant to do anything that would potentially give rise to the issues that were set out by Mr. Attorney as an example.

50:28

There are various comments around how references to working days should or two days rather should be two working days and I confirm that I can be amenable to those and there'll be addressed.

50:39

And again, there's a comment in relation to emergency and urgent activities, which as I've stated, I've looked to address and there are comments quite a few comments made in relation to Article 10. The first one that I consider it's necessary to address

50:56

is that the ability to exercise article 10 writes in aid of constructing and maintaining outside of the order limits appears unnecessarily broad. And I would highlight that the power is not unnecessarily broad. It is subject to a test of necessity by any such works being required for the purpose of where those works were not for the purpose of constructing or maintaining the development they would not be authorised.

And in any event were not the case there would not need to be any authorization issued in relation to them by the Highway Authority.

51:29

And there's a further point made in relation to Portsmouth City Council's submissions, it's not clear or justified why for post construction maintenance and in relation to any area outside the order limits the undertaking should not be treated as any other party. By making an application under the general terms of the permit schemes. The Undertaker would be treated as any other party the permit schemes specifically apply to the construction and maintenance of the authorised development, the traffic management strategies for construction only. So permits will be obtained in relation to maintenance through the permit scheme without the carve outs applying or rather, the clarifications are turned in with regards to how traffic management strategies that are treated in the context of the issue of permits.

52:13

There are various comments in relation to the new roads and streetworks act. Some of those relate to aligning the Aquarian daughter with the SLP order.

52:25

It's with particular particularly with regard to whether or not it should be confirmed at article 11. One that that power applies without consent. And as article 11, to where works or outside or 11. Three right outside your limits is with consent. It's specifically because one is weird, and one is without consent, that it's necessary to reference both. And it's not agreed that including anything in Article 11. One that confirms that there's not a requirement to obtain consent in relation to those works, would negate the need to comply with the permit scheme, which has already been expressly stated to be applicable. And in that regard, I would just highlight that the SLP order does have the same wording. And we're not aware of any issues arising in relation to the interpretation of that order.

53:07

And in relation to Article 12, which is the application of the new roads and streetworks act 1991 Portsmouth city council comment that section 56, the power to give directions to the timing of streetworks is admitted, meaning that article 93 would be the sole means of directing the conditions securing different timings are imposed. If there are any works to which the permit scheme did not apply. This would be necessary in order to allow the higher authority to meet its network management duty under Section 16 of the Traffic Management Act 2004. As well as to coordinate works of all kinds on the highway intersection 59 of the new roads and streetworks apps. And the permit scheme does apply and it will apply to all such works on streets that are regulated by these matters. And therefore it's not considered that there is any need to re include section 56 as suggested.

53:56

And with regards to directions in relation to working hours more generally, and we might come on to this later. Obviously there's been some discussion between the applicant and the local highway authorities in that regard.

54:06

The applicant will just make the point that it's only going to be amenable to directions being given in relation to him work can be undertaken on the highway where it's been evidenced that doing so would not give rise to any environmental assessments that are within the scope of those assessed and reported on within the environmental statement.

54:22

Again, the comments are made with regards to the admission of Section 58 and 58. A in relation to a moratorium in Article 12. For the reasons confirmed that will not be applied it would be an impediment to the scheme at Quint requires the ability to carry out its work in accordance with the timescales provided for in the ATMs, and anything that would threaten that would be opposed by the applicant. There is a query with regards to Section 66, which requires the undertaker to complete works as expeditiously as possible, with only necessary obstructions of the highway. Again, the traffic management strategies will set out the details of how the works will be carried out in the highway and the time spent.

55:00

in which there to be carried out. So those matters are already addressed separately and the new rows and streetworks tax provision does not need to be replicated to give effect to that.

55:09

There's a comment with regards to Section 75 in relation to inspection fees. And this is just to note that I will consider that further. And that may be included in the order that submitted deadline eight, and I'll confirm the position on that my post hearing schedule requested by Mr. Mohan at the beginning of the hearing today.

55:29

And then second, and lastly, rather, with regards to Article 12, there's a reference to Section 78. And there did not appear to be any of the reference relevant regulations. And I would just highlight that 12 one specifically includes the words and any regulations made or code of practice, issue order, or approved under those provisions apply. So clearly, all of those provisions do apply. It's also noted that section 78 is not applied in the SLP decio. And there are comments in relation to Article 13. But it's more of a summary of what article 13 does, rather than any objection to them. So I don't have any specific comments on those comments that were provided. Article 14, Article 15. Again, it's just more of a commentary, it seems for Portsmouth city council as to what the actual articles do, rather than any comments in relation to how they're drafted. And then lastly, in relation to Article 16, there was a comment in relation to the use of the word revoke and that that may not be appropriate given it's only temporary zeros which are sought. And I do understand the point made there and I will consider whether the word revoke can be removed on the basis that amend or suspend should be appropriate. And then 16, one, B two f there is a comment that code is not defined in the decio. I would just note that expressions used in this article and in the 1984 Act have the same meaning. And that's expressly provided for in Article 16. If you bear with me a second, I'm just confirming exactly where that is. Apologies, I had wrote down.

57:03

Article 16. Six confirms that expressions used in Article 16 and the 1984 Act have the same meaning in this article as in that act. And that's how the definition of wrote is provided for without providing expressly in the interpretation provisions in the decio. And that brings me to the end of Part Three, sir. Thank you. Thank you very much. Mr. Jarvis. Thank you for that. miska who and obviously that is arises from your proposed changes. Is there anything you wish to come back on verbally at this time in relation to what you've just heard?

57:37

So

57:40

good, I can be heard. So.

57:42

So I think I think, again, it's, I don't want to take up time now. It's far better that I see what Jarvis has has been saying in writing, I took as good notes as possible. But there are various things that I would like to discuss with those instructing me before I give a full response. I'll ask Mr. Lehmann if he wants to add anything at this particular stage. But I think I don't want to take up time asking Mr. Jarvis, what he said again, so it's far better we see in writing, as I say, but but I'll just ask or so you asked Mr. Laban. If he wants to add anything. Okay, Mr. layvin. Is there anything you wish to add at this time?

58:21

Thank you, sir. Yes, Mr. Layton here just to really double down on what Mr. Haines said. discussions regarding Part Three with the applicant have been helpful to date. So I think if we could further that in writing, and hopefully, to secure some more common ground, that would be helpful.

58:41

Thank you very much, Mr. layvin.

58:44

Mr. Sparks, I see that your hand is raised.

58:50

Thank you very much. So I'm just by getting the hang of electronics up now.

58:55

Yeah, yes, Article 13. Sir, I just raised by reference to Article 13, three pedestrian access and article seven suspension of private Ray ways

59:08

and foreshadow the examiners question about why the carpenters are proposing protected provisions. This is an example of why they're doing that. And, in essence, obviously, the carpenters land will be directly affected by the proposal. And contrary to aquin in its response, it is not resolved access from Broadway lane westwards along the carpenters private right of way into its land, that private right away

from Broadway lane is used. For example, by sheep, I also by heavy vehicles to gain access to the carpenters land and if in the event the Development Centre is confirmed, at least for the project and it becomes executed in due course potentially, if so.

59:56

They obviously are going to want to continue using as best they can their land.

1:00:00

The moment at Queen's simply shut the door by stopping up the access from Broadway lane. Westwood's full stop. And although they assert they've resolved it, they simply haven't. So what

1:00:15

we're doing in relation to this bespoke decio, as Mr. Jarvis has adverted to already, is, is there for promoting a protective provision that interfaces with a number of different articles to facilitate execution in due course of which article 13 is one. Now, for your notes, how you recall that the Planning Act 2008, section 123, and four provides for provisions on your record also that part one sheduled five and paragraph 10 expressly provides for, quote, the protection of the property or interest of any person, the carpenters are self, evidently any person can qualify as such. So, rather than having a series of carve outs or requirements, we've aggregated all of the potential protections into the protective provisions in draft. So here, for example, Article 13, three appears to prevent access by pedestrians, including the sheep westwards from Broadway lane. And article 37 simply seeks to convert suspension of access into some kind of compensation. Well, we say that's not good enough, because we can facilitate access through and in the absence of any engagement by Aqua and with the carpenters, frankly, throughout the period of the examination hearing to explore all reasonable steps to avoid compulsory purchase powers being used. we endorse when we come to it to summarise the protective provisions. But this is an example of trying to therefore leave article 13 intact between effects have a carve out for access in due course. Thank you, sir.

1:01:57

Thank you very much for for that.

1:02:02

Mr. Attorney. I do see your hand is raised. But I'll get Mr. Jarvis's feedback on that particular point first, and I'll come to you, sir. Thank you for your patience. Mr. Jarvis.

1:02:12

Thank you, sir, I would just know that we have been trying to address this matter through voluntary agreement with Mr. Schwartz client. And I'm also I would just need to double check exactly what we can confirm in relation to allowing access where it's safe to do so. But obviously, where works are being undertaken. And it's not safe to allow access. And there's other reasonable access available, then the position is that the public right of way refer to a Broadway line would be closed for that period, sir. Thank you.

1:02:39

Thank you very much. Mr. Turney.

1:02:44

Thank you, Sir Richard. Tony, for Hampshire County Council very briefly. We've heard Mr. Jarvis's detailed response on the PCC submissions about this application of various provisions in the new Adam street where it's at. And we'd like to come back on that in writing, if we may.

1:03:02

If just to echo in a sense, Mr. Schwartz point as well. You will be aware that the county council shares concerns about the Broadway lane access. So it's not just the landowner who's concerned about the issues there that they're shared by the Council.

1:03:19

Okay, thank you very much for that.

1:03:23

Are there any further points on this particular question? on the agenda at this time?

1:03:33

Mr. farts are you I think your microphone is still on. I don't know if that means you wish toys are put up. There we go. Thank you very much for confirming. Okay.

1:03:44

Moving on them. Before I get to the other matters point on the agenda. I just like to flag it with the applicant. That Hampshire County Council at deadlines seven c have commented on article 16.

1:04:02

With respect to enforcement and funding of the provisions within that article, is the saying you are able to answer now, Mr. Jarvis was dissent you prefer to come back to in writing.

1:04:15

Thank you, sir. It was raised with me a day or so ago. And I haven't unfortunately had the time to consider that in detail. So I will come back and writing on that point, sir. Thank you.

1:04:26

Thank you very much. Thank you for that. And the final matter under this part three, then Are there any other matters that any parties wish to raise under Part Three?

1:04:41

Okay, nothing heard.

1:04:43

I think what we'll do then, it's quarter past 12. Now, if we could have just a brief five minute break, just recuperation break, and we turn at 1220 please.



1:04:58

Thank you.